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Legislative Council

LC Paper No. CB(2) 1390/02-03

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House Committee meeting on 7 March 2003
Background Brief prepared by Legislative Council Secretariat

Industrial Training (Construction Industry) (Amendment) Bill 2001

Purpose

This paper summarizes past discussions on the Industrial Training (Construction Industry) (Amendment) Bill 2001 to assist Members in considering the Administration's proposal that the Bill and the proposed regulation to be made under the Factories and Industrial Undertakings Ordinance (Cap. 59) be held in abeyance for the time being.

Industrial Training (Construction Industry) (Amendment) Bill 2001

2. The Industrial Training (Construction Industry) (Amendment) Bill 2001 was introduced into the Legislative Council (LegCo) on 14 March 2001 and considered by the House Committee meeting on 16 March 2001. The Bill seeks to empower the Construction Industry Training Authority to arrange for and cover the costs of the medical examination of persons employed in prescribed occupations in the construction industry involving exposure to hazardous substances. It is the Administration's intention to prescribe those occupations in a regulation to be made under the Factories and Industrial Undertakings Ordinance (Cap. 59), which will provide for mandatory medical examination of persons employed in work involving exposure to and the use of hazardous substances and physical agents.

3. At the House Committee meeting on 16 March 2001, Members agreed to defer a decision on the Bill pending the introduction of the proposed regulation to be made under the Factories and Industrial Undertakings Ordinance (Cap. 59), as the Bill was dependent on and subsidiary to the proposed regulation. The Legal Service Division report on the Bill and the relevant extract from the minutes of the House Committee meeting on 16 March 2001 are in Appendices I and II for Members' easy reference.

4. At the House Committee meeting on 21 February 2003, Members noted that almost two years had passed and the Administration had still not introduced the proposed regulation. Members agreed that the Chairman of the House Committee should raise the matter with the Chief Secretary for Administration (CS) and request the Administration to expedite action.

Director of Administration's letter dated 27 February 2003

5. The Director of Administration (D of Adm) provided a response on the matter in his letter dated 27 February 2003 to the Chairman. (The letter was circulated to Members vide LC Paper No. CB(2)1340/02-03 dated 27 February 2003 and also tabled at the House Committee meeting on 28 February 2003.) Members agreed at the meeting on 28 February 2003 that discussion on the letter should be deferred to the meeting on 7 March 2003 to allow time for Members to study it.

6. In D of Adm's letter, the Administration proposes to hold the Bill and the proposed regulation in abeyance for the time being, and has put forward the following reasons to support its proposal -

(a) under the proposed regulation, employees who are certified medically unfit will be suspended either temporarily or permanently from employment in their particular occupation. Those suspended temporarily would suffer loss of pay even if they were granted sick leave, whilst those suspended permanently may lose their jobs if their employers cannot arrange for re-deployment. In addition, the latter may have difficulties in securing another job because of the current high unemployment rate. For these reasons, it is unlikely that employees will welcome the re-introduction of the regulation;

(b) in the past few years, there has been a downturn in the local economy. This phenomenon had not been envisaged at the time when the regulation was first proposed. The construction industry, in which more than 80% of the workers covered by the proposed regulation are employed, has been particularly hard hit. The latest unemployment and underemployment rates in the industry are 15.2% and 14.6% respectively, which are far higher than the corresponding rates of 7.2% and 3.1% for the total workforce. If employees in the industry are suspended from work under the proposed regulation, the outlook for re-deployment and re-employment in the industry is rather bleak; and

(c) it has been estimated that implementation of the proposed regulation would entail a 0.03% increase in the total operating cost of main contractors in the construction industry and 0.01% increase for

proprietors in the other affected industries. Because of the cost implications, re-introduction of the regulation will not find favour with employers under the present economic climate.

7. D of Adm has indicated in his letter that the Administration would review the situation later this year and consult the trade unions and employer associations on the way forward.

Factories and Industrial Undertakings (Medical Examinations) Regulation

8. Members are invited to note that the proposed regulation, the Factories and Industrial Undertakings (Medical Examinations) Regulation, was made by the Commissioner for Labour on 22 June 1999. The Administration gave notice to move a motion on the Regulation at the Council meeting on 14 July 1999 to seek the Council's approval for the Regulation. The Regulation provided for mandatory medical examination of persons employed in 17 occupations. Under the Regulation, employees who were medically unfit would be suspended either temporarily or permanently from employment in their particular occupation. It was estimated that the Regulation would cover 23 industries involving a total of 195 000 workers. The Administration was asked to withdraw its notice for the motion as the House Committee had decided (at its meeting on 2 July 1999) to refer the Regulation to a subcommittee for detailed study.

