

Construction Workers Registration Bill

Responses to comments made by Members at the 11th Bills Committee meeting and other proposed amendments

At the 11th Bills Committee meeting held on 21 May 2004, the Bills Committee discussed the Administration's responses to issues raised by Members at the 10th Bills Committee meeting and the special report on issues to be reverted to the Bills Committee. Having considered the comments and suggestions made by Members and the Legal Adviser of LegCo, the Administration would like to provide the following responses and other proposed amendments for Members' consideration:

1. Appeal Board may require appellant to undergo test (clause 58(1)(b))

Members still considered that the Appeal Board should have the flexibility of requiring an appellant to undergo a training course as another option to ascertain his level of competence. After further deliberation, the Administration considers that clause 58(1)(b) could be removed as it is unlikely that the Appeal Board will exercise the power.

2. Details of the newly proposed provisional registration arrangement for senior workers

In the special report tabled to Members at the 11th meeting, the Administration presented a newly proposed provisional registration arrangement for senior workers (for the purpose of this proposal, it is now considered that the term "provisional" is preferred and is used in place of "transitional"). In response to Members' request, a paper setting out details of the new proposal is given at the Appendix.

3. Other powers of authorized officers (clause 17C(1)(f))

It has been suggested that it might be too onerous for any person found on a construction site to be required to provide information that may enable an authorized officer to identify the principal contractor, any person carrying out construction work on the site, and the employer of such person.

This power is important in an authorized officer's function in enforcing the requirements under the Bill. In some situations, it is difficult, if not impossible, to identify the principal contractor or an employer. We agree that it may not be difficult for an authorized officer to identify a person carrying out construction work on a site. Thus, clause 17C(1)(f) is revised to remove this requirement.

We also believe that there are sufficient safeguards. First, an authorized officer may not exercise the power under clause 17C(1)(f) unless he reasonably believes that the person has the information. Thus, the power may not be exercised arbitrarily. Secondly, if a person does not know the answer to an authorized officer's question, the person has a "reasonable excuse" for failing to comply with the officer's requirement. That would be a defence in case of a prosecution.

A similar power can be found in section 46(1)(a) of The Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474). We have also consulted the Department of Justice specifically on clause 17C(1)(f). There is no objection to clause 17C(1)(f) from a human right perspective.

4. Notice of appeal (clauses 53)

We have made several amendments to the appeal related provisions including clauses 52 and 53 to clearly indicate that the time allowed for an appellant to submit a notice of appeal should be calculated after the Registrar has made his decision in relation to the recommendations of the Review Committee on the said issue.

5. Amendments in relation to the newly proposed provisional registration arrangements and other amendments

- (a) Amendments due to introduction of the newly proposed provisional registration arrangements

Subject to Members' agreement to the newly proposed provisional registration arrangements, amendments will be made to the related clauses on "qualifications for registration" (clause 37), "acceptance and rejection of registration" (clause 38), "special provision on registration for certain trades" (clause 40) and "assessment interview and trade test for registered skilled workers (transitional)" (clause 41). Clause 39 on "registration as registered skilled worker (transitional)" and clause 36(3) about the assessment interview will also be deleted. In connection with the above amendments, corresponding amendments to clause 3(2), 3(3), 6(8), 46(1), headings of Parts 1 and 2 of Schedule 1 are also necessary.

- (b) Offences of making false or misleading statements, of failure to attend as witness and of obstructing authorized officers, etc.

In response to comments made by the Legal Adviser of LegCo, we have amended clause 61(3)(d) to improve the clarity of this clause.

- (c) Other technical amendments

We have refined clause 17C(1)(e)(i) and clause 19(5).

- (d) Proposed amendment to clause 65 on Rules

The Judiciary Administrator has lately advised that it would be more appropriate to vest any new rule-making power in any proposed legislation in a Rules Committee rather than in the Chief Justice. As such, we propose to amend clause 65 such that the District Court Rules Committee instead of the Chief Justice may make rules of court for the purposes of section 28. As this amendment has not been included in the current version of CSAs, we will consult the Legal Adviser of LegCo on this new amendment.

Enclosure - Appendix

27 May 2004
ETWB

Newly Proposed Provisional¹ Registration Arrangements for Senior Workers

This paper gives further details of the proposed provisional registration arrangements being contemplated by the Administration for Members' consideration. In addition, the background and rationale leading to the new proposal are also provided.

