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

**Minutes of meeting
held on Thursday, 14 December 2000 at 4:30 pm
in the Chamber 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 HUI Cheung-ching
Hon SIN Chung-kai
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 Cyd HO Sau-lan
Hon YEUNG Yiu-chung
- 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. Election of Chairman

Mr Andrew CHENG was elected Chairman of the Subcommittee.

II. Meeting with the Administration

2. At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) explained the legislative intent of the proposed Occupational Safety and Health (Display Screen Equipment) Regulation (the proposed Regulation) to members. He pointed out that the proposed Regulation was premised on the concept of self-regulation, which was the underlying philosophy for devising occupational safety and health legislation and had been enshrined in the Occupational Safety and Health Ordinance (OSHO). Although it was a new approach adopted in the local legislation, the Administration had made reference to overseas experience in drawing up the proposed Regulation. The Administration would step up public education and publicity in this respect. Non-compliance with the proposed Regulation, when revealed during Labour Department's (LD) inspections, would be subject to warning, and enforcement actions, including improvement notices and prosecution where appropriate. Given that the activities covered under OSHO were wide ranging, the Administration would not spell out the detailed requirements in the proposed Regulation, but in the health guide.

3. PAS(EM) further said that with the growing use of computers at work, the proposed Regulation intended to regulate the use of display screen equipment (DSE) by

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employees who have to use DSE for a significant part of normal work. Examples of these users were data input operators, computer graphic designers, financial dealers, etc. Under the proposed Regulation, a person responsible for a workplace, in which DSE users work, would be required to perform risk assessment of workstations, take steps to reduce risks, inform DSE users of the findings of the risk assessment and take any action to reduce the risks and ensure that the workstations were suitable in regard to the safety, health and welfare of DSE users. Although conducting risk assessments was the primary requirement of the proposed Regulation, it was not a new concept in the context of safety and health at the workplace. Similar requirements for risk assessment were already made in respect of working in confined spaces and manual handling operations. As regards an employer of DSE users, he was required to provide DSE users with adequate safety and health training in the use of the workstations. He added that the risk assessment to be conducted would not involve "professional" knowledge for the purpose of compliance.

Risk assessment

4. The Chairman asked about the scope of risk assessment required to be conducted by an employer. He referred to the risk assessment checklist to be completed by any person responsible for the use of the workstations and expressed doubt about the capabilities of an employer or a person responsible for the workplace in completing the checklist.

5. PAS(EM) responded that the Administration had written to 87 employers associations, trade unions and professional bodies in August 1999 on the proposed Regulation together with the content of the health guide in the course of formulating the legislative provisions. No dissenting views were received from the respondents. The Hong Kong Association of Banks, the Hong Kong Computer Society and the British Trade Commission expressed support for the legislative proposal as well as the content of the draft health guide on the ground that the guide required only common sense for compliance.

6. Occupational Health Consultant (OHC) added that the risk assessment required to be conducted was simpler than the assessment required for performing other types of work, e.g. the risk assessment for a confined space. He pointed out that for the purpose of the proposed Regulation, risk assessment consisted of a process of identifying the potential hazards arising from the work in the workstation, deciding who might be at risk and how the person was affected as well as evaluating the risk and deciding whether existing precautions were adequate. The Administration considered that a risk assessment required under the proposed Regulation was a relatively simple process. It might be completed by using a checklist that could be performed by trained staff who had good understanding of the use of DSE. Only in complicated cases, which should be quite rare, should a risk assessment be conducted by safety and health consultants.

7. Mrs Miriam LAU remained uncertain about how a risk assessment would be

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conducted properly. As the proposed Regulation would have wide implications on computer work, she requested the Administration to explain, by using specific examples, how to complete a risk assessment checklist and the definition of good understanding of the use of DSE. She also asked whether a self-regulatory approach had been found in other legislation.

8. PAS(EM) explained that the proposed Regulation was the first Regulation made under OSHO adopting the self-regulatory approach, which was different from the conventional enforcement-based approach in promoting occupational safety and health. He stressed that the Administration had made reference to overseas experience in devising the self-regulatory approach to regulate the use of DSE. OHC added that easy-to-follow steps for conducting a risk assessment would be provided in the health guide. For instance, when making reference to the screen of a computer, one might assess whether the screen gave a clear, sharp and steady image, whether the characters were of adequate size, with adequate spacing between the characters and the lines, etc.

