

Legislative Council

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Subcommittee on regulations relating to occupational safety and health

Minutes of meeting held on Tuesday, 29 September 1998 at 10:45 am in Conference Room A of the Legislative Council Building

Members present : Hon Andrew CHENG Kar-foo(Chairman)
Hon HO Sai-chu, JP
Hon Cyd HO Sau-lan
Hon Michael HO Mun-ka
Hon LEE Cheuk-yan
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP

Members absent : Hon Ronald ARCULLI, JP
Hon LEUNG Yiu-chung
Hon TAM Yiu-chung, JP

Public Officers attending : Mr Herman CHO
Principal Assistant Secretary for Education and Manpower 7

Mr Franco KWOK
Assistant Secretary for Education and Manpower

Mr William SIU
Assistant Commissioner for Labour

Ms Stella CHAN
Government Counsel

Mr PANG Kwok-lam
Chief Safety Officer (Operations)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Miss Betty MA
Senior Assistant Secretary (2) 1

Ms Lolita NG
Senior Assistant Secretary (2) 5

Mr Arthur CHEUNG
Assistant Legal Adviser 5

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I. Election of Chairman

Mr Andrew CHENG was elected Chairman of the Subcommittee.

II. Meeting with the Administration

2. The Chairman said that at its meeting held on 25 September 1998, the House Committee decided that the Subcommittee would be responsible for studying all the regulations relating to occupational safety and health to be introduced during the 1998-99 legislative session. The Subcommittee would study the Factories and Industrial Undertakings (Confined Spaces) Regulation (the new Regulation) at the first meeting.

Factories and Industrial Undertakings (Confined Spaces) Regulation

3. At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS/EM) briefed members on the salient points of the legislative proposal. He said that the purpose of the new Regulation was to overcome the enforcement difficulties under the present legislation and to provide better protection for workers in a confined space. The new Regulation would replace the existing Factories and Industrial Undertakings (Confined Spaces) Regulations (the existing Regulation). The new Regulation would define more clearly what constituted a confined space and would require proprietors or contractors to take preventive safety measures and emergency measures. For example, the new Regulation would require proprietors or contractors to conduct a risk assessment by a competent person, to ensure that workers entering or working in a confined space were certified workers. To allow time for the industry to make necessary preparations and for the workers to be trained, the Administration proposed a grace period of 12 months upon the enactment of the new Regulation before it took effect.

4. In response to Mr CHAN Wing-chan, PAS/EM advised that within the 12-month grace period, the existing Regulation would still prevail. During the grace period, the Administration would step up publicity on the requirements under the new Regulation.

5. Responding to Mr HO Sai-chu, Assistant Commissioner for Labour (AC for L) said that a construction site was an industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (FIUO).

6. In response to Mr CHAN Kam-lam, AC for L advised that the new Regulation was not applicable to work activities taking place inside domestic premises. At the request of members, the Administration agreed to provide additional information on whether the new Regulation was also applicable to work activities taking place in an enclosed environment inside domestic premises, e.g. the construction of a septic tank in a small house in the New Territories.

7. Responding to Mr CHAN Wing-chan, AC for L said that cold storage in a restaurant would be a workplace within the meaning of confined space under the new Regulation only if no ventilation system was installed. Chief Safety Officer (Operations) added that a restaurant operator could consider appointing a competent person to carry out risk assessment of the working conditions as required under the new Regulation as it might be impracticable to engage a safety officer. AC for L reiterated that it was the responsibility of the owner of a workplace in question to ensure that only certified workers were working inside.

