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by the Administration)

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

**Minutes of meeting
held on Wednesday, 17 January 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 HUI Cheung-ching
Hon YEUNG Yiu-chung
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 SIN Chung-kai
- 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
[LC Paper No. CB(2)704/00-01(01)]

Principal Assistant Secretary for Education and Manpower (PAS(EM)) briefly took members through the Administration's paper setting out its response to issues raised by members at the last meeting.

Regulation of the use of display screen equipment (DSE)

2. Mr Kenneth TING noted from the Administration's paper that although USA and the European Union adopted a legislative approach to regulate the use of DSE at work, Australia, Singapore, Canada and New Zealand adopted a non-legislative approach in the regulation of health and promoting the proper use of DSE at work through the publication of guidelines. He asked why the Administration only made reference to the experience in those countries adopting a legislative approach. Citing the experience in some overseas countries which adopted a legislative approach, Mr TING said that to his knowledge, some information technology developers had decided to shelve their investment plans simply because of the regulation of the use of DSE. He believed that the proposed regulation of the use of DSE would jeopardise the development of information technology in Hong Kong.

3. PAS(EM) pointed out that the legislative intent of adopting a self-regulatory approach was to safeguard the occupational safety and health of employees. The Administration was of the view that a responsible government should be proactive in taking preventive measures in this respect.

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4. While agreeing with the need to arouse the awareness of users about the proper use of DSE, Mr Kenneth TING considered that it was premature to introduce the relevant legislation at the moment given that the corresponding health guide had not yet been promulgated. The Administration should step up educational publicity in respect of the use of DSE before introducing the relevant legislation. Mr MAK Kwok-fung concurred with Mr TING.

5. Occupational Health Consultant (OHC) pointed out that prolonged use of DSE at work might cause short-term health problems. According to the findings of a survey conducted by the Occupational Safety and Health Council (OSHC) in 1997, it was revealed that of the respondents, over 70% of them had eyestrain problems, 20% to 30% and 50% to 60% of the respondents suffered from upper limb pains and back pains respectively. Regarding the more serious health problems, some ten cases of tenosynovitis were reported every year. However, 20 cases of this disease were reported last year. OHC further said that notwithstanding that the Labour Department (LD) had issued guidelines on the use of computers at work since early 1980s, it was revealed from the above survey results that health problems caused by improper use of DSE was an area worth more attention. As such, the Administration considered that the introduction of legislation in this respect would be more effective to arouse the public awareness of the proper use of DSE at work.

6. Mrs Miriam LAU expressed similar concerns with Mr Kenneth TING. She commented that the Administration, on the one hand, advocated to promote a self-regulatory approach in safeguarding safety and health in the workplace. On the other hand, the Administration did not trust both the employers and users at workplace by making non-compliance with the requirements an offence. Mrs LAU expressed strong reservations about the proposal as it was too great a step forward. She asked for more information on whether a fine was imposed on non-compliance with the guidelines on use of DSE in those countries where a self-regulatory approach had been adopted.

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7. PAS(EM) agreed to provide the information requested by Mrs Miriam LAU after the meeting. He stressed that the Occupational Safety and Health (Display Screen Equipment) Regulation (the proposed Regulation) sought to provide a legal framework to enforce the compliance with the requirements and standards laid down in the guidelines. The crux of the proposed Regulation was the performance of risk assessment, the record of which contained specific information for assessing whether an employer had abided by the compliance standards.

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8. Mr LEUNG Fu-wah recalled that the Administration had continuously launched educational publicity on the proper use of DSE at work and considered that sufficient guidelines had been provided to employers and users. To facilitate members' better understanding of the publicity works which had been carried out, Mr LEUNG suggested and OHC agreed to provide samples of educational pamphlets and publications on promoting the proper use of DSE at work.

9. The Chairman opined that it was the general practice of LD to use guidelines as

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an implementation instrument. He wondered why the proposed Regulation adopted a different approach from the conventional one in promoting occupational safety and health at the workplace.

