

Legislative Council

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Report of the Bills Committee on Factories and Industrial Undertakings (Amendment) Bill 1999

Purpose

This paper reports on the deliberations of the Bills Committee on the Factories and Industrial Undertakings (Amendment) Bill 1999 (the Bill).

The Bill

2. The Bill seeks to:
 - (a) empower the Commissioner for Labour (the Commissioner) to approve safety training courses for construction work and container handling;
 - (b) require a proprietor of an industrial undertaking in construction work and container handling not to employ a worker who does not have a valid certificate issued in respect of the latter's attendance at a relevant safety training course; and
 - (c) expand the power of the Commissioner in making regulations to require proprietors or contractors to develop safety management systems for personnel in the relevant industrial undertakings.

Background

3. Under the Factories and Industrial Undertakings Ordinance (FIUO), proprietors and contractors already have a general duty, including the provision of relevant instruction and training for their worker, to ensure the safety and health at work of all persons employed in an industrial undertaking. However, as there is no mandatory provision of safety training for the employees under FIUO, a limited number of proprietors and contractors in the private sector actually provide such training to their workers. Furthermore it is not easy for proprietors and contractors to compel their employees to attend safety training despite the introduction of a "green card" safety training system by the construction industry a few years ago.

4. To promote the provision of safety training for workers, the Administration proposes to amend FIUO to make safety training mandatory. As a first step, the mandatory safety training requirement will apply to the construction and container handling industries.

5. To implement the 1995 Consultation Paper on the Review of Industrial Safety in Hong Kong, the Administration also proposes to introduce a safety management system in relevant industrial undertakings. The Safety Management Regulation will be made by the Commissioner, subject to the approval of the Legislative Council, after the passage of the Bill.

The Bills Committee

6. At the House Committee meeting on 29 January 1999, a Bills Committee was formed to study the Bill. Chaired by Hon Ronald ARCULLI, the Bills Committee held six meetings with the Administration, one of which was to receive views of deputations from the industry, trade associations and professional bodies.

7. The membership list of the Bills Committee is in **Appendix I**. The list of organisations consulted is in **Appendix II**.

Deliberations of the Bills Committee

8. Members of the Bills Committee are generally in support of the policy intention to provide mandatory safety training to workers in the construction and cargo handling industries, in view of the high accident rates in these industrial undertakings. However, members are concerned about the coverage of the Bill, its implications on the industry, the actual operation of the system and the responsibilities of the proprietors and employees. As deputations and some members have expressed serious concern about the provisions in the proposed Safety Management Regulation, the Bills Committee has also sought clarifications from the Administration in this regard.

9. The deliberations of the Bills Committee are summarized in the following paragraphs.

Coverage of the Bill

10. Noting that the Bill applies only to the private sector, some members are of the view that the Government should also be bound by the proposed mandatory safety training requirement. In this connection, the Administration has explained that the scope of FIUO only covers factories and industrial undertakings, and that the work of civil servants seldom falls within the scope of FIUO, except those working in Government dockyards and repair workshops of the Electrical and Mechanical

Services Department. Moreover, the Government has put in place internal regulations requiring civil servants to comply with the requirements of FIUO. In addition, contractors of the Public Works Programme and Housing Authority projects are already required to provide induction safety training to their site workers as part of the contract conditions.

11. With regard to members' queries on the meaning of "maintaining" and "keeping" under the definition of "container handling" in clause 2, the Administration has clarified that "maintaining" includes repairs and maintenance of containers while "keeping" means no more than "storing" and is a redundant word. To remove any doubt or uncertainty about the scope of the definition, the Administration has agreed to move a Committee Stage amendment to this effect.

12. In response to members' concerns about the application of the Bill to container handling activities on the sea, the Administration has explained that Labour Department is responsible for the safety of containers on land, while Marine Department will control safety matters on a ship. If an accident involves both land-based and sea-based operations, a joint inspection will be conducted by the two departments to ascertain whether FIUO or other legislation relating to port control, shipping and freight containers should apply.