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8. Mr LEE Cheuk-yan enquired about the reasons for not incorporating the new Regulation under the Occupational Safety and Health Ordinance (OSHO) given that confined spaces were not only found in factories or industrial undertakings. In response, AC for L said that when consideration was given to amending the existing Regulation, OSHO had not yet come into effect. Enforcement experience showed that almost all types of confined spaces in either industrial or non-industrial undertakings were already covered under the existing Regulation. In order not to delay the introduction of the legislative proposal, the Administration thus proposed to replace the existing Regulation by the new Regulation. PAS/EM added that the enactment of OSHO in 1997 had already extended the protection for the safety and health of workers to non-industrial undertakings. It was the long term policy of the Administration to gradually replace all the provisions of FIUO by incorporating them under OSHO. The Administration agreed to provide further information in writing on the reasons for not incorporating the new Regulation under OSHO, and the estimated time needed if the new Regulation was to be incorporated under OSHO.

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9. Mr CHAN Wing-chan was concerned about whether there would be sufficient registered safety officers for the purpose of the new Regulation. AC for L responded that there were 1 606 registered safety officers as at August 1998. Based on the information collected from the survey carried out by the Labour Department in September 1996, it was projected that about 40% to 50% of the graduates from the relevant training courses had joined the occupational safety profession. The Administration believed that sufficient registered safety officers were available in the employment market. PAS/EM added that when the total number of persons employed at a construction site was 100 or more, the employment of a safety officer was already required under the existing legislation. As such, the Administration was of the view that the existing registered safety officers present at construction sites could carry out the risk assessment of the working conditions in confined spaces and make recommendations on measures to be taken for the purposes of the new Regulation. The existing staff could absorb the workload arising from the statutory requirements with no difficulty. In reply to the Chairman, PAS/EM said that the holder of a certificate issued by a person specified by C for L was also regarded as a competent person for the purpose of the new Regulation. The legislative spirit was to provide proprietors or contractors with flexibility in enhancing the safety protection of workers engaged in confined space work. Hence, for those construction sites of smaller size, the proprietors or contractors concerned might consider employing a competent person on a project basis when confined space works were involved.

10. Responding to Mr CHAN Kam-lam's enquiry, AC for L said that in order to meet the training needs for competent persons and certified workers, the Construction Industry Training Authority, the Occupational Safety and Health Council and other training institutions would organize courses on preventive safety measures and emergency measures. In response to Mr HO Sai-chu, AC for L said that there would be sufficient training places as well as manpower to

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cope with the training needs. Moreover, the Administration noted that many registered safety officers on the construction sites had already conducted risk assessment and organized training courses on confined space work for the workers concerned.

11. Mr CHAN Wing-chan suggested that the Administration should step up its publicity works in order to encourage more employers to release their workers to attend the courses on confined space work, e.g. granting of study leave for attending the courses, paying for the course fees, etc. AC for L said that the Labour Department had always promoted the importance and needs for both employers and employees to observe occupational safety in workplaces. Under the new Regulation, it was the proprietor's or contractor's responsibility to ensure that workers entering or working in a confined space were certified workers. The Administration was considering requiring workers in the construction sector to attend mandatory basic occupational safety training courses.

12. As to whether the qualifications acquired overseas would be recognized, AC for L said that the major factor for consideration was whether the person in question was eligible to become a competent person for the purpose of the new Regulation, i.e. either a safety officer registered under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations or a person who held a certificate issued by a person specified by C for L.

13. Mr CHAN Kam-lam asked whether a professional, e.g. chartered engineer, could be exempted from being required to attend a two-day course on confined space work organized for certified workers if he needed to enter a confined space. AC for L clarified that apart from possessing the required qualifications, a person must also be competent by virtue of his experience to devise and implement a safe system of work for confined space activities.

14. Dr LEONG Che-hung raised the following concerns -

- (a) whether certified workers would be required to attend periodic medical examinations so as to ensure that they were physically fit for working in confined spaces;
- (b) given that there was a lack of professional insurance scheme in the construction sector, how the responsibility in respect of compensation would be shared between a proprietor or contractor and a safety officer if the latter considered the work to be undertaken in a confined space involved no risk but an industrial accident occurred subsequently;
- (c) whether the code of practice on working in confined spaces would be made available for the scrutiny by the Legislative Council; and
- (d) as the new Regulation did not bind the State, whether public works

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projects would be bound.