9. The subcommittee, comprising 11 Members and chaired by Hon Andrew CHENG, held a total of 10 meetings between July 1999 and June 2000. It had also consulted some 40 organizations and discussed with 22 deputations on the proposals in the Regulation. Hon Andrew CHENG made a verbal report on the subcommittee's deliberations at the House Committee meeting on 16 June 2000 and submitted a written report at the following meeting on 23 June 2000.

10. While the subcommittee was fully in support of the objective of the Regulation which sought to better protect workers' occupational health through mandatory medical examinations, it had expressed a number of concerns. For instance, some members were concerned about the implications of the Regulation on the employment of those workers who were found to have contracted occupational diseases and considered medically unfit to continue employment in the specified occupation. These members considered that there should be compensation payment for the affected employees.

11. In addition, some members of the subcommittee had pointed out that the proposed temporary suspensions of employment on medical grounds would be incompatible with the provisions in the Employment Ordinance. In response to the subcommittee's repeated queries, the Administration had sought legal

advice and informed the subcommittee on 13 June 2000 that the Employment Ordinance did not cater for the situation of temporary suspension on grounds of medical fitness. The Administration had also advised that as an amending bill would need to be introduced first to amend section 7 of the Factories and Industrial Undertakings Ordinance, it would not be possible to move a motion to seek the Council's approval for the Regulation before the end of the 1999-2000 legislative session.

Consultation with Panel on Manpower on proposed regulation on 15 February 2001

12. Members are invited to note that before the introduction of the Industrial Training (Construction Industry) (Amendment) Bill 2001 into the Council, the .Panel on Manpower was consulted on the legislative proposals in the Bill and the proposed regulation at its meeting on 15 February 2001, The extract from the minutes of the meeting and the Administration's paper provided for the meeting are in Appendices III and IV respectively. At the meeting, members of the Panel expressed a number of concerns, including -

(a) how the Administration could ensure that a worker who was recommended to be suspended temporarily from employment would be granted paid sickness days, if his employer was unable to arrange other temporary work for him;

(b) the practical difficulties in defining whether a disease was purely caused by his occupation, especially when a worker's service in the occupation was short;

(c) possible disputes over illnesses not defined as occupational diseases but were in fact caused by the occupation;

(d) protection for a worker who suffered illness caused by a combination of his personal health condition and his occupation, and was required to be permanently suspended from employment;

(e) protection for a worker who was certified to have suffered from occupational disease, but which did not fall within the prescribed occupational diseases under the Employees Compensation Ordinance, and was required to be permanently suspended from the occupation; and

(f) whether time limits should be set before which an employer would not be held responsible if an intake was found having occupational disease which was most likely caused by his previous jobs.

13. Members had also requested the Administration to provide the following information -

(a) the occupational diseases associated with each of the 17 designated occupations and the industries in which these occupations diseases were found; and

(b) the wording of the proposed regulation, especially the terms of the savings provision referred to in paragraphs 9 and 10 of the Administration's paper (Appendix IV).

14. The Chairman asked the Administration to consider the points raised by members at the meeting, and if possible, provide the requested information before the introduction of the proposed Regulation. Members are invited to note that the Administration provided information in relation to paragraph 13(a) above in a letter dated 29 October 2001 to the Chairman to the Panel. However, the Administration has so far not provided the wording of the proposed regulation to the Panel (paragraph 13(b) refers) or consulted the Panel on its proposal to hold the proposed regulation in abeyance.

The way forward

15. The Administration is seeking the House Committee's views on its proposal to hold the Bill and the proposed regulation in abeyance for the time being. The question for the House Committee is whether Members are in a position to support the Administration's proposal in respect of the bill based on the information provided. Given that the Bill is dependent on and subsidiary to the proposed regulation, the House Committee may wish to ask the Administration to first consult the Panel on Manpower on its proposal that the proposed regulation should be held in abeyance, including its plan to review the situation and consult the trade unions and employer associations as mentioned in D of Adm's letter. Pending the outcome of the Administration's consultation with the Panel, the House Committee may wish to continue to defer a decision on the Industrial Training (Construction Industry) (Amendment) Bill 2001.

立法會
Legislative Council

LC Paper No. LS68/00-01

Paper for the House Committee Meeting
of the Legislative Council
on 16 March 2001

Legal Service Division Report on
Industrial Training (Construction Industry)
(Amendment) Bill 2001

Object of the Bill

To empower the Construction Industry Training Authority to arrange for and cover the costs of the medical examination of persons employed in prescribed occupations in the construction industry involving exposure to hazardous substances.