10. PAS(EM) pointed out that following a review of the effectiveness of existing measures to promote occupational safety and health conducted by the Administration in 1995, it was found that the conventional enforcement approach adopted under the Factories and Industrial Undertakings Ordinance and the related guidelines and codes of practice were proven inadequate to achieve the purpose of promoting occupational safety and health at the workplace. It was against this background that the Occupational Safety and Health Ordinance (OSHO) was introduced in 1997. The policy intent was to strike a proper balance between arousing the awareness of employers to assume the responsibility of taking appropriate action to improve safety and health at workplace and to provide a legal basis for LD to take enforcement actions against non-compliance. As illustrated in paragraph 6 of the Administration's paper, no prosecution in respect of DSE workstations had ever been instituted since the coming into effect of OSHO. On the question of stepping up education on the proper use of DSE at work, PAS(EM) said that the draft health guide gave practical guidance on the ergonomic requirements of workstations and measures for preventing common ill-health problems.

11. Mr YEUNG Yiu-chung said that although reference to overseas experience could be made when deciding whether legislation should be introduced to regulate the use of DSE at work, consideration should be given to assessing the extent of local health problems arising from the prolonged use of DSE. He asked about the details of the associated health problems.

12. OHC responded that as revealed from the survey conducted by OSHC, there was an increasing trend of employees encountering health problems closely related to the use of computers at work. Although many of these problems were temporary and might be relieved after work, they could degenerate into chronic health problems if ignored over a considerable period of time. Then the question on employees' compensation might come in.

Admin

13. To further facilitate members' understanding of the extent of health problems, the Chairman requested the Administration to provide statistics on the number of occupational sickness reported in relation to the use of DSE at work.

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14. Mr Henry WU pointed out that for most small size enterprises, employees might not use computers frequently, though they depended on the use of computers in their job. However, the office layout of these small offices must be re-designed, with great difficulties, so as to meet the compliance standards under the proposed Regulation. The Administration should address this loophole by clearly defining the term "continuous use" of DSE in the proposed Regulation. OHC replied that the proposed Regulation sought to protect DSE users who were highly dependent on the use of DSE in their daily job and would use the equipment for long hours almost every day. The Administration agreed to provide additional information after the meeting.

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Offence of strict liability

15. Mrs Miriam LAU said that she could not accept the proposal that non-compliance with the proposed Regulation by an employer or a responsible person was liable to committing an offence of strict liability. She considered that the matter should be studied from the equity angle. Mrs LAU sought advice from the Assistant Legal Adviser 5 (ALA5) as to whether the two court cases cited by the Administration (which held that even if an offence was a strict liability offence, it did not mean that a defendant would have no defence for the offence) did provide the authority that defences were available for strict liability offences.

16. ALA5 said that as a general principle, strict liability would be imposed on regulatory offences which were related to issues of social concern, e.g. littering, and which were created by statutes. In such offences, the requirement for mens rea (namely, knowledge, recklessness or negligence) before a person could be found guilty of a criminal offence would be displaced. The court would usually construe an offence as carrying strict liability only if the intention of the legislation was clear and that it was justifiable. The power to create offences of strict liability under the proposed Regulation was provided in OSHO. ALA5 further said that the description of these offences as strict liability offences had more been preferred by some legal academics to offences of absolute liability because certain general defences were still allowed for some strict liability offences, e.g. insanity, necessity or duress and coercion.

17. Referring to paragraph 5(b) of the Administration's paper, Mr MAK Kwok-fung opined that the Administration proposed to make offences referred to in the proposed Regulation as strict liability offences simply because the subject matter was a regulatory issue was putting the horse before the cart. Given that providing answers to questions listed in the draft health guide involved subjective judgement, he considered that the Administration should step up educational efforts on the proper use of DSE, rather than imposing penalty for non-compliance with the requirements and standards.

18. In reply, PAS(EM) said that the proposed Regulation sought to protect DSE users who were usually highly dependent on the use of DSE in their job. He pointed out that some 80 organisations, including the Hong Kong Computer Society, had been consulted on the proposals. The Hong Kong Computer Society, being a professional body in the computer field, had expressed support for the contents of the draft health guide.

Relationship between the proposed Regulation and OSHO

19. Mr LEUNG Fu-wah said that to his knowledge, the legislative intent of the proposed Regulation was to arouse the awareness of employers in protecting DSE users.

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He asked about the relationship between the proposed Regulation and OSHO and whether the provisions in the proposed Regulation as presently drafted were so unclear that it would be difficult to enforce.

