

立法會
Legislative Council

LC Paper No. CB(2) 1591/98-99

(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, 11 January 1999 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Andrew CHENG Kar-foo(Chairman)
Hon HO Sai-chu, JP
Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP
Dr Hon TANG Siu-tong, JP

Members absent : Hon Michael HO Mun-ka
Hon LEE Cheuk-yan
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 PANG Kwok-lam
Chief Occupational Safety Officer (Operations)

Mr G H FOX
Senior Assistant Law Draftsman

Ms Lonnie NG
Senior 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. Confirmation of minutes of meeting held on 19 November 1998
(LC Paper No. CB(2) 1004/98-99)

The minutes were confirmed.

II. Continued discussion on the Construction Sites (Safety)
(Amendment) Regulation 1998 (Amendment Regulation)
(LC Paper No. CB(2) 1020/98-99(01))

Matters arising from the meeting on 4 January 1999

Definition of “working platform” in clause 2(c)

錯誤! 尚未定義書籤。 Members noted that the Administration considered it necessary to add the reference of “suspended working platform” in the definition of “working platform” to remove ambiguity.

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2. Assistant Commissioner for Labour (AC for L) said that the proposed Part VA accepted the use of a working platform as being an adequate step in preventing a person from falling. As a “suspended working platform” was a “working platform”, logically it should be acceptable as an “adequate step” for purposes of proposed regulation 38B(2). When the Construction Sites (Safety) Regulations (the existing Regulations) were enacted in 1978, a suspended working platform was not in common use and had no legal definition. The public might query whether the current definition of a working platform in the existing Regulations, modified in 1983, would include a suspended working platform which was defined in the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation enacted in 1994. In the Administration’ view, a clarification at this junction would be appropriate.

3. AC for L further said that subject to legal advice, an alternative approach would be to add “or a suspended working platform” to proposed regulation 38B(2)(a), but then it would have the undesirable connotation that a suspended working platform was not a working platform referred to in the existing Regulations.

4. The Chairman did not see the need to add the reference of “suspended working platform” in the definition of “working platform”. Instead, he preferred the alternative approach in para. 4 above.

5. Having regard to consistency, members discussed whether a review of the Amendment Regulation would be necessary in the event that the alternative approach was adopted. Senior Assistant Law Draftsman (SALD) pointed out that in the Factories and Industrial Undertakings Ordinance (FIUO), “suspended working platform” was included in the definition of “working platform”. Should this be a government policy, a review of the Amendment Regulation would be necessary. AC for L said that in general, the definition of “working platform” had included “suspended working platform” with an exception in proposed Regulation 38B(4) because of technical reason.

6. SALD further said that a simple solution was to delete the proposed amendment in clause 2(c) and that following this, no change to the wordings in proposed Regulations 38B(2)(a) and 38B(4) would be necessary. Members agreed that clause 2(c) on the amendment to the definition of “working platform” be deleted.

Statistics on cases that had been prosecuted by the Government for contravening Existing Regulations 38A and 38D

7. Members noted the statistics on cases that had been prosecuted by the Government from 1996 to 1998 as contained in the paper.

8. Referring to the statistics in 1996, the Chairman asked about the rationale

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for non-conviction of about 26% of the summonses. AC for L and Chief Occupational Safety Officer (Operations) (COSO(O)) explained that this was largely related to matters of fact and law other than the “reasonably practicable” aspect.

Redefining the term “competent person” with reference to the training and experience required under the existing code of practice

9. Members raised no question to the Administration’s explanation that it would be difficult to provide an all embracing definition in the Amendment Regulation as outlined in the paper.

Progress of the matter relating to the 13 construction sites against which suspension notices were issued

10. Responding to the Chairman, COSO(O) said that the Labour Department (LD) had cancelled 12 of the 13 suspension notices issued to these construction sites. The suspension notice to the remaining site had not been cancelled because the site was adjacent to a slope for which more detailed study on the applicability of suspended working platforms needed to be carried out. LD would expedite to resolve the matter with the contractor so that the suspension notice could be cancelled as soon as possible.

Clause-by-clause examination

Proposed regulation 38G - Boatswain’s chairs (not power operated)

11. Members further discussed proposed regulation 38G which provided for the restriction to use boatswain’s chairs in construction sites. Mr CHAN Kam-lam said that there were many boatswain’s chairs workers working in the trade and that boatswain’s chairs needed to be used in many construction sites. In the absence of any fatal accident involving the use of boatswain’s chairs in the past 10 years, he did not agree that a restriction be imposed on the use of boatswain’s chairs. He further said that the Democratic Alliance for Betterment of Hong Kong and the Federation of Trade Unions had reservation about proposed regulation 38G.

12. PAS/EM reiterated the spirit and the legislative intention of the Amendment Regulation. The Administration was determined to improve occupational safety in the construction sector. There should be adequate 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/harnesses should be provided and it was only if this was again not practicable that safety belts/harnesses be used on their own. He stressed that suspended working platforms should be used for painting or repainting of external walls as far as possible.

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13. AC for L added that despite a possible decrease in the number of boatswain's chairs workers after the Amendment Regulation came into force, boatswain's chairs workers could still continue painting or repainting on suspended working platforms after appropriate training. Notwithstanding the restriction, the Administration could exercise flexibility in allowing the use of boatswain's chairs when the use of suspended working platforms was not feasible. Where necessary, contractors could apply to Commissioner for Labour (C for L) for exemption from proposed regulation 38G to use boatswain's chairs.

