

Construction Sites (Safety) (Amendment) Regulation

Administration's Response to Issues raised by Members at the Subcommittee meeting on 16 July 2003

At the subcommittee meeting on 16 July 2003, the Administration was requested to consider whether regulations 38A(3) and 38A(4) should be amended along the line of amendment to regulation 38A(1). In addition, some Members were also concerned about contractors may have difficulties in complying with the requirements of the new regulations 38AA(4) and 48(1A)(b).

2. The Administration would make the following replies to the aforesaid concerns.

Regulations 38A(3) and 38A(4)

3. Members have expressed a concern about regulations 38A(3) and 38A(4) in that while regulation 38A(1) been amended by introducing the term "hazardous conditions", the two regulations have not been amended correspondingly. In drafting the regulations, the Administration has not considered amending the two regulations because the duties imposed by the regulations are independent of and separate from the requirements of 38A(1), and they do not need to be read in connection with each other. Furthermore, we have not encountered any difficulty in enforcing the two regulations so far. However, having taken into consideration Members' view and for consistency purpose, we propose to revise the two regulations by making reference to "hazardous conditions" so as to make them in line with 38A(1). Similarly, regulations 38AA(4) and 38AA(5) would be amended in the like manner.

4. Separately, Members are concerned about contractors may have difficulties in complying with the requirements of regulation 38AA(4) in that they may not be able to prevent workers of other contractors, not under their control, from gaining access to an unsafe place. Under the regulation, any contractor who has direct control over any construction work shall ensure that, so far as is reasonably practicable, no person gains access to any unsafe place which is within the place of work where the construction work is being carried out. It is our intention that the contractor would have discharged his duties under the regulation if he has taken every reasonable practicable step to prevent access of persons to the unsafe place. It would be the duties of other responsible contractors if the contractor has taken the steps but failed to prevent workers of other contractors from gaining access to the unsafe place. To this end, the

drafting of the proposed regulation has been improved to clarify that the contractor need only to take “ suitable and adequate steps to ensure that, so far as is reasonably practicable” no person gains access to any unsafe place.

Regulation 48(1A)(b)

5. Members are concerned about the difficulty faced by a contractor to ensure the workers of other contractors, who do not wear safety helmet, from remaining on the site. It is our policy intention that the contractor would only need to ensure the workman employed to carry out the construction work, which he has direct control, does not remain on the site unless he is wearing a safety helmet. To this end, we propose to amend the regulation to “..... to ensure that no workman employed to carry out the construction work remains on the site unless he is wearing a suitable safety helmet.”

6. The revised Amendment Regulation incorporating the above-mentioned amendments is at Annex.

Labour Department
July 2003

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

AND

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

CONSTRUCTION SITES (SAFETY) (AMENDMENT) REGULATION 2003

Resolution made and passed by the Legislative Council under section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1) on 2003.

RESOLVED that the Construction Sites (Safety) (Amendment) Regulation 2003, made by the Commissioner for Labour on 28 May 2003, be approved, subject to the following amendments -

(a) in section 15 -

(i) in paragraph (a), by deleting the proposed regulation 38A(1A);

(ii) by adding -

"(aa) in paragraph (3), by repealing "unsafe place on the site" and

substituting "place on the
site where any hazardous
conditions are present";";

(iii) by deleting paragraph (b) and
substituting -

"(b) in paragraph (4), by repealing
"making any place safe if all"
and substituting "rectifying
any hazardous conditions if
all reasonably";";

(iv) by adding -

"(ba) by adding -

"(4A) For the
purpose of this
regulation, "hazardous
conditions" (危険状況)
includes the following
conditions that may give
rise to a risk of persons
falling from a height -

(a) unprotected
edge or opening
at a place of
work;

(b) improper design
and

construction of
a place of work;

(c) inadequate or
insecure
support or
anchoring of a
place of work;

(d) improper
maintenance of a
place of work;

(e) any working
platform (other
than a suspended
working
platform) that
fails to comply
with the
provisions of
the Third
Schedule
applicable to
it."";

(v) in paragraph (c), in the proposed
regulation 38A(5) -

(A) in paragraph (a) -

(I) by deleting "(1A)" and

substituting "(4A)";

(II) by deleting "paragraph (1)" and substituting "paragraphs (1), (3) and (4)";

(B) in paragraph (b), by deleting "(1A)" and substituting "(4A)";

(b) in section 16, in the proposed regulation 38AA -

(i) by deleting paragraph (2);

(ii) by renumbering paragraphs (3), (4) and (5) as paragraphs (2), (3) and (4) respectively;

(iii) by deleting paragraph (3) and substituting -

"(3) Subject to paragraph (4), any contractor who has direct control over any construction work shall take suitable and adequate steps to ensure that, so far as is reasonably practicable, no person gains access to any place which is within the place of work where the construction work is being carried out and where any hazardous conditions are present.";

(iv) in paragraph (4) -

- (A) by deleting "Paragraph (4)" and substituting "Paragraph (3)";
- (B) by deleting "making any place safe" and substituting "rectifying any hazardous conditions";
- (v) by adding -
 - "(5) For the purpose of this regulation, "hazardous conditions" (危險狀況) includes the following conditions that may give rise to a risk of persons falling from a height -
 - (a) unprotected edge or opening at a place of work;
 - (b) improper design and construction of a place of work;
 - (c) inadequate or insecure support or anchoring of a place of work;
 - (d) improper maintenance of a place of work;
 - (e) any working

platform (other than a suspended working platform) that fails to comply with the provisions of the Third Schedule applicable to it." ;

(vi) in paragraph (6) -

(A) in paragraph (a) -

(I) by deleting "(2)" and substituting "(5)";

(II) by deleting "paragraph (1)" and substituting "paragraphs (1), (3) and (4)";

(B) in paragraph (b), by deleting "(2)" and substituting "(5)";

(c) by deleting section 21(b) and substituting -

"(b) in paragraph (3), by adding "and the contractor who employs him to carry out the inspection" after "the scaffold";"

(d) by deleting section 24(c) and substituting -

"(c) in paragraph (3)(b), by repealing "concerned" and substituting "responsible for the construction site

concerned and the contractor who employs that person to carry out the examination".";

- (e) in section 34, in the proposed regulation 48(1A)(b), by deleting "remains on the site to carry out the construction work" and substituting "employed to carry out the construction work remains on the site";
- (f) in section 43 -
 - (i) in paragraph (a), by deleting "38AA(1), (3) or (4)" and substituting "38AA(1), (2) or (3)";
 - (ii) in paragraph (b)(v), by deleting "38AA(3) or (4)" and substituting "38AA(2) or (3)";
- (g) in section 44, by deleting "regs. 38A(1A), 38AA(2)" and substituting "regs. 38A(4A), 38AA(5)".

Clerk to the Legislative Council

July 2003