

Legislative Council

LC Paper No. CB(2) 788/98-99

(These minutes have been
seen by the Administration)

Ref : CB2/SS/4/98

Subcommittee on regulations relating to occupational safety and health

Minutes of meeting held on Friday, 30 October 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 LEE Cheuk-yan
Hon Ronald ARCULLI, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP
Hon TAM Yiu-chung, JP

Members absent : Hon Michael HO Mun-ka
Hon LEUNG Yiu-chung

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

Mr Franco KWOK
Assistant Secretary for Education and Manpower

Mr William SIU
Assistant Commissioner for Labour

Mr PANG Kwok-lam
Chief Occupational Safety Officer (Operations)

Dr W K LO
Occupational Health Consultant

Mr W B Maddaford
Senior Assistant Law Draftsman

Mr G H FOX
Senior Assistant Law Draftsman

Ms Lonnie NG
Senior Government Counsel

Ms Stella CHAN
Government Counsel

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

Staff in attendance : Ms Lolita NG
Senior Assistant Secretary (2) 5

Mr Arthur CHEUNG
Assistant Legal Adviser 5

Action

**I. Confirmation of minutes of meeting held on 29 September 1998
(LC Paper CB(2)476/98-99)**

The minutes of the meeting held on 29 September 1998 were confirmed.

Action

II. Meeting with the Administration on the Factories and Industrial Undertakings (Confined Spaces) Regulation (the new Regulation)

(LC Paper No. CB(2) 475/98-99(01) & (02))

(LC Paper No. CB(2) 525/98-99(01))

2. At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS/EM) took members through the Administration's response to the outstanding issues arising from the meeting on 29 October 1998 and the submission from the Hong Kong Society of Occupational and Environmental Medicine (HKSOEM).

Overseas legislation on rights of employees to refuse to perform dangerous works

3. Assistant Commissioner for Labour (AC for L) explained that the Administration had collected information on provisions of overseas legislation regarding workers' right to refuse work on ground of hazard to their safety and health. The Administration required more time to find out from these countries the background and enforcement practice of their legislation. Members urged the Administration to expedite its research into relevant overseas legislation. They considered that the Administration should have studied and made reference to the relevant overseas legislation when the new Regulation was drafted. AC for L agreed to provide the information for discussion at the next meeting.

Adm

Exemption of the Government from the new Regulation

4. PAS/EM advised that the new Regulation was a piece of subsidiary legislation made under the Factories and Industrial Undertakings Ordinance (FIUO). As FIUO did not apply to the Government, a regulation made thereunder would similarly not apply to the Government as it could not go beyond the scope of the principal ordinance.

5. Dr LEONG Che-hung said that he was unable to accept the Government's exemption from the new Regulation. PAS/EM responded that this was not the only circumstance that the Government was exempted from certain legislative requirements nor it was a deliberate move to exempt itself from the industrial safety legislation. Though not bound by FIUO, the Government had put in place a set of internal guidelines which were in line with the requirements stipulated in FIUO. Under the guidelines, Government workplaces and civil servants were required to comply with all provisions of FIUO including the new Regulation, and were subject to inspection by the Labour Department (LD) for compliance with the safety measures. Any breach of FIUO or failure to comply with the new Regulation by a civil servant would be subject to disciplinary actions.

6. PAS/EM further said government activities falling under the ambit of FIUO were rare, except in the dock yards of the Marine Department and the

Action

vehicle maintenance work sites of the Electrical and Mechanical Services Department. Most of the public works were contracted out and the contractors were governed by FIUO. Since FIUO was amended in 1996, the Commissioner for Labour (C for L) had been authorized to issue “improvement notice” and “suspension notice” to workplaces including those of the Government, hence supervision on the Government. There was not a double standard between the Government and the non-Government sector. PAS/EM also cited section 5 of the Occupational Safety and Health Ordinance (OSHO) which stipulated that OSHO was applicable to the Government, but neither the Government nor any public officer in the officer’s capacity as such was liable to be prosecuted for an offence against it.