LegCo Brief Reference

2. LegCo Brief EMB CR 1/2961/95 dated 28 February 2001, issued by the Education and Manpower Bureau.

Date of First Reading

3. 14 March 2001.

Comments

4. The Bill has one single purpose, i.e. to expand the functions of the Construction Industry Training Authority so as to empower it to make arrangements for and to cover the costs of the medical examination of persons who are or are to be employed in certain prescribed occupations in the construction industry. In practical terms, the amendments proposed by the Bill

will only affect the long title and section 5 (Functions of the Authority) of the Industrial Training (Construction Industry) Ordinance (Cap. 317).

5. The intention of the Administration is to prescribe those occupations in a regulation to be made under the Factories and Industrial Undertakings Ordinance (Cap. 59), which will provide for the mandatory medical examination of persons employed in work involving exposure to and the use of hazardous substances and physical agents.

6. In other words, the Bill is introduced in preparation for the proposed regulation and is expected to come into effect not later than the commencement of the proposed regulation after it is made. The Administration has indicated in the paper (paragraph 19) for the LegCo Panel on Manpower meeting on 15 February 2001 that it will introduce the proposed regulation after the enactment of the Bill.

7. In order to cover the cost to the Authority in discharging its new proposed function in future, the Administration is also proposing to increase the existing levy (at 0.4%) collected from the construction industry by the Authority by 0.03%. Under section 22 of the Industrial Training (Construction Industry) Ordinance, the rate of the levy (including therefore any increase) has to be prescribed by the Legislative Council by resolution.

Public Consultation

8. According to the LegCo Brief, the Labour Advisory Board has expressed support for the proposed regulation. The Hong Kong Construction Association and Real Estate Developers Association of Hong Kong have indicated support for engaging the Authority as the agent for the construction industry.

Consultation with the LegCo Panel

9. The Panel on Manpower was briefed on the proposed regulation and the related amendments proposed by the Bill at its meeting on 15 February 2001.

Conclusion

10. The proposal made in the Bill is in itself rather straightforward. However, since it is dependent on and subsidiary to the proposed regulation to

be made under the Factories and Industrial Undertakings Ordinance, Members may wish to consider to hold this Bill in abeyance until they have come to a view on the proposed regulation after it is introduced by the Administration.

11. The legal and drafting aspects of the Bill are in order.

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Prepared by

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Assistant Legal Adviser
Legislative Council Secretariat
7 March 2001

Appendix II

Extract from Minutes of House Committee meeting of the Legislative Council held on 16 March 2001

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III. Business arising from previous Council meetings

(a) Legal Service Division's reports on bills referred to the House Committee in accordance with Rule 54(4)

(iii) Industrial Training (Construction Industry) (Amendment) Bill 2001
(LC Paper No. LS 68/00-01)

8. Presenting the paper, the Legal Adviser said that the Bill had one single purpose, i.e. to expand the functions of the Construction Industry Training Authority (CITA) to empower it to make arrangements for and to cover the costs of the medical examination of persons who were or were to be employed in certain specified occupations in the construction industry.

9. The Legal Adviser explained that the Bill was introduced in preparation for a regulation to be made under the Factories and Industrial Undertakings Ordinance which would provide for the proposed mandatory medical examinations of persons employed in work involving exposure to and the use of hazardous substances and physical agents. The Legal Adviser said that as the implementation of the Bill was dependent on and subsidiary to the making of the proposed regulation to be introduced, it was for Members to consider whether to set up a Bills Committee immediately or to defer making a decision until Members had come to a view on the proposed regulation to be introduced.

10. Dr YEUNG Sum expressed support for deferring a decision on the Bill as the related regulation had yet to be introduced.

11. Miss Margaret NG asked whether it was the Administration's intention to seek Members' views on the general principle of the legislative proposals in order to prepare for the regulation to be made under the Factories and Industrial Undertaking Ordinance.

12. Ir Dr Raymond HO also sought clarification on whether the Bill had to be introduced ahead of the proposed regulation, or vice versa.

13. The Legal Adviser explained that the Bill only proposed that CITA would act as an agent for the medical examination arrangements for persons employed in certain prescribed occupations in the construction industry. This was in preparation for the implementation of the mandatory medical examinations which would be prescribed in a regulation under the Factories and Industrial Undertakings Ordinance. The Legal Adviser added that to cover the costs to CITA in carrying out the proposed function, the Administration would be proposing to increase the existing levy (at 0.4%) collected from the construction industry by CITA by 0.03%. The increase would have to be approved by resolution of the Council. The Legal Adviser pointed out that the Bill, the resolution and the proposed regulation must be in place before the proposed mandatory medical examination arrangements could be implemented in accordance with the proposed mechanism.

