

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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**Subcommittee on
Occupational Safety and Health
(Display Screen Equipment) Regulation**

**Minutes of meeting
held on Thursday, 21 June 2001 at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Andrew CHENG Kar-foo (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Mrs Miriam LAU Kin-yee, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
- Members absent** : Hon SIN Chung-kai
Hon HUI Cheung-ching
Hon YEUNG Yiu-chung
- Public Officers attending** : Mr Samson LAI
Assistant Secretary for Education and Manpower
- Dr L M LEUNG
Occupational Health Consultant
Labour Department

Ms Marie SIU
Senior Government Counsel

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

Staff in attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Miss Betty MA
Senior Assistant Secretary (2)1

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I. Meeting with the Administration

The Chairman said that the Administration had provided a written response to his and Mrs Miriam LAU's proposed amendments to the proposed Occupational Safety and Health (Display Screen Equipment) Regulation (the proposed Regulation) [LC Paper No. CB(2) 1914/00-01(01)]. He then invited members' views on the proposed amendments.

Amendments proposed by the Chairman

2. Mr Michael MAK sought clarification about the meaning of "periodical break" in the Chairman's proposal. The Chairman responded that his proposal sought to introduce a periodic interruption when working with display screen equipment (DSE) by taking a break or changing activities. The proposed provision was modelled on the United Kingdom Health and Safety (Display Screen Equipment) Regulations. When non-DSE work could not be arranged, a five to ten-minute break after one to two hours continuous DSE work, depending on the intensity of the work, was recommended. He added that the recommended duration of rest breaks was in line with the recommendation made in the Health Guide.

3. Mr Kenneth TING said that as DSE work might have to be carried out for a certain period of time for continuity purpose, there were practical difficulties in arranging rest breaks at regular interval. He believed that DSE users would take breaks as appropriate whenever the need arose. In his view, the Chairman should move his proposed motion in his own name, but not in the name of the Subcommittee.

4. The Chairman said that as no consensus was reached regarding his proposed motion, he would consider proposing the amendments in his name.

Amendment proposed by Mrs Miriam LAU

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5. Mrs Miriam LAU said that she proposed to amend section 10(4) for the purpose of eliminating the element of strict liability. She then tabled an explanatory note explaining the reasons for proposing the amendment.

(*Post-meeting note* : The explanatory note on Mrs Miriam LAU's proposed amendment was circulated to members vide LC Paper No. CB(2) 1914/00-01(03).)

6. Ms LI Fung-ying enquired about the legal effect of Mrs Miriam LAU's proposed amendment. Mrs Miriam LAU responded that her proposal sought to remove the provision which created certain offences under the proposed Regulation as strict liability offences. Non-compliance with the proposed Regulation was still liable to an offence. However, under her proposed amendment, the onus of proof was on the prosecution and the construction of law should be left to the court.

7. Responding to Mr Michael MAK, Mrs Miriam LAU said that the meaning of "person responsible for a workplace" in her explanatory note was the same as that laid down in the proposed Regulation.

8. Regarding making some offences in the proposed Regulation as strict liability offences, Assistant Secretary for Education and Manpower (AS(EM)) said that the Department of Justice had taken into full account of members' views and the principles laid down in the relevant precedent court cases, and it maintained the view that it was appropriate to make the offences concerned as strict liability offences. He pointed out that the Occupational Safety and Health Ordinance (OSHO) had conferred power on the Commissioner for Labour (C for L) to make certain offences as strict liability offences. Hence, the policy intent of stepping up the deterrent effect of the occupational safety and health related legislation by making some offences as strict liability offences had been fully reflected in OSHO.

9. Mrs Miriam LAU responded that she had made reference to the precedent cases cited by the Administration before proposing her amendment. She pointed out that in *Gammon (Hong Kong) Ltd v A.G. [1985] AC1*, the creation of the offences in question as strict liability offences would be effective for safeguarding public security. In the case of *Uniglobe Telecom (Far East) Ltd v HKSAR (FACC No.5 of 1998)*, it would be a defence to the offences in question if a defendant could prove that he believed for good and sufficient reason that he had complied with the legislation. However, in other cases of strict liability offences, it was observed that it was indeed very difficult for a defendant to prove that he had complied with the legislation as showing due diligence did not necessarily imply that he had discharged the liability of the offence.