14. Noting that possible exemption by C for L was not mentioned in proposed regulation 38G, Mr CHAN Kam-lam and CHAN Wing-chan urged the Administration to consider providing expressly in the Amendment Regulation for exemption to use boatswain's chairs in special circumstances and setting out the criteria for granting such exemption. Mr Ronald ARCULLI said that the Administration should explain its flexible approach to allow exemptions when circumstances required.

15. The responses of PAS/EM and AC for L were as follows -

- (a) An express provision for exemption would not be in line with the spirit and objective of the Amendment Regulation to improve the safety of and protection for persons working at height;
- (b) In accordance with section 7(4) of the FIUO, C for L could exempt an industrial undertaking from any regulation made under FIUO. As this was applicable to all the subsidiary legislation, it was not necessary to make an express provision for proposed regulation 38G in particular;
- (c) The criteria for approving the use of boatswain's chairs, being technical details, should be included in the relevant code of practice. Any additional safety requirements applicable to a particular circumstance would be spelt out in the letter of approval for exemption; and
- (d) Even with exemption, the use of boatswain's chairs would be subject to strict safety requirements stipulated by the Labour Department.

16. Miss Cyd HO and Mr Ho Sai-chu considered it necessary to improve the occupational safety in the construction sector. They agreed to the Administration's approach to handle the use of boatswain's chairs in construction sites.

17. Having regard to the divided views among members, the Chairman

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wondered if an amendment to proposed regulation 38G would be necessary. In response, PAS/EM said that the Administration would object any amendment to proposed regulation 38G. On further deliberations, PAS/EM agreed that the exemption for using boatswain's chairs under special circumstances be mentioned in the speech of the Secretary for Education and Manpower when moving the motion on the Amendment Regulation.

Proposed regulation 38H - Defences to proposed regulations 38B(1) and 38C

18. Mr Ronald ARCULLI considered that a defence clause should also be provided for proposed regulations 38A, 38D, 38E and 38F as a contractor was provided with a defence under proposed regulation 38H.

19. PAS/EM and AC for L said that proposed regulation 38A was a general provision for a contractor to ensure that the place of work was, so far as was reasonably practicable, made and kept safe. Proposed regulations 38B(1) and 38C related to safety precautions for working at height. Proposed regulation 38B(1) referred to the responsibility of a contractor to take adequate steps to prevent any person on the site from falling from height. Proposed regulation 38C provided for a contractor's responsibility to provide a worker with a safe scaffold, ladder or other means of support for working at height. A contractor would be provided with a defence if he could comply with the requirements in proposed regulation 38H, despite his failure to comply with proposed regulations 38B(1) and 38C.

20. Mr Ronald ARCULLI said that it would be extremely difficult for a contractor to defend against an offence under proposed regulations 38B and 38C in which he was required to take "adequate steps" to ensure workers' safety. However, if a contractor was required to take "reasonably practicable" steps to ensure safety in the place of work under proposed regulations 38A and 38D, he could have a better chance to defend against an offence thereunder. He further said that proposed regulation 38H(1)(c) was not consistent with proposed regulations 38H(1)(a) and (b).

21. On proposed regulation 38H(1)(c), PAS/EM said that it was always necessary for a contractor to take all reasonable steps to ensure the proper use of the safety belts by the persons to whom they were provided. COSO(O) supplemented that as a part of a safe system of work, apart from providing a worker with a safety belt, the contractor had a legal obligation to train the worker for the proper use of the safety belt. The worker would be liable to prosecution under proposed regulation 38I in case he did not use the safety belt deliberately. PAS/EM agreed to amend "reasonable steps" to "reasonably practicable steps" in proposed regulation 38H(1)(c).

22. At the request of the Chairman, PAS/EM undertook to review whether a

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defence should also be provided for proposed regulations 38A, 38D, 38E and 38F.

Proposed regulation 38I - Duty to wear safety belt

23. Mr Ronald ARCULLI proposed that fixed penalties be imposed on workers for contravening proposed regulation 38I. Miss Cyd HO added that a fixed penalty system should also be applicable to contractors.

24. PAS/EM responded that the Administration had considered a similar proposal when the Industrial Safety Review was conducted in 1995. Because of the practical difficulties to enforce a fixed penalty system in construction sites, the Administration did not adopt the proposal. He further said that the Factories and Industrial Undertakings (Amendment) Bill 1999 would be introduced into the LegCo on 27 January 1999 to provide for mandatory safety training for persons employed in the construction and container handling industries. After the enactment of this Bill, the Factories and Industrial Undertakings (Safety Management) Regulation would be introduced to provide for a safety management system in selected industrial undertakings.

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25. At the request of the Chairman, PAS/EM agreed to consider members' suggestion of imposing a fixed penalty for contravening proposed regulation 38I and to provide information as regards the review on the feasibility of a fixed penalty system.

Third Schedule - Requirement with which certain safety equipment must comply

26. Members noted that the Third Schedule to the Amendment Regulation provided for the technical requirements of the safety equipment.

27. In response to Mr CHAN Wing-chan, COSO(O) said that the requirement of not less than 400 millimetres for the width of any working platform, gangway or run and the requirement of not less than 650 millimetres for the width of any gangway or run used for movement of materials in items 1(1) and 1(2) were similar to those of the existing Regulations.

28. COSO(O) further said that only the requirement for the height of a toe-board was a new provision.

III Date of next meeting

29. The next meeting was scheduled for Tuesday, 26 January 1999 at 2:30 pm.

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30. There being no other business, the meeting ended at 4:20 pm.

Legislative Council Secretariat
22 March 1999