

**立法會**  
***Legislative Council***

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**Paper for the House Committee meeting on 15 October 1999**

**Report of the Bills Committee on  
Shipping and Port Control (Amendment) Bill 1999**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Shipping and Port Control (Amendment) Bill 1999.

**Background**

2. At present, Part V of the Shipping and Port Control Ordinance (Cap. 313) (the principal Ordinance) provides for the regulation and control of repairs and breaking up of vessels, and cargo handling on vessels. The safety of the persons engaged in such activities is protected under the provisions of Part V. However, the growth in container handling and marine construction activities in recent years, and the adoption of practices to accelerate the container transfer process have given rise to potential new hazards and more accidents. The Administration therefore considers it necessary to expand the scope of the principal Ordinance to cover marine construction activities and to strengthen the existing legislative provisions to further protect the safety of workers.

**The Bill**

3. The Bill seeks to:
- (a) extend the marine work activities covered by the principal Ordinance to include “marine construction”; and
  - (b) improve the safety of workers engaged in marine work activities, through:

- (i) empowering the Director of Marine (D of M) to issue codes of practice for the purpose of providing practical guidance in respect of the requirements of Part V of the principal Ordinance;
- (ii) enabling regulations to be made for the control of works, and for D of M to approve any person to provide a safety training course and issue certificates to any person who attends the course; and
- (iii) increasing the penalty charges for breach of the requirements of Part V of the principal Ordinance.

### **The Bills Committee**

4. The House Committee agreed at its meeting on 16 April 1999 to form a Bills Committee to study the Bill. The Bills Committee first met on 10 July 1999 and Hon HUI Cheung-ching was elected Chairman. The membership list of the Bills Committee is in **Appendix I**. The Bills Committee held a total of three meetings. It has received written submissions from eight organizations, including the Occupational Safety and Health Council and seven associations in the relevant industries, and met representatives from six of them. The list of these organizations is in **Appendix II**.

### **Deliberations of the Bills Committee**

5. The Bills Committee welcomes the introduction of the Bill which aims at strengthening the existing legislation to further protect the safety of workers. The main deliberations of the Bills Committee are set out in the following paragraphs.

#### Codes of practice

6. The Bills Committee notes that the relevant industries are in support of the proposed provision on the issue of codes of practice by D of M. In response to the Bills Committee's request that the relevant industries be fully consulted before finalizing the codes, the Administration advises that a steering group comprising representatives from the Administration, Occupational Safety and Health Council and the relevant industries has been set up to work on the code of practice. It is expected that the steering group, with the expert advice of consultants, will draw up a code which is acceptable to all parties concerned.

### Increase in penalty charges

7. The Bill proposes to increase the penalty charges for breach of the requirements of Part V of the principal Ordinance by 100% to 150%. The Bills Committee notes that the relevant industries are particularly concerned about the substitution of fines by a higher level, for example, a fine of \$10,000 be substituted by a fine at level 4 (\$10,001 to \$25,000), and a fine of \$20,000 be substituted by a fine at level 5 (\$25,001 to \$50,000), etc. The justification put forth by the Administration for this proposal is to achieve a deterrent effect and to reduce the accident figures. According to the Administration, the existing penalty charges were set in 1978. The casualty and fatality figures in different marine industries respectively amounted to 684 and 9 in 1996, 599 and 11 in 1997, and 536 and 5 in 1998. Although the accident figures do not depict an upward trend, the numbers are still on the high side. The proposed increase therefore aims to deter employers/persons in charge of works from not complying with the legislative requirements and accordingly, reduce the accident figures.

8. Some of the organizations in the relevant industries however are not convinced of the need to increase the penalty charges. They have pointed out to the Bills Committee that due to the economic downturn of Hong Kong, the relevant industries have been experiencing great difficulties in continuing their business. The proposed increase in penalty charges will only impose further financial difficulties on the employers and result in some of them closing down their business, but not necessarily reduce the accident figures. They consider that the Administration should improve the safety of marine work activities through other means, such as by strengthening the publicity work on occupational safety and organizing more training courses for the workers concerned.

9. Whilst appreciating the concern of the relevant industries, the Bills Committee notes with concern that there were over 500 casualty and fatality cases in each of the recent three years and recognizes the need to improve the situation. Having regard to the fact that the existing penalty charges were set 21 years ago, a majority of members of the Bills Committee support the Administration's proposal to increase the penalty charges to achieve a deterrent effect. They note that the proposed increase is part of the whole package of the legislative amendments proposed by the Administration for improving the safety of marine work activities and will only affect those employers who do not comply with the requirements of Part V of the principal Ordinance. In setting the revised levels of penalty charges, the Administration has made reference to the relevant legislation governing industrial safety for land-based operations, namely, the Factories and Industrial Undertakings Ordinance (Cap. 59) and the Occupational Safety and Health Ordinance (Cap. 509). In fact, the revised levels of penalty charges proposed under the Bill are far lower than those stipulated in Cap. 59 and Cap. 509. According to the Administration, the range of fines under each level of penalty charges will provide flexibility for the court to impose heavier fines for the repeated offenders. In other words, the court may not necessarily impose the

maximum fines on the offenders. The Bills Committee notes that the offenders involved in the six prosecution cases between 1996 and 1998 have been fined a total of \$39,500 only and that it appears unlikely that the increase in penalty charges would substantially increase the operational costs of employers.

