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Legislative Council

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**Paper for the House Committee meeting
on 25 June 1999**

**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, few proprietors and contractors in the private sector actually provide such training to their workers.

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's 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.

26. With regard to subsection (15) of section 6BA in the Administration's proposed CSAs in Appendix III, the Administration has subsequently agreed that a notice under subsection (14) is a subsidiary legislation, and that subsection (15) will be deleted in its revised CSAs.

Committee stage amendments

27. The Committee Stage amendments (CSA) to be proposed by the Administration are given in **Appendix III**. The Bills Committee has not proposed any CSAs.

Recommendations

28. The Bills Committee supports the Bill and the CSAs proposed by the Administration in Appendix III (subject to paragraph 26), and recommends resumption of the Second Reading debate of the Bill on 7 July 1999.

Legislative Council Secretariat

24 June 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

Appendix III

GFOX: DMA#9247v3

1st draft: 7.6.99

2nd draft: 11.6.99

3rd draft: 17.6.99

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Education and Manpower

- | Clause | Amendment Proposed |
|--------|--|
| 2(c) | In the proposed definition of "container handling", by deleting ", keeping or maintaining" and substituting "or maintaining (including repair)". |
| 3 | By deleting proposed section 6BA and substituting -
"6BA. Proprietor of relevant industrial undertaking not to employ, etc.
relevant person who does not have relevant certificate
(1) In this section -
"appointed day" (指定日期) means the day appointed under <u>subsection (14)</u> ;
"certificate" (證明書) means a certificate referred to in <u>subsection (2)</u> ; |

"relevant certificate" (有關證明書), in relation to a relevant person employed at a relevant industrial undertaking, means the certificate issued to the person in respect of his attendance at the relevant safety training course which relates to that undertaking;

"relevant industrial undertaking" (有關工業經營) means an industrial undertaking the subject of a notice under subsection (2);

"relevant person" (有關人士), in relation to a relevant industrial undertaking, means a person the subject of a notice under subsection (2) in the case of that undertaking;

"relevant safety training course" (有關安全訓練課), in relation to a relevant person, means the safety training course the subject of a notice under subsection (2) in the case of the class of persons to which that person belongs.

(2) The Commissioner may, by notice

in the Gazette, or by notice in writing published in such other manner as the Commissioner thinks fit, recognize a safety training course -

(a) for a class of persons -

(i) employed at an industrial undertaking specified in column 1 of the Fourth Schedule; and

(ii) belonging to the persons specified opposite the undertaking in column 2 of that Schedule; and

(b) in respect of which a certificate is issued to a person who attends the course.

(3) A certificate issued to a person who attends a safety training course which is subsequently recognized under subsection (2) shall, unless otherwise

provided in the notice under that subsection recognizing the course, for the purposes of this Ordinance have the same effect as a certificate issued to a person who attends the course on or after the day on which the course is so recognized.

(4) Where the Commissioner is satisfied that a relevant person has undergone training -

- (a) equivalent to the training provided by a relevant safety training course; and
- (b) of a standard not less than the standard of the training provided by that course,

then -

- (i) the Commissioner may issue or cause to be issued to the person a certificate in the same terms as the certificate that would have been issued to the person if he had attended that course; and
- (ii) the certificate so issued

shall, for the purposes of this Ordinance, have the same effect as a certificate issued to a person who has attended that course.

(5) On and after the appointed day, every proprietor of a relevant industrial undertaking -

- (a) shall not employ at the undertaking a relevant person who has not been issued a relevant certificate or whose relevant certificate has expired;
- (b) in the case of a relevant person employed at the undertaking immediately before that day who has not been issued a relevant certificate or whose relevant certificate has expired, shall cease to continue to employ the person at the undertaking

on the expiration of 1 month after that day unless, before that expiration, the person has been issued a relevant certificate.

- (6) A certificate shall expire on -
- (a) the day specified in the certificate, being a day not less than 1 year, and not more than 3 years, after the day on which the certificate was issued;
 - (b) if no such day is specified, on the expiration of 3 years after the day on which the certificate was issued.

(7) On and after the appointed day, it shall be the duty of every relevant person employed at a relevant industrial undertaking who has been issued a relevant certificate which has not expired to -

- (a) carry the certificate with him while at work at the undertaking;
- (b) produce the certificate

upon demand by -

- (i) the proprietor of the undertaking or an agent of the proprietor authorized by the proprietor for the purpose; or
 - (ii) subject to paragraph (c), an occupational safety officer;
- (c) if unable to comply with a demand under paragraph (b) (ii), produce the certificate at a place and within a period -
- (i) specified by the occupational safety officer who made the demand; and
 - (ii) which are reasonable in all the circumstances.
- (8) Where a relevant certificate

which has not expired has been lost, defaced or destroyed, the relevant person to whom it was issued shall, unless he has ceased to be employed at a relevant industrial undertaking, as soon as is reasonably practicable make an application to the Commissioner to be issued a replacement relevant certificate in the same terms (and any such application may consist of, or require the accompaniment of, a statutory declaration made by the person as to the loss, defacement or destruction of the certificate).

(9) The Commissioner shall issue or cause to be issued a replacement relevant certificate pursuant to an application under subsection (8) upon being satisfied that the relevant certificate which it will replace has in fact been lost, defaced or destroyed.

