

Legislative Council

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by the Administration)

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Subcommittee on regulations relating to occupational safety and health

Minutes of meeting held on Thursday, 19 November 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 Ronald ARCULLI, JP
Hon CHAN Wing-chan
Dr Hon LEONG Che-hung, JP
Hon LEUNG Yiu-chung
Hon TAM Yiu-chung, JP
Dr Hon TANG Siu-tong, JP

Member absent : Hon CHAN Kam-lam

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)

Mr W B MADDAFORD
Senior Assistant Law Draftsman

Ms Stella CHAN
Government Counsel

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

Staff in attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Ms Lolita NG
Senior Assistant Secretary (2) 5

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I. Meeting with the Administration - continued discussion on the Factories and Industrial Undertakings (Confined Spaces) Regulation (the new Regulation)

Outstanding issues arising from the meeting on 30 October 1998
(LC Paper CB(2)654/98-99(01))

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

At the invitation of the Chairman, Assistant Commissioner for Labour (AC for L) briefed members of the provisions in overseas legislation regarding workers' right to refuse work on ground of hazard to their safety and health, including the backgrounds and enforcement practices of the legislation. There were no provisions for a worker's right to refuse work on grounds of hazard to his safety or health in neighbouring countries, namely Japan, Singapore, Malaysia and South Korea. In the United Kingdom, there was no procedure for dealing with a worker's refusal to work on grounds of hazard to his health or safety. However, there were such provisions in some provinces in Canada and

Australia.

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2. The Administration observed that in countries where the right to refuse work was provided in laws, there was always a mechanism for resolution of the issue by a third party on the site, e.g. a health and safety committee in the case of Ontario in Canada, a safety and health representative in Australia. Such provisions would allow prompt actions to be taken to remove any imminent danger to allow the work to go on.

3. Members suggested to add a provision for a worker's right to refuse work on grounds of hazard to his safety and health and resolution by a third party on issues relating to work hazards to the new Regulation, its principal ordinance and the Occupational Safety and Health Ordinance (OSHO). AC for L responded that the Administration would propose a Safety Management Regulation (SMR) in early 1999. The SMR would provide for a safety committee (SC) and a legal framework for other elements of a safety management system. Half of the members of SC would comprise of representatives of workers while the other half would be representatives of the management. In the Administration's view, a SC and a legal framework should be put in place before the aforesaid structure and system were developed in Hong Kong. Principal Assistant Secretary for Education and Manpower (PAS/EM) added that the proposed mechanism of resolution by a third party could be considered in the context of SC, which had a definite role to play in resolving issues relating to work hazards. The SMR would be submitted to Legislative Council for consideration in early 1999 and the provision as regards the aforesaid workers' right would be dealt with at a later stage.

4. In response to members, PAS/EM and AC for L said that SMR was an enabling legislation. The proposal for a worker's right to refuse work on grounds of hazard to his safety or health and a mechanism for resolution by a third party of issues relating to work hazards was acceptable in principle. As the drafting of SMR was almost completed, instead of incorporating the aforesaid provision in SMR, it would be more feasible to include the provisions under the relevant code of practice which would also have legal effect. The trades concerned would be consulted on the relevant draft code of practice. At members' request, PAS/EM promised to add to the code of practice of SMR the provisions for a worker's right to refuse work on grounds of hazard to his safety or health and a mechanism for resolution by a third party of issues relating to work hazards. The SMR and the relevant draft code of practice would be submitted to the Legislative Council for scrutiny.

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5. Responding to Mr LEUNG Yiu-chung, AC for L advised that the mechanism of resolution by a third party was a joint effort of employers and employees to resolve problems of work hazards with an aim to resuming work and/or production. In accordance with the overseas legislation, the safety and health committee members or the representative as the case might be should arrive in the workplace-in-question as soon as possible. Before he arrived, the employees were required to stay in a safe area in the workplace.

6. In response to Mr CHAN Wing-chan, PAS/EM agreed to provide

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information on the composition of the Australian joint health & safety committee which was needed at a workplace where 20 or more workers were regularly employed.

Consultation with the Hong Kong Construction Association Ltd (HKCA) on the new Regulation and the Construction Sites (Safety) (Amendment) Regulation 1998 (CSSR)

7. AC for L said that HKCA was consulted on the amendments to both regulations on the basis of a paper put to the then Committee on Industrial Safety and Health (CISH) of the Labour Advisory Board (LAB) on 28 November 1995. Representatives of HKCA and the Labour Department (LD) met on 15 December 1995. On the new Regulation, HKCA suggested that, instead of requiring competent supervisors to supervise operations in confined spaces, the regulations should require all workers entering or working in confined spaces to be trained and certified. LD accepted the proposal and incorporated it into the paper for consultation with LAB. The proposals were endorsed by LAB on 29 January 1996.