9. While raising no opposition to the introduction of self-regulatory approach and safeguarding the occupational safety and health of employees, Mrs Miriam LAU expressed reservations about the usefulness of the vague guidelines in facilitating the completion of a risk assessment checklist. She was of the view that the Administration should ensure that the general public were well aware of the concept of self-regulation before introducing the relevant legislation. The Chairman expressed a similar concern with Mrs Miriam LAU. He asked about the consequences of giving wrong answers when filling the risk assessment checklist as it might result in an oversight of the risks at the workplace and hence taking insufficient risk reduction steps by a responsible person.

10. PAS(EM) said that the object of the proposed Regulation was to raise the awareness of DSE users about the proper use of workstations at work as well as the need for carrying out of risk assessment. There would be practical difficulties for LD to judge compliance in the absence of risk assessment records. Hence, the primary objective of requiring an employer or a person responsible for a workplace to keep records of assessment was to ensure that they would conduct risk assessments. The information required for the purpose of the risk assessment reports was simple.

11. Mrs Miriam LAU remained unconvinced that the steps for completing the risk assessment checklist were easy and simple. As there was a lack of clear guidelines, she was uncertain about the correct answers for completing the checklist, not to mention taking the appropriate steps to meet the requirements. She stressed that the Administration should step up publicity efforts and education on the proper use of DSE before introducing the legislation having regard to the fact that non-compliance would be liable to an offence.

12. Mr Kenneth TING concurred with Mrs LAU's comment that the draft health guide was unclear for the purpose of the proposed Regulation. He considered that the Administration should provide a set of clear guidelines for compliance with the requirements and standards for use of DSE at the workplace. He pointed out that as the

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use of DSE was becoming popular amongst teenagers, the Administration should consider stepping up publicity on the proper use of DSE for the community at large rather than introducing legislation to regulate the use of DSE at work.

13. PAS(EM) advised that LD would publish a detailed health guide which would cover general information on the compliance standards. There would be a 12-month grace period before the proposed Regulation came into effect.

14. Mr LEUNG Fu-wah declared that he was a member of the Labour Advisory Board (LAB). He said that LAB had been consulted and indicated its support for the proposed Regulation and the compliance standards. To his knowledge, the risk assessment checklist could be completed by a person who had some computer knowledge. He expressed support for the proposed Regulation. Mr LEUNG further said that although the employers' representatives had raised similar concerns at the LAB meeting on risk assessment as those expressed by members at this meeting, they expressed support for the proposal after listening to the Administration's explanation.

15. Whilst supporting the legislative intent to protect the occupational safety and health of employees at the workplace, Mr MAK Kwok-fung said that the questions listed in the risk assessment checklist were subjective. In order to avoid unnecessary disputes between employers and employees over the proper use of DSE, he suggested that the Administration should devise the checklist with reference to some objective factors as far as practicable. He also pointed out that the Chinese rendition of "risk" could not reflect its meaning accurately. He suggested to change it to "風險".

16. PAS(EM) advised that LAB had been consulted on and expressed support for the proposed Regulation. The affected trades and businesses had also been consulted on the compliance standards. He stressed that the spirit of OSHO was to safeguard employees' safety and health at the workplace. He therefore saw no reasons why employees would refuse to cooperate with employers to take steps to reduce risks at the workplace. Across-the-board compliance standards might not be practical because of the physical differences at workplaces.

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17. Mr MAK Kwok-fung requested the Administration to provide statistics on the number of warning letters, improvement notices and prosecutions made under OSHO since its coming into effect.

General requirements for DSE workstations

18. Mr HUI Cheung-ching referred to paragraph 2.4 of the draft health guide and sought clarification as to what types of workstation furniture were required for the purpose of the proposed Regulation. PAS(EM) said that as laid down in the draft health guide, for instance, the chair should be adjustable in height to suit the body configuration of the user. He stressed that there would be no hard and fast rule on the specifications of workstation furniture bearing in mind the difference in size, posture, etc of individual users.