15. In response, the Administration made the following points -

- (a) the physique requirement of a certified worker would be almost the same, regardless whether he was required to work in a confined space or not, provided that the worker in question was performing the same type of job, and had complied with the safety precautions before work began and when work was being undertaken as recommended by a competent person and had used personal protective equipment properly. Medical advice suggested that workers would be able to note whether they were physically unfit for the work in a confined space as they would in other working environment. The mandatory training courses for the confined space work would also alert them to any danger, including any symptoms that they were physically unfit to work. The Administration intended to introduce a new regulation under FIUO in November this year requiring workers engaged in certain hazardous trades to receive pre-employment medical examinations and periodic post-employment medical examinations;
- (b) the respective responsibility and penalty for a proprietor or contractor, a competent person and a certified worker were spelt out clearly in the new Regulation. If a safety officer was proved to be negligent in making necessary safety improvement recommendations and that an industrial accident was resulted, the safety officer in question had committed an offence and was liable to prosecution. Compensation for the workers involved in industrial accidents would be dealt with in accordance with the provisions in the Employees Compensation Ordinance;
- (c) the Labour Department would launch public consultation when the draft code of practice was ready. The Administration would consult the Subcommittee when the draft code of practice on working in confined spaces for the guidance of proprietors, contractors and competent persons was ready; and
- (d) when the public works projects were contracted out to private contractors, the contractors were regulated by FIUO. In the event that the projects were undertaken by civil servants, FIUO would not be applicable. Despite the Administration was exempted from statutory requirements stipulated in FIUO, it had put in place a set of internal guidelines which were in line with the requirements stipulated in FIUO, e.g. the employment of safety officers. The Administration did observe the existing legislation closely.

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16. Mr LEE Cheuk-yan considered that the requirement to carry out risk re-assessment of working conditions after the work activities in a confined space

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had started as well as right of employees to refuse to perform dangerous works ought to be provided under the new Regulation. AC for L advised that as provided under Regulation 5(4), a fresh assessment would be required whenever there had been a significant change in the conditions of the confined space. He pointed out that the risk assessment reports and recommendations made under Regulation 5 of the new Regulation (including the fresh assessment made under Regulation 5(4)) were valid for a specified period only. A fresh assessment of the working conditions in the confined space would be carried out thereafter.

17. Regarding the employees' right to refuse to perform dangerous works, AC for L said that a proprietor or contractor should not request a worker to carry out work in a confined space without obtaining a risk assessment report or taking appropriate safety precautions. The safety of workers were safeguarded under the new Regulation. A worker, who considered his personal safety was endangered, might refuse to perform dangerous works if he met the conditions stipulated in section 10 of the Employment Ordinance (termination of contract without notice by employee). In response to a follow-up question from Miss Cyd HO on whether a worker could refuse to carry out a particular type of work on a specific date on the ground of medically unfit, AC for L advised that it would be determined in accordance with the provisions in the Employment Ordinance. If he was not fit for work, he should have consulted a doctor and been advised whether to take sick leave or take only light duties.

18. Mr LEE Cheuk-yan commented that section 10 of the Employment Ordinance was inadequate to protect workers in this regard since most of the workers concerned might not want to terminate their contracts of employment but to refuse to perform a particular type of dangerous work. The Administration had failed to incorporate the right of employees to refuse to perform dangerous works in any piece of occupational safety related legislation. The Chairman shared the views with Mr LEE and urged the Administration to take the opportunity to review the adequacy of protection to workers under the existing occupational safety legislation. PAS/EM said that the new Regulation provided adequate protection to workers when carrying out confined space work. Firstly, the risk assessment of working conditions and recommendations on measures to be taken were conducted by competent persons whose qualifications were specified in the legislation. Their professional assessments could be assured. Secondly, the proprietors or contractors were required to take safety precautions before allowing workers into a confined space. Lastly, the workers concerned were provided with sufficient personal protective equipment when working therein. In the event that an industrial accident occurred, the Labour Department would carry out investigation. The competent person concerned committed an offence if he was proved to be negligent of his duties.

