

**立法會**  
**Legislative Council**

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**Subcommittee on  
Regulations relating to Occupational Safety and Health**

**Minutes of Meeting  
held on Wednesday, 10 November 1999 at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon HO Sai-chu, SBS, JP  
Hon Michael HO Mun-ka  
Hon LEE Cheuk-yan  
Hon LEE Kai-ming, SBS, JP  
Dr Hon LUI Ming-wah, JP  
Hon Ronald ARCULLI, JP  
Hon CHAN Wing-chan  
Dr Hon LEONG Che-hung, JP  
Hon TAM Yiu-chung, GBS, JP
- Member Absent** : Hon Cyd HO Sau-lan
- Public Officers Attending** : Mr Herman CHO  
Principal Assistant Secretary for Education and Manpower
- Mr Samson LAI  
Assistant Secretary for Education and Manpower
- Mr TSANG Kin-woo  
Assistant Commissioner for Labour
- Dr LEUNG Lai-man  
Occupational Health Consultant, Labour Department

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Mr Sunny CHAN  
Senior Government Counsel

Ms Anastasia KWONG  
Senior 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

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**I. The Administration's response to questions raised at the meeting on 21 October 1999**

[Paper No. CB(2)327/99-00(01)]

At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) briefed members on the Administration's response to members' concerns raised on 21 October 1999.

*Mandatory medical examination*

2. Mr Ronald ARCULLI expressed concern about the financial burden on small and medium proprietors and the feasibility of requiring employers to pay the mandatory medical examination fees for casual and replacement workers in non-construction industries. He pointed out that some employers might choose to employ workers who already had a valid medical certificate. He asked whether the Administration had considered other options such as appointing an agent to co-ordinate medical examinations for all workers in the non-construction industries, modelling on the Construction Industry Training Authority (CITA) system.

3. Occupational Health Consultant, Labour Department (OHC(LD)) responded that the Regulation would affect 17 occupations. The number of casual and replacement workers employed in non-construction industries was much lower than that in the construction industry. He said that at present there

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was no central mechanism to co-ordinate mandatory medical examinations for workers in non-construction industries.

4. Mr CHAN Wing-chan considered that employers should pay the medical examination fees for casual and replacement workers as well. He pointed out that it was a common practice in the catering industry that a catering worker who could not report to work on a certain day would arrange his own replacement. He therefore inquired the legal liabilities of an employer in respect of the medical examination fees for replacement workers, and in case a replacement worker was found not in possession of a valid medical certificate.

5. PAS(EM) responded that under section 6 of the Regulation, a proprietor was required to arrange and pay for medical examinations for workers (including casual and replacement workers) engaged in the designated occupations in his workplace. He believed that the proprietors would pay the medical examination fees for those long-term "casual" employees. However, he acknowledged that some employers might choose to employ persons who were experienced and had a valid medical certificate after enactment of the Regulation. Replacement workers who did not work for any particular employer might have to arrange medical examination for themselves for their own benefit. PAS(EM) said that it would not be possible for the legislation to specify all situations to cater for the different practices in different industries. Referring to Mr CHAN Wing-chan's comment, OHC(LD) pointed out that the Regulation would affect the kitchen staff but not the waiters in Chinese restaurants. He believed that the problem of replacement workers would be less serious among kitchen staff in Chinese restaurants.

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6. In view of members' concerns, the Chairman requested the Administration to provide a response to explain the legal liabilities of the employer under the proposed Regulation in respect of the arrangement for medical examinations for casual and replacement workers.

7. Mr LEE Kai-ming suggested that the Administration might consider designating government clinics to conduct the first time medical examination free of charge for some 40 000 workers in those non-construction industries covered by the Regulation. He estimated that about 20% of these workers were daily rated or casual workers. As regards the costs for subsequent periodic medical examinations, he considered that these should be borne by the respective employers.

8. Mr Michael HO said that the provision of free medical examinations to some 40 000 workers in non-construction industries would have serious resource implications on government clinics. It might also affect the provision of general health and clinic services to the public. He pointed out that since casual and replacement workers worked for more than one employer, there was also a

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problem as to which employer should be responsible for the periodic medical examinations. PAS(EM) agreed that the provision of free medical examinations would have significant resource implications. He would provide a written response on the suggestion.