14. Mr Andrew WONG said that the proposed regulation needed not be introduced separately. It could have been incorporated in the Bill as consequential amendments so that Members could examine these legislative proposals together.

15. The Legal Adviser agreed that it was technically feasible to introduce a miscellaneous amendments bill to amend the relevant legislation. He pointed out that it was the Administration's original intention to introduce the proposed regulation first. However, during the scrutiny of the proposed regulation by a subcommittee formed in the last term, it was considered that the proposed regulation might be inconsistent with the provisions on sick leave and continuous employment in the Employment Ordinance. Further examination was required to determine whether amendment to the Employment Ordinance was necessary. The Legal Adviser added that the Administration had indicated that it would introduce the proposed regulation shortly.

16. Mr TAM Yiu-chung said that the proposed regulation was studied by the Subcommittee on Regulations Relating to Occupational Safety and Health in the last term. The Subcommittee noted that the proposed regulation might contradict certain provisions in the Employment Ordinance. The Hong Kong Construction Association had also expressed concern about the proposed regulation. The Administration therefore agreed to re-consider the proposed regulation. Since the present Bill was only to provide a legal framework for CITA to implement the medical examination arrangements if the proposed regulation was available, the Bill and the proposed regulation could be examined together.

17. The Chairman said that if Members agreed to the proposed regulation after scrutiny, a Bills Committee might not be necessary to study the Bill which was relatively straightforward. The Chairman proposed that the Bill should be held in abeyance pending the introduction of the proposed regulation. Members agreed.

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Appendix III

Extract from Minutes of Meeting of Manpower Panel on 15 February 2001

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III. Draft Factories and Industrial Undertakings (Medical Examinations) Regulation
(LC Paper No. CB(2)849/00-01(03))

4. At the invitation of the Chairman, Deputy Secretary for Education and Manpower (DSEM) briefed members on the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation (the proposed Regulation) and related amendments to the Industrial Training (Construction Industry) Ordinance, as detailed in the Administration's paper. He pointed out that the legislative intent of the proposed Regulation was to protect the health of workers engaged in 17 designated hazardous occupations. All the occupational diseases associated with these occupations were covered by the Employees' Compensation Ordinance (ECO) and other related ordinances. The statutory rights and benefits of workers would not be affected by the implementation of the proposed Regulation.

5. Mr LEE Cheuk-yan pointed out that under the proposed Regulation, an appointed medical practitioner (AMP) might recommend to an employer, after considering the safety and health of an employee concerned, for suspending the employee from employment in his particular occupation for a period to be specified by the AMP. Considering that a worker who was medically unfit to work in a particular occupation might be fit for other occupations, Mr LEE asked how the Administration could ensure that a worker who was recommended on temporary suspension from employment would be granted paid sickness days if his employer was unable to arrange other temporary work for him. DSEM explained that only workers engaged in seven of the 17 designated hazardous occupations covered by the proposed Regulation might be required to be temporarily suspended from employment in their particular occupation. The number of such workers was estimated to be around 20 000. He said that the hazards of the seven occupations were all related to chronic poisoning which was caused by exposure to hazardous substances for a long time, therefore only workers with long service in these occupations would be affected. In view of the long service of these workers, their accumulated paid sickness days should be sufficient to cover the period of suspension which would normally last for one to two months. Under the guidelines to be issued, an AMP would recommend paid sickness days for the employee who was recommended for temporary suspension, if re-deployment could not be arranged by the employer.

6. The Chairman expressed concerned that a worker might have insufficient or no paid sickness days accumulated to cover the temporary suspension period. He said that a worker's sickness allowance benefits might be affected when he suffered from a

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non-occupational illness while his paid sickness days had already been exhausted by his previous occupational illness. He also asked how to ensure that the worker would not contract the same occupational disease upon his return to work and the possible consequence if the worker chose not to continue the employment.

7. DSEM explained that not all these 20 000 workers would have to be temporarily suspended from employment. Only those engaged in the seven hazardous occupations without adopting effective protective measures would be affected. He cited Singapore as an example that out of some 70 000 occupational medical examinations conducted in 1999, only 1 138 were found abnormal; and of which 1 108 were related to exposure to excessive noise at work. These workers were not required to be suspended from employment and the abnormality could be rectified by wearing protective equipment. He pointed out that under the Employment Ordinance (EO), an employee could accumulate a maximum of 120 paid sickness days. The possibility of having insufficient paid sickness days to cover the suspension period was therefore low. He further said that in theory the chance of contracting the same occupational disease again was low as the Labour Department (LD) should have inspected the workplace and recommended suitable protective measures to the employer to improve the working environment. If the worker chose to discontinue his employment, the termination would be handled as a general termination of employment contract.

