

Legislative Council

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Paper for the House Committee on 26 February 1999

Second report of the Subcommittee on regulations relating to occupational safety and health

Purpose

This paper reports on the deliberations of the Subcommittee on regulations relating to occupational safety and health on the Construction Sites (Safety) (Amendment) Regulation 1998.

The Subcommittee

2. A membership list of the Subcommittee is in Appendix I.
3. The Subcommittee submitted to the House Committee its first report on the deliberations on the Factories and Industrial Undertakings (Confined Spaces) Regulation on 8 January 1999.
4. The Subcommittee, under the chairmanship of Hon Andrew CHENG Kar-foo, held a further three meetings with the Administration to discuss the Construction Sites (Safety) (Amendment) Regulation 1998 (Amendment Regulation). The Subcommittee has concluded its deliberations on the Amendment Regulation on 10 February 1999. It has also met representatives from the Hong Kong and Kowloon Painters General Union (Union).

Construction Sites (Safety) (Amendment) Regulation 1998 (Amendment Regulation)

5. The Amendment Regulation seeks to improve the safety of and protection for persons working at height. Under the Amendment Regulation, where it is necessary for workers to work at height, the contractor has to provide proper working platforms. If this is not practicable, safety nets and safety belts should be provided. It is only when this is again not practicable that safety belts be used on their own. The Administration proposes a grace period of six months upon the enactment of the Amendment Regulation before it takes effect.

Deliberations of the Subcommittee on the Construction Sites (Safety) (Amendment) Regulation 1998

6. The main deliberations of the Subcommittee are summarised below.

Restricting the use of boatswain's chairs

7. Proposed regulation 38G provides that the contractor responsible for a construction site shall ensure that no boatswain's chair or similar plant or equipment (not being a boatswain's chair or similar plant or equipment which is raised or lowered by a power-driven lifting appliance) is used on the site.

8. Some members share the concern of the Union that the restriction on the use of boatswain's chairs would seriously affect the employment opportunities of boatswain's chair workers. Given there was no fatal accident involving the use of boatswain's chairs in the past 10 years, they consider that the Administration should adopt a flexible approach in implementing the Amendment Regulation with consideration given to the peculiar nature of work of this job type. Moreover, it is not always feasible to use suspended working platform in some construction sites. Members suggest that more training be provided to boatswain's chair workers as regards the safe operation of the equipment and that a licensing system in respect of boatswain's chair workers be implemented.

9. The Administration has pointed out since workers using boatswain's chairs are only supported by a chair board while working at height, they are extremely vulnerable. They are suspended high above the ground, and if any fault occurs in the work system or its components or if any human error occurs, it will inevitably result in fatal or serious bodily injury. Even with the use of safety belt, there is still the risk of serious spinal injuries in case of a fall. Given the serious risks involved and the fact that much safer work systems such as provision of proper working platforms or suspended working platforms are available, the use of boatswain's chairs should be prohibited unless there are exceptional circumstances. Most developing countries discourage the use of boatswain's chairs unless the work required to be done is short in duration and the use of suspended working platform or proper scaffold is not practicable. Hong Kong is following this mainstream approach in protecting workers from exposure to undue hazards.

10. The Administration has further pointed out that as provided under regulation 38I(2) of the Construction Sites (Safety) Regulation, the use of boatswain's chairs is prohibited for maintenance work at the external wall of buildings except in situations where the use of suspended scaffold is not practicable due to the structure of the building or the short duration of the job. At present, if a contractor does not notify the Labour Department, the Department would not have the information that boatswain's chairs have been used. After the Amendment Regulation comes into operation, in situations where the use of suspended working platform is not practicable, the contractor could apply to the Commissioner for Labour for the use of boatswain's chairs. Exemption would be considered on a case by case basis, subject to compliance with the safety requirements laid down by the Labour Department. Where applications are approved, the Labour Department would conduct site inspections to ensure the proper use of boatswain's chairs. Hence, the occupational safety in the construction sector could be improved.

11. As regards the employment of boatswain's chair workers, the Administration has advised that they can perform painting work on suspended working platform after attending a two-day course organised by the Construction Industry Training Authority (CITA) and obtaining the relevant certificate. The Labour Department has made special arrangements with CITA to provide training for the affected workers.

12. Some members request the Administration to provide expressly in the Amendment Regulation for exemption to use boatswain's chairs in special circumstances and to set out the criteria for granting such exemption.

13. The Administration is of the view such an express provision would contradict the objective of the Amendment Regulation to improve the safety of and protection for persons working at height. Flexibility will be exercised in allowing the use of boatswain's chairs when the use of suspended working platform is not feasible. As the criteria for approving the use of boatswain's chairs are technical details, they will be included in the relevant code of practice. Any additional safety requirements

applicable to a particular circumstance would be spelt out in the letter of approval for exemption. On further deliberations, the Administration has undertaken to mention in its speech when moving the motion on the Amendment Regulation the exemption for using boatswain's chairs under special circumstances.

