

立法會
Legislative Council

LC Paper No. CB(1)821/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/10/2

Bills Committee on Lifts and Escalators Bill

Fifth meeting on
Tuesday, 25 October 2011, at 10:45 pm
in Conference Room 2B of the Legislative Council Complex

- Members present** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)
Hon James TO
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon IP Wai-ming, MH
- Members absent** : Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
- Public officers** : Mr Enoch LAM Tin-sing
Attending Deputy Secretary for Development (Works) 2
- Mr Jimmy CHAN Pai-ming
Principle Assistant Secretary for Development (Works) 3
- Mr Jacky WU Kwok-yuen
Assistant Secretary for Development (Works Policies) 7

Mr Alfred SIT Wing-hang
Deputy Director/Regulatory Services
Electrical and Mechanical Services Department

Mr Harry LAI Hon-chung
Assistant Director/Gas and General Legislation
Electrical and Mechanical Services Department

Mr CHUI Wai-sing
Chief Electrical and Mechanical Engineer/General Legislation
Electrical and Mechanical Services Department

Mr Leakey LAU Lik-kee
Senior Electrical and Mechanical Engineer /Lifts and Escalators 1
Electrical and Mechanical Services Department

Ms Frances HUI Hang-ka
Senior Government Counsel
Department of Justice

Ms Angie LI Sau-lee
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mr Hugo CHIU
Council Secretary (1)5

I Meeting with the Administration

Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)157/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 11 October 2011

LC Paper No. CB(1)3074/10-11(01) — The Administration's letter dated 4 October 2011 providing its response to issues raised at the Bills Committee meetings on 31 May 2011 and 20 June 2011)

Clauses-by-clause examination of the Bill

(LC Paper No. CB(3)684/10-11 — The Bill)

Discussion

2. The Committee deliberated (Index of proceedings attached at **Appendix**).

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3. The Administration was requested to provide the following information:

(a) review the drafting of the definition of "qualified person" under clause 2 with a view to enhancing its comprehensibility;

(b) review whether the trade-specific terms such as "goods lift" used in the Bill are consistent with those used in other related ordinances such as the Buildings Ordinance (Cap. 123);

(c) provide information on how the existing codes of practices (CoPs) issued under the Lifts and Escalators (Safety) Ordinance (Cap. 327) would be amended upon the passage of the Bill;

(d) in respect of clause 2(5), provide the relevant CoPs; and

(e) review the penalty level under clause 8(3) such that it would not be lower than that under clause 13(4).

ALA1

4. The Legal Adviser of the Bills Committee was requested to examine whether the definition of "responsible person" under clause 2 is sufficiently clear, particularly for the purpose of determining the respective liabilities of the relevant persons under different provisions in the Bill.

III Any other business

Date of next meeting

5. The Chairman reminded members that the next meeting would be held on 1 November 2011.

6. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
10 January 2012

**Proceedings of the
Bills Committee on Lifts and Escalators Bill
Fifth meeting on Tuesday, 25 October 2011, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000240 – 000347	Chairman	Introductory remarks	
000348 – 000902	Administration	<p>The Administration remarked that it was compiling its response to the issues raised at the meeting on 11 October 2011 and would send the relevant paper to the Clerk before 28 October 2011.</p> <p><i>(Post-meeting note: The paper was circulated to members vide LC Paper No. CB(1)157/11-12(02) on 27 October 2011.)</i></p> <p>The Administration briefed members on the difference between the Lifts and Escalators (Safety) Ordinance (Cap. 327) (LESO) and the Bill, including the total number of sections/clauses and the structure of the Ordinance/Bill. In this connection, the Administration tabled a paper entitled "Corresponding Provisions of Lifts and Escalators Bill and Lifts and Escalators (Safety) Ordinance (Cap. 327)" showing in tabular form the clause reference between the the Bill and LESO.</p> <p><i>(Post-meeting note: The paper was circulated to members vide LC Paper No. CB(1)182/11-12 on 26 October 2011.)</i></p>	
000903 – 001000	Chairman Administration Ms LI Fung-ying	<p><u>Clause-by-clause examination of the Bill</u></p> <p>The Chairman remarked that the Bills Committee would examine the Chinese and English texts of the Bill at the same time.</p> <p>Part 1</p> <p>Preliminary</p> <p><u>Clause 1 – Short title and commencement</u></p> <p>Members raised no questions on clause 1.</p>	

