

立法會
Legislative Council

LC Paper No. CB(2)879/99-00

(These minutes have been
seen by the Administration)

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**Bills Committee on
Factories and Industrial Undertakings (Amendment) Bill 1999**

**Minutes of Meeting
held on Tuesday, 1 June 1999 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon HO Sai-chu, JP
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon LEE Kai-ming, JP
Hon HUI Cheung-ching
Hon CHAN Wing-chan
Hon LEUNG Yiu-chung
Hon Howard YOUNG, JP
Hon Andrew CHENG Kar-foo

Members Absent : Dr Hon LUI Ming-wah, JP
Dr Hon LEONG Che-hung, JP

Member Attending : Dr Hon Raymond HO Chung-tai, JP

Public Officers Attending : Mr Herman CHO
Principal Assistant Secretary for Education and Manpower

Mr Franco KWOK
Assistant Secretary for Education and Manpower

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Mr William SIU
Assistant Commissioner for Labour

Mr G H FOX
Senior Assistant Law Draftsman

Miss Leonora IP
Government Counsel

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Stanley MA
Senior Assistant Secretary (2) 6

I. Meeting with the Administration

[Paper Nos. CB(2)1716/98-99(07), CB(2)1788/98-99, CB(2)2007/98-99(01), CB(2)2131/98-99(01) & (02), and CB(2)2158/98-99(01) & (02)]

Members noted that some deputations had provided further submissions to the Bills Committee and agreed that they be invited to present their views at the next meeting if they so wished. The Chairman then went through the Administration's response to members' concerns raised at the last meeting on 21 May 1999 [Paper No. CB(2)2158/98-99(02)].

Application of the proposed Safety Management Regulation to small companies in the container handling and construction industries

2. Referring to paragraph (g) in the Administration's response, the Chairman reiterated his suggestion of establishing a central "floating" safety management committee for small companies in the container handling and construction industries which occasionally employed additional workers up to 50 staff or more to cope with urgent work. Given that small companies employed about two-third of the local workforce, he urged the Administration to consider the provision of an alternative system to assist small companies to meet the legislative requirement.

3. Assistant Commissioner for Labour (AC for L) responded that it would

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be difficult for an external organization to assist a small company to develop a safety management system within a short period of time. Principal Assistant Secretary for Education and Manpower (PAS(EM)) supplemented that in enforcing the legislative requirement, the Administration would consider the circumstances of each case to determine whether prosecution against the proprietors or contractors would be justified. If the sudden upsurge of workload was due to unforeseen circumstances or exceptional situations such as typhoons and large ship consignments, there would be a case to provide for a reasonable defence under the proposed Regulation. He said that the Administration would provide an amendment to that effect.

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4. Miss Cyd HO expressed concern that some "contingency" situations such as typhoons were foreseeable and that a mechanism should be put in place to assist small companies to devise a safety management system. Mr HO Sai-chu pointed out that small companies and contractors employing less than 50 workers were usually sub-contractors of principal contractors who had the responsibility to ensure compliance with the statutory requirements on the sites. The Labour Advisory Board had discussed the issue and agreed that principal contractors should be responsible for the establishment of an effective safety management system on the construction sites and container storage yards. Mr LEE Cheuk-yan agreed with Mr HO Sai-chu.

5. In view of the high accident rate in construction and container handling industries, Mr LEE Kai-ming considered it more important for members to concentrate on the provisions in the Bill to facilitate its early implementation so that workers in these industries would be required to undergo the mandatory safety training. He suggested that deliberations on the proposed Regulation could continue when it was introduced into the Legislative Council after passage of the Bill. Mr Kenneth TING agreed with Mr LEE.

6. The Chairman pointed out that Clause 5 of the Bill sought to expand the powers of the Commissioner for Labour (C for L) to make regulations on the safety management system and to amend the proposed Fourth Schedule which specified the types of industrial undertakings subject to the Bill. As C for L could add other types of industrial undertakings to the Fourth Schedule after passage of the Bill, the Chairman inquired whether such amendments would be subject to positive or negative vetting of LegCo. Senior Assistant Law Draftsman (SALD) advised that under section 8 of the Factories and Industrial Undertakings Ordinance, C for L might by notice in the Gazette amend the Schedules under the Ordinance, including the Fourth Schedule if the Bill was passed. SALD said that amendments to the Schedules would be subsidiary legislation subject to LegCo's negative vetting. Assistant Legal Adviser 5 (ALA5) confirmed SALD's interpretation.

7. PAS(EM) responded that to address members' concerns expressed at the

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meeting on 9 March 1999, the Administration had already undertaken to consider an amendment to the Bill to the effect that any amendments to the Fourth Schedule should be subject to positive vetting.

8. In view of the Administration's undertaking in paragraph 7 and the fact that members generally had no objection to the safety card system for workers in the container/cargo handling and construction industries, the Chairman suggested and members agreed that the Bills Committee could concentrate on the provisions in the Bill at the present stage. Members also agreed that detailed provisions on the safety management system could be further deliberated by a subcommittee to be formed to study the proposed Regulation after its introduction into LegCo on enactment of the Bill.

Workers' right to refuse dangerous work assignment

9. On paragraph (g) in the Administration's response, PAS(EM) said that the Secretary for Education and Manpower had undertaken at the LegCo meeting on 20 January 1999 that Government would set up a mechanism to resolve disputes concerning workers' refusal to work on the spot and appropriate guidelines would be incorporated in the Code of Practice. He stressed that Government should widely consult the employers and trade union representatives on the specific arrangements and details of the Code of Practice.