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19. Mr HUI Cheung-ching further asked who would make the final decision if there were disputes between the employers and employees over the requirements for a DSE workstation. PAS(EM) responded that the employees could lodge complaints with the employers if they believed that the requirements were not in compliance with the proposed Regulation.

Offences

20. Mr LEUNG Fu-wah sought clarification on the different levels of fines for non-compliance by an employer and a DSE user as an employer might also be a user of DSE at work as well as why a user was liable to a fine upon conviction. He also asked whether a self-employed person was within the meaning of employer or user for the purpose of the proposed Regulation.

21. Senior Government Counsel (SGC) clarified that an employer and a DSE user were liable on conviction to a fine under section 10(2) and (3) of the proposed Regulation respectively. As a user was required under section 9 to conform to any system of work and practice of work provided by a responsible person of the workplace, the user would be liable to a fine for non-compliance. Regarding self-employed persons, PAS(EM) confirmed that they were not within the meaning of employer or user for the purpose of the proposed Regulation. It was because the spirit of OSHO was to hold employers liable for the occupational safety and health at the workplace.

22. Ms LI Fung-ying expressed support for providing a safe and healthy workplace for employees. Noting that both employers and responsible persons were liable to fines upon conviction, Ms LI expressed worry that it was unfair for the responsible persons to be held responsible for non-compliance as they only acted according to the instruction of the employers. She pointed out that the proposed Regulation failed to spell out the relationship between employers and responsible persons.

23. OHC advised that the definition of employer, person responsible and employee were clearly spelt out in OSHO. Under OSHO, the person responsible for a workplace was the employer of the employees who were employed to carry out work there, or if the employer did not exercise any degree of control over the workplace, meant the occupier of the workplace. If an employer exercised control over the workplace, the employer would assume responsibility for occupational safety and health at the workplace.

24. Noting from section 10 of the proposed Regulation that a person responsible for a workplace and an employer who failed to comply with the proposed Regulation would commit an offence of strict liability and a user would be liable to a fine only for non-compliance, Mrs Miriam LAU asked about the rationale for the differences. Mrs LAU added that having regard to the fact that some of the compliance standards and requirements were not clear and subjective, she had reservations about making the offence under sections 10(1) and (2) strict liability offences. The Chairman shared with Mrs LAU's view. He asked why a responsible person for a workplace would be liable to committing an offence of strict liability, which was set as the same level of

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that committed by an employer, as he might be an employee.

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25. SGC advised that as laid down in OSHO, the onus was on the defendants to prove compliance with the requirement or obligation. PAS(EM) said that since OSHO had come into effect, LD had followed the practice of issue warning letters and improvement notices before taking prosecution action. Nevertheless, he agreed to consider whether the existing practice should be spelt out explicitly in the proposed Regulation.

Enforcement of the Regulation

26. Mr LEE Cheuk-yan pointed out that there were no clear standards in the proposed Regulation under which the performance of the risk assessment and reduction could be measured against. To his knowledge, specific guidelines on the proper use of DSE at work were incorporated in overseas legislation on regulating the use of DSE. In the absence of some important and basic protection in the proposed Regulation, e.g. provision of rest breaks for users to address the problem of eyestrain, Mr LEE expressed concern about the enforcement of the Regulation as it relied heavily on the self-regulation of employers and users. He doubted whether the occupational safety and health of DSE users could be adequately protected even after the coming into effect of the proposed Regulation. PAS(EM) responded that the issue of rest break for all employees was being studied by the Administration under a separate exercise. Nevertheless, in overseas countries rest break for DSE users could take either the fair of alternative duties or rest from DSE work, the draft health guide had proposed.

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27. The Chairman requested the Administration to provide information on the regulation of the use of DSE in overseas countries, particularly the provision of rest breaks for users and the performance of risk assessment. PAS(EM) agreed.

