

立法會
Legislative Council

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**Subcommittee on
Factories and Industrial Undertakings
(Safety Management) Regulation**

**Minutes of meeting
held on Tuesday, 2 November 1999 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon LEE Kai-ming, SBS, JP (Chairman)
Hon James TIEN Pei-chun, JP
Hon HO Sai-chu, SBS, JP
Hon Michael HO Mun-ka
Dr Hon LUI Ming-wah, JP
Hon HUI Cheung-ching
Hon CHAN Wing-chan
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo

Members absent : Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Dr Hon LEONG Che-hung, JP
Hon YEUNG Yiu-chung

Public Officers attending : Mr Herman CHO
Principal Assistant Secretary for Education
and Manpower

Mr Samson LAI
Assistant Secretary for Education
and Manpower

Mr William SIU
Assistant Commissioner for Labour

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Miss Leonora IP
Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Raymond LAM
Senior Assistant Secretary (2) 5

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I. Election of Chairman

Mr LEE Kai-ming was elected Chairman of the Subcommittee.

II. Meeting with the Administration

(LegCo Brief (Ref. : EMB CR2/2961/95), LC Paper Nos. LS 14/99-00 and CB(2) 232/99-00(02))

2. At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) briefed members on the Factories and Industrial Undertakings (Safety Management) Regulation (the Regulation), which provided for the introduction of a safety management system in selected industrial undertakings. He said that the Regulation would require contractors or proprietors of construction sites, shipyards, factories and other designated industrial undertakings with 100 or more workers, as well as construction projects with contract value of \$100 million or more, to adopt the first ten of the 14 process elements of the safety management system and to carry out safety audits. Construction sites and industrial undertakings employing 50 to 99 workers would be required to adopt the first eight of the 14 process elements of the safety management system and to carry out safety reviews. Assistant Commissioner for Labour (AC for L) also briefed members on the 14 key process elements of the safety management system proposed for Hong Kong.

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Requirements on industrial undertakings employing less than 50 workers

3. Members noted that construction sites and industrial undertakings employing less than 50 workers would be exempted from the proposed safety management system. Mr Andrew CHENG suggested that these industrial undertakings should be required to adopt the first four process elements, which were the core ones, at the initial stage. Mr HO Sai-chu however considered that as workers in industrial undertakings employing less than 50 workers were more directly supervised, the accident rates were generally very low. The suggestion of requiring them to adopt the first four process elements would only increase their financial burden. He added that the overall industrial accident rate had substantially decreased in the previous year. A step-by-step approach should be adopted for improving industrial safety.

4. PAS(EM) responded that a phased implementation of the key process elements would be adopted so as to allow the industries affected to get accustomed to the new system and to prepare for the additional elements. This would also allow sufficient industrial safety practitioners and medical professionals to be trained to take up the additional functions. The Administration considered it not the appropriate time to require small industrial undertakings employing less than 50 workers to comply with the Regulation having regard to the additional financial burden on them. Furthermore, the demand for safety review officers or safety auditors would significantly increase. The Administration would review the implementation of the proposed safety management system one year after the Regulation had come into force to determine the appropriate time to bring the remaining elements into operation. It would also review whether the system should be extended to industrial undertakings employing less than 50 workers. AC for L added that the Administration would strengthen education and promotional efforts on safety management concept and practices to prepare industrial undertakings employing less than 50 workers for implementation of safety management system in the future. He added that the Labour Department (LD) and the Occupational Safety and Health Council (OSHC) had been promoting safety management in the past few years. They had produced a number of publications on safety management. OSHC was also producing a CD-ROM on the same subject. Volunteers would be recruited to promote industrial safety among small and medium-sized industrial undertakings.

5. Dr LUI Ming-wah asked whether a safety management system would not be required of a construction site in which less than 50 workers worked for each subcontractor. AC for L responded that in determining whether the Regulation would apply, the number of workers in a construction site rather than the number working for a subcontractor would be used. Subcontractors employing 50 workers or more would need to have their own safety management system. Construction projects with contract value of \$100 million or more were also required to adopt the first 10 of the 14 process elements.

Sub-contractors

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6. Mr James TIEN said that the Liberal Party was in support of the Regulation which sought to improve industrial safety.

7. Referring to process element (ix), Mr James TIEN said that the control of sub-contractors should be incorporated in the licensing system for sub-contractors. AC for L responded that regulation of sub-contractors through a licensing system might not be appropriate, as some sub-contractors might comprise only one person and did not have a licence. The monitoring of sub-contractors should be a responsibility of the main contractor.

8. In response to Mr James TIEN's question about whether the termination of the employment of a one-man sub-contractor for safety management reasons would be in breach of provisions in the Employment Ordinance (Cap. 57) (EO), AC for L clarified that EO did not apply to self-employed persons.