10. Mr LEE Cheuk-yan emphasized that the Hong Kong Confederation of Trade Unions held a strong view that the powers and functions of the safety management committees and the workers' representatives should be stipulated in the proposed Regulation, instead of the Code of Practice which was not legally binding.

Clause by clause examination

Clause 1- Short Title

11. Members raised no queries on the clause.

Clause 2 - Interpretation

12. The Chairman sought clarification as to whether the definition of "container handling" would need amendment as suggested by the Hong Kong Container Depot and Repairer Association [Paper No. CB(2)1716/98-99(02)]. SALD responded that "maintaining" in English would mean keeping the container in a satisfactory condition and it would include "maintenance and repair". ALA5 queried whether "keeping" would be included under "storing" and whether it could mean "upkeeping". Messrs LEE Cheuk-yan and Andrew CHENG therefore suggested deleting "keeping" from the definition. PAS(EM)

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Admin undertook to consider improving the drafting of the definition.

Clause 3- Section added

13. Referring to a comment in a submission tabled at the meeting, Mr LEE Cheuk-yan enquired whether a proprietor who was involved in "cargo handling" activities should also be required to obtain the safety training certificate as his employees. SALD advised that the Bill was intended to cover employees in specified industrial undertakings and the proposed section 6BA did not include proprietors or their agents. PAS(EM) clarified that the legislative intent was to cover all persons employed in the construction sites and container handling depots, except those engaged in office administration and activities unconnected with the construction and container handling work. AC for L further explained that "cargo handling" was different from "container handling" and only the latter was covered by the Bill.

Admin 14. ALA5 said that the authority for SEM to appoint a day for the commencement of the proposed sections 6BA(5) and 6BA(7) should be expressly stated in these subsections. Upon the advice of the Chairman, SALD undertook to consider an amendment to the relevant subsections.

Admin 15. The Chairman suggested that, for clarity, "the person who does not have a relevant certificate" in section 6BA(5) should be amended to "the person who have not been issued the relevant certificate". SALD agreed.

Admin 16. With regard to the validity period of the training certificate, AC for L advised that such certificate would be valid for three years from the date of issue or for a specified period as stated in the certificate. To avoid confusion to workers as to when they should apply for renewal of their training certificates, members suggested that the validity period or expiry date should be clearly specified in law. PAS(EM) agreed to consider improving the drafting.

Admin 17. On section 6BA(7), Mr Andrew CHENG expressed concern that a worker might be dismissed for forgetting to bring the green card to work. He therefore asked whether a grace period would be allowed for the worker to produce the card within a reasonable period of time on demand by an occupational safety officer. Mr LEE Cheuk-yan suggested allowing 24 hours for the worker to produce his certificate to the officer upon demand. PAS(EM) undertook to consider the suggestions.

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Admin 18. Members also expressed concern about the arrangement for workers to apply for replacement certificates or renewal of certificates. Mr LEE Kai-ming considered that a convenient system should be put in place to avoid last minute rush for renewal of certificates at the same time. PAS(EM) advised that workers could apply for renewal of certificates three months before expiry. He would consider providing a reasonable period for renewal after the expiry of the certificate.

Admin 19. As regards loss of certificates and replacement procedures, AC for L advised that Labour Department maintained a central record of holders of training certificates as the issuing institutions might cease to exist after a period of time. Mr LEE Kai-ming said that given the work environment of the construction and container handling industries, such certificates could be lost or damaged accidentally. It was therefore necessary to have a speedy system to enable the workers to obtain their replacement certificates quickly so that they could resume work as soon as possible. At the request of the Chairman, PAS(EM) undertook to consider the suggestion and whether amendments would be required for the proposed legislation.

Admin 20. ALA5 sought clarification of the meaning of "cease to employ" under the proposed section 6BA(5). The Chairman advised that the Administration should consider whether it was the policy intention to "suspend" or "terminate" the employment of a worker who did not carry or was not issued a training certificate. Mr LEE Kai-ming considered it unreasonable to terminate the employment of the worker. SALD said that the proprietor could re-deploy the worker to another post not requiring a training certificate for the time being. Miss Cyd HO also suggested providing a grace period for the worker to obtain the training certificate instead of cessation of employment. In response to members' concern, PAS(EM) undertook to consider providing some flexibility in legislation and to examine whether amendment to "cease to employ" was necessary.

21. ALA5 asked whether the Gazette notice by the Commissioner for Labour to recognize safety training courses under section 6BA(2)(a) was subsidiary legislation subject to LegCo's negative vetting. SALD advised that the notice on the recognition of training courses had no legislative effect and was not subsidiary legislation. AC for L added that the notice would only list out the training courses recognized by the Commissioner and that frequent updating might be necessary. Mr LEE Kai-ming accepted that the list of courses might not need LegCo vetting but expressed concern that the class of personnel required to undergo mandatory training should be vetted by LegCo. The Chairman pointed out that the subject of section 6BA(2) was mainly for accreditation of courses, and that the drafting could be improved so that the class of persons required to undergo training could be subsidiary legislation subject to

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LegCo scrutiny. The suggestion was supported by Messrs LEE Kai-ming and Andrew CHENG. At the request of the Chairman, PAS(EM) undertook to consider the suggestions.

II. Any Other Business

22. The next meeting would be held on 3 June 1999 to continue clause-by-clause examination of the Bill.

Legislative Council Secretariat

12 January 2000