

LEGISLATIVE COUNCIL BRIEF

Factories and Industrial Undertakings Ordinance
(Chapter 59)

CONSTRUCTION SITES (SAFETY) (AMENDMENT) REGULATION 1998

INTRODUCTION

At the meeting of the Executive Council on 22 September 1998, the Council ADVISED and the Chief Executive ORDERED that, subject to the approval of the Legislative Council, the Construction Sites (Safety) (Amendment) Regulation 1998, at **Annex A**, should be made under section 7 of the Factories and Industrial Undertakings Ordinance, to improve the safety of and protection for persons working at height.

BACKGROUND AND ARGUMENT

Shortcomings of the Existing Regulations

2. At present, the safety of persons working at height in construction sites is regulated by the provisions of Part VA of the Construction Sites (Safety) Regulations (the existing Regulations), which have been in force since 1983. These provisions set out the safety requirements in respect of scaffolds, working platforms and ladders, etc. They regulate a whole range of work situations involving people working at places where they may be exposed to the risk of falling from a considerable height. The relevant provisions of the existing Regulations are at **Annex B**.

3. The Administration considers that people working at height should, whenever possible, use a proper working platform. If this is not practicable, they should use a safety net as an alternative. It is only when this is again not practicable that they use a safety belt/harness.

4. However, the existing Regulations do not reflect this modern concept of risk management. As a result, some contractors in the construction industry have opted for the cheaper method of providing workers with safety

belts/harnesses in many situations of working at height. Furthermore, the existing Regulations are too complicated and difficult to understand, and contain too much technical detail.

5. There are also difficulties in taking enforcement action as the prosecution has to prove that it is practicable for contractors to comply with certain regulations, e.g. provision of a working platform.

The Proposal

6. Fall of persons is the main cause of serious accidents in the construction industry. It is therefore important that the existing Regulations should be amended, which is one of our Policy Commitments in 1997, to address the problem.

7. We propose to replace the existing Part VA of the 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 is necessary for workers to work at height, the contractor has to provide proper working platforms. If it is not practicable to do so, safety nets and safety belts/harnesses should be provided¹. It is only if this is again not practicable that safety belts/harnesses be used on their own; and
- (d) require the contractor to show (in proceedings for an offence) that it is impracticable to use working platforms or safety nets. It is considered that this is reasonable because the contractor is in the best position to determine whether it is practicable or not to use working platforms or safety nets.

8. We further propose that the Amendment Regulation should provide for the substantive provisions only. The technical details should be set out in an approved code of practice so that future changes in the safety

¹ In many cases, we recognise that it is not practicable to use working platforms or safety nets, such as within lift shafts. In such a situation, a proprietor will have discharged his statutory obligations if he uses safety belts with a secure anchorage. In this connection, it is worth noting that the Commissioner for Labour has power under section 7(4) of the Factories and Industrial Undertakings Ordinance to exempt any industrial undertaking from any regulation made under the Ordinance.

measures as a result of technological developments can be incorporated quickly into the code without recourse to amending the law.

THE AMENDMENT REGULATION

9. The main provisions of the Amendment Regulation -
- (a) set out the fundamental duty of the contractor to provide a safe working environment and to take adequate steps to prevent any worker from falling from a height of two metres or more (**Regulations 38A and 38B**);
 - (b) set out the required protective measures and proper working platforms for persons working at height (**Regulations 38C and 38D**);
 - (c) require a scaffold to be erected by trained workers under the supervision of a competent person (**Regulation 38E**); and
 - (d) require a scaffold to be inspected by a competent person before, inter alia, being taken into use or been substantially altered (**Regulation 38F**).
10. A **new Third Schedule** is also added to the existing Regulations to provide for the technical details of the new safety measures.

LEGISLATIVE TIMETABLE

11. The Amendment Regulation will be introduced into the Legislative Council for approval on 14 October 1998.

IMPLEMENTATION

12. We propose that the Amendment Regulation shall come into effect six months after enactment. This will allow time for the construction industry to be familiar with the safety standards relating to safety nets which have not been commonly used in Hong Kong.

BASIC LAW IMPLICATIONS

13. 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

14. 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

15. The Amendment Regulation does not bind the State by express provision. The provisions of the existing Regulations do not bind the State by express provision.

FINANCIAL AND STAFFING IMPLICATIONS

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

ECONOMIC IMPLICATIONS

17. As the cost for the provision of a proper working platform or safety net is relatively small compared to the contract sum, the proposed amendments are not expected to impose a heavy financial burden on contractors. In the case of bamboo scaffolds, the new requirements will entail a slightly higher cost at the erection stage, and require some technical adjustments of the construction method at the later stages. The reduction in accidents which the new provisions are expected to bring about will benefit the community at large in terms of reduced demand for medical services, compensation and social security payments. This will more than offset the increased compliance costs on the part of the contractors.