7. Dr LEONG Che-hung was of the view that there was a double standard between the Government and the non-Government sector insofar as industrial safety legislation was concerned. He maintained that the new Regulation should bind the Government.

Incorporation of the new Regulation under OSHO

8. Referring to paras. 2 and 4(b) of the Administration’s information paper, the Chairman said that there seemed to be a discrepancy between the Administration’s long term objective to incorporate all occupational safety and health regulations, including those under FIUO, into OSHO and the claim that little would be gained by making the new Regulation under OSHO. PAS/EM responded that the new Regulation would cover all confined space work in industrial undertakings. As non-industrial undertakings did not involve confined space work, their employees would not benefit much from an extension of the new Regulation to the non-industrial sector. OSHO covered all economic sectors and was applicable to the Government. The Administration had a long term objective to incorporate all occupational safety and health regulations, including those made under FIUO, into OSHO. By making all regulations under one single ordinance would facilitate enforcement.

9. PAS/EM further said that the Administration would consider making new regulations under OSHO with consideration given to the applicability of the regulations concerned. Regulations which were only applicable to industrial undertakings would more appropriately be made under FIUO when that ordinance was in force. The Administration would adopt flexibility in handling the matter. PAS/EM added that by the time OSHO was enacted in 1997, drafting work on the new Regulation was already at an advanced stage. In order not to delay its introduction, the Administration did not incorporate the new Regulation under OSHO.

10. Mr Lee Cheuk-yan urged for a time table to incorporate the regulations made under FIUO into OSHO. PAS/EM reiterated the aforesaid long term objective of the Administration. As some 27 regulations were involved, the Administration would need more time to study the matter and work out a time table. He said that the Administration would keep the Panel on Manpower

Action

Adm

informed of a time table in due course.

Monitoring risk during work

11. Miss Cyd HO asked the Administration to clarify what criteria would be adopted to assess a significant change in the condition of a confined space or in the work activities. Chief Occupational Safety Officer (Operations) (COSO(O)) responded that the significant change in the condition of a confined space or in the work activities referred to change in situations or circumstances that might result in a danger or risk to the safety and health of workers working inside a confined space, e.g. a sudden in-rush of water due to unexpected increase of rainfall or in-rush of substances or dangerous fumes generated during sewer and ditches projects.

12. As regards continuous monitoring of the working environment within a confined space by equipment raised by the Chairman, AC for L advised that the new Regulation already catered for workers' occupational safety and health. Given proper ventilation in the confined space, there would not be dangerous substances and/or their residues which would jeopardize the safety and health of the workers when they entered or worked in the confined spaces. The relevant risk assessment reports would include recommendations for the workers to wear breathing apparatus as appropriate. Moreover, a fresh assessment would be required whenever there had been a significant change in the condition of a confined space. The Administration, therefore, did not deem it necessary to specify continuous monitoring of the working environment within the confined spaces by equipment in the new Regulation.

錯誤! 尚未定義書籤。

Miss Cyd HO asked when the Administration would consult the public on the size of manholes. AC for L said that as explained in the last meeting, if there was a need to specify the size of manhole, it would be dealt with in the code of practice on working in confined spaces. The code of practice would be formulated in the light of experience obtained after enactment of the new Regulation. The trades concerned would be consulted on the code of practice.

13. Miss Cyd HO expressed concern about the likely safety risks to workers working in confined spaces in the absence of specification of the size of manholes in the new Regulation while the relevant code of practice would not be ready when the Regulation took effect. AC for L responded that if there was a need, the recommendation on the size of manholes would be included in the risk assessment report. Risk assessment would be done before and after the construction of a manhole. Coupled with the fresh assessments whenever there had been a significant change in the condition of a confined space, safety of the working environment could be ensured. He pointed out that there was a provision in FIUO and OSHO requiring employers to provide their employees with a safe working environment. Employers who failed to provide manholes big enough for workers to enter and/or work in confined spaces would be in breach of the provision.