10. Notwithstanding the above, Hon Mrs Miriam LAU has drawn the Bills Committee's attention to the unfairness to the industries if penalty charges are increased before the implementation of the codes of practice. To address Hon Mrs Miriam LAU's concern, the Administration has proposed to introduce a Committee Stage amendment (CSA) to clause 1 of the Bill to the effect that the Bill, if passed by the Council, will come into operation on a day appointed by the Secretary for Economic Services by notice in the Gazette. The Administration's plan is to issue the codes of practice six months after the enactment of the Bill and at the same time, put into effect the revised penalty charges. Other provisions of the Bill will be effective as soon as possible after enactment of the Bill. Members consider this arrangement acceptable.

#### Definition of "person in charge of works"

11. Under the existing legislation, "person in charge of works" means the owner or master of, or other person having control over, the vessel concerned, or a principal contractor or sub-contractor. It is proposed under the Bill that the definition be expanded to include "any other person having for the time being in command or charge of any works being carried out on, to or by means of a vessel". One of the organizations in the relevant industries is concerned that if the revised definition is adopted, the terminal operators, being persons in charge of works, will be subject to a number of legislative requirements to be imposed on persons in charge of works, such as the provision of training, and the requirement to ensure that any equipment provided for use in a workplace by the persons employed in the works should be in safe working conditions. The Bills Committee notes the Administration's advice that in some cases, the principal contractor or the sub-contractor does not control the actual progress of works on board a vessel. The Administration therefore proposes to expand the definition of "person in charge of works" to the effect that the frontline supervisor who is directly in charge of works on board of a vessel will be responsible for the works to be safely carried out. The Bills Committee accepts that there is a need to revise the definition as proposed. It also notes that to assist the relevant industries in complying with the legislative requirements, the Administration is, in conjunction with the Vocational Training Council, organizing two-day safety training courses for the frontline supervisors of ship repair works.

Application of Part V of the principal Ordinance to vessels of 50 metres or less in length

12. At present, ship repairing and ship breaking activities for vessels of 50 metres or less in length are exempted from the control of Part V of the principal Ordinance. To tighten the control of such activities, the Administration proposes to amend section 37 of the principal Ordinance, by clause 8 of the Bill, to remove such an exemption. However, the Bills Committee notes that at the same time, clause 10 of the Bill amends section 40 of the principal Ordinance by adding a new subsection (1A) so that vessels of 50 metres or less in length will continue to be exempted from the requirement of seeking D of M's permission for any repairing or breaking up work to be carried out to these small vessels. The adding of the new subsection (1A) therefore appears to be not in line with the policy intent of clause 8 of the Bill.

13. In response to the Bills Committee's queries, the Administration advises that in 1998, there were only 36 cases of industrial accidents that involved repairing of vessels of 50 metres or less in length and all such accidents were minor in nature. Hence, the Administration considers it appropriate to retain the existing arrangement that written permission of D of M is not required for any repairing or breaking up work to be carried out to these small vessels. Apart from this exemption, these small vessels will be subject to more stringent legislative control after the passage of the Bill. The Bills Committee accepts the Administration's explanation.

Consequential amendments to the Merchant Shipping (Local Vessels) Ordinance

14. The Bills Committee supports the Administration's proposal to add new clauses 17 to 27 to the Bill so that consequential amendments will be made to the Merchant Shipping (Local Vessels) Ordinance ( Ordinance No. 43 of 1999) which was passed on 7 July 1999. The Administration will move CSAs to this effect.

The Shipping and Port Control (Cargo Handling) (Amendment) Regulation 1999

15. The Bills Committee takes note of the Administration's proposal that after enactment of the Bill, the Shipping and Port Control (Cargo Handling) (Amendment) Regulation 1999 will be introduced and be subject to negative vetting of the Council. Under the Regulation, new provisions on occupational safety will be added and general duties of care will be imposed on employers, persons in charge of works and persons employed.

**Committee Stage amendments**

16. The Administration has agreed to move the CSAs in **Appendix III**.

**Recommendation**

17. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 3 November 1999.