8. Mr LEE Cheuk-yan opined that paid sickness days for occupational diseases should be claimed under the ECO rather than using the worker's sickness allowance under the EO. In principle, employers should not be held responsible for the compensation. Occupational Health Consultant (2), Labour Department (OHC(2)/LD) said that if an employee was diagnosed as suffering from occupational disease, his paid sickness allowance would be made in accordance with the ECO. However, the following situations were not covered by the ECO -

(a) if the occupational disease was so preliminary that it did not fall within the ambit of the ECO; and

(b) if the illness was of a general nature and was caused by the personal health of a worker rather than his occupation.

9. The Chairman pointed out that there might be disputes over illnesses not defined as occupational diseases but were indeed caused by the occupation. In response to Mr LEE Cheuk-yan, OHC(2)/LD confirmed that workers engaged in the 17 designated hazardous occupations suffering from occupational diseases were entitled to compensation under the ECO or related ordinances such as the Pneumoconiosis (Compensation) Ordinance. The Chairman suggested that this should be expressly stated in the proposed Regulation.

10. Ms LI Fung-ying expressed concern about the protection for workers who were certified to have suffered from occupational diseases, but which did not fall within the

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prescribed occupational diseases under the ECO, and were required to be permanently suspended from the occupation. OHC(2)/LD said that all the possible occupational diseases associated with the 17 designated hazardous occupations were included in 49 occupational diseases prescribed in the ECO or related ordinances. Such workers would be protected under those ordinances. In reply to Ms LI's further question, OHC(2)/LD said that the cost of medical examinations of non-construction workers would be borne by employers.

11. Ms LI Fung-ying said that there might be a situation where a worker suffered illness caused by a combination of his personal health condition and his occupation and was required to be permanently suspended from employment. She asked whether there would be protection for the worker. Acting Deputy Commissioner for Labour (Ag DC for L) said that an AMP would make a judgment as to whether a worker's illness was directly caused by his job. If it was confirmed to be otherwise, the termination of employment would be dealt with in accordance with the EO. Ms LI opined that the Administration should make clear the definition of occupational disease as there had all along been many disputes in this regard. Otherwise, workers might be unable to benefit from the proposed Regulation. The Chairman requested the Administration to provide information on the occupational diseases associated with each of the 17 designated occupations and the industries in which these occupational diseases were found.

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12. Miss CHAN Yuen-han pointed out that there had been practical difficulties in determining whether a disease was purely caused by his occupation, such as in the case of occupational deafness, especially when a worker's service in the occupation was short. A clear definition of occupational disease would definitely help reduce the grey areas in this aspect. She recalled that when the proposed Regulation was studied by a subcommittee in the last legislative term, the Administration was requested to consider establishing a central occupational compensation system to overcome the grey areas. OHC(2)/LD said that whether a disease was an occupational one and whether compensation should be made under the ECO would be decided by the Employees' Compensation Assessment Board. As regards occupational deafness, he said that the Occupational Deafness (Compensation) Ordinance clearly listed out the occupations covered by the Ordinance.

13. In response to Mr Kenneth TING, DSEM said that employers were welcome and encouraged to arrange other temporary work for workers during the suspension period as long as the working environment was free from hazards.

14. Referring to paragraphs 9 and 10 of the paper, Mr Andrew CHENG asked about the details of the savings provision. DSEM said that the Department of Justice had suggested to include a savings provision in the proposed Regulation such that no provisions in the proposed Regulation might affect any rights or liabilities of any employers or employees under the law. Mr CHENG requested the Administration to provide members with the wording of the proposed Regulation, especially the savings provision, as soon as possible. DSEM undertook to provide the information.

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15. Mr LEUNG Fu-wah expressed support for the direction of the proposed Regulation. In order to allow flexibility, he suggested that the Administration should consider classifying the workers into two categories, viz intakes and workers currently employed in hazardous occupations. He said that an intake who was found medically unfit for an occupation should not be allowed to work in that occupation. However, those currently employed in hazardous occupations should be given a choice to continue working in that occupation, except for those suffering from critical occupational diseases. If the worker chose to stay, he should be required to undergo regular medical examinations so as to monitor his health condition and the progress of improvement in the working environment. A centralized database storing related information should be maintained to follow up the occupational diseases so that preventive and improvement measures could be adopted. Mr LEUNG also asked whether the Administration would consider setting up a short-term fund to meet the financial needs of workers currently employed in hazardous occupations being affected by the proposed Regulation.

