

Legislative Council

LC Paper No. CB(2) 1089/98-99

(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 Thursday, 26 November 1998 at 4:30 pm in the Chamber of the Legislative Council Building

Members present : Hon Andrew CHENG Kar-foo(Chairman)
Hon HO Sai-chu, JP
Hon Michael HO Mun-ka
Hon LEE Cheuk-yan
Hon Ronald ARCULLI, JP
Hon CHAN Wing-chan

Members absent : Hon Cyd HO Sau-lan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP
Hon LEUNG Yiu-chung
Hon TAM Yiu-chung, JP
Dr Hon TANG Siu-tong, JP

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 : Ms Lolita NG
Senior Assistant Secretary (2) 5

Mr Arthur CHEUNG
Assistant Legal Adviser 5

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

(LC Paper No. CB(2) 728/98-99(01))

The Administration tabled a Chinese version of the information paper on its response to the outstanding issues arising from the meeting on 19 November 1998. At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS/EM) took members through the Administration's information paper.

Composition of the Australian joint health and safety committee which was required at a workplace where 20 or more workers were regularly employed

2. Members noted the information provided by the Administration as set out in item 1 of the paper concerning the composition of a joint health and safety committee for a workplace in Australia.

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A revised definition of “confined space” under clause 2

3. Assistant Commissioner for Labour (AC for L) explained that with reference to relevant legislation in the overseas countries, the Administration proposed to adopt a new definition for “confined space”, modelled on the definition in the United Kingdom’s Confined Space Regulation 1997. The proposed new definition was set out in item 2 of the paper. A new definition for “specified risk” as set out in item 2 of the paper would be added to the new Regulation. Coupled with the addition of the definition of “specified risk”, the revised definition of “confined space” would be able to address members’ concern raised at the last meeting.

4. Members accepted the revised definition of “confined space”.

Review of clause 4 - Certified worker and competent person to complete an approved course

5. PAS/EM said that the Administration would amend the reference to “competent person” in subclause (2) to “persons certifying them to be competent to prepare risk assessment reports”. Noting that the revision provided a clearer reference to the term “competent person” therein, members accepted the proposed amendment.

Review of clause 5 - Risk assessment and recommendations

6. Members noted the Administration’s proposed amendments to clause 5 and consequential amendments to clause 14 on “Offences”, as referred to in item 3 of the information paper.

Review of clause 8 - Safety precautions when work is being undertaken

7. As regards a new provision to cater for the continuous risk assessments by a competent person in line with the concept of continuous monitoring, PAS/EM said that the matter was already taken care of by the proposed amendments to clause 5.

8. PAS/EM pointed out that the person referred to in clause 8(b) should maintain communication with the workers in a confined space, administer emergency procedures (e.g. first aid) and be capable of summoning assistance rapidly in emergencies. His role was very different from that of a worker entering a confined space to work. The Administration did not think that such person should also be a “certified worker” because this would not contribute to the safety and health aspects of the work, but might limit the choice of the proprietor in employing such persons and increase the cost of his work.

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Review of clause 10 - Emergency procedures

9. On clause 10(2)(b), PAS/EM said that the apparatus for reviving an unconscious worker typically meant a resuscitator. The Administration would provide in an approved Code of Practice internationally acceptable standards of the resuscitator. If the proprietor or contractor should use an equipment conforming to such standards, he should be deemed to be using a suitable apparatus. Furthermore, where the resuscitator was a component of an oxygen cylinder, the cylinder was subject to control by the Dangerous Goods (General) Regulations which were administered by the Fire Services Department. As there were internationally recognized standards stipulated for the resuscitator and separate legislation governing the gas cylinder, there was adequate control in the use of such apparatus.

10. On clause 10(3) which provided that a sufficient number of persons who knew how to use the safety equipment referred to in clause 10(2) should be present when work was taking place in a confined space, the Chairman consider it desirable to spell out the minimum number of such persons. In response, AC for L said that several factors, including the nature of the work, the hazards inherent in the confined space in relation to the work and to the work methods proposed, needed to be considered in the circumstances. Those were technical details and should be dealt with in an approved Code of Practice rather than in the new Regulation. It was not appropriate to provide a set of requirements in the new Regulation as the aforementioned factors had to be assessed by a competent person against a background of the professional knowledge in such work. The Administration considered that it would be more flexible to handle the matter in this way.