**Advice sought**

18. Members are requested to support the recommendation of the Bills Committee in paragraph 17 above.

Prepared by

Council Business Division 1  
Legislative Council Secretariat  
12 October 1999

《1999 年船舶及港口管制(修訂)條例草案》委員會  
Bills Committee on  
Shipping and Port Control (Amendment) Bill 1999

委員名單  
Membership list

許長青議員(主席)	Hon HUI Cheung-ching (Chairman)
朱幼麟議員	Hon David CHU Yu-lin
李啟明議員	Hon LEE Kai-ming, SBS, JP
陳鑑林議員	Hon CHAN Kam-lam
單仲偕議員	Hon SIN Chung-kai
劉健儀議員	Hon Mrs Miriam LAU Kin-ye, JP
鄧兆棠議員	Dr Hon TANG Siu-tong, JP

合共 : 7 位議員  
Total : 7 Members

日期 : 1999 年 7 月 10 日  
Date : 10 July 1999

**Bills Committee on  
Shipping and Port Control (Amendment) Bill 1999**

**List of organizations submitted views on the Bill**

Occupational Safety and Health Council\*

New Territories Cargo Transport Association\*

Central Container Handling Safety Committee\*

Hong Kong Stevedores Employers' Association\*

Hong Kong Mid-stream Operators Association\*

Hong Kong and Kowloon Shipbuilding Trade Workers Union\*

Hong Kong Cargo-Vessel Traders' Association

Hong Kong & Kowloon Motor Boats & Tug Boats Association Ltd

Total: 8 organizations

**Remark:**

“\*” denotes those organizations the representatives of which have met with the Bills Committee.



## Appendix III

DMA#12941

U:\CSA\ShippingV2

1<sup>st</sup> draft: 19.7.99

2<sup>nd</sup> draft: 7.8.99

3<sup>rd</sup> draft: 19.8.99

4<sup>th</sup> draft: 21.9.99

Final draft: 24.9.99

### SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1999

#### COMMITTEE STAGE

##### Amendments to be moved by the Secretary for Economic Services

##### Clause

##### Amendment Proposed

- |      |   |
|------|---|
| 1    | By deleting the clause and substituting -<br>“1. Short title and commencement<br>(1) This Ordinance may be cited as the Shipping and Port Control (Amendment) Ordinance 1999.<br>(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Services by notice in the Gazette.”. |
| 2    | By deleting “and regulation” and substituting “the regulation”.   |
| 3(b) | By adding “使用” after “《”.   |
| 4    | (a) In the heading, by adding “使用” after “《”.<br>(b) In subclause (a), by adding “使用” after “《”.  |

(c) In subclause (b) (i), by adding “使用” after “《”.

7(a)

By adding -

“(iii) by repealing “吊杆” and substituting “吊桿” ;”.

15

In the proposed section 44A(2), by deleting “《守則》” and substituting “工作守則” .

New

By adding -

### **“Consequential Amendments**

#### **Merchant Shipping (Local Vessels)**

#### **Ordinance**

### **17. Interpretation**

Section 2 of the Merchant Shipping (Local Vessels)

Ordinance (43 of 1999) is amended -

- (a) in the definition of “cargo”, by adding”,  
container, pallet, material and solid ballast”  
after “goods”;
- (b) in the definition of “lifting appliance” -
  - (i) by adding “excavator, pile driver,  
pile

extractor,” after “sheer legs,”;

(ii) by repealing “cargo handling”  
and substituting “works”;

(c) in the definition of “lifting gear”, by  
repealing “cargo handling” and substituting  
“works”;

(d) by adding -

““material” (物料)

includes construction material,  
waste material and debris;”.

## **18. Part heading substituted**

The heading to Part VIII is repealed and substituted by  
“WORKS”.

## **19. Interpretation**

Section 37 is amended -

(a) in the definition of “machinery, equipment  
or appliance”, by adding -

“(d) marine construction, means

any machinery, equipment or  
appliance provided or used for  
that purpose;”;

(b) in the definition of “person in charge of  
works” -

(i) in paragraph (a) -

(A) by repealing “on or to” and  
substituting “on, to or by  
means of”;

(B) by repealing “or” at the end;

(ii) in paragraph (b), by adding “or”  
at the end;

(iii) by adding -

“(c) any other person having  
for the time being in  
command or charge of  
any works being

carried out on, to or by  
means of a local  
vessel;”;

(c) in the definition of “works” -

(i) in paragraph (b), by repealing  
“or”;

(ii) in paragraph (c), by repealing the  
full stop and substituting”; or”;

(iii) by adding -

“(d) marine construction.”;

(d) by adding -

““approved code” (《守則》) means  
a code of practice issued under  
section 45A;

“crane”(起重機) means any appliance  
equipped with mechanical means  
of hoisting and

lowering a load and for transporting the load while suspended; and also all chains, ropes, swivels, or other tackle (down to and including the hook), used in the operation of the appliance; but does not include -

- (a) a hoist block running on a fixed rail or wire;
- (b) a stacker or conveyer whereby a load is moved by means of a belt or platform; or

(c) an earth or mineral  
moving or excavating  
appliance not fitted  
with a grab;

“marine construction” (海上建造工  
程) means any construction or  
reclamation works, including  
dredging, drilling, pipe laying,  
buoy laying, cable laying and  
caisson construction, in which  
local vessels are used;”.