PUBLIC CONSULTATION

18. The Labour Advisory Board and its Committee on Industrial Safety and Health have been consulted and have given their support to the proposal.

PUBLIC REACTION

19. Members of the general public are unlikely to show much interest in the Amendment Regulation. Labour unions and safety professionals are expected to welcome the proposed improvements to the safety measures for working at height. The contractors may complain about the additional costs involved but are expected to accept the amendments.

PUBLICITY

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

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23 September 1998

**Factories and Industrial Undertakings Ordinance
(Chapter 59)**

Construction Sites (Safety) (Amendment) Regulation 1998

Annex

Annex A: Proposed Construction Sites (Safety) (Amendment) Regulation 1998

Annex B: Existing Construction Sites (Safety) Regulation

CONSTRUCTION SITES (SAFETY) (AMENDMENT) REGULATION 1998

(Made under section 7 of the Factories and Industrial
Undertakings Ordinance (Cap. 59) subject to the
approval of the Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Commissioner for Labour by notice in the Gazette.

2. Interpretation

Regulation 2(1) of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg.) is amended -

- (a) in the definition of “ladder”, by repealing “does not include” and substituting “includes”;
- (b) by repealing the definitions of “ladder scaffold”, “slung scaffold”, “suspended scaffold” and “trestle scaffold”;
- (c) in the definition of “working platform”, by adding “and a suspended working platform” after “stage”;
- (d) by adding -

““place of work” (工作地方) means any place which is used by
any person for the purposes of -

- (a) construction work; or

(b) any work activities arising from, or in connection with, construction work, and includes any place to which such a person has access whilst at work;

“safety belt” (安全帶) includes a safety harness;

“suspended working platform” (吊船) means a suspended working platform within the meaning of the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation (Cap. 59 sub. leg.);”.

3. Part substituted

Part VA is repealed and the following substituted -

“PART VA

SCAFFOLDS, WORKING PLATFORMS AND LADDERS, ETC.

38A. Safety of places of work

(1) Without prejudice to the other provisions of this Part, the contractor responsible for any construction site shall ensure that every place of work on the site is, so far

as is reasonably practicable, made and kept safe for any person working there.

(2) The contractor responsible for any construction site shall ensure that, so far as is reasonably practicable, suitable and adequate safe access to and egress from every place of work on the site is provided and properly maintained.

(3) Subject to paragraph (4), the contractor responsible for any construction site shall take suitable and adequate steps to ensure that, so far as is reasonably practicable, no person gains access to any unsafe place on the site.

(4) Paragraph (3) shall not apply in relation to a person engaged in work for the purpose of making any place safe if all practicable steps have been taken to ensure the safety of that person whilst engaged in that work.

38B. Prevention of falls

(1) Subject to paragraphs (2), (3) and (4), the contractor responsible for any construction site shall take adequate steps to prevent any person on the site from falling from a height of 2 metres or more.

(2) For the purpose of paragraph (1), “adequate steps” (足夠的步驟) shall include the provision, use and maintenance of one or more of the following -

- (a) working platforms;
- (b) guard-rails, barriers, toe-boards and fences;
- (c) coverings for openings;
- (d) gangways and runs.

(3) Paragraph (1) shall not apply to any opening, corner, break or edge exposed in the course of demolition operations if adequate precautions have been taken to prevent any person from being exposed to the risk of falling therefrom.

(4) Every working platform (other than a suspended working platform), guard-rail, barrier, toe-board, fence, covering for an opening, gangway or run provided for the purpose of paragraph (1) shall comply with the provisions of the Third Schedule applicable to it.

(5) For the avoidance of doubt, it is hereby declared that -

- (a) paragraphs (2) and (4) do not prejudice the generality of paragraph (1);
- (b) the reference to working platform in paragraph (4) does not prejudice the operation of the provisions of the Factories and Industrial

Undertakings (Suspended Working Platforms) Regulation (Cap. 59 sub. leg.) in relation to a working platform which is a suspended working platform.

38C. Safe means of support

Where work cannot be safely done on or from the ground or from part of a permanent structure, the contractor responsible for the construction site concerned shall provide, and ensure the use of, a scaffold, ladder or other means of support, all of which shall be safe for the purpose, having regard to the work to be done.

38D. Construction and maintenance of scaffolds, etc.

