

立法會
Legislative Council

LC Paper No. CB(2)878/99-00

(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 Friday, 21 May 1999 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present : Hon Ronald ARCULLI, JP (Chairman)
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 Howard YOUNG, JP
Hon Andrew CHENG Kar-foo

Members Absent : Hon Kenneth TING Woo-shou, JP
Dr Hon LUI Ming-wah, JP
Dr Hon LEONG Che-hung, JP
Hon LEUNG Yiu-chung

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 and CB(2)2007/98-99(01)]

Members noted the following responses from the Administration -

- (a) response to members' concerns raised at the meeting on 30 March 1999 [Paper No. CB(2)1716/98-99(07)]; and
- (b) response to submissions made by 14 organizations [Paper No. CB(2)2007/98-99(01)].

2. Members noted that the submissions had also commented on the proposed Safety Management Regulation which would be introduced into LegCo after passage of the Bill. With the agreement of Hon Andrew CHENG, Chairman of the Subcommittee which was tasked to examine all regulations relating to occupational safety and health introduced into LegCo in the 1998-99 session, members agreed that the Bills Committee would also discuss issues raised in the submissions relating to the proposed Safety Management Regulation. At the Chairman's invitation, Principal Assistant Secretary for Education and Manpower (PAS(EM)) briefed members on the Administration's response to the submissions. The discussion was summarized below.

Carrying the certificate while at work

3. The Chairman expressed concern about the actions to be taken if a worker forgot to carry the training certificate (green card) to the workplace. He said that if a worker responsible for operating a special equipment or a critical operation was required to go home to bring back the card to the workplace, it might disrupt the operation on site resulting in losses to both the worker and the proprietor. He asked whether the Administration could devise a mechanism to help workers who genuinely forgot to carry their green cards to work. Mr Andrew CHENG and Mr LEE Kai-ming shared the Chairman's concern as the worker might then suffer loss of wages in these circumstances. They therefore urged the Administration to propose a workable alternative to enable workers to produce the green card within a reasonable period of time after the workday.

4. Senior Assistant Law Draftsman (SALD) pointed out that the proposed section 6BA(12) had provided a defence of "reasonable excuse" for a relevant person under the Bill. To address members' concern, he suggested the proposed section 6BA(7) be re-drafted to allow workers with reasonable excuse to work on the condition that they should produce the green card, upon demand, within a reasonable period of time. Assistant Commissioner for Labour (AC for L) agreed to give consideration to members' suggestion having regard to the enforcement implications.

Code of Practice under the proposed Safety Management Regulation

5. Referring to the Code of Practice on Safety Management as described in paragraphs 26-29 of the Administration's response, Mr HUI Cheung-ching expressed concern about the implications of the Code on the industries. He also asked about the timetable for its introduction and whether LegCo would be consulted on the draft.

6. PAS(EM) responded that the Code of Practice in relation to an ordinance or regulation would be introduced only after enactment of the relevant legislation. He said that Labour Department (LD) was now preparing a preliminary draft of the Code and would consult relevant parties including trade unions, employers' associations and professional bodies. He stressed that the Code was only to provide guidelines on safety management and could not exceed the powers conferred by the legislation. The Chairman and Mr HO Sai-chu advised the Administration to include Labour Advisory Board in its consultation.

Scope of application of the proposed Regulation

7. Mr CHAN Wing-chan referred to paragraph 16 of the Administration's response and expressed concern that the Administration intended to extend the proposed Regulation to establishments in non-industrial sector one year after the commencement of the Regulation. He asked whether the Administration had a list of these non-industrial establishments in mind.

8. PAS(EM) clarified that paragraph 16 was a response to views expressed in a submission that the proposed Regulation should apply to non-industrial establishments including civil service, hospitals and tertiary institutions. The Legislative Council Brief (EMBCR 2/2961/95) had already explained that the review would aim at deciding the appropriate time for implementing the remaining four process elements and whether to extend application of the Regulation to cover industrial undertakings employing less than 50 workers. He stressed that the Administration did not have any definite views on the types of non-industrial establishments to be included and would consult the industries in due course.

9. Mr Andrew CHENG sought clarification on the criteria for determining that an industrial undertaking employed less than 50 persons. He asked whether "50 persons" referred to the number of staff employed by a company or the total number of workers employed on the site. The Chairman commented that there would be enforcement difficulties in this respect and asked the Administration whether the proposed section 8(3) would apply to the situation of three small companies each employing 20 persons on the same construction site. He pointed out that the number of workers might vary at different times at a construction site or shipyard because temporary workers would be employed to cope with sudden influx of work. Similar situation would also apply to catering industries.