## **20. Powers of Director and inspectors**

Section 40(3) is amended by repealing “level 3” and  
substituting “level 4”.

**21. Restriction on carrying out  
repairs or breaking up of  
local vessels**

Section 41 is amended -

(a) in subsection (1), by repealing “subsection (2)”  
and substituting “subsections (1A) and (2)”;

(b) by adding -

“(1A) Subsection (1) does not  
apply to any local vessels of 50 metres or  
less in length unless the Director gives  
written notification to the person in charge  
of works that subsection (1) applies to that  
vessel.”;

(c) in subsection (3), by repealing “level 5” and  
substituting “level 6”.

**22. Safe atmosphere**

Section 42(2) is amended by repealing “level 4” and  
substituting “level 5”.

**23. Directions regarding repairs or  
breaking up of local vessels**



Section 43(2) is amended -

- (a) by repealing “level 3” and substituting “level 4”;
- (b) by repealing “\$1,000” and substituting “\$2,000”.

**24. Prohibition against use of dangerous equipment, etc.**

Section 44(3) is amended -

- (a) in paragraph (a), by repealing “level 4” and substituting “level 5”;
- (b) in paragraph (b) -
  - (i) by repealing “level 3” and substituting “level 4”;
  - (ii) by repealing “\$1,000” and substituting “\$2,000”.

**25. Prohibition against carrying out works in dangerous conditions**

Section 45(3) is amended -

- (a) in paragraph (a), by repealing “level 4” and substituting “level 5”;
- (b) in paragraph (b) -

- (i) by repealing “level 3” and substituting “level 4”;
- (ii) by repealing “\$1,000” and substituting “\$2,000”.

## **26. Section added**

The following is added -

### **“45A. Code of practice**

(1) For the purpose of providing practical guidance in respect of any one or more of the requirements of this Part or of regulations made under this Ordinance, the Director may issue such codes of practice (whether prepared by the Director or not) as the Director considers appropriate.

(2) The Director may amend or revoke a code of practice issued by him under subsection (1).

(3) Where the Director exercises a power under subsection (1) or (2), he shall as soon as may be reasonably practicable publish notice thereof in the Gazette and the notice shall be in such form as the Director considers appropriate.

(4) A failure by any person to observe a provision of an approved code shall not of itself cause him to incur any criminal liability, but where -

(a) in any criminal proceedings the defendant is alleged to have committed an offence either -

(i) by reason of a contravention of or a failure to comply with, whether by act or omission, this Ordinance or regulations under this Ordinance; or

(ii) by reason of a failure to discharge or perform a duty imposed by this Ordinance or such regulations; and

- (b) the matter to which the alleged contravention or failure relates is one to which, in the opinion of the court, an approved code relates,

then subsection (5) shall apply as regards to the proceedings.

(5) In any criminal proceedings to which this subsection applies, the following, namely -

- (a) compliance with a provision of an approved code found by the court to be relevant to a matter to which a contravention or failure alleged in the proceedings relates;
- (b) a contravention of or a failure to comply with, whether by act or omission, any such provision so found,

may be relied on by any party to the proceedings as tending to establish or to negative any liability which is in question in the proceedings.

(6) In any criminal proceedings, any document which purports to be a copy of a particular approved code shall, in the absence of evidence to the contrary, be regarded by the court as being a true copy of that code.”.

## **27. Regulations - general**

Section 89(1) is amended -

(a) by repealing paragraph (zh) and substituting -

“(zh) the control of works, the control of salvaging of vessels, the control and use of lifting appliances and lifting gear, the safety and protection against accidents of persons employed in such works or operations, the provision of safe workplaces on local vessels, the operation, use and maintenance of hatches and hatch coverings on vessels in connection

with works, and regulations made for the purpose of this paragraph may empower the Director to -

- (i) make exemptions from the application of the regulations where he is satisfied that the regulations have been substantially complied with or where compliance therewith is unnecessary having regard to the circumstances;
- (ii) approve any person to

provide a safety  
training course  
and issue  
certificates to any  
person who  
attends the  
course;”;

(b) by repealing paragraph (zn).”.