9. Dr LUI Ming-wah accepted that medical examinations were required for employees in certain industries for the protection of employers, employees and customers. However, he was of the view that annual medical examinations for occupational diseases were not necessary as such diseases would only be contracted after prolonged period of exposure to hazardous substance or physical agent. He therefore suggested that periodic medical examinations should be applied flexibly for different industries and that priority should go to those with higher risks, such as the catering industry, to avoid spreading of contagious diseases to customers. PAS(EM) responded that catering establishments and their workers were already subject to hygiene standards as stipulated in the Public Health and Municipal Services Ordinance, Cap. 132.

10. In reply to Dr LEONG Che-hung, OHC(LD) said that a medical certificate would be valid for one year or for a period as specified on the certificate. The medical certificate would remain valid for the specified period irrespective of whether the worker worked for the same proprietor in the trade. PAS(EM) supplemented that if the worker changed to work in another designated occupation, the worker might have to attend other medical examinations as required under the Regulation.

11. With regard to the proprietor's responsibility to arrange medical examinations, Dr LUI Ming-wah was of the view that proprietors should not be required to pay the medical examination fees for new recruits. He also considered that casual and replacement workers should pay for such examinations for the purpose of obtaining a medical certificate for employment in the designated occupations. The Chairman considered that the Regulation should set a time frame for casual and replacement workers to undergo the mandatory medical examinations.

12. Mr Ronald ARCULLI reiterated his concern that if no satisfactory arrangement was put in place for the medical examinations, the Regulation would only add to the employers' burden and lead to unemployment of the workers in designated occupations. He asked whether the Administration had considered incorporating the proposed mandatory medical examinations under the Mandatory Provident Fund industry schemes. In this connection, Mr LEE Cheuk-yan suggested an alternative of imposing an additional levy on the employees' compensation insurance to provide funds for the Occupational Safety and Health Council (OSHC) to co-ordinate the provision of medical examinations to all non-construction workers free of charge. He requested the Administration to work out the resources required for such arrangement.

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13. PAS(EM) agreed to consider Mr LEE's proposal but pointed out that under the existing Employees' Compensation Insurance Levy Ordinance, all employers in both industrial and non-industrial sectors were required to contribute. He anticipated that those proprietors whose workers were not subject to the Regulation would object to the proposal.

14. Dr LEONG Che-hung also pointed out that the provision of free medical examinations to all non-construction workers covered by the Regulation could lead to abuse of the service. There was a possibility that workers, particularly those casual and replacement workers who had no permanent employment in any occupation, would take as many examinations as possible irrespective of the need. He was of the view that casual and replacement workers should share the responsibility of meeting the costs of medical examinations.

15. PAS(EM) responded that if a central mechanism was to be established to coordinate medical examinations for all workers affected, it would be necessary to include safeguards against abuses. As regards the CITA scheme, contractors in the construction industry would be required to indicate the types of workers who were subject to the medical examinations under the Regulation, as a measure against abuse.

16. Mr TAM Yiu-chung said that the spirit of the legislation was to enhance protection of the health and safety of those workers who were currently exposed to hazardous substances or physical agents. While he agreed that the proposal of a levy scheme might be more acceptable to proprietors as the costs were indirect, he hoped that arguments on medical examination fees would not delay the enactment of the Regulation. He said that the Regulation was the first step for promoting occupational hygiene and occupational health in industrial undertakings and construction sites, and this should be the collective responsibility of Government, employers and employees.

17. Dr LEONG Che-hung agreed with Mr TAM that the Regulation was to enable early detection and prevention of occupational diseases in workplaces through periodic medical checks and monitoring. He expressed support for early enactment of the Regulation.

18. Mr HO Sai-chu expressed support for the Regulation which was well-intentioned. However, he also shared the concern of some members that persons without a valid medical certificate or whose certificate would expire shortly would have difficulties in finding employment in the designated occupations.

19. Mr Michael HO expressed support for using mandatory medical examination as a tool to ensure that occupational diseases were reported to Labour Department to identify problematic workplaces for environmental

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monitoring. He stressed that the long-term objective should be to develop a system to improve occupational hygiene and occupational health in workplaces. However, he expressed concern as to whether the arrangement for Appointed Medical Practitioners (AMPs) to conduct such medical examinations would lead to unreasonable fees due to the limited supply of AMPs.

20. PAS(EM) responded that the Labour Department would continue to inspect workplaces and enforce the existing legislation on industrial safety and the Regulation only proposed to provide additional statutory protection to workers in designated occupations. Moreover, Government would continue its education and publicity programmes to promote the community's awareness on occupational safety and health. He said that long term surveillance was required to detect the effects of harmful substance in the air and mandatory medical examinations would provide another source of information for preventive measures in this respect. In reply to Mr Michael HO, PAS(EM) said that existing legislation already required employers to ensure the safety of workers by providing protective equipment to workers and implementing safety management systems in workplaces.

