

**立法會**  
**Legislative Council**

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the Administration)

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

**Minutes of meeting  
held on Thursday, 14 June 2001 at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon Kenneth TING Woo-shou, JP  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon SIN Chung-kai  
Hon Mrs Miriam LAU Kin-ye, JP  
Hon LI Fung-ying, JP  
Hon Henry WU King-cheong, BBS  
Hon Michael MAK Kwok-fung  
Hon LEUNG Fu-wah, MH, JP

**Members absent** : Hon Cyd HO Sau-lan  
Hon HUI Cheung-ching  
Hon YEUNG Yiu-chung  
Dr Hon LO Wing-lok

**Public Officers attending** : Mr K K LAM  
Principal Assistant Secretary for Education and Manpower  
  
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**

At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) said that the Administration had provided written response to issues and concerns raised by members at the last meeting on 29 May 2001 [LC Paper No. CB(2)1801/00-01(01)]. The gist of the Administration's response was summarised below -

- (a) The deterrent effect of the proposed Occupational Safety and Health (Display Screen Equipment) Regulation (the proposed Regulation) would not be compromised by proposing the revised section 4(6). Irrespective of whether a risk assessment under section 4 was performed or not, the Labour Department (LD) would proceed with prosecution action if the workstation was found unsuitable for use by users. A responsible person was required under section 7 to ensure, so far as reasonably practicable, that the workstations were suitable for DSE users.
- (b) Under the Occupational Safety and Health Regulation, a penalty was also imposed for failure to keep records of risk assessments in respect of manual handling operations. Since improper practices in manual handling operations would lead to severe bodily injuries, failure to keep such risk assessment records was liable to a fine at level 6. The Administration considered that the penalty level for failure to keep records of risk assessments as required under section 4(5) was appropriate.
- (c) Regarding the suggestion of confining the employer's responsibility to taking

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steps to reduce risks to areas which were under his direct control, the Administration pointed out that if the employer did not exercise any degree of control over the relevant part or aspect of the workplace, he would not be the responsible person for the purpose of the proposed Regulation. Even if the employer concerned fell under the definition of "responsible person", section 5 of the proposed Regulation had already provided that the responsible person should take steps to reduce any risks identified in a risk assessment to the lowest extent as was reasonably practicable. This had provided the employers with the necessary safeguard against being held liable for rectification actions which were beyond their control.

- (d) As regards the proposal to make the Health Guide a workplace code of practice under section 40 of the Occupational Safety and Health Ordinance (OSHO), the Administration was of the view that it was impracticable to set work practices and standards which were applicable to and agreed by all industries across-the-board. Nevertheless the Administration agreed to streamline the Health Guide to cover areas directly related to the use of display screen equipment (DSE) at work.

2. Occupational Health Consultant (OHC) then took members through the following amendments proposed to the revised Health Guide [LC Paper No. CB(2)1801/00-01(02)] -

- (a) the wordings "temperature, humidity and ventilation" were deleted from the meaning of "workstation" under paragraph 1.3 of the Health Guide as the enforcement requirements for these areas in the workplace had already been provided for in the Occupational Safety and Health Regulation. The proposed deletion would avoid unnecessary confusion in complying with the requirements. Correspondingly, the requirements for temperature and humidity as well as fresh air supply under Part III of the Health Guide were deleted;
- (b) "software in use" and "work pattern or task requirement" were deleted from paragraph 2.4 because a change of software or work pattern would seldom give rise to a significant change in the workstation. Moreover, these two areas were still being covered under the remaining item in the paragraph;
- (c) to delete "welfare" from the general requirements for setting up a workstation by a responsible person under paragraphs 3.1 and 3.2; and
- (d) the requirements for screen were revised to make the meaning clearer.

Responsibility of employers

3. Mrs Miriam LAU referred to paragraph 3(b) of the Administration's paper and sought clarification on the meaning of "exercise any degree of control". She said that it was common practice that employers would allocate certain office space to an employee and would leave the latter to decide the layout of the office furniture and

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equipment. Moreover, a DSE user might insist on the layout of his office furniture notwithstanding that it might not comply with the requirements under the Health Guide. In the circumstances, Mrs LAU asked whether the employers were regarded as exercising control over the workplace for the purpose of the proposed Regulation.