10. AC for L responded that the proposed section 8(3) would apply as long as the proprietor of an industrial undertaking employed 50 or more employees, or the aggregate number of the workers on a construction site or container storage yard was 50 or more. However, LD would exercise some flexibility in enforcement having regard to the work nature of the construction and container handling industries.

The legal status of safety committees and Code of Practice

11. Mr LEE Cheuk-yan expressed support for the proposal that proprietors employing a total of 50 or more workers should be subject to the proposed Regulation. However, he expressed concern as to whether the proposed Code of Practice and the safety committees had any legal power or status. The Chairman therefore asked the Administration what would be the consequences if a

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proprietor failed to comply with the provisions of the Code or recommendations of the safety committees.

12. SALD explained that under section 7A of the F&IU Ordinance, a failure to observe a provision of an approved code of practice shall not of itself cause the person to incur any criminal liability. However, in any criminal proceedings where the court considered a provision of an approved code of practice relevant to an alleged contravention of or failure to comply with the F&IU Ordinance or its regulations, either party in the proceedings could apply the provision to establish or to negative the liability in question in the proceedings. Referring to section 10 of the proposed Regulation, SALD said that a proprietor was required to establish a safety committee on matters relating to the safety and health of his workers. While the proposed Regulation would only provide a general description of the functions of the safety committees, the Code of Practice could identify specific functions required of individual safety committees in different industrial undertakings.

13. AC for L supplemented that it was the responsibility of the management to comply with the requirements under the proposed Regulation and the Code. He stressed that the Code was only to provide guidelines on safety management and was not the only way to achieve the objective. The safety committee would serve to enhance the communication between the employer and employees in identifying and implementing the safety management measures.

14. Mr LEE Cheuk-yan said that the Hong Kong Confederation of Trade Unions was strongly of the view that the workers' representatives in safety committees should be given statutory power to investigate into the causes of industrial accidents and to recommend appropriate measures to prevent recurrence. He pointed out that the relevant legislation in the United Kingdom had provisions on the statutory power of the safety committee and its members. He therefore requested the Administration to provide information on the operation of a similar safety management system in Singapore and the United Kingdom. AC for L agreed to provide the information.

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Requirements for safety auditors

15. The Chairman noted from paragraph 23 of the Administration's response that a lower requirement for registration of safety auditor would be allowed in the first six months of implementation, in order to ensure sufficient supply of safety auditors. The Chairman expressed concern about the professional competency of safety auditors if a lower standard was allowed. He said that the industries would need to know the arrangements for planning purpose and whether there would be adequate supply of qualified safety auditors. The Chairman also suggested postponing the implementation of the safety audit, say,

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by one year, so that sufficient qualified safety auditors would be available for implementation of the proposed system.

16. AC for L responded that the provision of a lower requirement was to facilitate adequate supply of qualified safety auditors at the initial stage of implementation. The arrangement would encourage serving personnel who were performing the duties as safety officers but without the three- year managerial experience to register as safety auditors. He stressed that these officers were required to successfully complete a training scheme recognized by the Commissioner for Labour before they could apply for registration as a safety auditor. As regards the supply of qualified safety auditors, LD's preliminary researches had indicated that, based on the current timetable, there should be sufficient qualified safety auditors at the commencement of the Regulation. The Chairman therefore advised the Administration to provide survey results on the estimated supply of qualified safety auditors. AC for L agreed to provide the information.

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Enforcement problems

17. Mr LEE Kai-ming expressed concern that application of the Regulation was based on the number of workers on the site or at the industrial undertaking. He pointed out that for container handling and construction industries, the number of workers could vary substantially within days depending on the workload. It was not uncommon for small companies employing less than 50 personnel to hire a large number of temporary workers to handle urgent or large ship consignments. He therefore requested the Administration to provide flexibility to address these problems.

18. PAS(EM) responded that proprietors should give priority to the safety of their workers, particularly during periods of high operational turnover. The Administration was of the view that smaller industrial undertakings which normally employed a workforce of less than 50 staff but regularly required the assistance of additional workers should also consider implementing a safety management system. He stressed that the Regulation aimed at encouraging self-regulation by proprietors and workers in order to create a safe and healthy working environment for themselves. LD played an advisory role to assist proprietors to establish a safety management system and would exercise flexibility in enforcing the legislative requirements.