21. With regard to the supply of AMPs, PAS(EM) said that the Regulation would be implemented in three stages and the largest group of affected workers, i.e. 182 000 workers who were exposed to excessive noise, would only be included in the last stage. It was anticipated that there would be sufficient supply of AMPs at that time, and the charges of medical examinations would be maintained at a reasonable level.

*Qualifications of Appointed Medical Practitioner (AMP)*

22. The Chairman asked about the Administration's position on the views of three medical bodies in respect of the qualifications of the AMPs. OHC(LD) responded that the Administration had considered the views and maintained its position that AMPs must possess specific qualifications. The reasons for such decision had been set out in the Administration's previous response [LC Paper No. CB(2)117/99-00(01)].

**II. Clause-by-clause examination**  
[LC Paper No. CB(2)2853/98-99]

23. The Chairman referred members to the correspondence between PAS(EM) and Assistant Legal Adviser 5 (ALA5) on the drafting issues. At the Chairman's request, PAS(EM) explained the contents of sections 1-10 of the Regulation.

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*Section 1 - Commencement*

24. Members had no comment on the section.

*Section 2 - Interpretation and application*

Admin 25. ALA5 said that the Administration would provide definitions for "buildings works" and "construction works" under section (2)(a). However, the Administration had yet to advise whether the word "industry" in subsection (2)(a) and (b) should be replaced by "industrial undertaking". Senior Government Counsel (SGC) agreed to consider the suggestion.

*Section 3 - Prohibition against employment without being medically examined and certified*

Admin 26. ALA5 asked whether section 3 would give the effect that a proprietor, having employed a person certified fit to work, should discontinue employing that person if the latter was subsequently found unfit in a periodic examination. PAS(EM) replied that the purpose of section 3 only applied to first time appointment while sections 8 to 13 applied to workers who were already in employment. ALA5 said that the wording of section 3 did not reflect such intention. The Chairman therefore requested the Administration to further consider the drafting of section 3.

27. ALA5 asked whether a worker would need to attend a fresh examination for a change of employer even if he remained in the same occupation and his certificate had not expired. PAS(EM) confirmed that so long as the worker remained in the same designated occupation, his fitness certificate would remain valid until the next periodic medical examination was due.

28. In reply to ALA5, PAS(EM) said that a worker who was exposed to more than one type of hazardous substance and physical agent should attend the corresponding medical examinations as specified in Schedule 2 of the Regulation.

Admin 29. Mr LEE Cheuk-yan enquired whether section 10(a) should be moved to section 3 to reflect more clearly the policy intention that an employee might continue employment under certain conditions and limitations as recommended by the AMP. PAS(EM) undertook to provide a written response.

*Section 4 - Appointment of medical practitioner*

30. Members had no comment on the section.

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*Section 5 - Training course for appointed medical practitioner*

31. Members noted the Administration's position on the qualifications of AMPs.

*Section 6 - Proprietor to bear expenses of medical examination*

32. ALA5 asked about the difference between "investigations" and "examination" as "investigation" was not defined in the Regulation. As the employer would have to pay the costs of further medical examinations as recommended by the AMPs, the Chairman said that the Administration should consider specifying the types of such examinations to avoid disputes.

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33. PAS(EM) responded that "investigations" would include radiological examinations, blood and urine tests, lung function tests, visual acuity tests and audiometric examinations as specified in the second column of Schedule 2, and anything ancillary to a medical examination which had to be investigated. He undertook to review the drafting of section 6 and the related sections in the Regulation.

34. Mr LEE Cheuk-yan added that since section 12 required a proprietor to act in accordance with the report and recommendation of an AMP provided under section 9, the word "investigations" might refer to further examinations as recommended by the AMP. If this was the legislative intent, he requested the Administration to make this clear in sections 6, 9 and 12.

35. In reply to Mr CHAN Wing-chan, OHC(LD) said that proprietors would have to arrange paid leave for their employees to attend mandatory medical examinations.

*Section 7 - Employee not to be employed without medical examination*

36. ALA5 said that the Administration had clarified that section 7 was to prohibit a person who had not attended a relevant medical examination from taking up employment, unless he had been exempted in writing by the Commissioner for Labour from having to comply with the requirements of section 3. The section did not apply to workers already in employment.