4. Senior Government Counsel (SGC) said that if the employer did not exercise any degree of control over the relevant part or aspect of the workplace, he would not be held responsible under OSHO. If the employer had no control over the workplace, the responsibility would rest with the occupier. Section 7 of the proposed Regulation had provided the employers with the safeguard that he should so far as reasonably practicable ensure that the workstations used by users were suitable for those users.

5. PAS(EM) said that a user was required under section 9 to conform to any system of work and any work practices that the responsible person had provided or established for the safety and health of users at the workplaces.

6. Mrs Miriam LAU said that under the proposed Regulation as presently drafted, the responsible person should be held responsible for the workstation in the workplace. Mrs LAU asked whether the responsible person would be held responsible if an employee made subsequent changes to the risk assessment record which were regarded as contravening the compliance standards. If this was the case, the proposed Regulation might increase the tension between employers and employees, rather than enhancing the occupational safety and health of employees through mutual agreement made by both parties.

7. PAS(EM) responded that the proposed Regulation sought to safeguard the occupational safety and health of DSE users at work. Employers were required to perform risk assessment and keep the relevant records. He believed that employers would not be held responsible for any changes made by employees to the workstations after the completion of the risk assessment. Given that changes to the content of the risk assessment records had been made, it would be advisable to record the changes for future reference. Any changes initiated by employees to their own comfort, though slightly deviated from the compliance standards, would generally not be regarded as contravening the proposed Regulation. PAS(EM) further said that he fully understood Mrs Miriam LAU's concern. He hoped that members would appreciate that it was practically impossible to set out across-the-board compliance standards for all industries and cover all possible scenarios in the Health Guide. He stressed that if an employer had taken steps to reduce any risks identified in a risk assessment to the lowest extent as was reasonably practicable, he would have the necessary safeguard from being held liable for non-compliance with the proposed Regulation.

8. Mr Kenneth TING shared Mrs Miriam LAU's concern. He said that a responsible employer would observe closely the requirements under the legislation. He expressed concern about how to prove that an employer did have taken rectification actions to reduce any risks identified in a risk assessment, in case an employee was uncooperative.

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9. OHC agreed that Mr TING's concern was not an uncommon problem in the context of the employer and employee relationship. He pointed out that the respective responsibilities of employers and employees were clearly spelt out in the proposed Regulation. The employee concerned would contravene the proposed Regulation if he refused to co-operate with the employer to conform to any work practices established by the latter for the sake of occupational safety and health. In practical situation, he believed that most employees would not lodge complaints if they chose not to conform with the work practices.

10. Concerning members' concerns about the problem of uncooperative employees, Assistant Legal Adviser 5 (ALA5) pointed out that section 5 of the proposed Regulation spelt out explicitly that the person responsible for a workplace must perform risk assessment and take steps to reduce the risks identified. It made no reference to what extent the employees should co-operate. Although it was laid down in section 9 that users should conform to any system of work practices established by the person responsible for the workplace, it was unclear about the obligations of DSE users vis-à-vis measures taken to reduce any risk identified in a risk assessment arising from a workstation, since the meaning of system of work or work practices might not necessarily include such measures. Hence, the respective responsibilities of employers and employees under sections 5 and 9 of the proposed Regulation might not match. ALA5 further said that notwithstanding that employees while at work were required under section 8 of OSHO to take care of others and to co-operate with employer as far as reasonably practicable, it might not be desirable if one had to rely on the principal Ordinance for supplementing seemingly self-contained provisions in the related regulations. As the Administration had proposed to delete the reference to "the work" in section 4(3)(a) to make clearer that the provision was applicable to the workstation only, consideration might be given to improving the drafting of section 9.

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11. The Chairman agreed with ALA5's observation. He requested the Administration to consider making the application of section 9 clearer having regard to the fact that contravening section 9 was liable to committing an offence. PAS(EM) agreed.

12. Mr LEUNG Fu-wah said that the respective responsibilities for employers and employees had been fully discussed when OSHO was introduced and such responsibilities were clearly stipulated in OSHO. There was no need for the Subcommittee to re-visit this aspect, instead it should expedite the scrutiny and proceed with the clause-by-clause examination of the proposed Regulation.

13. Mrs Miriam LAU disagreed with Mr LEUNG Fu-wah. She said that members should ensure that the drafting of each and every piece of legislation could fully reflect its legislative intent. The Chairman and Mr SIN Chung-kai agreed with Mrs LAU. Mr SIN said that members should ensure that the proposed Regulation would be implementable after enactment.