Medical examination for workers operating in confined spaces

14. AC for L advised that the Administration would introduce a new regulation under FIUO requiring workers engaged in certain hazardous trades to receive pre-employment medical examinations and periodic post-employment medical examinations. Referring to the Administration's response to HKSOEM's submission, Dr LEONG Che-hung disagreed to the view that working in a confined space was no different from working in other workplaces. In response, AC for L said that workers were required to take pre-employment and post-employment medical examinations largely because they would come into contact with dangerous substances and/or their residues which were hazardous to their safety and health, not because they worked in confined spaces. After due risk assessments, workers would be required to take necessary safety measures, such as breathing apparatus, when entering and/or working in confined spaces. Those who were not physically fit to wear breathing apparatus because of cardiac and pulmonary diseases would be screened out from operation in the confined spaces. In response to Dr LEONG Che-hung's enquiry, PAS/EM said that the aforesaid regulation was in its final stage of drafting and would probably be introduced into LegCo in December this year.

15. Mr Ronald ARCULLI asked whether the Administration had consulted the Hong Kong Construction Association Ltd (HKCA) on the proposed regulation on medical examinations for workers engaged in hazardous occupation, and whether the Administration had taken into account the difficulties of employers with regard to the expenses incurred in providing such medical examinations. PAS/EM responded that the Administration was consulting HKCA regarding the proposed regulation. When the Labour Advisory Board (LAB) was consulted on the proposed regulation at its last meeting, the employers' representatives raised questions in regard to construction workers' mobility, the daily wage system and the employers' willingness to provide them with medical examinations. The Administration would iron out the problems identified in the consultation process.

16. In response to Mr HO Sai-chu, AC for L said that the Administration would not introduce the regulation on medical examination for workers until due consultation was completed and related problems were solved.

Consultation on the new Regulation and the Construction Sites (Safety (Amendment) Regulation 1998

17. Mr Ronald ARCULLI asked whether the Administration had consulted HKCA about the new Regulation and the Construction Sites (Safety) (Amendment) Regulation 1998. At members' request, the Administration undertook to provide a detailed reply on the matter, including how the consultation was done and its outcome.

Action

Clause-by-clause examination

Clause 1 - Commencement

18. In response to Mr Ronald ARCULLI, PAS/EM said that to allow time for the industry to make necessary preparations and for the workers to be trained, there would be a grace period of 12 months upon the enactment of the new Regulation before it took effect. LD would issue a code of practice on working in confined spaces for the guidance of proprietors, contractors and competent persons.

Clause 2 - Interpretation

“competent person”

19. Referring to para. b(ii) of the definition of “competent person”, the Chairman asked if the criteria adopted by C for L on issue a certificate to a competent person should be spelt out in the new Regulations in order to prevent flexibility being abused. PAS/EM said that in similar provisions in the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations and the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation no criteria for issuing a certificate were specified. In the view of the Administration, the present drafting was adequate.

20. In reply to Mr Ronald ARCULLI’s question on paras. (b) and (c), AC for L said that a person must have at least one year’s relevant experience after he had obtained the registration as referred to in para b(i) or the certificate as referred to in para. b(ii) before he could become a competent person.

“confined space”

21. Mr Ronald ARCULLI sought clarification on paras. (a) and (b) of the definition of “confined space”. COSO(O) explained that apart from those specified under para (a), a confined space covered any other space in which, because of its construction, location or contents or because of work activities taking place therein, there was accumulation of a hazardous gas, vapour, dust or fume or the creation of an oxygen deficient atmosphere or there was a risk of an in-rush of mud or water.

