

立法會
Legislative Council

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seen by the Administration)

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

**Minutes of Meeting
held on Thursday, 3 June 1999 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Ronald ARCULLI, JP (Chairman)
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 : Hon Kenneth TING Woo-shou, JP
Hon HO Sai-chu, JP
Hon Cyd HO Sau-lan
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 and clause-by-clause examination

Clause-by-clause examination

The Bills Committee continued examination of the Bill from clause 4.

Clause 4 - Meaning of "at work"

2. Members had no comment on the clause.

Clause 5 - Power of Commissioner to make regulations, etc.

3. Responding to the Chairman, Assistant Legal Adviser 5 (ALA5) and Senior Assistant Law Draftsman (SALD) confirmed that all new regulations proposed by the Commissioner for Labour (C for L) under section 7 of the principal ordinance (Factories and Industrial Undertakings Ordinance) (FIUO) were subject to positive vetting by the Legislative Council (LegCo).

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4. The Chairman expressed concern that the proposed section 7(1)(oa)(ii) would require proprietors and contractors to prepare and revise safety policy statements and that non-compliance with the safety policies could lead to penalties under section 34(3) of the proposed Safety Management Regulation. He inquired whether individual companies could devise different safety policies and what would be the consequences of non-compliance with such policies.

5. Principal Assistant Secretary for Education and Manpower (PAS(EM)) said that under section 9 of the proposed Safety Management Regulation, a proprietor or contractor would be required to prepare and announce a written safety policy statement for compliance by their workers. He explained that the safety policy would be the company's internal policy providing the objective and implementation details for establishing a safety management system at the workplace. Employees not complying with the company's safety policies and procedures could be disciplined by the company.

6. Assistant Commissioner for Labour (AC for L) supplemented that proprietors and contractors could develop their own safety policies taking into account other concerns such as environmental assessment and public safety as appropriate. Implementation of these safety policies would be basically the responsibility of the company and would be monitored by the safety committee of the company. The company could determine whether disciplinary or punitive measures would be imposed on employees who were not following the safety measures, so long as such measures were not in conflict with the Employment Ordinance and other relevant legislation.

7. Mr LEE Kai-ming remarked that the legislative intent was to promote self-regulation so that the role of Labour Department (LD) could switch from law enforcement to safety management promotion in the long run. Mr LEE Cheuk-yan expressed concern about the effectiveness of self-monitoring and that unreasonable punitive measures might be imposed by employers on employees who did not follow the safety measures. In this connection, he asked the Administration to provide information on the types of permissible disciplinary measures which could be taken against employees.

8. In response, AC for L said that it would be difficult to provide a comprehensive list of such disciplinary measures for all industrial undertakings but the Code of Practice could provide some guidelines in this regard. The human resources management staff of the company could also compile their own rules for the purpose. He added that sections 6A and 6B of the FIUO had set out the general duties of a proprietor and employees in ensuring the health and safety of all persons in the workplace as well as the penalties for contravention of the legislative requirement.

Review of measures to improve safety and health of employees

9. Mr Andrew CHENG pointed out the Chinese version of "keep under review " in the proposed section 7(1)(oa)(iii) was different from its English version. He said that it would be difficult to define the frequency of review so as to comply with the requirement of "不斷檢討". To avoid ambiguity, he suggested deleting "不斷" in the Chinese version. SALD agreed to refine the drafting.

(Post-meeting note : The Administration subsequently proposed a Committee Stage amendment to delete "keep under" and "不斷" from the proposed subsection.)

The Commissioner's power to assess the performance of safety review auditors and officers

10. The Chairman said that the drafting of the proposed section 7(1)(oc) did not specify which party would be responsible for assessing the performance of the registered persons under paragraph (ob). PAS(EM) clarified that the legislative intent was for C for L to monitor the standards of safety reviews and audits and to assess the performance of the registered persons for these purposes. SALD added that section 33 of the proposed Safety Management Regulation had specified that C for L would assess the performance of a registered safety auditor or safety review officer. At the Chairman's suggestion, PAS(EM) and SALD undertook to consider an amendment to expressly empower C for L under the proposed paragraph (oc) to assess the performance of registered safety auditors and safety review officers.

(Post-meeting note : The Administration had subsequently proposed an amendment to expressly specify that assessment of the performance of persons referred in section 7(1)(ob) should be conducted by C for L.)

Disciplinary Board Panel and Disciplinary Board

11. Mr Andrew CHENG enquired about the composition of the Disciplinary Board Panel and Disciplinary Board and the reasons for including disciplinary powers (such as cancellation or suspension of registration) under the proposed section 7(1)(od)(ii). PAS(EM) replied that sections 26 and 27 of the proposed Safety Management Regulation specified the composition of the Disciplinary Board and Panel. SALD added that paragraph (od)(ii) was to make it clear that the disciplinary powers included cancellation and suspension of registration and reprimanding the person concerned. Similar disciplinary powers were also provided for other statutory bodies.

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12. The Chairman asked whether a fine could be imposed on the registered safety auditor or review officer in addition to those included in the Bill. SALD said that he saw no difficulty in proposing a new subsection to this effect but pointed out that consideration might be given to establishing a mechanism for collection of fines. The Chairman commented that if this was acceptable from the policy point of view, the implementation details could be discussed later. He also asked SALD to check whether there were similar provisions in other legislation for imposing a fine on registered professionals. PAS(EM) and SALD agreed to consider the suggestion.

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Clause 6 - Commissioner may amend the Schedules

13. Responding to the Chairman, PAS(EM) confirmed that the Administration would amend section 8 to the effect that any amendment to the Fourth Schedule would require positive vetting of LegCo.

Clauses 7 - Liability of proprietor

Clause 8 - Civil liability

14. Members had no comments on the clauses.

Clause 9 - Schedule added

15. Mr Howard YOUNG asked whether "container handling" in the proposed Fourth Schedule could adequately reflect the legislative intent, for example, whether this Ordinance or Merchant Shipping Ordinance (Cap.281) would apply if the container handling operation was carried out between the land and the sea. AC for L responded that it would depend on the location of the loadshifting machine. If the machine was placed on the land, the FIUO would apply. He added that in line with the amendments to the F&IU Regulations, the Marine Department was reviewing the Merchant Shipping Ordinance and the Merchant Shipping (Safety) Ordinance (Cap.369) to provide similar safety requirements.

Consequential Amendments - Clauses 10 to 18

16. Members had no comments on the proposed consequential amendments to the F&IU Regulations, Construction Sites (Safety) Regulations, and F&IU (Cargo and Container Handling) Regulations.

Committee stage amendments (CSAs)

17. The Chairman summarised the major concerns of the Committee and urged the Administration to forward its draft CSAs to the Clerk to Bills Committee around mid-June 1999 for circulation to members. The Chairman suggested and members agreed that, subject to members' agreement to the draft

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CSAs, the Bills Committee would report to the House Committee on 25 June 1999.

II. Any other business

18. There being no other business, the meeting ended at 12:00 noon.

Legislative Council Secretariat

12 January 2000