10. Senior Government Counsel (SGC) said that due diligence was not a defence for strict liability offence. According to *AG v Fong Chin Yue [1995] 1 HKC 21*, it would be a defence to strict liability offences if a defendant could prove on a balance of probabilities that he believed for good and sufficient reason that he had complied with the provision of the Regulation.

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11. Mrs Miriam LAU said that she was yet to be convinced of the Administration's response. She further said that if the offences were not made as strict liability offences, the court might or might not construe them as strict liability offences, depending on the totality of circumstances. The construction of law should be left to the court.

12. Mr Kenneth TING concurred with Mrs LAU. Mr TING said that the spirit of making some offences in the proposed Regulation as strict liability offences contravened the presumption of innocence adopted in the common law system. Given the nature of the offences concerned, he could not see the need for imposing such a severe penalty for non-compliance.

13. The Chairman then sought members' view on Mrs Miriam LAU's proposed amendment. Mr LEUNG Fu-wah did not agree that the amendment be moved by the Subcommittee. Members agreed that the Subcommittee would not support the amendment, Mrs Miriam LAU might consider pursuing the amendment in her name.

Health Guide

14. Referring to the computer workstation risk assessment checklist (Appendix B of the Health Guide), Mr Henry WU expressed concern that the responsible persons might not possess the equipment and knowledge to complete the checklist. He said that the assessment criteria laid down in the checklist were too technical and hence would be beyond the general knowledge of the responsible persons.

15. AS(EM) said that the Health Guide sought to provide practical guidance for complying with the proposed Regulation. The Health Guide was incidental to the proposed Regulation and the criteria proposed in the risk assessment checklist were for reference only. He pointed out that in normal circumstances, the question of whether a workplace was suitable for DSE users could be determined by common sense and objective judgement of parties concerned on whether the general working environment was comfortable. Moreover, under section 7 of the proposed Regulation, an employer was required to ensure that the workstations were suitable having regard to the safety and health of users.

16. Mr Henry WU remained unconvinced of the Administration's explanation. Having attempted to perform risk assessment in a workplace in accordance with the checklist, he reiterated that the criteria laid down in the Health Guide would impose practical difficulties on the persons responsible for the workplaces for compliance.

17. Ms LI Fung-ying pointed out that as far as she could recall, the objective criteria were incorporated into the Health Guide in response to members' concern about the lack of compliance standards contained therein. To facilitate better understanding of compliance standards to be incorporated into the Health Guide, she suggested that members might consider proposing the objective criteria.

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18. Mr LEUNG Fu-wah said that to his knowledge, the Health Guide provided a general guidance for compliance and was not a legal document. He asked about the consequences for non-compliance with the Health Guide.

19. AS(EM) said that although there was no penalty for non-compliance with the Health Guide, it sought to provide for compliance standards. The introduction of the Health Guide would be useful for promoting the concept of occupational safety and health in workstations. He further said that responsible persons and DSE users were required under sections 7 and 9 respectively to comply with the proposed Regulation. He stressed that section 7 provided sufficient safeguard for employers as they were required to ensure that, as far as reasonably practicable, the workstations were suitable having regard to the safety and health of users. The Labour Department (LD) would take into account the overall working environment in the workplace before taking a view as to whether the responsible person had contravened the requirements under the proposed Regulation. Moreover, to facilitate easy compliance with the Health Guide, LD would review the Health Guide periodically in the light of enforcement experience.

Revised section 9

20. Mr Henry WU sought clarification on how to enforce the requirements under the proposed Regulation if an employee carried out DSE work at a workplace which was beyond the control of his employer. Citing the example of using DSE in a public library, Mr WU asked how the proposed Regulation was enforced when a member of the public used the workstation provided by the library.

21. SGC explained that under section 9 of the proposed Regulation, a DSE user was required to conform to a system of work and work practices established by the person responsible for a workplace. With reference to Mr Henry WU's example, SGC said that the workplace was the library and the DSE user was required to observe the instructions made by the responsible person, say the librarian, for using the workstations in the library.

Clause-by-clause examination

[LC Paper No. CB(2)1874/00-01(02)]

Section 1

22. AS(EM) said that section 1 provided for the commencement of the Regulation. The proposed Regulation would come into operation on a day to be appointed by C for L by notice published in the Gazette. A grace period of 12 months would be provided during which the Administration would launch a series of publicity programmes to arouse the awareness of employers and employees about the proposed Regulation. He added that the actual commencement date of the proposed Regulation would depend on the response of affected parties.