13. The Administration has also clarified that only those persons who are actually engaged in construction work or container handling activities are required to undergo basic safety training. These will include professional engineers and technical staff working on construction sites. However, employers and persons whose duties are incidental to work undertaken on the site, such as clerical staff, security guards, or drivers whose duties are confined to only driving the goods, are not covered by the Bill.

Addition of designated industrial undertakings to the Fourth Schedule

14. In view of members' concern that the Commissioner may add other types of industrial undertakings to the Fourth Schedule for the purpose of the mandatory safety training scheme, the Administration has agreed to introduce a Committee Stage amendment under clause 6 to the effect that amendments to the Fourth Schedule will become subsidiary legislation subject to positive vetting by the Legislative Council. The arrangement will allow more time for Members to scrutinize any proposed additions to the Fourth Schedule.

Training arrangements

15. Noting that the Vocational Training Council (VTC) currently runs free one-day safety training courses for container handling workers, some members have suggested that the Construction Industry Training Authority (CITA) should waive the construction workers from paying the \$100 training fee. The Administration has responded that the proposal may increase absenteeism and will add financial burden

on CITA which is currently heavily subsidizing the safety training courses. However, CITA is prepared to waive the course fee for CSSA recipients. Members have also noted that the majority of course attendants are sponsored by their employers. With regard to the adequacy of training places, members have noted that CITA can train 40,000 construction workers a year, while VTC has the capacity of training a total of 12,000 container handling workers in 1998-99 and 1999-2000. Regarding members' suggestion that other organizations or trade associations can run similar courses, the Administration has responded that arrangements can be made for other organizations to provide similar training courses where necessary.

Production of the training certificate upon demand

16. The Bills Committee has noted that it is an offence if a worker (i.e. "a relevant person") fails to produce his certificate at a place and within a period specified by an occupational safety officer, as required under section 6BA(7) in clause 3. To cater for cases where the workers forget to carry the certificates to work, members have requested the Administration to allow a reasonable period of time for the production of certificates (the "green card") under this section. Members have also suggested the Administration to put in place a simple, convenient system for workers to report loss or damage of their certificates and to obtain replacement cards at the Labour Department. In response, the Administration has undertaken to make an amendment to provide a reasonable period for the production of certificate under this section. The Labour Department will issue a confirmation note to workers who report loss or damage of their certificates. An amendment will be moved by the Administration under section 6 BA(8).

17. To address members' concern about the possible confusion caused by expiry of certificates at about the same time, the Administration has responded that the workers can apply for refresher training and renewal of certificates six months before the expiry date of the card. An amendment will be moved by the Administration under section 6BA(5) and (6).

Responsibilities of employers

18. Some members have expressed concern that the employer may not know that his employee's certificate has expired, and that a prosecution under the proposed section 6BA(11) will be unfair. The Administration therefore proposes an amendment under section 6BA(12) to provide a defence for the employer charged.

19. Regarding the meaning of "cease to employ" under section 6BA(5) in clause 3 of the Bill, the Administration has clarified that this should mean that the proprietor shall not employ the worker at the undertaking, on the expiration of one month after the appointed date, in a post the holder of which should be "a relevant person". The Administration has emphasized that there is no intention to require a proprietor to terminate the worker's service, because under section 6A of FIUO, a proprietor has the obligation to provide appropriate training for his workers. An amendment will be

introduced by the Administration under section 6BA(5) to this effect.

Safety management system

20. The Bills Committee has noted that factories and designated industrial undertakings will be required to develop and implement a safety management system as stipulated in the proposed Regulations to be made by the Commissioner under clause 5 of the Bill. Several members have expressed concern about the rationale for the three-tier system in the adoption of the 14 process elements of the safety management system. Some members consider that the manufacturing industries, which have a relatively lower accident rate, should be exempted from the requirement. Other members are concerned how the Commissioner can enforce a safety management system which is to be developed and maintained by the companies themselves. As regards the provisions under clause 5 of the Bill, some members have asked whether the Commissioner can devise objective benchmarks for the frequency of safety reviews and assessment of the performance of safety officers.