8. AC for L further said that HKCA suggested to use either safety nets or safety belts/harness if it was not practicable to provide proper working platforms under CSSR. This was contrary to the advice of CISH which advised that both safety nets and safety belts/harness should be used where it was impracticable to provide working platforms. The suggestion of HKCA was brought to the attention of LAB when it was consulted on the issue on 29 January 1996. However, LAB endorsed the view of CISH.

Review of the definition of “confined space” under clause 2

錯誤! 尚未定義書籤。 Referring to paragraphs (a) and b(ii) on the definition of “confined space” under clause 2, AC for L explained that the Administration intended to provide all the technical details in an approved code of practice. Having regard to the concern of the Subcommittee for a more precise description of the term “confined space”, PAS/EM undertook to propose a revised definition and other modifications after obtaining members’ views on the remaining parts of the new Regulation.

Adm

9. On the point of adding “temperature” as a parameter for cold storage, AC for L pointed out that a cold storage when functioning as such was not a place where workers would stay and work for a prolonged period of time. The main danger of working in such place was the danger of a worker being locked in. Such hazard was dealt with by OSHO under section 3(1) which required the person responsible for the workplace to ensure that the plant in a workplace was safe and without risk to the safety and health of persons who used the plant.

10. Responding to the Chairman and Miss Cyd HO, AC for L and Chief

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Occupational Safety Officer (Operations) (COSO(O)) reiterated the statutory requirement on the design of a cold storage that it could be opened from within. COSO(O) added that there would be technical problems to install a switch-off inside the cold storage. He pointed out that workers normally stayed in a cold storage for a short period of time and that they were required to put on thick clothing should they need to stay inside for a long period of time.

Review of clause 3(b)

11. AC for L explained that the intention of clause 3(b) was to extend the ambit of the new Regulation to cover work beyond the confined space as many precautionary measures to ensure the safety of working inside a confine space had to be performed outside the confined space. However, clause 3(b) also limited the application of the new Regulation to certain work only. Those limitations were -

- (a) the work had to be required by the new Regulation;
- (b) it had to be in the immediate vicinity of the confined space; and
- (c) it had to be associated with the work occurring within the confined space.

Therefore, most of the work outside the confined space should not be affected because they would be excluded by the above limitations.

12. AC for L further said that the words “in the immediate vicinity of” were frequently used and could be found in such other regulations as section 2 of CSSR and section 3 of the Factory and Industrial Undertakings (FIU) (Lifting Appliances and Lifting Gear) Regulations. Other examples could be found in the FIU (Safety Officers and Safety Supervisors) Regulations, the FIU (Suspended Working Platforms) Regulation and the FIU (Cartridge-operated Fixing Tools) Regulations. The words “associated with work” also appeared in the FIU (Work Compressed Air) Regulation and whether the work outside a confined space was associated with the work therein should be determined on the facts of each case. The Administration did not envisage any difficulty in enforcement by using those words in the new Regulation.

Review of clause 4(2)

13. AC for L clarified that the person referred to in clause 4(2) should be a person who had completed a course preparing a person to make a risk assessment and complete a risk assessment report. The Administration would subject to legal advice amend the reference to “competent person” in clause 4(2) to “a person who is the subject of a certificate under (b)(ii) in the definition of a “competent person” under section 2 of this Regulation”.

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Clause-by-clause examination

Clause 5 - Risk assessment and recommendations

Adm 14. Referring to clause 5(4), the Chairman and Mr LEE Cheuk-yan considered that where a competent person, in his initial assessment on the risk of a confined space, was of the opinion that there was a likely change in the conditions of the confined space and that the change might result in a risk to the safety and health of workers working therein, a proprietor or contractor should appoint a competent person to carry out continuous risk assessments. This requirement should be spelt out in the new Regulation. PAS/EM agreed to add a provision in respect of continuous monitoring of the working environment in a confined space as a recommendation by a competent person in his assessment while retaining clause 5(4).

Adm 15. In response to Miss Cyd HO, the PAS/EM agreed to consider defining the term “continuous risk assessment by a competent person” referred to in paragraph 15 above. AC for L added that the guidelines for continuous risk assessments could be dealt with in the relevant code of practice.

16. Dr TANG Siu-tong questioned how long the “reasonable period of time” would be for a competent person to submit risk assessment report and recommendations to a proprietor or contractor as referred to in clause 5(5). COSO(O) said that risk assessment reports and recommendations, if any, would be made available shortly after the risk assessment i.e. one to two hours under normal circumstances. Responding to a further question from Dr TANG Siu-tong, COSO(O) advised that workers were not allowed to enter or continue operating in the confined space in question until the risk assessment was completed.