16. DSEM said that in principle an AMP would be able to judge the degree of hazards if the worker continued to work in that occupation without taking the recommended break. Considering the short duration of the temporary suspension and for the sake of health, the worker should not be encouraged to continue the job. As employers would be encouraged to arrange other type of work for the worker during the suspension period and paid sickness days would be granted if re-deployment could not be arranged, the worker should not in general experience undue hardship. OHC(2)/LD pointed out that temporary suspension from employment was not required for workers suffering from certain occupational diseases e.g. occupational deafness. However, in the case of serious occupational diseases, such as occupational asthma, the workers concerned should not be allowed to continue their occupations as it might further risk his health. As regards the centralized database, OHC(2)/LD said that AMPs would report all detected occupational diseases to the Commissioner for Labour for follow-up actions as required under the Occupational Safety and Health Ordinance.

17. In reply to the Chairman, Principal Assistant Secretary for Education and Manpower (7) (PAS(EM)7) said that in view of the unique characteristics of the construction industry in having a multi-layered sub-contracting system, the Administration proposed to appoint the Construction Industry Training Authority (CITA) as the agent for the construction industry to arrange and pay for medical examinations. He pointed out that the ultimate responsibility in respect of workers' occupational diseases would rest with the principal contractor under the ECO. He added that a report recently released by the Construction Industry Review Committee suggested that the responsibility should be shared by the principal contractor and concerned sub-contractors.

18. Mr James TIEN expressed concern about employers' responsibilities under the

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proposed Regulation. He opined that time limits should be set, especially for construction industry, before which an employer would not be held responsible if an intake was found having occupational disease which was most likely caused by his previous jobs. PAS(EM)7 said that workers suffered from occupational diseases, except for pneumoconiosis and occupational deafness, were compensable under the ECO provided that the prescribed criteria were fulfilled, e.g. prescribed period. The prescribed period for different occupational diseases were different. Ag DC for L added that employers were required under the ECO to take out insurance cover for employees, therefore compensation for occupational diseases would be paid by the insurer.

19. Mr James TIEN asked about the arrangement with regard to the wages to be paid to a worker on sick leave due to occupational disease. DSEM said that the employer had to pay a sickness allowance equivalent to four-fifth of the wages of the worker concerned if re-deployment could not be arranged. In response to Mr TIEN's further question, Ag DC for L said that even without the proposed Regulation, an employee could be on sick leave for one to two months. Arrangement to cover up the work of employees on sick leave would normally be dealt with by mutual agreement between employers and employees. Mr TIEN opined that the kind of sickness days under the proposed Regulation was different from the general ones as there were some limitations on both employers and employees. He commented that arranging re-deployment for a worker on temporary suspension was sometimes impractical, especially in the construction industry.

20. The Chairman asked the Administration to consider the points raised by members and, if possible, provide members with the requested information before the introduction of the proposed Regulation.

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LC Paper No. CB(2)849/00-01(03)

Legislative Council Panel on Manpower

Meeting on 15 February 2001

Proposed Factories and Industrial Undertakings (Medical Examinations) Regulation

PURPOSE

This paper informs Members of the Administration's plan to take forward the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation (the proposed Regulation) and related amendments to the Industrial Training (Construction Industry) Ordinance (Cap. 317).

2. The proposed Regulation was introduced into the Legislative Council in 1999, but for the reasons explained in paragraph 9 below, examination of the draft could not be completed before the end of the 1999-2000 session. The proposed Regulation would therefore need to be re-introduced within the 2000-01 legislative session. Separately, in order to enable the Construction Industry Training Authority (CITA) to arrange medical examinations for construction workers under the proposed Regulation, there is a need to amend the Industrial Training (Construction Industry) Ordinance (Cap. 317).

BACKGROUND

3. At present, workers engaged in asbestos work, compressed air work, underground work and work with certain carcinogenic substances are required to undergo pre-employment and periodic medical examinations. Medical examinations currently required under various regulations under the Factories and Industrial Undertakings Ordinance (Cap. 59) may be performed by any registered medical practitioner.

4. The scope of the current statutory medical examinations is somewhat narrow. Certain other hazardous substances and physical agents, if not properly used at work, also have the potential to cause permanent health damage. It is necessary to broaden the scope to cover these hazards. Moreover, medical examinations for workers in hazardous occupations are rather specialised, and general medical practitioners may not have the expertise

to carry out such examinations and give appropriate health advice. In this regard, the Expert Working Group on Occupational Health Services (established by the Director of Health) recommended that statutory medical examinations be extended to other hazardous occupations where appropriate, and be conducted by medical practitioners with recognised training in occupational medicine. Following the Working Group's recommendation, the proposed Regulation was prepared.