21. The Administration has responded that the ultimate goal is self-regulation by the proprietors and their workforce in enhancing safety standards. Initially only those large establishments employing 100 workers or more, as well as construction projects with contract value of \$100 million or more, will be required to adopt ten of the 14 process elements under the safety management system. Construction sites and industrial undertakings employing 50 to 99 workers each will be required to adopt eight of the 14 process elements. Industrial undertakings employing less than 50 workers will be exempted for the time being. The phased implementation is to allow the industries affected to get accustomed to the new system and to prepare for adoption of more elements by the smaller establishments.

22. Responding to members' concerns on enforcement, the Administration has clarified that there will be penalty clauses in the proposed Safety Management Regulations, and that the Labour Department may prosecute a proprietor or contractor for non-compliance under the Regulation. Details of the operation of the safety management system, such as the frequency of reviews, will be prescribed in the Regulations. As the Regulations will also require an action plan on the implementation of the system to be sent to Labour Department, the Administration can see whether remedial measures need to be taken by the company concerned. In view of members' concerns about the operation of the system, the Administration has assured the Bills Committee that the Regulations to be made by the Commissioner under section 7 of FIUO will be subject to the positive vetting of the Legislative Council.

23. Regarding the disciplinary measures that can be imposed by the disciplinary board/panel under section 7(1)(od) in clause 5 of the Bill, the Administration has accepted the Chairman' suggestion that the board/panel can impose a fine on registered safety officers in addition to other disciplinary powers. An amendment will be moved by the Administration to this effect.

24. Some members also share the concerns of deputations about the composition and duties of the safety committee, the qualifications of safety officers, and the functions and powers of worker representatives on the safety committees. In particular, members have expressed concern about the application of the Regulations to those small companies which need to employ a large number of temporary staff at times to cope with influx of work. Members have urged the Administration to put in place a flexible system such as a central safety committee to deal with these cases. The Bills Committee has also discussed other concerns relating to the definition of circumstances which would pose imminent and serious danger to the life or health of a worker, the legal status of the Code of Practice, and the appointment of in-house staff as safety auditors. The Administration have noted these comments and provided written responses to the concerns raised. The Bills Committee has advised that issues relating to the proposed Safety Management Regulations will be further deliberated when the Regulations are submitted to the Legislative Council for positive vetting.

Other issues

25. The Bills Committee has also discussed the additional costs on the industries and the benefits to be derived from the implementation of the mandatory safety training and safety management system. Some members have asked the Administration to increase publicity on the mandatory requirements. The Assistant Legal Adviser has also suggested some technical amendments to the clauses for clarity and textual improvements.

Committee Stage amendments

26. The Administration has revised its draft Committee Stage amendments (CSAs) after further discussion with the Chairman of the Bills Committee. The revised CSAs to be proposed by the Administration are given in **Appendix III**. The Bills Committee has not proposed any CSAs.

Consultation with the House Committee

27. The Bills Committee has reported its deliberations to the House Committee on 25 June 1999.

Legislative Council Secretariat
8 July 1999

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

Membership list

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
Dr Hon LUI Ming-wah, JP
Hon HUI Cheung-ching
Hon CHAN Wing-chan
Dr Hon LEONG Che-hung, JP
Hon LEUNG Yiu-chung
Hon Howard YOUNG, JP
Hon Andrew CHENG Kar-foo

Total : 13 members

Date : 9 March 1999

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

List of organizations consulted

1. Hong Kong Confederation of Trade Unions
2. Construction Industry Training Authority
3. Hong Kong Container Depot & Repairer Association Limited
4. The Society of Accredited Safety Auditors Limited
5. The Hong Kong Institution of Engineers
6. Society of Registered Safety Officers
7. The Hong Kong Occupational Safety and Health Association
8. The Hong Kong Small and Medium Business Association
9. Hong Kong Federation of Trade Unions
10. The Hong Kong General Chamber of Commerce
11. Hong Kong Construction Association Limited
12. Federation of Hong Kong Industries
13. Federation of Hong Kong and Kowloon Labour Unions
14. Occupational Safety and Health Council