

## **LEGISLATIVE COUNCIL BRIEF**

Factories and Industrial Undertakings Ordinance  
(Chapter 59)

### **FACTORIES AND INDUSTRIAL UNDERTAKINGS (CONFINED SPACES) REGULATION**

#### **INTRODUCTION**

At the meeting of the Executive Council on 15 September 1998, the Council ADVISED and the Chief Executive ORDERED that, under section 7 of the Factories and Industrial Undertakings Ordinance, the Factories and Industrial Undertakings (Confined Spaces) Regulation (the new Regulation), at the Annex, should be made, subject to the approval of the Legislative Council.

#### **BACKGROUND AND ARGUMENT**

##### **Enforcement Difficulties Encountered under the Existing Regulations**

2. The Factories and Industrial Undertakings (Confined Spaces) Regulations (the existing Regulations) were first enacted in 1973 and subsequently amended in 1981 and 1989. Under Regulation 4, safety measures, such as the use and provision of approved breathing apparatus and other safety equipment, will take effect when a worker enters a confined space which is described as “any chamber, tank, vat, pit, well, tunnel, pipe, flue, boiler, pressure receiver or other confined space in which dangerous fumes are liable to be present to such an extent as to involve risk of person being overcome thereby.”

3. Enforcement experience shows that because of the need to prove the presence of dangerous fumes to such an extent as to involve risk of person being overcome, it is difficult to establish that a workplace in question is indeed a confined space. Even after an accident has occurred, the prosecution must prove that dangerous fumes were present in the space at the time of the accident and that their concentration was to such an extent as to have overcome the persons involved. Scientific measurements, including air sampling, for

confirming the aforesaid state often vary from moment to moment since the presence of dangerous fumes may be transient in nature. Furthermore, its concentration might be diffused by rescue work or other activities after an accident. There is therefore a need to improve the protection for the safety and health of workers entering a confined space.

4. The introduction of the new Regulation into the Legislative Council in the current legislative session is one of our Policy Commitments in 1997.

### **The Proposal**

5. To overcome the enforcement difficulties and to provide better protection for workers in a confined space, it is proposed to repeal the existing Regulations and to replace them with the new Regulation. The new Regulation will define more clearly what constitutes a confined space which, specifically, means -

- (a) a chamber, tank, vat, pit, well, sewer, tunnel, pipe, flue, boiler, pressure receiver, hatch, caisson, shaft or silo; and
- (b) any other space in which, because of its construction, location or contents or because of the work activities taking place therein -
  - (i) the accumulation of a hazardous gas, vapour, dust or fume or the creation of an oxygen deficient atmosphere may occur; or
  - (ii) there is a risk of an in-rush of mud or water.

In addition, the new Regulation will require proprietors or contractors to take the following safety measures -

- (a) to conduct a risk assessment by a competent person;
- (b) to certify that all necessary precautions have been taken;
- (c) to ensure that workers entering or working in a confined space are certified workers;
- (d) to provide and ensure that workers entering or working in a confined space wear an approved breathing apparatus and safety harness connected to a lifeline if the situation so requires;

- (e) to have in place emergency procedures; and
- (f) to provide the necessary information, instructions and training to all workers involved.

6. For the purpose of the new Regulation, a competent person must have attained the age of 18 and either be a registered safety officer or hold a certificate issued by a person specified by the Commissioner for Labour, after completing a course on confined space work risk assessment and management. He must also be competent by virtue of his experience to devise and implement a safe system of work for confined space activities. As for a certified worker, he must have attained the age of 18 and hold a certificate issued by a person specified by the Commissioner for Labour after completing a course on confined space work.

7. To meet the training needs for competent persons and certified workers, the Construction Industry Training Authority, the Occupational Safety and Health Council and other training institutions will be requested to organise suitable courses on preventive safety measures and emergency measures. Normally, it will take three to four days to train a competent person and two days to train a worker for the purpose of meeting the statutory requirements.

## **THE NEW REGULATION**

8. The new Regulation requires a proprietor or contractor to -
- (a) obtain a written report assessing the risks, and making recommendations in respect thereof, associated with a confined space (**section 5**);
  - (b) comply with the recommendations in the risk assessment report and issue a certificate that the report has been complied with (**section 6**);
  - (c) take certain safety precautions before allowing workers into a confined space and while they are working therein (**section 7, 8 and 9**);
  - (d) formulate emergency procedures and keep emergency equipment on hand (**section 11**).
9. **Section 14** provides that the penalties for contravening the Regulation will range from \$50,000 to \$200,000, with or without imprisonment for 12 months depending on the nature and gravity of the offence.

## **LEGISLATIVE TIMETABLE**

10. The new Regulation will be introduced into the Legislative Council for approval on 30 September 1998. (Note : The Legislative Council House Committee agreed at its meeting on 18 September 1998 that a subcommittee should be formed to study the new Regulation.)

## **IMPLEMENTATION**

11. We propose to allow a grace period of 12 months upon the enactment of the new Regulation before it takes effect, for the industry to make necessary preparations and for workers to be trained. Labour Department will issue a code of practice on working in confined spaces for the guidance of proprietors, contractors and competent persons.

## **BASIC LAW IMPLICATIONS**

12. The Department of Justice advises that the proposed legislation is consistent with those provisions of the Basic Law carrying no human rights dimensions.

## **HUMAN RIGHTS IMPLICATIONS**

13. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT OF THE REGULATION**

14. The new Regulation does not bind the State by express provision. The existing Regulations which are repealed by the new Regulation do not bind the State by express provision.

## **FINANCIAL AND STAFFING IMPLICATIONS**

15. There are no financial or staffing implications for Government.

## **ECONOMIC IMPLICATIONS**

16. Proprietors of industrial undertakings and contractors of construction sites already have a duty under the general duties provisions of the Factories and Industrial Undertakings Ordinance and the existing Regulations

to adopt a safe system of work to protect the safety and health of workers entering or working in a confined space. Hence there will be no additional financial burden on them except for engaging competent persons to conduct risk assessment and ensuring that workers assigned to work in the confined spaces are certified workers. As noted in paragraph 6 above, the competent persons could either be a registered safety officer (whose presence on larger construction sites is already required by law) or existing staff of the proprietor and contractor upon completing the necessary training. Existing workers of the proprietors and contractors could also become certified workers after completing a short training course on confined space work. The additional costs involved in complying with the new Regulation would therefore be minimal for the great majority of the duty holders and they should be able to absorb them with no difficulty. In return, the benefits from the improvements to safety performance and reduction in accidents and ill-health will outweigh these costs.

### **PUBLIC CONSULTATION**

17. The Labour Advisory Board has been consulted on the new Regulation and endorsed the proposal.

### **PUBLICITY**

18. A press release will be issued and a spokesman will be available to handle media enquiries.

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