Time Marker	Speaker	Subject(s)	Action Required
001001 – 002910	Mr IP Wai-ming Administration	<p><u>Clause 2 – Interpretation</u></p> <p>Regarding the definition of "qualified person" under clause 2, Mr IP remarked that he supposed a registered lift worker having attained the status of "registered worker" was already allowed to carry out lift works and enquired why sub-paragraphs (a)(ii)(A) to (C) were included in the definition. The Administration replied that for a registered lift worker to be a "qualified person", there were three scenarios. In this regard, under sub-paragraph (a)(ii)(A) of the definition of "qualified person", the registered lift worker should be employed by a registered lift contractor who undertook the lift works concerned, whilst sub-paragraphs (a)(ii)(B) and (C) of the definition of "qualified person" were included to cater for the scenario that the registered lift worker could undertake the works in the capacity of a registered lift contractor or was a partner in the partnership that undertook the works in the capacity of a registered lift contractor.</p> <p>Mr IP further enquired whether a registered lift worker could form a partnership with a third party to undertake works in the capacity of a registered lift contractor and whether the Bill set out the requirements for registration as a qualified lift contractor. The Administration replied that any person who fulfilled the requirements for registration as a registered lift contractor could be registered as a registered lift contractor and then undertook lift works in such a capacity. The requirements for registration as a registered lift contractor had been set out in clause 74 of the Bill.</p>	
002911 – 003048	Chairman Administration ALA1	<p>Regarding the definition of "escalator" under clause 2, the Chairman enquired whether travelators were covered. The Administration replied in the affirmative.</p> <p>ALA1 supplemented that the definition of "escalator" under clause 2 of the Bill was similar to that provided in the LESO.</p>	
003049 – 003841	Prof Patrick LAU Administration Chairman	<p>Prof LAU pointed out that the Chinese version of the terms "qualified person" and "competent lift worker" both contained the expression "合資格" and enquired whether the two terms had material differences.</p>	

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		<p>In response, the Administration advised that the term "competent lift workers" had been included in the Bill to provide transitional arrangement to existing lift workers. "Competent lift worker" has the same meaning of the term under LESO. Upon expiry of the related transitional arrangement, the term "competent lift workers" would be repealed and the apparent inconsistency would no longer exist in the proposed legislation.</p>	
003842 – 004015	Administration Chairman ALA1	<p>In reply to the Chairman, ALA1 and the Administration advised that in other ordinances, the Chinese rendition of "incident" was usually "事故", instead of "事件".</p>	
004016 – 005041	Mr James TO Administration	<p>Mr TO remarked that some of the lifts carrying cars and persons (car lifts) were so small that the safety of the drivers and passengers of the cars inside such lifts might be jeopardized and enquired (i) whether the Bill applied to car lifts; and (ii) whether there were minimum dimensions specified for car lifts.</p> <p>The Administration replied that the Bill would be applicable to car lifts. While there were no specified dimensional requirements for car lift, an application had to be made to the Director of Electrical and Mechanical Services (the Director) for approval before the installation of any type of such lift and the Director would assess the dimensions of a car lift on a case-by-case basis. Mr TO suggested that the Administration might consider specifying the minimum dimensions of car lifts. In response, the Administration advised that size was one of the factors to be considered by the Director in approving the installation of any type of car lift in Hong Kong.</p>	
005042 – 005358	Prof Patrick LAU Chairman Administration	<p>Prof LAU suggested that the Administration should review whether the trade-specific terms such as "goods lift" used in the Bill were consistent with those used in other related ordinances such as the Buildings Ordinance (Cap. 123).</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
005359 – 005604	Mr James TO Administration	<p>Mr TO pointed out that some lifts required the drivers and passengers to leave the cars before the lifting of the cars and it might be dangerous for the handicapped to use such lifts. The</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Administration noted Mr TO's concern on the usage of the concerned type of lifts which was called mechanized vehicle parking system under the Bill and undertook to study the issue.</p>	
005605 – 010422	Mr Andrew CHENG Administration	<p>Mr CHENG referred to clauses 145 and 146 and asked whether it was possible for two sets of codes of practice (CoPs) to be compiled on a safety issue (i.e. one set issued by the Director and the other set issued by other persons with the approval from the Director). The Administration replied in the affirmative and advised that it would liaise closely with the industry in compiling CoPs.</p> <p>In addressing Mr CHENG's enquiry, the Administration pointed out that the mechanism for amending the CoPs had all along been done through close discussion with the industry and had not been subject to the vetting of the Legislative Council. In view of the Administration's remark, Mr CHENG requested the Administration to provide information on how the existing CoPs issued under the LESO would be amended upon the passage of the Bill for members to examine whether the amendments to be made would be consistent with the legislative intent of the Bill.</p>	The Administration to take action as per paragraph 3 of the minutes.
010423 – 011552	Ms LI Fung-ying Administration Chairman ALA1 Mr Andrew CHENG	<p>Ms LI commented that the present formulation of the definition of "qualified person" under separate paragraphs in clauses 2(1) and 2(2) was undesirable, making the definition difficult to comprehend.</p> <p>The Administration replied that clause 2(2) was added to supplement the definition of "qualified person" in clause 2(1) by setting out the criteria for determining whether a worker is qualified to carry out any particular kind of lift/escalator works.</p> <p>ALA1 advised that clause 2(1) set out the various types of "qualified person" while clause 2(2) set out the the types of work that a "qualified person" is qualified to carry out. A possible alternative way of drafting was adding a new clause on "qualified person" and moving the provisions concerning "qualified persons" in clauses 2(1) and 2(2) to this new clause, similar to clause 6 on</p>	

