

**Administration's response to issues raised
at the meeting of the LegCo Subcommittee
on regulation relating to
Occupational Safety and Health on 4.1.99**

The Construction Sites (Safety) (Amendment) Regulation

- 1. To review whether it is necessary to add “suspended working platform” in the definition of “working platform” in clause 2(c).**

The Administration considers it necessary to add the reference of “suspended working platform” in the definition of “working platform” to remove ambiguity. The proposed Part VA accepts the use of a working platform as being an adequate step in preventing a person from falling. As a “suspended working platform” is a “working platform”, logically it should be acceptable as an “adequate step” for purposes of the proposed section 38B(2). When the Construction Sites (Safety) Regulation (CSSR) was 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 CSSR, modified in 1983, would include a suspended working platform which is defined in the FIU (Suspended Working Platforms) Regulation enacted in 1994. A clarification at this junction would therefore be appropriate. Subject to legal advice, an alternative approach would be to add “or a suspended working platform” to the proposed section 38B(2)(a), but then it would have the undesirable connotation that a suspended working platform is not a working platform referred to in the CSSR.

- 2. To provide statistics on cases that have been prosecuted by the Government for contravening existing regulations 38A and 38D.**

Statistics for summonses taken out under regulations 38A and 38D for the past three years are as follows:-

For Regulation 38A

Year	Summonses heard	Summonses convicted	Conviction Rate
1996	38	28	73.7%
1997	30	23	76.7%
1998	53	43	81.1%

For Regulation 38/D

Year	Summonses heard	Summonses convicted	Conviction Rate
1996	4	2	50%
1997	4	4	100%
1998	1	1	100%

More details on the prosecution cases are given in the Annex. It can be seen from the conviction rates that the “reasonably practicable” approach adopted for the existing regulation has not created enforcement difficulties for the Administration.

- 3. To consider redefining the term “competent person” with reference to the existing code of practice which has stated clearly the training and experience required.**

Under the existing CSSR and the proposed amendment to Part VA of the Regulation, there are several sections which require a competent person to carry out specific duties under the respective sections. These duties are wide ranging and cover, for examples, the examination of excavation or earthwork, inspection of scaffolds, and inspection of hoist, and supervision work during lifting operation using hoists. The training and relevant experience required for the different tasks vary according to the nature of the specific duty. It would be difficult to provide an all embracing definition in the Regulation. It would be more appropriate to explain the training and experience required for the different tasks in a code of practice or guidance material on the Regulations than redefining the term “Competent Person”.

**Statistics on Individual Offence
For the year ended 31.12.96**

Section: CSSR - 38A(a)

No. of summonses heard:	33	Total fine:	564,000	Average fine for PG convicted cases:	26,667
No. of summonses convicted:	24	Average fine:	23,500	Average fine for PNG convicted cases:	14,000
No. of summonses withdrawn:	0	Highest fine:	50,000	Average fine for accident cases:	0
No. of summonses dismissed:	9	Lowest fine:	6,000		

Section: CSSR - 38A(b)

No. of summonses heard:	5	Total fine:	120,000	Average fine for PG convicted cases:	23,333
No. of summonses convicted:	4	Average fine:	30,000	Average fine for PNG convicted cases:	50,000
No. of summonses withdrawn:	0	Highest fine:	50,000	Average fine for accident cases:	0
No. of summonses dismissed:	1	Lowest fine:	15,000		

Section: CSSR - 38D(1)(b)

No. of summonses heard:	1	Total fine:	0	Average fine for PG convicted cases:	0
No. of summonses convicted:	0	Average fine:	0	Average fine for PNG convicted cases:	0
No. of summonses withdrawn:	0	Highest fine:	0	Average fine for accident cases:	0
No. of summonses dismissed:	1	Lowest fine:	0		

Section: CSSR 38D(2)

No. of summonses heard:	3	Total fine:	18,000	Average fine for PG convicted cases:	9,000
No. of summonses convicted:	2	Average fine:	9,000	Average fine for PNG convicted cases:	0
No. of summonses withdrawn:	0	Highest fine:	10,000	Average fine for accident cases:	0
No. of summonses dismissed:	1	Lowest fine:	8,000		

**Statistics on Individual Offence
For the year ended 31.12.97**

Section: CSSR - 38A(a)

No. of summonses heard:	23	Total fine:	389,500	Average fine for PG convicted cases:	20,450
No. of summonses convicted:	19	Average fine:	20,500	Average fine for PNG convicted cases:	20,556
No. of summonses withdrawn:	0	Highest fine:	40,000	Average fine for accident cases:	0
No. of summonses dismissed:	4	Lowest fine:	7,500		

Section: CSSR - 38A(b)

No. of summonses heard:	7	Total fine:	98,500	Average fine for PG convicted cases:	21,167
No. of summonses convicted:	4	Average fine:	24,625	Average fine for PNG convicted cases:	35,000
No. of summonses withdrawn:	0	Highest fine:	40,000	Average fine for accident cases:	0
No. of summonses dismissed:	3	Lowest fine:	3,500		

Section:CSSR-38D1(a)

No. of summonses heard:	2	Total fine:	30,000	Average fine for PG convicted cases:	0
No. of summonses convicted:	2	Average fine:	15,000	Average fine for PNG convicted cases:	15,000
No. of summonses withdrawn:	0	Highest fine:	20,000	Average fine for accident cases:	0
No. of summonses dismissed:	0	Lowest fine:	10,000		

Section: CSSR 38D(2)

No. of summonses heard:	2	Total fine:	70,000	Average fine for PG convicted cases:	35,000
No. of summonses convicted:	2	Average fine:	35,000	Average fine for PNG convicted cases:	0
No. of summonses withdrawn:	0	Highest fine:	50,000	Average fine for accident cases:	0
No. of summonses dismissed:	0	Lowest fine:	20,000		

**Statistics on Individual Offence
For the year ended 31.12.98**

Section: CSSR - 38A(a)

No. of summonses heard:	50	Total fine:	1,020,000	Average fine for PG convicted cases:	25,406
No. of summonses convicted:	42	Average fine:	24,286	Average fine for PNG convicted cases:	20,700
No. of summonses withdrawn:	2	Highest fine:	50,000	Average fine for accident cases:	14,769
No. of summonses dismissed:	6	Lowest fine:	10,000		

Section: CSSR - 38A(b)

No. of summonses heard:	3	Total fine:	5,000	Average fine for PG convicted cases:	0
No. of summonses convicted:	1	Average fine:	5,000	Average fine for PNG convicted cases:	5,000
No. of summonses withdrawn:	0	Highest fine:	5,000	Average fine for accident cases:	1,667
No. of summonses dismissed:	2	Lowest fine:	5,000		

Section: CSSR 38D(2)

No. of summonses heard:	1	Total fine:	35,000	Average fine for PG convicted cases:	0
No. of summonses convicted:	1	Average fine:	35,000	Average fine for PNG convicted cases:	35,000
No. of summonses withdrawn:	0	Highest fine:	35,000	Average fine for accident cases:	35,000
No. of summonses dismissed:	0	Lowest fine:	35,000		

Sources:Labour Department