20. In response, ALA5 said that the extent of specific standards for compliance to be laid down in the legislation was a matter of policy consideration and judgement. As regards the proposed Regulation, it was believed that the lack of clear standards in the Regulation with which the performance of the risk assessment and reduction could be measured against was the result of conscious decision to adopt the concept of self-regulation. The enforcement of the proposed Regulation was based on a self-regulatory approach, which was supplemented by administrative measures in the form of guidelines. Although it was laid down in the principal legislation that the court could make reference to the guidelines or codes of practice issued by the enforcement agencies in deciding whether the defendants concerned had violated the legislation, the health guide in the present case was apparently outside the statutory framework.

21. PAS(EM) pointed out that since the enactment of OSHO in 1997, employers assumed responsibility for the health and safety at the workplace, including the use of DSE. Even in the absence of the proposed Regulation, employers could be convicted of not providing a healthy and safe workplace for computer users by invoking OSHO. The proposed Regulation sought to spell out explicitly the responsibility of employers and responsible persons in safeguarding the health and safety at the workplace.

Enforcement of the proposed Regulation

22. Mr LEE Cheuk-yan expressed doubts about the overall effectiveness of the Regulation as it would depend very much on the quality of the risk assessment. He pointed out that LD could not bring about prosecution for non-compliance if an employer or a responsible person argued that he/she had already performed a risk assessment, though it might be conducted without giving due regard to the potential risks, nor observing the guidelines closely. He believed that the introduction of legislation would be the most effective way to safeguard occupational safety and health at the workplace. In the absence of clear standards in the proposed Regulation, Mr LEE considered that the effectiveness of the health guide could be improved only if the Administration included a provision requiring employers to allow DSE users to take rest breaks or perform alternative duties at regular intervals after prolonged use of DSE. The Chairman expressed similar concerns with Mr LEE Cheuk-yan. Having regard to the fact that no prosecution in respect of DSE workstations had been made under OSHO since its enactment and the limited manpower in LD to carry out inspections, the Chairman said that the Administration should explain how the proposed Regulation would be enforced.

23. PAS(EM) clarified that LD would issue warning letters and improvement notices for non-compliance with the proposed Regulation as the initial steps of enforcement. Prosecution would be instituted only if employers or responsible persons failed to take corresponding measures upon receipt of the warning letters and improvement notices. He stressed that the object of the proposed Regulation was to

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set up a mechanism requiring employers or persons responsible for workplace to perform risk assessment and take appropriate steps to reduce the risks identified with a view to protecting DSE users. PAS(EM) reiterated that employers were already required under OSHO to assume responsibility for employees' health and safety at the workplace. Mr LEE Cheuk-yan requested the Administration to provide further information on the provisions in OSHO, under which actions could be taken for breaching the proposed Regulation. Ms LI Fung-ying echoed Mr LEE's request. She said that to her knowledge, the responsibility and obligation of employers and employees to promote health and safety at workplace were laid down in OSHO. To clear members' doubts, she considered that it would be useful to provide members with the relevant provisions in OSHO.

Admin

24. As regards the provision of rest breaks, PAS(EM) said that although reference to rest breaks were made in some overseas countries on regulating the use of DSE at work, it did not necessarily mean taking a break from work. Performing alternative duties might achieve similar purpose.

25. Mr LEE Cheuk-yan stressed that if the Administration wished to better protect DSE users and to relieve the related health problems, it should include in the health guide rest breaks or requiring DSE users to perform alternative duties after prolonged use of DSE as a prerequisite condition in addition to other compliance standards. PAS(EM) agreed to consider.

Admin

Other concerns

26. Noting from the Administration's paper that no change to the Chinese rendition of "risk assessment" was required, Mr MAK Kwok-fung expressed disagreement with the Administration's view. He maintained the view that the existing Chinese rendition of "risk assessment" as "危險評估" could not reflect its meaning accurately and urged the Administration to further consider rendering "risk" as "風險". PAS(EM) explained that "危險評估" was well-established as the Chinese rendition of "risk assessment" in the legislation. Nevertheless, Mr MAK's view was noted.

27. In concluding the discussion, the Chairman requested the Administration to provide the relevant extract of the Health and Safety (Display Screen Equipment) Regulations in the United Kingdom as well as other overseas legislation and guidelines on the use of DSE at work, together with a comparison table setting out the various provisions on risk assessment, continuous DSE work, rest breaks and penalties for non-compliance with the provisions. PAS(EM) agreed.

Admin

28. The next meeting would be held on 26 February 2001 at 4:30 pm.

29. There being no other business, the meeting ended at 9:45 am.

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Legislative Council Secretariat
10 April 2001