1. The Proposal

A transitional registration arrangement for senior workers with not less than 10 years relevant experience was originally stipulated in the Construction Workers Registration Bill (the Bill). In accordance with the provisions, qualified senior workers would be registered as registered skilled workers (transitional) and upon passing an assessment interview, they could obtain registration as a registered skilled worker. In consideration of the strong views of Members and the trade unions to adopt a qualifying period of 6 years for senior workers and the understanding reached at the discussion held on 19 May 2004, a new one-off provisional registration arrangement is proposed to replace the original transitional registration arrangement for senior workers. CSAs will be moved subject to Members' general acceptance of this new proposal. The details are given below for Members' consideration:

- (a) If the Registrar satisfies that a person has **not less than 6 years** relevant experience in a designated trade, he shall register the person as a registered skilled worker (provisional) for the trade.
- (b) The registered skilled worker (provisional) may choose to attend and complete a training course specified by the Authority for the trade or to pass the trade test. If the worker successfully completes the course or if he passes the trade test, he can obtain registration as a registered skilled worker for the trade.

¹ The term "provisional" is preferred and is used in place of "transitional" in consideration of the nature of the newly proposed registration arrangement.

- (c) In view of the specific nature and skill level of each trade, the content and duration of each training course would be trade dependant. While details of these training courses have yet to be worked out, the initial proposal is that the course content would cover essential elements of a particular trade. In particular, emphasis would be placed on areas which the workers commonly failed in the trade tests. For the purposes of the training courses, it is also suggested that course lengths of up to several days would be appropriate.
- (d) Apart from meeting the attendance rate, the workers should pass an assessment which form part of the course before they could successfully complete the course. The assessment would be in a form of multiple choice questions. Assistance would be provided to those workers who have difficulties in reading or understanding the questions.
- (e) The workers have to pay a fee for attending the training course. However, it is intended to keep the course fee as low as possible to alleviate the burden of the workers. The fee is intended to be set at a level similar to the charges for trade tests.
- (f) If the worker fails to complete the course or pass a trade test within 3 years from the date of the registration mentioned in paragraph (a), his registration as a registered skilled worker (provisional) will expire after the lapse of this period.
- (g) The worker who successfully completes the training course will receive a certificate of completion as a life long qualification. He can obtain his registration as a registered skilled worker based on this qualification. If he fails to renew his registration as required, he could still rely on such qualification to apply for re-registration.

2. Background and rationale leading to the Proposed Provisional Registration Arrangement

- (a) Since 1995, the Government has been implementing a contractual requirement requiring the contractors of the Housing Department to

employ a given percentage of qualified tradesmen² in specified trades to improve the quality of construction works. Similar contractual requirement was also included in public works contracts from 1996. Over the years, the percentage requirements have been raised according to the availability of trade-tested workers in the construction industry to further encourage the employment of such workers.

- (b) One major objective to implement the proposed registration system is to improve the quality of construction works through certification of the skill levels of workers. Towards this objective, the initial proposal required all skilled and semi-skilled workers in the construction industry to pass a trade test before they could obtain the registration. To recognize the skill level of the senior workers and their contribution to the industry, the stakeholders have later agreed that senior workers with relevant experience of not less than 10 years should be exempted from trade test and be registered as registered skilled workers by passing an assessment interview. However, the relevant trade associations, training institutes and major employers also stressed that an experience of 10 years was a minimum requirement to give assurance on the skill levels of the exempted workers.
- (c) Upon introduction of the Bill into the LegCo, the relevant trade unions expressed that the qualifying period for senior workers should be reduced to 6 years quoting the one-off exemption requirement under the registration of electrical workers for Grade A electrical workers as a reference. They also viewed that a shorter qualifying period could help alleviate the concerns of the workers arising from the poor economic situation.
- (d) Though the Administration has tried its best by holding a number of meetings with the parties concerned to sort out the discrepancies, the parties stood firm on their stance and a consensus could not be reached. Having examined in details the views expressed by them, the Administration later recommended that a qualifying period of 8 years for the senior workers should be adopted, citing this a

² This refers to skilled workers who hold a trade test certificate or an equivalent qualification.

reasonable compromise which could give a reasonable degree of assurance on the skill level of the exempted workers and also help address the concerns of the construction workers. However, the proposal was not supported by the trade unions and some Members.

- (e) After further consultations with the trade unions and trade associations and subsequently at the discussion held with some Members and representatives of the relevant trade associations on 19 May 2004, the new provisional registration arrangement was put forward for discussion. Participants generally considered the new proposal worth pursuing. The Administration agreed to raise the new proposal for discussion at the 11th Bills Committee meeting after giving deliberation to the following points:
 - (i) The new proposal should strike a balance between the demands and expectations of the trade unions and the trade associations, major employers and training institutes.
 - (ii) It should give a reasonable degree of assurance on the skill level of the workers who obtain their registration under this new proposal. A training course pinpointing at common weakness observed in the respective trade tests would be helpful.
 - (iii) To be fair to the about 110,000 workers³ who have spent their effort and time to pass the trade tests or operator tests, the new proposal should require the applicants to go through some form of assessment for quality assurance.

ETWB

27 May 2004

³ As some of the workers possess more than 1 type of certificate and hence, the actual number of workers is actually smaller than this figure.