23. Assistant Legal Adviser 5 (ALA5) said that having regard to a 12-month grace period and the fact that the proposed Regulation had attracted much controversial

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discussion, he sought clarification as to whether the Panel on Manpower would be updated of changes in the Health Guide and the commencement date of the proposed Regulation before C for L published the commencement notice in the Gazette. He added that in the absence of relevant information on measures taken before the commencement of the proposed Regulation, it would be difficult for members to assess whether there would be smooth implementation of the proposed Regulation.

24. AS(EM) said that as a general practice, no Legislative Council (LegCo) brief would be issued in relation to a Gazette notice on the commencement of a piece of subsidiary legislation. However, such notice would be subject to the negative vetting procedure of LegCo. AS(EM) further said that the Panel on Manpower could be provided with a revised Health Guide for information, if subsequent changes were made to the Health Guide.

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25. The Chairman urged that the Secretary for Education and Manpower should undertake in her speech when moving the motion on the proposed Regulation in the Council that the Administration would brief the Panel on Manpower on the proposed commencement date and any changes made to the Health Guide before the commencement notice was published in the Gazette.

Section 2

26. AS(EM) said that section 2 defined the expressions used in the proposed Regulation, including "user", "DSE" and "workstation".

27. Referring to the definition of "user", the Chairman said that in the English version, user meant an employee who normally used DSE as a significant part of his normal work. The corresponding Chinese for "significant part" was "重要部分". In his view, "重要" meant important, rather than qualifying the period for using DSE. It would be more appropriate to qualify the use of DSE by means of intensity and thereby adopting "主要" in the Chinese version. Mr Henry WU echoed the Chairman's suggestion that users should refer to those who used DSE at work for a long period.

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28. SGC said that the use of "重要部分" could fully reflect the frequent use of DSE in normal work. AS(EM) said that the Administration had reservations about defining "user" by making reference to the duration of using DSE at work. Nevertheless, he agreed to consider replacing "重要部分" with "主要部分".

Section 3

29. AS(EM) said that section 3 described the scope of application of the Regulation. The proposed Regulation would not apply to areas spelt out in section 3(2), which normally posed minimal risks to their users.

Section 4

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30. AS(EM) said that section 4 contained provisions outlining the risk assessment which had to be performed by the person responsible for a workplace. A person responsible for a workplace was required to perform a risk assessment of a workstation before it was first used by DSE users, review the risk assessment if there had been a significant change in the workstation or in the conditions of a previous assessment, keep the record of the findings of a risk assessment and produce for inspection any record kept and retained by him and to deliver a copy of the record to the inspection officer within a specified period.

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31. The Chairman referred to the Chinese version of section 4(3)(b) and said that the provision as presently drafted might imply that the person being described in the provision was a dangerous person, rather than he was at risk. He requested the Administration to improve the drafting of the Chinese version.

32. The Chairman pointed out that in sections 4(4)(b) and 8(2), the terms used to qualify changes in a workstation were "significant change" and "substantially modified" respectively. He was of the view that unless it was a policy decision to reflect different extent of changes in a workstation, he preferred that the same expression should be adopted in both the English and Chinese versions of the proposed Regulation.

33. Mr LEUNG Fu-wah concurred with the Chairman. Mr LEUNG said that the Administration should consider revising the wording of section 8(2) along the line of section 4(4)(b), i.e. a significant change in a workstation.

34. ALA5 said that the Administration might also re-consider in section 4(4)(a) how "the conditions of a previous assessment may have changed" related to "a significant change in a workstation" in section 4(4)(b) and "organisation of a workstation is substantially modified" in section 8(2).

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35. The Administration agreed to consider the views of members and ALA5.

Section 5

36. AS(EM) said that section 5 imposed a duty on the person responsible for a workplace to take steps to reduce any risk identified by him to the lowest extent as was reasonably practicable.

37. The Chairman expressed concern that in the absence of objective criteria for determining the meaning of "the lowest extent", it would be difficult to determine whether the steps taken by a responsible person could reduce risks to the lowest extent, bearing in mind the fact that non-compliance with the requirements was liable to committing an offence of strict liability. Mr Kenneth TING said that the Administration might consider adopting "minimum" as an alternative. Ms LI Fung-ying suggested that "the lowest extent" be replaced with "the level as is reasonably practicable".