Review of clause 14 - Offences

11. On clause 14 (1)(a), Mr Ronald ARCULLI observed that a proprietor or contractor who contravened and committed an offence under section 7, 8, 10(2) or (3) or 11(1) or (2) was liable to a fine of \$100 000 and an imprisonment for six months. He queried if it was reasonable to impose the fine on a proprietor or contractor as the latter usually delegated another person to supervise and ensure that the necessary safety precautions had been in place before workers entered or worked in a confined space.

12. AC for L responded that in examining the liability of a proprietor or contractor, it would be necessary to consider on what levels relevant instructions had been given and carried out to ensure workers' safety when entering or working in a confined space. In some cases, the management was not prosecuted for non-compliance with the existing Regulation. Chief Occupational Safety Officer (Operations) (COSO(O)) added that a strict liability approach would be adopted to implement the new Regulation. In principle, a proprietor or contractor was ultimately responsible for liability for contravening the requirements to safeguard work safety in a confined space. Despite delegation of his responsibility to another person, a proprietor or contractor

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had to ensure that the statutory requirements stipulated in the new Regulation were complied with by the person. In circumstances where the proprietor or contractor had given clear instructions and provided the necessary training and safety precautions, but some of his staff or the person to whom he delegated the supervisory responsibility had failed to carry out the instructions, the proprietor or contractor would not be liable to an offence so committed.

Adm

13. In response to Mr Ronald ARCULLI and the Chairman, PAS/EM agreed to reconsider clause 14(1) with a view to providing a proprietor or contractor with an opportunity to give “reasonable excuse” or “reasonable cause” before imposing on him a penalty for contravening the new Regulation.

14. On clause 14 (2) (b) and (c), AC for L explained that there was a difference in the offences committed by a competent person although the penalties were set at the same level. A competent person had an opportunity to give “reasonable excuse” for the offence referred to in clause 14(2)(b) which related to failure to deal with necessary matters in his risk assessment report. However, he would not be provided with such an opportunity for the offence referred to in clause 14(2)(c) relating to preparation of a false risk assessment report. Since the offences were handled in the aforementioned manner, the Administration had not provided the offences for different treatments insofar as penalty was concerned.

Adm

15. Noting the explanations in para.14 above, the Chairman maintained his view that there should be different penalty for the offences because of the more serious nature of the offence referred to in clause 14(2)(c). Mr Ronald ARCULLI shared his view. At members’ request, PAS/EM undertook to consider setting the penalty for the offences referred to in clauses 14(2)(b) and (c) at different levels.

16. Mr CHAN Wing-chan enquired about the penalty for the offence committed by a proprietor or contractor under clause (9) which related to use of personal protective equipment. AC for L advised that while a fine of \$200 000 was stipulated under Regulation 6 of the existing Factories and Industrial Undertakings (Confined Spaces) Regulation, the penalty under the new Regulation would be a fine of \$100 000 and six months imprisonment. There was a new provision of imprisonment despite a reduction of the fine.

III. Any other business

17. Members agreed that Hong Kong and Kowloon Painters General Union be invited to attend the next meeting to present its views on the Construction Sites (Safety)(Amendment) Regulation 1998.

18. At the request of members, the Administration agreed to provide a marked-up copy of the new Factories and Industrial Undertakings (Confined Spaces) Regulation showing the amendments proposed by the Administration.

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19. At the request of Chairman, ALA5 would present an overview of the amendments to the existing Regulation at the meeting scheduled for 10 December 1998.

IV. Date of next meeting

20. The three next meetings were scheduled for Tuesday, 8 December 1998 at 10:45 am, Thursday 10 December 1998 at 2:30 pm and Monday, 14 December 1998 at 2:30 pm respectively.

(Post-meeting note : The meeting scheduled for 10 December 1998 was cancelled subsequently.)

21. There being no further business, the meeting ended at 5:40 pm.

Legislative Council Secretariat

7 January 1999