(10) A replacement relevant certificate issued pursuant to an application under subsection (8) shall, for the purposes of this Ordinance, have the same effect as the relevant certificate which it replaces.

(11) Subject to subsection (12), a proprietor who contravenes subsection (5) commits an offence and is liable to a fine at level S.

(12) It shall be a defence to a prosecution for an offence under subsection (11) for the proprietor to show that he believed, and that it was reasonable for him to believe, that the relevant person to whom the offence relates had been issued with a relevant certificate and that the certificate had not expired.

(13) A relevant person who, without reasonable excuse, contravenes subsection (7) (c) commits an offence and is liable to a fine at level 3.

(14) The Secretary for Education and Manpower may, by notice in the Gazette, appoint a day for the purposes of subsections (5) and (7).

(15) A notice under subsection (14) is not subsidiary legislation.

(16) For the avoidance of doubt, it is hereby declared that subsection (5) (b) shall not operate to entitle an employer

to terminate the contract of employment of an employee otherwise than in accordance with the provisions of the Employment Ordinance (Cap. 57) in the case of an employee within the meaning of section 2 of that Ordinance."

- (5) (a) In the proposed paragraph (oa) (iii), by deleting "keep under".
- (b) In the proposed paragraph (oc), by adding "by the Commissioner" after "assessing".
- (c) In the proposed paragraph (od) (ii), by adding", the imposition of a fine not exceeding \$10,000" after "suspension of registration".

6 By deleting the clause and substituting -

"6. Commissioner may amend Schedules Section 8 is amended -

- (a) by renumbering it as subsection (1);
- (b) by adding -

"(2) The Commissioner may, by notice in the Gazette and subject to the

approval of the Legislative Council,
amend the Fourth Schedule."

7 By deleting "6BA(12)" and substituting "6BA(13)".

9 By deleting the proposed Fourth Schedule and substituting -

"FOURTH SCHEDULE [ss. 6B & 8]

SPECIFIED INDUSTRIAL
UNDERTAINGS
AND PERSONS EMPLOYED AT
THE UNDERTAKINGS

	Column 1	Column 2
	Industrial Undertaking	Persons employed at industrial undertaking
1.	Construction work	Every person carrying out construction work
2.	Container handling	Every person carrying out container handling".

16 By deleting "堆疊的貨物或貨品的移去" and

substituting "使堆疊的貨物或貨品不再堆疊".

17 By deleting "堆疊的貨櫃的移去" and substituting "使堆疊的貨櫃不再堆疊".

Explanatory Notes

- (a) clause 2(c), proposed definition of “container handling” - to delete the redundant reference to “Keeping” (i.e. it adds nothing to “storing”) and to make it clear that “maintaining” includes “repair”;
- (b) clause 3, proposed section 6BA(1) (definition of “appointed day”) and proposed section 6BA(14) - to transfer SEM's power to appoint a day for the purposes of proposed section 6BA(5) and (7) from the definition of “appointed day” to proposed section 6BA(14);
- (c) clause 3, proposed section 6BA(2)(a)(ii), and clause 9, proposed Fourth Schedule, column 2 - to make it clear that the safety training course is only for persons who carry out construction work or container handling (i.e. not for office-workers on site);
- (d) clause 3, proposed section 6BA(5)(b) and (16) - in respect of persons employed immediately before the appointed day and who do not on that day have unexpired certificates -
 - (i) to provide a grace period of 1 month before they are required to cease to be employed at the relevant undertaking unless they have certificates; and
 - (ii) to make it clear that proposed section 6BA(5)(b) does not entitle an employer to terminate the contract of employment of an employee otherwise than in accordance with the provisions of the Employment Ordinance (Cap.57);
- (e) clause 3, proposed section 6BA(6) - to provide that a certificate shall have a validity period of not less than 1 year and not more than 3 years;
- (f) clause 3, proposed section 6BA(7)(c) - to empower an occupational safety officer to require an employee to produce his certificate at a place and within a period reasonable in all the circumstances where the employee cannot produce the certificate upon demand by the occupational safety officer;

- (g) clause 3, proposed section 6BA(8) - to enable an application for a replacement certificate for a lost, defaced or destroyed certificate to consist of, or require the accompaniment of, a statutory declaration as to the loss, defacement or destruction of the certificate;
- (h) clause 3, proposed section 6BA(12) - to provide a defence for an employer charged with an offence under proposed section 6BA(11). (The defence being that the employer believed, and that it was reasonable for him to believe, that the relevant person to whom the offence relates had been issued with a certificate and that the certificate had not expired);
- (i) clause 3, proposed section 6BA(13) - to make it an offence for a relevant person to fail to produce his certificate at a place and within a period specified by an occupational safety officer under proposed section 6BA(7)(c);
- (j) clause 3, proposed section 6BA(15) - to make it clear that the notice under proposed section 6BA(14) by SEM appointing a day for the purposes of proposed section 6BA(5) and (7) is not subsidiary legislation;
- (k) clause 5, proposed section 7(1)(oc) - to make it clear that the assessment of the performance of persons referred to in proposed section 7(1)(ob) will be done by the Commissioner for Labour;
- (l) clause 5, proposed section 7(1)(od)(ii) - to empower the disciplinary board appointed under the regulations to impose a fine not exceeding \$10,000 in addition to its other disciplinary powers; and
- (m) clause 6 - to provide that the Commissioner for Labour's power to amend the Fourth Schedule is subject to the approval of LegCo.