37. In response to Mr Michael HO, PAS(EM) said that self-employed persons were not bound by the Regulation.

*Section 8 - Employee to be periodically medically examined*

38. ALA5 said that the Administration had clarified that section 8 referred to periodic medical examinations to be conducted after employment. However, the

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section had not specified a period for existing workers to attend medical examinations after commencement of the Regulation. Mr LEE Cheuk-yan expressed the same concern.

39. In response, OHC(LD) clarified that section 8 referred to periodic medical examinations and it also applied to the first time examination of existing employees in designated occupations when the Regulation came into operation.

*Section 9 - Report of medical examination*

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40. In response to ALA5, SGC undertook to consider improving the drafting to specify that a copy of the report of the pre-employment medical examination should also be provided to the worker.

*Section 10 - Report may be accompanied by recommendation as to limitations on or for suspension from employment in particular occupation*

41. ALA5 said that while section 3 would prohibit employment of workers unfit for employment, section 10 would allow continued employment of workers under certain conditions and limitations as recommended by AMPs. He pointed out that a proprietor might not be in a position to implement a recommendation on permanent suspension under section 10(d) as the proprietor could not prevent the worker from seeking employment from another company.

42. Mr Michael HO added that he could not think of any situation where a worker contracted with an occupational disease could still return to work in the same workplace subject to conditions, if the harmful substance still existed in the workplace. It was also likely that other workers in the same workplace would have contracted the same disease.

43. PAS(EM) said that in some cases, the occupational disease was contracted due to some personal habits of the worker concerned, for example, the worker might not have the habit of wearing protective equipment or washing his hands. OHC(LD) added that Labour Department would investigate the causes of occupational diseases as reported by AMPs and examine whether the work environment would need improvement. If the proprietor concerned was found in breach of the legislative requirements, Labour Department could take enforcement actions against the proprietor including issuing a suspension notice.

44. Mr Michael HO then inquired the reasons for having section 10 if existing legislation already required proprietors to put in place sufficient safety measures at the workplace. If the proprietor had followed the existing legislative requirements, it would not have given rise to a situation where the AMP would have to recommend conditions or limitations for the continued employment of

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the worker. He therefore asked the Administration to give examples on the scenarios under sections 10(a)-(d).

45. OHC(LD) said that section 10 was to empower the AMPs to make recommendations on remedial measures appropriate to the health conditions of individual workers contracted with occupational diseases. The remedial actions recommended would prevent the worker from further exposure to the harmful substance, while follow up actions by Labour Department and proprietors would promote occupational hygiene and occupational health in the long term.

46. Mr Michael HO asked whether workers on temporary suspension would be granted sick leave with pay. PAS(EM) responded that depending on the seriousness of the disease, there might be circumstances where the workers were not granted sick leave during temporary suspension. He explained that the worker on temporary suspension was only prohibited from continuing to work in the designated occupation, but the worker could be re-deployed to other posts. OHC(LD) added that in the case of minor lead poisoning, the worker would not require sick leave but temporary suspension from employment in a particular occupation was recommended to prevent him from further exposure to the harmful substance.

47. Mr LEE Cheuk-yan expressed grave concern about workers' livelihood if sick leave with pay was not granted during the period of temporary suspension. He pointed out that under existing legislation, medical practitioners could recommend sick leave and/or lighter duties for the worker. Moreover, under the Employment Ordinance, temporary suspension of work could only be made where there was allegation of serious misconduct such as suspected criminal offence, subject to a maximum period of 14 days. Mr LEE Cheuk-yan was concerned that section 10(d) of the proposed Regulation might place workers in a disadvantageous position. He therefore asked whether workers under permanent suspension, particularly those with less than five years of service, would be entitled to any compensation or ex-gratia payment. He also asked about the relationship between the proposed section 10 and other legislation on employee compensation and occupational safety and health. Mr CHAN Wing-chan expressed similar concerns.

Admin 48. In view of members' concerns, the Chairman requested the Administration to provide a written response. PAS(EM) agreed.

Date of next meeting

49. Members agreed to hold the next meeting at 8:30 am on 3 December 1999.

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*(Post-meeting note : At the request of the Administration, the next meeting was subsequently re-scheduled to 15 December 1999.)*

**III. Any other business**

50. There being no other business, the meeting ended at 10:40 am.

Legislative Council Secretariat

23 May 2000