The contractor responsible for any scaffold, ladder or other means of support referred to in regulation 38C shall ensure that it shall not be used unless it is -

- (a) so designed and constructed that it does not collapse, overturn or move accidentally;
- (b) of suitable and sound materials of sufficient strength and capacity for the purpose for which it is to be used; and

- (c) properly maintained and every part thereof kept so securely supported or suspended as to ensure, so far as is reasonably practicable, that it is stable.

38E. Trained workmen to erect scaffold under supervision

The contractor responsible for a scaffold on a construction site shall ensure that no such scaffold is erected on the site or substantially added to, altered or dismantled except by workmen who are -

- (a) adequately trained and possess adequate experience of such work; and
- (b) under the immediate supervision of a competent person.

38F. Inspection of scaffolds

(1) Subject to paragraph (2), the contractor responsible for a scaffold on a construction site shall ensure that the scaffold is not used unless -

- (a) the scaffold -
 - (i) has been inspected by a competent person before being taken into use for the first time;

- (ii) has been inspected by a competent person after any substantial addition, partial dismantling or other alteration;
 - (iii) has been inspected by a competent person after any exposure to weather conditions likely to have affected its strength or stability or to have displaced any part;
 - (iv) has been inspected by a competent person at regular intervals not exceeding 14 days immediately preceding each use of the scaffold;
and
- (b) a report has been made and signed by the person carrying out the inspection in an approved form containing the prescribed particulars which include a statement to the effect that the scaffold is in safe working order.

(2) Paragraph (1) shall not apply in relation to a scaffold from no part of which a person is liable to fall from a height of 2 metres or more.

(3) A report under paragraph (1) (b) of an inspection of a scaffold shall be delivered forthwith by the competent person to the contractor responsible for the scaffold.

(4) The contractor to whom a report is delivered under paragraph (3) shall -

- (a) at all times keep the report, or a copy thereof, on the construction site on which the scaffold to which the report relates is located;
- (b) at all reasonable times make that report or copy available for inspection by -
 - (i) any occupational safety officer who requests to see it;
 - (ii) any other person who is lawfully on the site (including any person using or proposing to use the scaffold).

38G. Boatswain's chairs (not power operated)

The contractor responsible for a construction site shall ensure that no boatswain's chair or similar plant or equipment (not being a boatswain's chair or similar plant or equipment which is raised or lowered by a power-driven lifting appliance) is used on the site.

38H. Defences to regulations 38B(1) and 38C

(1) It shall be a defence for a contractor charged with an offence under regulation 38B(1) or 38C to show -

(a) that in all the circumstances of the case, it was impracticable to comply with all or any of the requirements of that regulation;

(b) that -

(i) the contractor provided suitable and adequate safety nets and safety belts in lieu of complying with those requirements; or

(ii) in all the circumstances of the case, it was impracticable to provide such safety nets and the contractor provided suitable and adequate safety belts in lieu of complying with those requirements; and

(c) that all reasonable steps were taken to ensure the proper use of the safety belts by the persons to whom they were provided.

(2) Safety nets shall not be considered as suitable and adequate for the purpose of paragraph (1) unless they are -

(a) of such design and so constructed; and

(b) so erected, maintained and kept in such positions, as to be effective to protect persons carrying on at a height the work to which the nets relate, to protect persons using any access to or egress from the part of the construction site where that work is being done and to prevent as far as practicable injury to persons falling onto them.

(3) Safety belts shall not be considered as suitable and adequate for the purpose of paragraph (1) unless they -

- (a) are attached continuously to a suitable and secure anchorage;
- (b) have suitable fittings therefor; and
- (c) are of such a design and so constructed and maintained as to prevent injury to persons using them in the event of a fall.

38I. Duty to wear safety belt

Every person working on a construction site who has been provided with a safety belt shall wear it and keep it attached to a secure anchorage whenever the use of the belt is necessary for his own or any other person's safety.”.

4. Offences and penalties relating to contractors

Regulation 68 is amended -

- (a) in paragraph (1) (a), by repealing “38A, 38B, 38C, 38D(1) or (2), 38E, 38F, 38G, 38H, 38I(1) or (2), 38J(1), (2) or (3), 38K(1), 38L, 38M(1) or (2), 38N(1), 38O(1), (2) or (3), 38P(1), 38Q(1), (2), (3), (4) or (5)” and substituting “38A(1), (2) or (3), 38B(1), 38C, 38D, 38E, 38F(1) or (4), 38G”;
- (b) in paragraph (2) -
 - (i) in subparagraph (a), by repealing “38C, 38E, 38F, 38G, 38J(1), (2) or (3), 38K(1), 38O(1), (2) or (3), 38Q(2), (3), (4) or (5)” and substituting “38E, 38F(1) or (4)”;
 - (ii) in subparagraph (f), by repealing “38D(2), 38Q(1)” and substituting “38A(1), (2) or (3), 38B(1), 38C, 38D, 38G”;
 - (iii) in subparagraph (g) -
 - (A) by repealing “38B, 38D(1), 38H, 38I, 38L, 38M, 38N(1) or 38P(1),”;
 - (B) by repealing the semicolon and substituting a fullstop;
 - (iv) by repealing subparagraphs (h) and (i).

