

立法會
Legislative Council

LC Paper No. CB(2) 1415/98-99
(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 Monday, 14 December 1998 at 2:30 pm
in the Chamber 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 Ronald ARCULLI, JP
Hon CHAN Wing-chan

Members absent : Hon LEE Cheuk-yan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP
Hon LEUNG Yiu-chung
Dr Hon TANG Siu-tong, JP
Hon TAM Yiu-chung, 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 W B MADDAFORD
Senior Assistant Law Draftsman

Mr G A FOX
Senior Assistant Law Draftsman

Ms Lonnie NG
Senior Government Counsel

Mr Joseph WONG
Senior Government Counsel

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. Continued discussion on the Factories and Industrial Undertakings (Confined Spaces) Regulation (new Regulation)

Marked-up copy of the Factories and Industrial Undertakings (Confined Spaces) Regulations

The Administration tabled a revised marked-up copy showing the proposed amendments to the existing Factories and Industrial Undertakings (Confined Spaces) Regulations (existing Regulations) which superseded the one circulated vide LC Paper No. CB(2) 798/98-99(01) dated 4 December 1998.

2. At the request of the Chairman, Assistant Legal Adviser 5 (ALA 5) highlighted the revised amendments. Members made no queries to the revised amendments.

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Review of sub-clause (1) of clause 14

LC Paper No. CB(2) 831/98-99(01)

3. Members noted that the Administration did not agree to provide a proprietor or contractor with an opportunity to show “reasonable excuse” or “reasonable cause” as proposed by members at the Subcommittee meeting on 26 November 1998.

4. Referring to the para.(c) of the information paper, ALA 5 did not agree to the Administration’s argument that even without the provision of “reasonable excuse” a proprietor or contractor being charged for an offence could still adduce evidence to prove that he had done everything possible to ensure his compliance with the requirement of the law and therefore had not committed the offence. In the view of the Administration, the “reasonable excuse ” requirement was available even in a strict liability situation except that it had to be adduced and proved by the defendant. If a “reasonable excuse” requirement was present in the offence provisions, the prosecution had to prove that the defendant had no reasonable excuse.

5. ALA 5 pointed out that in the case of a defence of a “reasonable excuse”, which must be expressly provided to make it available, the burden of proof would rest on the defendant. This was based on the principle of “negative averments” as stated in section 94 A of the Criminal Procedure Ordinance (Cap. 221).

6. Mr Ronald ARCULLI was concerned about the scope of defence by a proprietor or contractor. Referring to clause 7(a), he enquired about the scope of defence if a proprietor or contractor had delegated the responsibility to a foreman to execute the statutory requirement but the foreman failed to do so. ALA5 advised that despite the delegation of responsibility, the proprietor or contractor would have strict liability and very limited scope to defend his case unless a statutory defence of “reasonable excuse” or “reasonable cause” was provided.

7. Mr Ronald ARCULLI did not agree to the reason given by the Administration in para. (b) of the information paper which argued that as a matter of legal policy, a strict liability approach had been adopted in most provisions dealing with occupational safety in Hong Kong and therefore, no provision for “reasonable excuse” and “reasonable cause” had been given to most of the offences in the 27 sets of regulation made under the Factory and Industrial Undertakings Ordinance (FIUO). He said that where a proprietor or contractor delegated to an employee or employees the responsibility of supervising or ensuring that the requirements of these regulations were observed, it would be grossly unfair for the proprietor or contractor to be strictly liable where it was reasonable to expect such delegation. He considered that in certain offences listed in the new Regulation, a proprietor should be given the opportunity to show “reasonable excuse”.

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8. Mr HO Sai-chu said that a defence clause should be considered where imprisonment penalty was involved.

9. Assistant Commissioner for Labour (AC for L) said that in the existing Regulations, a strict liability approach was adopted for specific requirements while a provision for “reasonable excuse” or “reasonable cause” was considered for non-specific requirements e.g. provision of a safe working environment and provision of adequate training for workers. Mr Ronald ARCELLI agreed that a strict liability approach be adopted for offences committed by a proprietor or contractor himself. However, a proprietor or contractor should be provided with an opportunity to show “reasonable excuse” or “reasonable cause” in the event of delegation to his employee(s) the responsibility to execute requirements under the new Regulation.

10. Members proposed that clause 14(1) be revised to the effect that a fine be imposed for committing offences which were of a less serious nature and that for offences of a more serious nature leading to imprisonment, a proprietor or contractor be provided with an opportunity to show “reasonable excuse” or “reasonable cause” before imposing on him the penalty. Principal Assistant Secretary for Education and Manpower (PAS/EM) agreed to consider members’ suggestions.