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		<p>"Who is a competent lift worker". The definition of "qualified person" under clause 2 would become a short sentence referring to the new clause.</p> <p>The Chairman, Ms LI and Mr CHENG suggested that the Administration should consider reviewing the drafting of the definition of "qualified person" under clause 2 with a view to enhancing its comprehensibility. The Administration undertook to review the issue.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
011553 – 012234	Mr Andrew CHENG Administration	<p>Mr CHENG remarked that the Bills Committee should carefully examine the criminal liabilities to be borne by responsible persons.</p> <p>In respect of clause 2(5), Mr CHENG requested the Administration to provide relevant CoPs as quickly as possible for members to assess whether sufficient practical guidance was provided in the CoPs to facilitate trade practitioners to comply with the statutory requirements in the Bill.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
012235 – 012923	Prof Patrick LAU Administration	<p>Regarding the definition of "responsible person" under clause 2, Prof LAU considered that the coverage of the term should be clearly specified so that the public could be well informed of the impacts of the Bill on them.</p> <p>The Administration remarked that apart from the owners of lifts or escalators, the management companies of buildings and management staff of an organization who had the management or control of lifts or escalators would also fall into the definition of responsible persons. The Administration added that CoPs were technical in nature and were aimed at providing practical guidance for the trades, rather than lift owners and property management companies. The Task Force for Legislative Amendments to the Lifts and Escalators (Safety) Ordinance was preparing general guidelines in plain language to set out the coverage and responsibilities of responsible persons under the Bill.</p> <p>Prof LAU sought clarification from the Administration on the respective responsibilities of flat owners and property management companies under the Bill. The Administration advised that the arrangement for a lift/escalator with two or more</p>	

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		responsible persons was set out in clause 5. Under clause 5, if the management company of a building complied with a requirement imposed the responsible person for a lift or escalator, the owners of the building would also be regarded as having complied with the requirement.	
012924 – 013232	Administration	<u>Clause 3 – Application of Ordinance to lifts and escalators</u> Members raised no questions on clause 3.	
013233 – 013327	Prof Patrick LAU ALA1	Prof LAU requested ALA1 to examine whether the definition of "responsible person" under clause 2 was sufficiently clear, particularly for the purpose of determining the respective liabilities of the relevant persons under different provisions in the Bill.	ALA1 to take action as per paragraph 4 of the minutes.
013328 – 013908	Administration Chairman ALA1	<u>Clause 4 – Ordinance applies to Government etc</u> The Chairman enquired whether clause 4 was present in the LESO and the Administration replied in the negative. ALA1 pointed out that lifts and escalators in Hong Kong (i) belonging to the Central People's Government (CPC) or over which the CPC had control and management; and (ii) belonging wholly to the government of a foreign country and which was used exclusively or mainly for the purposes of the official business of the consular office of such government were currently exempted from the LESO, and sought clarification from the Administration on how it would tackle the safety of these lifts and escalators. ALA1 further pointed out that consular premises are inviolable under Article 31 of the Vienna Convention on Consular Relations, which has been given the force of law in Hong Kong under the Consular Relations Ordinance (Cap. 557). The authorities of the receiving State (i.e. Hong Kong) may only enter consular premises with the consent of the head of the consular post or the head of the diplomatic mission of the sending State. The Administration replied that (i) it would liaise with the CPC on the safety arrangements for the lifts and escalators concerned; and (ii) the Bill covered the lifts and escalators of consular offices.	