5. Offences by competent examiners, etc.

Regulation 70(1A) is amended by repealing “38K(2)” and substituting “38F(3)”.

6. Offences by other persons

Regulation 71(1) is amended by repealing “38R” and substituting “38I”.

7. Schedule added

The following is added -

“THIRD SCHEDULE

[reg. 38B(4)]

REQUIREMENTS WITH WHICH CERTAIN
SAFETY EQUIPMENT MUST COMPLY

1. Width of working platforms, gangways and runs

(1) Subject to subsections (2) and (3), the width of any working platform, gangway or run shall be not less than 400 millimetres.

(2) Subject to subsection (3), the width of any gangway or run used for the movement of materials shall be not less than 650 millimetres.

(3) Where it is impracticable by reason of limitations of space to provide a working platform, gangway or run of the width required by subsection (1) or (2), then, in lieu of

complying with that subsection, the working platform, gangway or run shall be as wide as is reasonably practicable.

2. Working platforms, etc. to be closely boarded, etc.

(1) Subject to subsection (2), every working platform, gangway and run shall be closely boarded or planked.

(2) Subsection (1) shall not apply to a working platform, gangway or run -

(a) consisting of open metal work having interstices none of which exceeds 4 000 square millimetres in area; or

(b) the boards or planks of which are so secured as to prevent their moving and so placed that the space between adjacent boards or planks does not exceed 25 millimetres,

if there is no risk of persons below the platform, gangway or run being struck by materials or articles falling through the platform, gangway or run.

3. Boards and planks in working platforms, gangways and runs

Every board or plank forming part of a working platform, gangway or run shall

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- (a) be of sound construction, adequate strength and free from patent defect;
- (b) be of a thickness capable of affording adequate security having regard to the distance between the supports and be not less than 200 millimetres in width and not less than 25 millimetres in thickness or not less than 150 millimetres in width when the board or plank exceeds 50 millimetres in thickness;
- (c) not protrude beyond its end support to a distance exceeding 150 millimetres unless it is sufficiently secured to prevent tipping;
- (d) rest securely and evenly on its supports; and
- (e) rest on at least 3 supports unless, taking into account the distance between the supports and the thickness of the board or plank the conditions are such as to prevent undue or unequal sagging.

4. Coverings for opening

Every covering provided for an opening shall be -

- (a) so constructed as to prevent the fall of persons, materials and articles; and

- (b) clearly and boldly marked as to show its purpose or be securely fixed in position.

5. Height of toe-boards, etc.

The height of a toe-board or other similar barrier shall be not less than 200 millimetres.

6. Height of guard-rails

Subject to section 7, the height of a guard-rail above any place of work on a working platform, gangway, run or stairway shall be -

- (a) in the case of a top guard-rail, not less than 900 millimetres and not more than 1 150 millimetres;
- (b) in the case of an intermediate guard-rail, not less than 450 millimetres and not more than 600 millimetres.

7. Exception to section 6

Section 6 shall not apply to a working platform on a bamboo scaffold if the platform is protected by not less than 2 horizontal bamboo members of the scaffold spaced at intervals between 750 millimetres to 900 millimetres.

8. Temporary removal, etc. of guard-rails, etc.

(1) Guard-rails, toe-boards and barriers may be removed or remain unerected for the time and to the extent necessary for the access of persons or the movement of materials or other purposes of the work concerned, but shall be replaced or erected as soon as practicable after the expiration of that time.

(2) Toe-boards shall not be required for stairs.”.

Commissioner for Labour

1998

Explanatory Note

The object of this Regulation is to amend the Construction Sites (Safety) Regulations (Cap. 59 sub. leg.) to -

- (a) repeal Part VA and substitute a new Part VA and new Third Schedule containing provisions on, inter alia, scaffolds, working platforms, gangways and

runs on construction sites to provide a greater degree of safety to persons working on such sites, in particular in relation to preventing falls from heights (see sections 3 and 7); and

- (b) make amendments consequential to the introduction of the new Part VA (see sections 2, 4, 5 and 6).