5. The proposed Regulation provides a framework for medical examinations for workers engaged in 17 designated hazardous occupations, including the existing four as mentioned in paragraph 2 above. A list is provided at the **Annex**. It further requires these medical examinations to be conducted by only appointed medical practitioners (AMPs). It is estimated that about 195 000 workers will be affected by the proposed Regulation, of whom 182 000 are exposed to the hazard of excessive noise.

6. The legislative intent of the proposed Regulation is to protect the health of workers engaged in the designated hazardous occupations. Through regular medical examinations, occupational diseases can be detected early so that timely treatment can be instituted and preventive measures taken at the workplace to avoid permanent health damage to these workers. If a worker is found by a medical examination to be unfit for a particular job, he would be temporarily or permanently suspended from that job as the case may be. In doing so, the ultimate objective is to protect the worker from further exposure to the hazardous agent.

7. When consulted on the proposed Regulation in 1998, the Labour Advisory Board and its Committee on Occupational Safety and Health expressed their support.

THE PROPOSED REGULATION

8. The proposed Regulation requires that employees engaged in the designated occupations should submit themselves for medical examinations periodically. Such medical examinations should be conducted by AMPs and arranged at the expenses of the proprietors. In a medical examination, an AMP may make a recommendation to the proprietor, after considering the safety and health of the employee concerned, for -

(a) employing the employee in his particular occupation subject to certain conditions or limitations (e.g. provision of personal protective

equipment);

(b) suspending the employee from employment in his particular occupation for a period to be specified by the AMP;

(c) suspending the employee from employment in his particular occupation until he is certified fit to work in that occupation; or

(d) permanently suspending the employee from employment in his particular occupation.

A proprietor shall not employ any person who has not been medically examined and certified fit to work by an AMP in the designated occupation concerned.

9. The proposed Regulation was introduced into the Legislative Council on 14 July 1999 for examination by the then Subcommittee on Regulations relating to Occupational Safety and Health (the Subcommittee). In response to an enquiry raised at the Subcommittee in April 2000, the Department of Justice advised that temporary suspension under the proposed Regulation may have the effect of breaking the continuity of employment of the employee concerned, and could disqualify the employee concerned from certain entitlements under the Employment Ordinance (Cap. 57). As this was not the intention of the proposed Regulation and because of the impending closure of the legislative session, examination of the proposed Regulation could not be completed.

10. The Administration has since reviewed the issues relating to temporary suspension under the proposed Regulation. The Department of Justice has advised that for the purpose of preserving the continuity of employment for employees on suspension and clarifying the policy intention outlined in paragraph 6 above, it is necessary to include a savings provision in the proposed Regulation, such that no provisions in the proposed Regulation affect any right or liabilities of any employer or employee under any law. The Department of Justice has confirmed that such savings provision can be added to the proposed Regulation as the making of such a savings provision in the Regulation is already within the ambit of the regulation making provision in the Factories and Industrial Undertakings Ordinance (Cap. 59). Amendment of the principal Ordinance is not necessary.

11. Having clarified the issue of continuity of employment for employees recommended for suspension, the Administration intends to re-introduce the

proposed regulation into the Legislative Council shortly.

MEDICAL EXAMINATIONS FOR CONSTRUCTION WORKERS

12. The majority of the employees (153 000 out of 195 000) to be covered by the proposed Regulation are in the construction industry. Depending on the job nature, employees of the construction industry are exposed to hazards such as excessive noise, silica, tar, pitch, bitumen, lasers, lead, cadmium, manganese, compressed air and asbestos.

13. When consulted, the Hong Kong Construction Association (HKCA) indicated that individual proprietors in the construction industry would have difficulty in meeting the requirements under the proposed Regulation for arranging periodic medical examinations for employees who are engaged in designated occupations. This is due to the unique characteristics of the construction industry in having a multi-layered sub-contracting system and a high mobility of construction workers. The HKCA proposed that an agency should be empowered to arrange medical examinations of construction workers on behalf of proprietors in the construction industry, and to pay for the cost of medical examinations which should be met through a levy on the construction industry.