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013909 – 013938	Administration	<p><u>Clause 5 – Jointly owned etc. lift or escalator</u></p> <p>Members raised no question on clause 5.</p>	
013939 – 014555	Administration Mr Andrew CHENG	<p><u>Clause 6 – Who is a competent lift worker</u></p> <p><u>Clause 7 – Who is a competent escalator worker</u></p> <p>Mr CHENG observed that under clauses 6 and 7, the minimum years of relevant working experience required for a person to acquire the status of competent lift/escalator worker through the route with or without the stipulated academic qualification were the same (i.e. four years). He considered the arrangement unfair to workers having attained the stipulated academic qualification, and was worried that the registered contractors would prone to recruit workers without the stipulated academic qualification to reduce cost.</p> <p>The Administration replied that clauses 6 and 7 basically followed the existing requirements stipulated under the LESO for a person to acquire the status of competent lift/escalator worker. The Administration was aware of the concern mentioned by Mr CHENG, and hence under the registration regime proposed in the Bill, the minimum years of relevant working experience required for registration were different for workers with and without the stipulated academic qualification.</p> <p>In reply to Mr CHENG's enquiry, the Administration advised that as a transitional arrangement, the Bill allowed workers to apply for registration as a registered lift/escalator worker through the existing route of becoming a competent lift/escalator worker without academic qualification. It had been agreed with the trade that such transitional arrangement would last for five years in principle to enable the current lift/escalator workers not in possession of the stipulated academic attainment could seek registration through the existing route of becoming a competent lift/escalator worker after accumulating sufficient working experience.</p>	

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014556 – 014555	Mr Andrew CHENG Administration Chairman	<p>Part 2 – Safety of Lifts</p> <p>Division 1 – Prohibitions</p> <p><u>Clause 8 – Only qualified persons or specified persons to personally carry out lift works, etc.</u></p> <p>Mr CHENG reiterated his concern about the disparity between the sanctions imposed on qualified persons and responsible persons in the Bill, and requested the Administration to review the penalty level under clause 8(3) such that it would not be lower than that under clause 13(4).</p> <p>The Administration advised that clause 8(3) also covered responsible persons, and a host of relevant factors had been taken into account in determining the penalty levels for different offences in the Bill, including the need to maintain consistency with other legislation in this regard.</p> <p>Mr CHENG remarked that the penalty level under clause 8 should not be lower than the penalty level under clause 13, because from the safety angle, ensuring that lift works were carried out by qualified persons was no less important than ensuring that lifts were used or operated only after proper completion of installation/alteration works. The Chairman remarked that the Administration should examine the issue raised by Mr CHENG.</p> <p>The Administration replied that it would revert to the Bills Committee on this issue.</p>	The Administration to take action as per paragraph 3 of the minutes.
015612 – 020018	Administration Chairman	<p><u>Clause 9 – Prohibition against using or operating lifts in certain circumstances</u></p> <p>The Chairman enquired whether there were any stipulated requirements on lift lighting so that information on the use permit could be clearly seen by lift passengers. The Administration replied in the negative and added that the Bill introduced a new use permit which would contain clear and concise information about the lift including the expiry date of the use permit.</p>	
020019 – 020232	Administration Chairman	<p><u>Clause 10 – Prohibition against carriage of persons in lifts specified in Schedule 4</u></p> <p><u>Clause 11 – Prohibition against overloading lifts specified in Schedule 4</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		Members raised no questions on clauses 10 and 11.	
020233 – 020337	Prof Patrick LAU Administration Chairman	Prof LAU enquired whether the terms "qualified person" and "competent lift worker"/"competent escalator worker" referred to the same group of people. The Administration explained that the terms "competent lift worker" and "competent escalator worker" were defined in clauses 6 and 7. These workers held qualifications equivalent to an existing competent worker under LESO. The term "qualified person" in the Bill, in relation to a worker, referred only to certain lift/escalator workers registered under the registration regime of the Bill and certain competent lift/escalator workers as defined in clause 6 or 7. The arrangement regarding competent lift/escalator workers was a transitional arrangement.	
020336 – 020357	Chairman	The Chairman remarked that the next meeting would be held on 1 November 2011.	