Issue of whether the manufacturing sector should be subject to the Regulation

9. Dr LUI Ming-wah said that the accident rate of the manufacturing sector was much lower than that of the construction sector. He considered that industrial accident rate was not related to the size of an industrial undertaking, but to the nature of the trade concerned. He questioned whether it was necessary to cover the manufacturing sector under the Regulation. The Administration should consider exempting an industrial undertaking from the process elements if its industrial accident rate was very low. PAS(EM) responded that besides the construction industry, the catering industry would also be covered under the Regulation. The Regulation had been drafted in such a way so as to allow each industrial undertaking to develop its own safety system having regard to its own environment. If an industrial undertaking had already adopted good safety management practices, it would probably need to put in very little additional resources to comply with the Regulation.

Effectiveness of the proposed safety management system

10. Dr LUI Ming-wah expressed doubt about the effectiveness of the proposed safety management system in improving industrial accident rates. He asked whether the Administration had assessed the decrease in industrial accident rate that would result from the implementation of the Regulation. AC for L said that experience in the United Kingdom, Australia and New Zealand indicated that industrial accident rates had decreased since the implementation of similar safety management system. In Hong Kong, the Works Bureau and the Housing Authority had found that implementation of the "pay for safety" scheme, in which the cost of construction safety was separately accounted for and formed a separate budget item, had brought about a much lower industrial accident rate of about 60% to 80%, as compared to an accident rate of 200% for the construction industry.

11. AC for L said that although the proposed scheme would rely on the self-regulation of proprietors and contractors, LD would inspect safety audits and safety

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reviews to monitor the situation. Dr LUI Ming-wah considered that such inspections would be a waste of resources if carried out on an industrial undertaking which had no accident. PAS(EM) said that there was a need to continuously enhance industrial safety given that there was still potential risks of industrial accidents in the manufacturing sector. The accident rates in many industries were still very high. Even where the accident rate was low, there might still be room for improvement. An industrial accident could affect a worker's ability to work in future and the need for social assistance. It was therefore important for industrial accidents to be kept to a minimum. The Administration would deploy more manpower for the inspection of industrial undertakings with high accident rates and less manpower for those with low accident rates.

Safety auditors

12. Mr James TIEN expressed concern about whether there would be sufficient qualified safety auditors for enforcing the Regulation. AC for L responded that a registration scheme for safety auditors would be introduced. A safety auditor must be a registered safety officer and had completed a training course on safety audit. The relevant training courses with duration of seven months and nine months were being offered by the Hong Kong Polytechnic University and the City University of Hong Kong respectively. The Administration envisaged that sufficient qualified safety auditors were available in the market.

Composition of safety committee

13. As regards the composition of a safety committee, Mr HUI Cheung-ching asked how safety committee members who represented workers in the relevant industrial undertaking were to be nominated. He considered that problems might arise if the nomination was to be made by employers. AC for L responded that as the scheme was a new one, the requirements were more lenient and there was no particular requirement on the method of nomination or election of those members. However, the members nominated or elected must represent workers in the relevant industrial undertaking.

Records of safety committee meetings

14. Mr HUI Cheung-ching asked why the records of the safety committee had to be kept for five years. AC for L said that the requirement was consistent with the requirement on the keeping of records in other parts of the Regulation. As safety audit reports were also required to be kept for five years and the records of safety committee meetings might contain information on investigations and recommendations, the five-year requirement would facilitate the verification of records.

Process elements (x) to (xiv)

15. The Chairman asked why the last four process elements were included in the list

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of process elements although they were not required to be adopted for industrial undertakings of any size. Mr Andrew CHENG asked how the Administration could review the last four process elements if they were not to be implemented in the initial stage. AC for L explained that the inclusion of these process elements would facilitate the understanding of the requirements in the longer term. Some of the last four process elements were related to the first ten process elements. In the review to be carried out on the Regulation, the Administration would examine whether there were industries in which the last four process elements were automatically implemented during the implementation of the first ten process elements. Consideration might then be given to requiring such industries to adopt all the 14 process elements. He added that implementation of the last four elements were not required in the initial stage. They should be easier to implement after the first ten process elements had been in place. The Chairman said that there might be concern on the last process element, which was related to occupational health rather than industrial safety.

Clause-by-clause examination of the Regulation

Section 2 (Interpretation)

16. Members noted that while "container handling" was not defined in the section, its definition had been incorporated in FIUO in 1999. According to the definition, it meant "the loading, unloading, handling, stacking, unstacking, storing or maintaining (including repairing) of containers".