19. On the requirement to form safety committees, PAS(EM) advised that formation of safety committees was not required for industrial undertakings employing less than 100 workers at the initial stage of implementation. PAS(EM) said that one objective of the safety committee was to provide a forum for workers to communicate with the management the potential dangers at the workplace and ways for improvement. Discussions and recommendations of a

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safety committee would be recorded and communicated to responsible persons for implementation. In enforcing the legislation, LD inspectors would examine the records of meetings to ensure that actions proposed by a safety committee were followed up at the workplaces.

20. The Chairman said that the Administration had not addressed the concerns of the trade on implementation difficulties. Given the Administration's interpretation of the application of the Regulation, small companies occasionally employing more than 100 workers would still be subject to prosecution and penalties if a safety committee was not established by the company. On the other hand, some large companies might split into smaller companies to avoid being caught by the Regulation. He therefore asked the Administration to consider establishing a mechanism such as a central safety committee for small container handling and construction companies which were occasionally required to employ a large number of temporary workers. Mr CHAN Wing-chan shared the view that the proposed Regulation should provide flexibility and exemptions for compliance with the requirement for formation of safety committee. In this connection, Mr LEE Cheuk-yan suggested the Administration to make reference to the Singapore's model. PAS(EM) noted the comments.

Right to refuse work on ground of occupational hazard

21. Mr Andrew CHENG said that the Subcommittee on Regulations relating to Occupational Safety and Health had previously sought legislative protection on workers' right to refuse work which posed serious threats to their safety and health. He asked whether this would be included in the Code of Practice and whether there would be objective standards for assessing the extent of danger in a particular piece of work or work situation. He pointed out that the United Kingdom had developed an arbitration system in this respect.

22. PAS(EM) said that Government agreed in principle that workers could refuse work in an environment which would pose serious threat to their safety and health. At the Legislative Council meeting on 20 January 1999, the Secretary for Education and Manpower had undertaken to examine the feasibility of incorporating relevant provisions in the Code of Practice under the proposed Regulation. The Government would balance the interest of employers and employees and consult relevant parties in order to develop a reasonable mechanism. In reply to the Chairman, PAS(EM) said that countries such as Canada and Australia had put in place independent mechanisms for third parties to adjudicate disputes on the spot. However, the United Kingdom, Japan, Singapore, Malaysia and South Korea did not have similar law in this area.

23. The Chairman expressed doubt about the effectiveness of an arbitration system as it would hold up the operation on site. He added that certain types of

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work were by nature dangerous and it would create confusion if some workers accepted the work while some others refused. He cited a few examples to substantiate his concerns.

24. Mr LEE Cheuk-yan remarked that the definition of hazardous work should be restricted to those work posing an imminent danger to the lives of workers. However, he preferred incorporating this in the proposed Regulation instead of the Code of Practice as the latter was not legally binding.

25. Mr HO Sai-chu expressed objection to incorporating this in the proposed Regulation. He said that workers' right to refuse work at the workplace was a complicated matter which had not yet been discussed by the Labour Advisory Board. It would be more appropriate to provide some general guidelines in the Code of Practice.

26. Mr Andrew CHENG said that the Subcommittee chaired by him had urged the Government to expedite actions to consult the industry on the issue. He reiterated that Government should carry out an overall review of the subject as soon as possible.

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Protection of workers' representatives in safety committees

27. On the protection of workers' representatives in safety committees, the Chairman asked whether the proposed Regulation or the Code of Practice would specify a ceiling for the time spent by workers' representative in safety committees. He was worried that the workers' representative would spend most of the working hours on the work of safety Committees rather than the normal job. SALD responded that a reasonable employer would allow a workers' representative to use a reasonable portion of his working time for the work of the safety committee. He would see what could be written in law to address the concern.

28. Mr HUI Cheung-ching asked whether similar protection was provided in other legislation for workers who were members of trade unions or employees' associations. AC for L replied that similar provisions were found in the Employment Ordinance and related F&IU regulations. SALD supplemented that to ensure effective operation of safety committees, it would be necessary and reasonable to include provisions in relevant ordinances and regulations to protect employees' representatives in safety committees from being dismissed.

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II. Date of next meeting and any other business

29. Members agreed to hold the next two meetings on 1 and 3 June 1999, and deputations could forward further submissions for members' consideration.

30. There being no other business, the meeting ended at 10:30 a.m.

Legislative Council Secretariat

12 January 2000