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38. Mr LEUNG Fu-wah said that the expression "the lowest extent" could prevent a responsible person from taking actions that would barely meet the minimum compliance standards.

39. AS(EM) said that section 5 sought to require the person responsible for a workplace to take every possible step to reduce risks identified in a risk assessment. SGC added that section 5 as presently drafted required responsible persons to do their utmost to take steps to reduce any risks identified in a risk assessment. She pointed out that sufficient safeguard was provided in section 5 as the responsible person was required to take steps as was reasonably practicable.

40. Mr LEE Cheuk-yan said that consideration might be given to requiring responsible person to take steps to reduce risk to the lowest extent with a view to ensuring that the workstations were suitable for DSE users, as required under section 7.

41. SGC responded that the scope of application of sections 5 and 7 was independent of each other. She explained that section 5 required a responsible person to take steps to reduce any risks identified in a risk assessment performed by him under section 4. Whilst section 7 imposed a general responsibility on responsible persons to ensure that the workstations were suitable for DSE users.

42. The Chairman said that while members understood the rationale for drafting section 5, members expressed concern about the interpretation of the expression "the lowest extent". Should there be disputes over the provision in application, it would be a question for the court.

Section 6

43. AS(EM) said that section 6 imposed a duty on the person responsible for a workplace to inform users of the findings of the risk assessment and the actions he had taken after the assessment.

44. ALA5 pointed out that under section 10(1), a responsible person was liable on conviction to a fine at level 5 for failing to comply with section 6, i.e. failing to inform users about the findings of the risk assessment and any actions he had taken after the assessment. However, the commission of other offences under 10(1), which were more directly related to the occupational safety and health of DSE users, were also liable on conviction to a fine at level 5.

45. Mr Kenneth TING and Mr Henry WU considered that having regard to the nature of the offence concerned, the penalty for non-compliance with section 6 was on the high side. Mr LEUNG Fu-wah had no strong view on the level of penalty for section 6 as the convicted person was seldom required by the court to pay the maximum fine.

46. Responding to ALA5's view, AS(EM) said that the proposed Regulation sought to impose general responsibilities and obligations on responsible persons and users of

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DSE. It was along the underlying principle in OSHO that the same level of penalty would be imposed on responsible persons for failing to comply with the requirements under the proposed Regulation, rather than taking into account the seriousness of individual offences concerned. This was because when a responsible person failed to comply with the requirements under the proposed Regulation, his decision would affect the well-being of other persons, i.e. DSE users. As for DSE users, if they failed to comply with the requirements under the proposed Regulation, they would affect their own occupational safety and health, but not the others. It was based on this principle that a higher penalty was proposed in respect of responsible persons than DSE users.

47. Mr Kenneth TING said that an employee was liable on conviction to a fine at level 3 for non-compliance with the relevant provision of the proposed Regulation whereas a level 5 penalty was imposed on a responsible person. He expressed dissatisfaction with the Administration's explanation. Mr LEUNG Fu-wah considered that the Administration's explanation was acceptable.

48. The Chairman said that the issue was a matter of policy decision. As the Administration had made its stance clear in this issue, members might consider moving a motion to amend section 6 if they so wished.

Section 7

49. AS(EM) said that section 7 required the person responsible for a workplace to ensure that the workstations were suitable having regard to the safety and health of users.

50. Responding to Mr Henry WU, AS(EM) said that under section 5(1) of OSHO, the Government was bound by the Ordinance.

51. ALA5 sought clarification as to whether the Government was held responsible for DSE users who used some workstations under its control, e.g. readers who used workstations in a public library, bearing in mind that there was no employer and employee relationship between Government and the users.

52. AS(EM) responded that with reference to the definition of "user" and "workstation" in the proposed Regulation, the major consideration would be whether the workstations were used by users for work purposes.

53. ALA5 recalled that when the matter was previously discussed, members were advised that in the case of the use of DSE in a public library, the librarian was the responsible person for the purpose of the proposed Regulation. He said that the matter warranted more detailed study from the policy perspective as it would have extended the scope of the application of the proposed Regulation to those workstations where neither the employer exercised control over the relevant part or aspect of the workplace, nor the responsible person had an employment relationship with the users.