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19. The Administration agreed to provide information on whether provisions regarding right to refuse to perform dangerous works were incorporated in overseas occupational safety and health legislation, if so, whether they were drafted from the angle of occupational safety, and to provide copies of the

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relevant legislation.

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20. In response to Mr CHAN Kam-lam's further enquiry on para.15(d) above, PAS/EM advised that the safety officers in government departments played similar roles as those in the private sector, e.g. making safety recommendations. Mr CHAN Kam-lam requested the Administration to provide information after the meeting on the mechanism in place to monitor the performance of safety officers in government departments.

21. Responding to Dr LEONG Che-hung's question on the role of safety officers in conducting risk assessment of the working conditions of confined spaces, AC for L advised that a safety officer would be responsible for preparing a report assessing the risks, and making recommendations in respect thereof, associated with a confined space. A proprietor or contractor would then have to comply with the recommendations in the risk assessment report and take safety precautions before allowing workers into a confined space, and formulate emergency procedures and keep emergency equipment on hand. A safety officer should have taken into account all possible scenarios when preparing the risk assessment report. PAS/EM added that, apart from assessing the working conditions of a confined space, the risk assessment report included the duration for working inside the confined space, the maximum number of workers being allowed into the confined space, whether breathing apparatus should be used, etc. The new Regulation intended to cover all foreseeable circumstances as far as possible.

22. Miss Cyd HO questioned about the reasons and justifications for exempting the Administration from the new Regulation given that it did adopt a set of internal guidelines for observing requirements under the relevant legislation. Mr LEE Cheuk-yan shared the views and opined that such practice was unfair to private employers and urged the Administration to consider repealing the exemption clause in the Regulation. PAS/EM advised that unless the principal ordinance, FIUO, was amended in respect of its binding effect on the Government, the new Regulation had to be in line with the principal ordinance, i.e. it did not bind the Government. He reiterated that any responsible officer would be liable to disciplinary action if he failed to observe the guidelines when performing his duties. He was also liable to civil liability if injury was caused. At the request of the Chairman, the Administration agreed to provide the reasons and justifications in writing for the Administration to be exempted from the new Regulation.

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23. Miss Cyd HO pointed out that the existing size of manholes had not been reviewed for more than a decade. She asked if consideration would be given to reviewing the size of manholes. AC for L said that under the new Regulation, there was no restriction on the size of manholes. Should the need arise, the Administration would consult members of the public before incorporating it into the relevant code of practice.

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24. Members expressed concern about the disparity in the penalties imposed on the proprietors, contractors and workers for contravening the new Regulation. The Administration opined that the respective responsibility and penalty of a proprietor or contractor, a competent person and any certified workers were spelt out clearly in the new Regulation as well as FIUO. Cooperation from all parties concerned to ensure occupational safety were needed.

25. Referring to the submission from the Hong Kong Workers' Health Centre, the Chairman enquired about the criteria adopted by the Commissioner for Labour to issue a certificate to a competent person. AC for L advised that the criteria, though not being spelt out in the new Regulation, would be incorporated in the relevant code of practice, which would specify the training courses to be attended as well as the institutions authorized for issuing certificates to those who passed the examinations or tests after attending the relevant training courses.

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錯誤! 尚未定義書籤。 To facilitate further deliberations of the Subcommittee, the Chairman requested and the Administration agreed to provide written response on the submission from the Hong Kong Workers' Health Centre in respect of the criteria adopted by the Commissioner for Labour to issue a certificate to a competent person (point 2), monitoring aspect of risk re-assessment (point 3) and sharing of responsibilities between the proprietors, contractors and workers (point 6).

III. Date of next meeting

26. The next meeting was scheduled for 30 October 1998 at 10:45 am.

27. The meeting ended at 12:40 pm.

Legislative Council Secretariat
21 October 1998