Revised Health Guide

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14. Mr Kenneth TING appreciated the amendments proposed by the Administration to the Health Guide. Mr TING, however, pointed out that some compliance standards would have financial implications on the employers. For instance, to cope with the requirement for a LCD monitor to avoid the effects of external electromagnetic fields would incur cost amounted to some \$3,000 for replacing one monitor.

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15. OHC clarified that the use of a LCD monitor to avoid the effects of external electromagnetic fields was for illustrative purpose only. All other possible solutions were acceptable. To avoid confusion, OHC agreed to further consider the drafting of the relevant part in the Health Guide.

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16. ALA5 pointed out that there was an inconsistency in the English and Chinese versions of the standard of a DSE workstation under paragraph 3.2 . In the English version, "a DSE workstation was *best* designed ergonomically" whereas the Chinese version was "最好", i.e. not necessarily to be the best model available. PAS(EM) agreed to look into the matter.

Responsibility of "occupier"

17. Mr Henry WU pointed out that employees might not necessarily perform their duties in the premises or workplace provided by their employers. In such cases, he enquired about the responsibility and liability of employers and employees for the purposes of the proposed Regulation if the employees failed to comply with the requirements in a workplace provided by somebody else.

18. SGC responded that under section 9 of the proposed Regulation, a user was required to conform to any system of work and any work practices provided by the person responsible for the workplace. Under OSO, a responsible person meant the occupier of the workplace if the employer did not exercise any degree of control over the relevant part or aspect of the workplace.

19. Mrs Miriam LAU sought clarification about the definition of an occupier. Citing the use of DSE provided in a library as an example, Mrs LAU asked whether a person who used the DSE in a library or the person responsible for the library, say the librarian, was the occupier for the purpose of the proposed Regulation.

20. SGC advised that under section 9 of the proposed Regulation, an employee was required to conform to the work practices established by the person responsible for the workplace. However, it did not necessarily imply that the employee had to carry out work in a workplace where the employer could exercise control. The workplace under section 9 referred to the premises or area where the users actually used the DSE at work. Regarding Mrs LAU's example, she said that the librarian was the occupier.

21. PAS(EM) added that the meaning of "employer", "person responsible" and "occupier" were laid down in OSO. Occupier or person responsible referred to a person who had any degree of control over the premises or workplace. The meaning of "user" was spelt out in the proposed Regulation, i.e. an employee who normally used

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DSE as a significant part of his normal work.

22. Mrs Miriam LAU said that she would further study the matter and reserved her position at the moment.

Amendments proposed by Mr LEE Cheuk-yan  
(LC Paper No. CB(2) 1825/00-01(01))

23. At the invitation of the Chairman, Mr LEE Cheuk-yan explained the rationale for proposing amendments to the proposed Regulation. He said that he had repeatedly expressed his concern at previous meetings that in the absence of compliance standards in the proposed Regulation, the proposed Regulation could not achieve its intended purpose. His proposal to add a new section 11 to the proposed Regulation was to make the Health Guide a workplace code of practice with a view to enhancing the effectiveness of the proposed Regulation and the Health Guide. Mr LEE further said that his proposed amendments were modelled on other prevailing codes of practice under section 40 of OSHO. The proposed amendments provided that a person did not incur a civil or criminal liability only because he had contravened the code of practice. However, if in any legal proceedings, the court was satisfied that a code of practice was relevant to determining a matter that was in issue, the code of practice was admissible in evidence in the proceedings. The workplace code of practice should be published in the Gazette and subject to the scrutiny of the Legislative Council. Mr LEE added that given the proposed Regulation would come into operation 12 months after enactment, members would have ample time to study the code of practice in more detail.

24. PAS(EM) said that the Administration's stance on Mr LEE's proposal from the policy perspective remained the same as that stated in LC Paper No. CB(2)1801/00-01(01).

25. SGC said that from the legal point of view, the new section 11 proposed by Mr LEE Cheuk-yan was basically modelled on sections 40 and 41 of OSHO. However, it was inconsistent with section 40 of OSHO. She pointed out that section 40 of OSHO sought to confer a power on the Commissioner for Labour (C for L) to issue codes of practice. C for L had discretion whether or not to issue a code of practice. The new section proposed by Mr LEE would however impose an obligation on C for L to issue a code of practice, thereby disabling C for L from exercising her discretionary power under section 40 of OSHO. SGC further said that under section 28(1)(b) of the Interpretation and General Clauses Ordinance, no subsidiary legislation should be inconsistent with the provisions of any Ordinance. It would be ultra vires OSHO if the new section as proposed by Mr LEE was added.