22. Referring to para. (a), Mr Ronald ARCULLI queried whether a chamber, a tank, a pit etc. irrespective of its size or location would fall into the meaning of a confined space under the new Regulation. Senior Assistant Law Draftsman (SALD) responded that the workplaces as referred to in para. (a) had to be within the industrial undertakings before this Regulation applied. COSO(O) said that a confined space should be big enough to allow workers entering or working inside as they were subject to risk assessments by competent persons or certified workers after relevant training. Mr Ronald ARCULLI further queried whether a tunnel in which a worker could stand inside would be defined as a confined space. He considered that the present definition of confined space

Action

might give rise to ambiguity in enforcing the new Regulation as there was no reference to size or measurements of the workplaces as referred to in para (a). At members' request, the Administration agreed to look into this point.

Adm

23. On para. b(ii), COSO(O) explained that in construction sites, there would be a sudden in-rush of rain water and mud in the rainy season and there would be a sudden in-rush of water when pipes burst. Mr Ronald ARCULLI pointed out the term "risk" was unclear as there was no reference to danger or risk to life or health of workers. At members' request, the Administration agreed to review the drafting of para. b(ii).

Adm

24. In response to the Chairman and Mr CHAN Wing-chan, AC for L explained that whether or not a cold storage in a restaurant was a confined space depended on the design of the cold storage. The cold storage would be considered a confined space in the absence of a ventilation system or if there was accumulation of a hazardous gas, vapour, dust or fume or the creation of an oxygen deficient atmosphere. It was a requirement on the design of a cold storage that it could be opened from within.

25. The Chairman suggested and the Administration agreed to review the definition of "confined space" with a view to adding "temperature" as a parameter for cold storage.

Adm

Clause 3 - Application

26. On clause 3(b), PAS/EM explained that the phrase "as required by this Regulation" referred to safety measures as required by the new Regulation. This Regulation would apply to work activities that took place within the immediate vicinity of a confined space and that those work activities had to be associated with the work occurring within that confined space. For example, if the provision of safety harnesses and lifelines were required as stand-by safety measures for the work being undertaken inside the confined space, work activities of controlling the lifelines outside that confined space would be covered by the new Regulation. It was not intended to apply the new Regulation to all work activities taking place in the vicinity of a confined space. Members pointed out that the present drafting did not seem to achieve the intended purpose. The meaning of "the immediate vicinity of a confined space" was unclear and could give rise to enforcement difficulties. At the request of the Chairman, the Administration agreed to explain, in writing, the legislative intent of clause 3(b) and to review the drafting in particular of the underlined words in the phrases "within the immediate vicinity of, and is associated with work occurring within, a confined space" so as to ensure enforceability of the new Regulation.

Adm

Clause 4 - Certified worker and competent person to complete an approved course

27. Referring to the phrase "the Commissioner to issue certificates to

Action

Adm

competent persons” in clause 4(2), Mr Ronald ARCULLI pointed out that at the time the certificate was issued to a person who had successfully completed the approved course in respect of preparing risk assessment reports, he was not a competent person until he had at least one year’s relevant experience. The present drafting was unclear as to whom the certificates were issued. SALD said that clause 4(2) referred to a certificate issued under para. b(ii) of the definition of a “competent person”. The Administration undertook to review the drafting of clause 4(2) so as to set out more clearly who should be the persons to whom certificates were issued.

III. Any other business

28. The Chairman informed members that the Hong Kong and Kowloon Painters General Union (Union) had requested, through Mr CHAN Wing-chan, to present its views on the Construction Sites (Safety)(Amendment) Regulation 1998 at a meeting of the Subcommittee. After discussion, members agreed that the Union would be invited to present its views when the said Regulation was discussed by the Subcommittee. The Union would be requested to send a written submission.

(Post meeting note : The Union’s written submission was circulated to members vide LC Paper No. CB(2) 582/98-99 dated 7 November 1998.)

IV. Date of next meeting

29. The next two meetings were scheduled for 19 November 1998 at 10:45 am and 26 November 1998 at 4:30 pm respectively.

30. There being no further business, the meeting ended at 12:55 pm.