14. A member proposes a grace period of one year upon the enactment of the Amendment Regulation before proposed regulation 38G comes into operation. This would allow more time for the affected workers to be trained to perform other types of work. The Administration does not support the proposal on the following grounds -

- a. The affected workers would have sufficient time to obtain the certificate in using suspended working platform within the six months' grace period as proposed by the Administration.
- b. Deferring the effective date for the proposed regulation 38G will serve no meaningful purpose as far as the boatswain's chair workers are concerned. After the implementation of the Amendment Regulation, a contractor has to comply with the provisions of the regulations. The Labour Department will issue Suspension Notices to prohibit the use of boatswain's chairs in situations where other safer means of support are practicable. There will be little scope for the use of boatswain's chairs.
- c. The contractor will not be able to apply for exemption from proposed regulation 38G where the use of boatswain's chairs is the only reasonable and practicable option or for work of a short duration.

15. After detailed discussions, the majority of members agree with the Administration's stance on restricting the use of boatswain's chairs in construction sites in order to improve occupational safety. They consider that the Amendment Regulation should be implemented as early as possible and therefore accept the six months' grace period as proposed by the Administration.

16. Some members, however, consider that given that there was no fatal accidents involving the use of boatswain's chairs in the past 10 years and that it is cost-effective and efficient, the use of boatswain's chairs should not be prohibited. They are gravely concerned about the employment opportunities of boatswain's chair workers. They have reservation about the proposed regulation 38G. A member indicates that Members of the Hong Kong Federation of Trade Unions would oppose the proposed regulation 38G as well as the Amendment Regulation.

Penalty for contravening proposed regulation 38I

17. The proposed regulation 38I imposes a duty on construction site workers to wear safety belt on site whenever the use of the belt is necessary. As site safety is a responsibility of proprietors, contractors and workers, some members suggest that a fixed penalty system be introduced in order to deter the workers from contravening this regulation.

18. The Administration has explained the enforcement difficulties of implementing a fixed penalty system against the workers. The introduction of such a system is inconsistent with the Administration's new strategy in encouraging self-regulation by both the proprietors and workers in enhancing workplace safety through a safety management system. Moreover, there are provisions in existing legislation for prosecuting workers for non-compliance with the safety requirements. The Labour Department will step up prosecutions against the workers concerned wherever necessary and appropriate.

Recommendations

19. The Administration has agreed to incorporate the agreed amendments, which are technical in nature, into the Amendment Regulation. A copy of the agreed amendments is in Appendix II.

20. The Subcommittee recommends that the motion to be moved by the Secretary for Education and Manpower on the Construction Sites (Safety) (Amendment) Regulation 1998 on 10 March 1999 be supported. The Subcommittee also supports that the Amendment Regulation will take effect six months after its enactment.

Advice Sought

21. Members are invited to support the recommendations at paragraph 20 above.

Legislative Council Secretariat
11 February 1999

Appendix I

附件 I

有關職業安全及健康的規例 小組委員會

Subcommittee on regulations relating to occupational safety and health

Membership List

鄭家富議員(主席)	Hon Andrew CHENG Kar-foo (Chairman)
何世柱議員	Hon HO Sai-chu, JP
何秀蘭議員	Hon Cyd HO Sau-lan
何敏嘉議員	Hon Michael HO Mun-ka
李卓人議員	Hon LEE Cheuk-yan
夏佳理議員	Hon Ronald ARCULLI, JP
陳榮燦議員	Hon CHAN Wing-chan
陳鑑林議員	Hon CHAN Kam-lam
梁智鴻議員	Dr Hon LEONG Che-hung, JP
譚耀宗議員	Hon TAM Yiu-chung, JP

10 位議員
10 Members

1999 年 1 月 28 日

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE
AND
INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

CONSTRUCTION SITES (SAFETY) (AMENDMENT) REGULATION 1998

Resolution made and passed by the Legislative Council under section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1) on 1999.

RESOLVED that the Construction Sites (Safety) (Amendment) Regulation 1998, made by the Commissioner for Labour on 22 September 1998, be approved, subject to the following amendments -

- (a) by deleting section 2(c);
- (b) in section 3, in the proposed regulation 38H(1)(c), by deleting "reasonable" and substituting "reasonably practicable";
- (c) by adding -

"3A. Keeping of records

Regulation 67(1) is amended -

- (a) by repealing "scaffold,";
 - (b) in subparagraph (b), by repealing "or scaffold".";
- (d) in section 4(b) -
- (i) in subparagraph (i), by deleting "or (4)";
 - (ii) by adding -
 - "(ia) in subparagraph (d), by adding "38F(4)," after "regulation";";
 - (iii) in subparagraph (ii), by deleting", (2) or (3), 38B(1), 38C, 38D, 38G";
 - (iv) in subparagraph (iii) (A), by adding "and substituting "38A(2) or (3), 38B(1), 38C, 38D or 38G"" before the semicolon.