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II. Discussion on the Construction Sites (Safety) (Amendment) Regulation 1998 (Amendment Regulation)

(Legco Brief on the Amendment Regulation issued by the Education and Manpower Bureau)
(LC Paper No. CB(2)874/98-99))

Matters arising from the meeting on 8 December 1998

11. At the invitation of the Chairman, PAS/EM took members through the Administration’s response to the outstanding issues arising from the meeting on 8 December 1998.

Number of industrial accidents in which boatswain’s chairs were used for painting the external hulls of ships

12. PAS/EM advised that according to the Marine Department, there was no fatal case arising from work carried out from boatswain’s chairs for the period since 1992 and that for non-fatal injuries, there was no breakdown on cases involving the use of boatswain’s chairs. Since accident records were not kept in the present computer system, the Marine Department had no information on

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accidents happened since 1992.

Information on the two-day course on suspended working platform organised by the Construction Industry Training Authority (CITA)

13. Members noted the details of the CITA's course as contained in the paper. PAS/EM said that pamphlets on the course would be circulated to members after the meeting.

(*Posting-meeting note* : A "Guidebook on Certification Course with Imbedded Certification Test for Person Working on Endless Winder Mode Temporary Suspended Working Platform (Gondola)" was circulated to members vide LC Paper No. CB (2) 900/98-99 dated 17 December 1998.)

14. At the request of the Chairman, PAS/EM briefed members on the LegCo Brief on the Amendment Regulation. He said that the Administration proposed to replace the existing Part VA of the Construction Sites (Safety) Regulations (existing Regulations) by a new part in the Amendment Regulation to -

- (a) define working at height;
- (b) define the safety standards to be achieved;
- (c) spell out the legislative intention that, as far as possible, working at height (i.e. of two metres or more) should be kept to the minimum. Where it was necessary for workers to work at height, the contractor had to provide proper working platforms. If it was not practicable to do so, safety nets and safety belts/harness should be provided. It was only if this was again not practicable that safety belts/ harnesses be used on their own; and
- (d) require the contractor to show (in proceedings for offence) that it was impracticable to use working platforms or safety nets. It was considered that this was reasonable because the contractor was in the best position to determine whether it was practicable or not to use working platforms or safety nets.

15. Referring to para.8 of the LegCo Brief, the Chairman noted that the Amendment Regulation provided for the substantive provisions only. The technical details would be set out in an approved code of practice so that future changes in the safety measures as a result of technological developments could be incorporated quickly into the code without recourse to amending the law. He asked for examples of such technical details. In response, AC for L drew reference to the code of practice for scaffold work issued by C for L in accordance with section 7(A) of FIUO. He explained that technical

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requirements, such as skill requirement, safety precaution, training and qualification of workers, could be stated in the code of practice. In line with technological developments, Commissioner for Labour (C for L) might amend the code of practice if and when necessary, without recourse to amending FIUO.

16. Referring to regulation 38B which provided that the contractor responsible for any construction sites should take adequate steps to prevent any person on the site from falling from a height of two metres or more, The Chairman questioned whether the provision of two metres was a specific requirement. AC for L advised that a height of two metres, being an action level, was an international standard for occupational safety. AC for L also referred to regulation 38A which provided that the contractor responsible for any construction site should ensure that every place of work on the site was, so far as was reasonably practicable, made and kept safe for any person working there. Given this general provision, workers' safety could be ensured for working at height of less than two metres.

17. The Chairman asked for the latest development of the matter relating to the 13 construction sites against which suspension notices were issued by the Labour Department (LD). AC for L responded that out of the 13 construction sites, LD had cancelled the suspension notices for four of them. Repainting work at those four construction sites had resumed. There was an agreement with the Housing Authority (HA)'s contractors that suspended working platforms should be used where possible. In places where the use of suspended working platform was not feasible, boatswain's chairs could be used subject to strict safety requirements laid down by LD. The Housing Department (HD) had issued a management circular to its staff and contractors that for new contracts, use of boatswain's chairs would not be allowed in construction sites unless approval was given by C for L. Moreover, the anchorage point of a boatswain's chair, usually at the roof-top of a building, should be firm enough and its security had to be examined by an engineer before the boatswain's chair was used and after each relocation. LD would continue to work in conjunction with HD on solutions for resuming work at the other seven construction sites.