54. AS(EM) reiterated that "user" as defined in the proposed Regulation referred to

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an employee who normally used DSE as a significant part of his normal work. Hence, the temporary use of workstations in places where his employer did not exercise any degree of control would not fall under the coverage of the proposed Regulation. He stressed that the policy intention of introducing the proposed Regulation was to safeguard the occupational safety and health of DSE users at work. The Administration had no intention of requiring those responsible persons who provided workstations to non-employees for temporary use to comply with the proposed Regulation.

55. Mr LEE Cheuk-yan said that the section 7 as presently drafted could not fully reflect the policy intention as it failed to spell out clearly that only a user who used workstations provided by his employer would be required to comply with the requirements under the proposed Regulation.

56. The Chairman said that while members agreed that the proposed Regulation should be applicable to the use of DSE for work purposes with a view to safeguarding the occupational safety and health of employees, the Administration should consider improving the drafting of the proposed Regulation to make clear its policy intention. For instance, it might consider spelling out clearly in section 3 the scope of application of the proposed Regulation that the workstations concerned should be provided by users' employers. AS(EM) agreed to consider.

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Section 8

57. AS(EM) said that section 8 required an employer to ensure that a user had been provided with adequate safety and health training. In the event that there were changes in the workstations, employers should provide fresh training to users.

58. Ms LI Fung-ying and the Chairman said that the drafting of the Chinese version of section 8(1) was rather clumsy. They requested and SGC agreed to review the drafting of the provision.

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59. Mr Henry WU enquired about the meaning of "organization of a workstation" laid down in section 8(2). Mr WU also expressed concern about the requirement of providing adequate safety and health training by an employer to a user in the event that a user used the workstation in a place where he did not exercise any control. In such circumstances, an employer was unable to have knowledge as to whether a workstation used by a user was substantially modified and thereby providing training to the user.

60. AS(EM) explained that it was the responsibility of employer to provide training to his employees, i.e. there was an employment relationship between both parties. The provision of safety and health training and such training with regard to changes in the workstations were to be dealt with by employers separately for the purpose of the proposed Regulation.

61. Mr Kenneth TING shared a similar concern with Mr WU. Mr TING said that the Administration should spell out clearly in the proposed Regulation that an employer

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was required to provide adequate safety and health training to users employed by him.

62. ALA5 pointed out that in section 8(1), the employment relationship between an employer and a user was clearly spelt out. However, it was unclear as to whether the employer mentioned in the English version of section 8(2) referred to the employer of that user. Similarly, it was unclear as to whether the user of the workstation mentioned in the Chinese version of section 8(2) had any employment relationship with that employer. ALA5 said that section 8(2) as presently drafted could not fully reflect the policy intention of requiring the provision of training by an employer to a user employed by him.

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63. To address members' concerns, the Chairman requested that the Administration should improve the drafting of section 8(2).

Section 9

64. AS(EM) said that section 9 sought to impose a duty on a user to avoid risks by conforming to system of work and work practices provided by the person responsible for a workplace.

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65. The Chairman was of the view that the Administration should review the drafting of the provision to make clear the meaning for easy compliance. The Administration agreed to consider.

Section 10

66. AS(EM) said that section 10 sought to create offences for failure to comply with the provisions of the proposed Regulation and set out the penalties to be imposed on offenders.

67. Mr Kenneth TING expressed concern about making some offences in the proposed Regulation as strict liability offences and imposing heavier penalty on employers than DSE users.

68. The Chairman said that Mr TING's concern had been fully discussed in the previous meetings. As the Subcommittee reached no consensus view on the matter, members might consider proposing amendments to the proposed Regulation in their name.

69. In view of the fact that the deadline for giving notice to move the motion on the proposed Regulation at the last Council meeting in this session was 23 June 2001, the Chairman sought members' view on the way forward about the scrutiny of the proposed Regulation. Ms Cyd HO considered that members should not rush for completing the scrutiny of the Regulation. Sufficient time should be allowed for studying the revised Regulation to be provided by the Administration. The Chairman suggested and members agreed that the Chairman would make a verbal report to the House Committee at the meeting on 22 June 2001, recommending for the House Committee's

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support to seek the leave from the President of LegCo to dispense with the notice requirement for the motion and members' motion(s), if any, to amend the Administration's motion.

70. Members agreed that the next meeting would be held on 28 June 2001 at 8:30 am to study the revised Regulation.

71. There being no other business, the meeting ended at 11 am.

Legislative Council Secretariat

17 October 2001