28. Mr Henry WU pointed out that while reference could be made to experience in other countries, the Administration should take into account the small office size of most small and medium enterprises in Hong Kong. Under certain circumstances, although risks were identified in a risk assessment, the employers could not take action to reduce any risks identified due to the physical constraints of the workplace. In addition, having regard to the unique working environment for some occupations, e.g. small work surface for finance, securities and foreign exchange dealers or the use of notebook computers, there might be practical difficulties for the employers to comply with the requirements for DSE workstations. He hoped that the requirements could be implementable.

29. PAS(EM) said that it was stipulated in section 5 of the proposed Regulation that the person responsible for a workplace should take steps to reduce any risks identified in a risk assessment to the lowest extent as was reasonably practicable. The Administration was aware that it was impossible to introduce across-the-board requirements for DSE workstations in different working environments. He stressed that the performance of a risk assessment aimed to identify potential risks in the workplace jointly by the employer or responsible person and the employees with a view

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to reducing any risks identified by adopting appropriate rectification measures. The employers were therefore required to produce risk assessment records for inspection.

30. The Chairman enquired about the consequences of a person responsible for a workplace if he failed to reduce any risks identified after the assessment despite he had already taken appropriate actions as far as practicable. OHC pointed out that the proposed Regulation required a responsible person to take steps to reduce any risks identified in a risk assessment to the lowest extent as was reasonably practicable, rather than taking all sort of ways to eliminate the risks. Hence, during LD inspection, the inspectors would look into the particular environment in the workplace to ascertain the possible actions that could be taken to reduce risks identified in performing a risk assessment. If it was proven that a responsible person had taken all reasonably practicable steps to reduce risks identified, LD would not bring about prosecutions.

31. Mr Henry WU asked whether an employer or a responsible person could lodge complaints against users for improper use of DSE; and if so, he expressed worry that the employer-employee relationship would be undermined consequently. In the circumstances, he preferred stepping up education on the proper use of DSE to introducing mandatory requirements for workstation.

32. Mr SIN Chung-kai said that the Panel on Manpower had discussed the proposed Regulation in the last term. Although he had expressed support for the regulation of users of DSE at work, he considered that under the proposed Regulation as presently drafted, a responsible person would be easily convicted for contravening section 5. Mr SIN suggested that the Administration should consider improving the drafting of the proposed Regulation with a view to setting out a mechanism for lodging complaints by employees in relation to the use of DSE, specific steps to be taken by employers to rectify the situation and serving notices of suspension. As such, the employers would become more aware of their obligations under the proposed Regulation. Mrs Miriam LAU expressed support for the suggestions. She reiterated that the Administration should give more emphasis on education in respect of the proper use of DSE at work before bringing the self-regulatory approach into full implementation.

33. In response, PAS(EM) said that the mechanism for serving improvement and suspension notices were already laid down in OSHO. Nevertheless, the Administration would further consider the need for spelling out the mechanism in the proposed Regulation.

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34. Responding to Mr SIN Chung-kai, PAS(EM) said that even though a responsible person could not produce a risk assessment record right away during LD's inspection, he could deliver a copy of the records to LD within a specified period as requested by an occupational safety officer (OSO) of LD. He clarified that prosecution would be instituted only if the person responsible for a workplace failed to take steps to reduce risks even after receiving an improvement notice.

35. Mr SIN Chung-kai enquired whether it would constitute an offence under section 4(5) of the proposed Regulation if the responsible person lost the risk

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assessment records. The Chairman expressed a similar concern with Mr SIN. He said that no flexibility was allowed under the proposed Regulation as presently drafted where failure to produce risk assessment records during LD's inspection in accordance with section 4 would constitute an offence.

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36. PAS(EM) reiterated that OSO of LD might make a written request under section 4(7) for a copy of the records to be delivered to LD within a specified period. Having regard to members' comments, PAS(EM) agreed to consider reviewing the drafting of section 4 of the proposed Regulation on risk assessment to allow more flexibility.

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37. In concluding the discussion, the Chairman urged the Administration to actively consider the concerns expressed by members and the implementation mechanism suggested by members. PAS(EM) agreed to revert to the Subcommittee at the next meeting.

38. The next meeting would be held on 17 January 2001 at 8:30 am.

39. There being no other business, the meeting ended at 6:15 pm.

Legislative Council Secretariat

7 March 2001