Clause 6 - Compliance with risk assessment report and issuing of certificate in respect thereof

Clause 7 - Safety precautions before work begins

Clause 8 - Safety precautions when work is being undertaken

Adm 17. On clause 6(1)(a), PAS/EM said that a proprietor or contractor was required to take all necessary safety measures in relation to the hazards identified in the risk assessment report before a worker entered the confined space for the first time. The Chairman pointed out that a proprietor or contractor should be required to comply with the provisions in clause 6(1)(a) whenever a continuous risk assessment was carried out. He suggested to add such provision in clause 6. In response, Senior Assistant Law Draftsman (SALD) advised that it would be more relevant to add a provision in clause 8 than in clauses 6 and 7 which related to entry for the first time, to cater for the continuous assessments by a competent person in line with the concept of continuous monitoring. At the Chairman’s request, PAS/EM undertook to consider adding the relevant provision.

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18. On clause 7 which set out the safety precautions to be taken before a worker entered a confined space for the first time, the Chairman questioned whether a proprietor or contractor should ensure that such safety precautions were taken every time a worker entered a confined space. COSO(O) responded that the risk assessment report should have included that a proprietor or contractor should ensure that these safety precautions were in force when work was being undertaken. PAS/EM pointed out that a proprietor or contractor was required under clause 8(4) to ensure that the safety precautions as referred to in clause 7 continued to be effective.

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19. On clause 8(b), the Chairman asked whether the person stationed outside a confined space should also be a “certified worker”. PAS/EM said that the person stationed outside the confined space was to maintain communication with the workers inside. He was not encouraged to enter a confined space in emergencies but to summon assistance rapidly in the circumstance. At the Chairman’s request, PAS/EM agreed to consider whether the person should also be a “certified worker”.

20. Mr CHAN Wing-chan enquired whether a worker working in the immediate vicinity of the confined space as referred to in clause 3(b) should also be a “certified worker”. AC for L said that he was not necessarily a “certified worker”. Instead, he would best know how to use the equipment such as oxygen masks for emergency when workers operating in the confined space were in need of rescue.

Clause 9 - Use of personal protective equipment

21. On clause 9(b), AC for L explained that a proprietor or contractor was required to ensure the use of suitable protective equipment by a worker when entering a confined space for underground pipework.

Clause 10 - Emergency procedures

22. In response to the Chairman and Miss Cyd HO, PAS/EM undertook -

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(a) to advise whether the suitable apparatus for reviving an unconscious workers as referred in clause 10(2)(b) was regulated by any legislation and the minimum standard required; and

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(b) to consider spelling out in the new Regulation the minimum number of persons considered to be sufficient as referred to in clause 10(3) and review whether having only worker who was knowledgeable in using the safety equipment referred to in clause 10(2) was adequate.

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23. On clause 10(3), AC for L said that workers knowledgeable in using the safety equipment referred to in clause 10(2) were allowed to work in the vicinity of the confined space. They were not required to station at the work site for rescue purpose only.

Clause 11 - Provision of information, instructions, etc.

24. AC for L explained that a proprietor or contractor should provide training, advice, instructions and equipment to all workers working within a confined space or assisting with such work from immediately outside the confined space in order to ensure their safety and health.

Clause 14 - Offences

25. Mr Ronald ARCULLI said that it appeared that only proprietors and contractors were prosecuted for contravening the existing Regulation. He opined that safety education and training were important for the contractors and workers.

26. AC for L said that more proprietors and contractors than workers had been prosecuted for contravening the existing Regulation. The Administration would not preclude from prosecuting workers. He, however, pointed out the difficulties in collecting sufficient evidence for instituting prosecution against workers for non-compliance with the statutory requirements. He stressed that the Administration had been providing more resources in safety education and training for the trades concerned.

Adm

27. On clause 14(1), Mr Ronald ARCULLI queried why a proprietor or contractor was not provided with an opportunity to give “reasonable excuse” or “reasonable cause” before imposing on him a penalty for contravening the new Regulation while a competent person and a certified worker were allowed to do so under clause 14(2) and 14(3) respectively. The Chairman requested the Administration to give a detailed reply on the reasons for not providing a proprietor or contractor with an opportunity to give “reasonable excuse” or “reasonable cause” in defending his case before imposing on him a penalty for contravening the new Regulation.

Adm

28. On clauses 14(2)(b) and (c), the Chairman questioned why the penalty for the offences in respect of a competent person was the same, given that the latter offence was of a more serious nature. The Chairman requested the Administration to explain, in writing, the rationale and justifications for setting the penalty at the same level.

29. There being no other business, the meeting ended at 1:05 pm.

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Legislative Council Secretariat
6 January 1999