18. In the absence of any serious accident involving the use of boatswain's chairs in the past 10 years, Mr CHAN Wing-chan queried the basis on which the Administration prohibited the use of boatswain's chairs at the construction sites before the Amendment Regulation came into operation.

19. AC for L responded that -

- (a) Since the existing Regulations came into operation in 1984, boatswain's chairs had not been used for repainting of government buildings. LD was empowered to issue suspension notices since 19 July 1996. LD had informed HD and Architectural Services Department of the legal requirements. Suspension notices were issued to three HD's projects in early 1997;

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- (b) despite the absence of any serious accident involving the use of boatswain's chairs in the past 10 years, it did not necessarily imply that there was not a risk factor for the use of boatswain's chairs for external wall painting or repainting; and
- (c) about 200 to 300 suspended working platforms were being used in construction sites everyday and no fatal accident had occurred since 1994.

20. Mr CHAN Wing-chan urged the Administration to adopt a flexible approach in implementing the Amendment Regulation with consideration given to the peculiar job type of boatswain's chairs. He pointed out that suspended working platforms could not be used in some situations. He suggested that a licensing system be introduced and that occupational safety be strengthened for continuing use of boatswain's chairs.

21. The responses of PAS/EM were as follows -

- (a) Painting or repainting by boatswain's chairs was a dangerous job type. As proposed in the Amendment Regulation, there should be three levels of safety precautions for working at height in construction sites, any fault in the work process might cause serious consequences. There should be three levels of safety precautions in construction sites, i.e. the provision of proper working platforms by the contractor; should this be not practicable, safety nets and safety belts/harness should be provided and it was only if this was again not practicable that safety belts/harnesses be used on their own. However, there was just one level of safety precaution in using boatswain's chairs. Should there be accidents, boatswain's chair workers could only depend on safety belts ;
- (b) While the Administration aimed to improve occupational safety in the construction sector across the board, blanket exemption for the use of boatswain's chairs would not be consistent with the spirit and the principle to amend the existing Regulations. In the circumstances, the Administration did not agree that the trade should be exempted from the Amendment Regulation. In situations where boatswain's chairs had to be used, a contractor could apply to C for L for an exemption to use boatswain's chairs;
- (c) Boatswain's chair workers could continue painting or repainting on suspended working platforms though at a lower wage level. Nevertheless, their occupational safety could be improved;
- (d) Given that the use of boatswain's chairs would not be common in

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construction sites after the Amendment Regulation came into operation, the Administration did not envisage a need to organise special training courses on use of boatswain's chairs.

22. Mr CHAN Wing-chan maintained that with improvement in the safety measures and implementation of a licensing system, the use of boatswain's chairs should be allowed. In response, PAS/EM said that the Labour Advisory Board (LAB) had been consulted before the Amendment Regulation was introduced. The representatives of employers and employees were in support of the Amendment Regulation.

23. AC for L added that the use of boatswain's chairs was not in line with the objective to improve occupational safety in the construction sector. A licensing system might not be accepted by all the parties, including proprietors and contractors.

24. AC for L also advised that while it was a requirement in an International Labour Convention for a boatswain's chair to measure 75 cm in depth, there was not such a reference in Hong Kong. The Administration would consider applying the international requirement when processing future applications for exemption to use boatswain's chairs. At the request of the Chairman, AC for L undertook to provide detailed information on the overseas requirement.

Adm

25. Mr HO Sai-chu, who was also a member of LAB, said that despite a higher cost, employers agreed to improve occupational safety in the construction sector. The Administration should be cautious in considering the concerns of the boatswain's chair workers.

錯誤! 尚未定義書籤。 As the use of boatswain's chairs was cheaper than that of suspended working platform, Miss Cyd HO worried that a contractor might submit a tender on the basis of using suspended working platform but might resort to boatswain's chairs after obtaining the tender.

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26. Miss Cyd HO suggested that medical advice be sought in relation to the risks of boatswain's chair workers to sustain spinal injuries, given that they were not supported at the back while working at height. PAS/EM agreed to follow up the matter.

27. In response to Miss Cyd HO, AC for L said that it would be difficult to include spinal injury resulted from working on boatswain's chairs as an occupational disease for the purpose of claiming workmen's compensation. However, a spinal injury or back muscle injury resulted from falling from height could be considered for claiming workmen's compensation.

III Date of next meeting

28. The next two meetings were scheduled for Mondays, 4 January 1999 and 11 January 1999 at 2:30 pm respectively.

29. There being no other business, the meeting ended at 4:25 pm.

Legislative Council Secretariat
26 February 1999