Section 8 (Duty of proprietor and contractor to develop, etc. safety management system)

17. Members noted that a proprietor or contractor under subsection (1) would be required to implement and maintain the elements specified in Schedule 4. Although Schedule 4 contained all the 14 process elements, the first 10 elements would take effect in the initial stage by way of a commencement notice.

Section 13 (Appointment of registered safety auditor to conduct safety audit)

18. Members noted that under subsection (2)(a), a proprietor or contractor of an industrial undertaking involved in construction work and coming into existence after the commencement of the section should ensure that safety audits were conducted not less than once in each six-month period beginning on the day on which it came into existence. Assistant Legal Adviser 5 (ALA5) queried whether enforcement problems might arise if an industrial undertaking occasionally ceased operation. AC for L said that an industrial undertaking would be regarded as being in continuous existence if it ceased operation but was still in the process of looking for orders. Similarly, a construction site would be regarded as in continuous existence even if the project concerned occasionally ceased. Senior Assistant Law Draftsman (SALD) added that under subsection (3), the Commissioner for Labour (C for L) might, having regard to the circumstances of the case, require a safety audit to be conducted at an interval shorter than six months.

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Section 15 (Submission of safety audit report)

Adm 19. ALA5 asked whether the requirement for a safety auditor to keep safety audit reports for a period of not less than five years would also apply to former safety auditors. He drew members' attention that it was explicitly provided in another section of the Regulation that the requirement in the provision also applied to a former safety auditor. SALD said that in his view, the requirement in the section would apply to a former safety auditor. As such application to a former safety auditor was explicitly set out in section 16(4)(b), an amendment to section 15(2) would be made to include reference to a former safety auditor.

Section 22 (Action to be taken on safety review report)

20. Referring to the requirement under subsection (1)(b)(i) for a proprietor or contractor to draw up an improvement plan within 14 days, the Chairman asked whether flexibility would be allowed to the 14-days requirement. AC for L said that where acceptable explanation was given, the proprietor or contractor could be allowed to draw up an improvement plan beyond the 14-days deadline.

Section 33 (Commissioner may inspect safety audit, etc.)

21. Referring to the provisions which empowered C for L to inspect the conduct of any safety audit or safety review, ALA5 asked whether C for L should, as in the case of safety auditors, be empowered to make recommendations for improvement. SALD and PAS(EM) said that the inspections were carried out for the purpose of assessing the performance of a safety auditor or safety review officer. The tasks of C for L were different from those of safety auditors. SALD added that if C for L came to the conclusion that a safety auditor or a safety review officer was negligent, disciplinary proceedings would be instituted against the safety auditor or the safety review officer. They could also challenge against C for L's conclusion.

Section 34 (Offences)

22. Mr HO Sai-chu expressed reservation about the provision that a person who committed an offence under certain parts of the Regulation was liable on conviction to imprisonment, given that the definitions of "contractor" and "proprietor" were very wide. PAS(EM) said that the provisions in the section were similar to those for other regulations under FIUO.

Schedule 3 (Proprietors and contractors who are required to have safety management systems)

Adm 23. ALA5 drew members' attention that the term "workplace" was not defined in the Regulation. SALD undertook to examine whether the term "workplace" was used in FIUO or any subsidiary legislation made under FIUO, and whether a definition of the

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term should be provided in the Regulation.

24. In response to ALA5, SALD said that the definitions of "contractor" and "proprietor" in the Regulation were the same as those in FIUO. ALA5 drew members' attention that the definitions of "contractor" and "proprietor" in FIUO were very wide and the former included sub-contractors. All the proprietors and contractors of an industrial undertaking or construction project would have to comply with the requirements under the Regulation.

25. ALA5 said that in the previous amendment of FIUO, some members had asked about how the number of workers in a construction site was to be calculated if the number fluctuated from day to day. AC for L responded that the number would be determined on the basis of head count at the time of inspection. Construction sites in which the number of workers occasionally exceeded 100 usually complied with the requirements for an undertaking employing more than 100 workers.

26. Members raised no queries on the other sections and schedules of the Regulation.

Way forward

27. The Chairman concluded that subject to the amendments to be proposed by the Administration, the Subcommittee supported the Regulation. A report would be submitted to the House Committee after the amendments were considered and agreed by members. He added that as the views of deputations had been received during the examination of the Factories and Industrial Undertakings (Amendment) Bill 1999, invitation of deputations' views on the Regulation would not be needed.

(Post-meeting note : The Administration subsequently provided a revised version of the Regulation incorporating amendments to sections 15(2) and 21(2) of the Regulation, which was circulated to members for comments vide LC Paper No. CB(2) 293/99-00. No comments were received on the amendments and a report of the Subcommittee was made to the House Committee at its meeting on 12 November 1999.)

28. There being no other business, the meeting ended at 4:10 pm.

Legislative Council Secretariat

1 December 1999