26. Mr LEE Cheuk-yan responded that he included intentionally in his proposed amendments that C for L was required to publish the code of practice. He said that C for L was already empowered under OSHO to issue the relevant workplace code of practice. The proposed new section 11 sought to require C for L to exercise her power in this respect. Mr LEE further said that if the word "may issue" was used in

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the new section 11 instead of "is required to publish", he was afraid that C for L might not issue the workplace code of practice eventually.

27. ALA5 held a different view from SGC regarding Mr LEE Cheuk-yan's proposed new section 11. He said that although the scope of application of the code of practice was not specified, he believed that the proposed amendments would not be beyond the scope of the proposed Regulation. However, Mr LEE Cheuk-yan might consider revising his proposed amendments by specifying the relevant sections in the proposed Regulation under which C for L was required to issue codes of practice. Otherwise, as a matter of obligation, C for L would have to issue codes of practice in respect of the requirements under each and every section in the proposed Regulation.

28. Mr LEE Cheuk-yan said that he would revise his proposed amendments to make clear that C for L was required to issue code of practice in respect of the requirements under section 7 of the proposed Regulation.

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29. To facilitate members' consideration of the different views expressed by SGC and ALA5 over Mr LEE Cheuk-yan's proposed amendments, the Chairman requested the Administration to further consider Mr LEE's amendments and provide a response later.

30. Mr Kenneth TING asked about the difference in the legal effect between a health guide and a workplace code of practice.

31. ALA5 explained that a workplace code of practice issued under OSHO and that proposed by Mr LEE Cheuk-yan had similar legal effect, i.e. a person did not incur a civil or criminal liability only because the person had contravened a provision of a workplace code of practice and it was admissible in evidence in the court proceedings. However, the Health Guide proposed by the Administration was an administrative guideline which would not be admissible in evidence in court proceedings.

32. Mrs Miriam LAU expressed concern whether a person would be easily liable to commit an offence of strict liability if it was stipulated in the proposed Regulation that the Health Guide was a workplace code of practice.

33. Mr LEE Cheuk-yan considered that section 7 provided a sufficient safeguard for the person responsible as he was required to ensure, as far as reasonably practicable, that the workstations were suitable having regard to the safety and health of users concerned. Moreover, a workplace code of practice was admissible for the court's reference only. Mr LEE further said that under the established practice of the Labour Department, it would issue warning letters and improvement notices before instituting prosecution actions. Hence, he believed that a person would not be easily convicted for committing an offence under the proposed Regulation, irrespective of whether the Health Guide was a workplace code of practice.

34. As to whether a person would easily be convicted after making the Health Guide a workplace code of practice, ALA5 cited section 7 as an example. He said that the

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code of practice would only facilitate the court to make a decision on whether the workplace was suitable, but not the question of whether the actions taken by the responsible person were reasonably practicable.

Offences of strict liability

35. On Mrs Miriam LAU's reservations about making some offences of strict liability, ALA5 said that reference could be made to sections 7 and 8 of OSHO under which an occupier and an employee would commit an offence if they failed to comply with the legislation intentionally, knowingly or recklessly, rather than committing a strict liability offence.

36. Mrs Miriam LAU said that under the proposed Regulation, an employer was liable to commit offences of strict liability whereas the provision was not applicable to an employee. She questioned why the underlying rationale adopted in the principal Ordinance was not extended to the proposed Regulation. Mrs LAU further said that she was considering proposing amendments to the proposed Regulation in this respect.

37. SGC pointed out that the Administration proposed to make some offences under the proposed Regulation as strict liability offences after taking into account the court's decision on cases which it had ruled as strict liability offences. Nevertheless, as illustrated in precedent cases, defence was allowed for strict liability offences.

Rest breaks

38. The Chairman said that he was considering proposing amendments to the proposed Regulation, on behalf of the Democratic Party, to add the provision on rest breaks for users after a prolonged use of DSE.

39. Members agreed that the next meeting would be scheduled for 18 June 2001 at 1 pm.

40. There being no other business, the meeting ended at 10:30 am.

Legislative Council Secretariat

8 October 2001