14. We propose to engage the CITA as the agent for arranging medical examinations in the construction industry. At present, a levy of 0.4% on the value of all construction works exceeding $1 million is imposed on contractors to meet the cost of services provided to construction industry by the CITA. If the CITA is to be engaged as the agent for arranging medical examinations in the construction industry, a suitable increase to the existing levy rate could be introduced to recover costs. To this end, agreement has been reached between the HKCA and the CITA that the latter would act as the agent for contractors/proprietors in the construction industry to arrange for medical examinations of construction workers. This new role for the CITA and the collection of the additional levy would require amendment to the Industrial Training (Construction Industry) Ordinance (Cap. 317).

15. The cost of medical examination per worker is about $400 for those exposed to excessive noise and ranges from $200 to $600 for those exposed to the other hazards. CITA has estimated that an additional levy at 0.03% on top of the existing 0.4% levy on the value of all construction works exceeding $1 million will be required to meet the costs for complying with the medical examination requirement. This will give rise to a marginal increase in the total operating cost of main contractors in the industry.

16. The HKCA and the Real Estate Developers Association of Hong Kong were also consulted and indicated support for engaging the CITA as the agent for arranging medical examinations for the construction industry and acceptance of the consequential adjustment to the levy rate.

17. We plan to introduce the proposed amendments to the Industrial Training (Construction Industry) Ordinance (Cap. 317) into the Legislative Council in March 2001. The proposed amendments, if enacted, shall come into operation prior to the coming into effect of the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation, ensuring that the CITA has the requisite statutory authority to arrange and pay for medical examinations under the proposed Regulation. The 0.03% levy will be collected through the existing levy collecting mechanism of the CITA after the commencement of the proposed Regulation.

PROPOSED AMENDMENTS TO THE INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE

18. It is proposed that section 5 of the Industrial Training (Construction Industry) Ordinance (Cap. 317) should be amended such that the CITA shall perform the function imposed upon it by the proposed Regulation, i.e. to arrange and pay for medical examinations of construction workers conducted by AMPs. A minor amendment to the long title is also required.

WAY FORWARD

19. We will introduce the proposed Regulation after the enactment of the proposed amendments to the Industrial Training (Construction Industry) Ordinance (Cap. 317). Upon approval by the Legislative Council, we intend to bring the proposed Regulation into operation by phases.

20. For the designated occupations already covered by existing legislation for medical examinations, we propose a six-month grace period so as to allow time for proprietors to arrange for their new intakes to undergo the necessary examinations by AMPs. Workers already in employment in these occupations before the commencement of the proposed Regulation would need to undergo medical examinations by AMPs only when their current medical certificates expire.

21. For the 13 new occupations for statutory medical examinations,

including those exposed to excessive noise, which involve a large number of workers, we propose that the Commissioner for Labour will monitor the supply of AMPs and bring the relevant provisions into effect by phases. It is expected that statutory medical examinations for workers exposed to excessive noise will be covered in the last phase. The suggested phased approach has been agreed by the Labour Advisory Board.

22. Upon enactment of the proposed Regulation, LD will issue practical guidelines to assist proprietors and employees in complying with the new requirements. The guidelines will provide guidance on the types of work processes in various industries where workers involved will require medical examinations, and the respective medical examination requirements under the new Regulation. To facilitate the appointment of AMPs by proprietors, LD will maintain a list of medical practitioners qualified for such appointment for their reference. A set of guidance notes for AMPs will also be issued. Apart from these, publicity activities will be launched to raise general awareness of industries of the new medical examination requirements.

Education and Manpower Bureau
February 2001

Annex

Occupations covered by the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation

1. *Employment in mines, quarries and tunnelling operations.
2. *Employment involving work in compressed air.
3. *Employment involving the use or handling of or exposure to asbestos.
4. *Employment involving the use or handling of or exposure to carcinogenic substances (controlled substances).
5. Employment involving the use or handling of or exposure to silica.
6. Employment involving the use or handling of or exposure to arsenic.
7. Employment involving the use or handling of or exposure to cadmium.
8. Employment involving the use or handling of or exposure to manganese.
9. Employment involving the use or handling of or exposure to lead.
10. Employment involving the use or handling of or exposure to mercury.
11. Employment involving the use or handling of or exposure to organophosphates.
12. Employment involving the use or handling of or exposure to tar, pitch, bitumen or creosote.
13. Employment involving the use or handling of or exposure to raw cotton dust.
14. Employment involving the use or handling of or exposure to benzene.
15. Employment involving the use or handling of or exposure to methylenediphenyl diisocyanate or toluene disocyanate.
16. Employment involving the use or handling of or exposure to lasers (class 3B and 4).
17. Employment involving exposure to excessive noise (daily personal noise exposure of 85dB(A) or above).

* Medical examinations already required under subsidiary legislation of the Factories and Industrial Undertakings Ordinance (Cap. 59)