

立法會
Legislative Council

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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 Monday, 18 June 2001 at 1:00 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Andrew CHENG Kar-foo (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon LEE Cheuk-yan
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
Ir Dr Hon Raymond HO Chung-tai, JP
Hon HUI Cheung-ching
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. Meeting with the Administration
(LC Paper No. CB(2) 1874/00-01(01))

The Chairman informed members that Mr LEE Cheuk-yan had revised his proposed amendments to the proposed Occupational Safety and Health (Display Screen Equipment) Regulation (the proposed Regulation). Mr LEE and the Chairman's proposed amendments were tabled at the meeting.

(*Post-meeting note* : The amendments proposed by Mr LEE and the Chairman were issued to members vide LC Paper No. CB(2) 1874/00-01(03) and (04) respectively on 19 June 2001.)

Amendments proposed by Mr LEE Cheuk-yan

2. Principal Assistant Secretary for Education and Manpower (PAS(EM)) elaborated on the Administration's response to the amendments proposed by Mr LEE Cheuk-yan, i.e. by adding a new section 11 to make the Health Guide a workplace code of practice. He said that the Commissioner for Labour (C for L) might, under section 40 of the Occupational Safety and Health Ordinance (OSHO) issue codes of practice for the purpose of providing practical guidance to employers and employees, and to occupiers of workplaces who were not employers. The Administration was of the view that the new section 11 proposed by Mr LEE was inconsistent with section 40 of OSHO. This was because section 40 of OSHO sought to confer a power on C for L to issue codes of practice. C for L had discretion whether or not to issue a code of practice. The proposed new section 11 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.

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3. PAS(EM) further said that according to legal advice, 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 proposed by Mr LEE was added.

4. PAS(EM) added that it was impractical to issue codes of practice for all workplaces covered under the proposed Regulation across-the-board.

5. Mr LEE Cheuk-yan said that he fully agreed with the practical difficulties in drawing up the work practices and standards in the proposed Regulation which were applicable to and agreed by all industries across-the-board. In the absence of specific provisions in the proposed Regulation on how to perform risk assessment, employers were uncertain as to whether they had contravened the requirements even though they believed that they had taken actions according to the legislation. He was of the view that the proposed Regulation was vague, and he had reservations about its effectiveness. He further said that although the Health Guide would provide general guidance for different industries, there was no penalty for non-compliance. It was against this background that he proposed to include the Health Guide in the proposed Regulation to provide some compliance standards to employers and employees.

6. As regards the Administration's comment that his proposed new section 11 was inconsistent with section 40 of OSHO, Mr LEE Cheuk-yan responded that he had revised his proposal to the effect that C for L was required to issue guidelines to the person responsible for workplaces for the purpose of providing guidance on compliance with section 7 of the proposed Regulation. He did not see any legal relationship between the proposed new section 11 and section 40 of OSHO. Having regard to the Administration's response, Mr LEE said that he might consider revising his proposal that C for L *might* issue guidelines, if the Administration undertook that C for L would do so after the enactment of the proposed Regulation.

7. While expressing appreciation that Mr LEE Cheuk-yan had revised his proposed amendments having regard to the Administration's response, PAS(EM) said that as the revised version was tabled at the meeting, he had not yet been able to study Mr LEE's revised amendments in detail. His initial response was that there was no need to lay down in the proposed Regulation that C for L *might* issue guidelines to the person responsible for workplace as OSHO had already conferred the discretionary power on C for L to issue a code of practice.

8. Senior Government Counsel (SGC) said that Mr LEE's proposed provision, irrespective of whether it was a code of practice or guidelines, would impose an obligation on C for L to issue such document, thus disabling C for L from exercising her discretionary power under section 40 of OSHO. She was of the view that Mr LEE's revised amendments contravened section 40 of OSHO.

9. Assistant Legal Adviser 5 (ALA5) said that the proposed Regulation would be made by C for L under the power conferred on her by OSHO. He pointed out that if Mr LEE Cheuk-yan's proposed provision was adopted, it would mean that C for L had

undertaken to issue guidelines for the purpose of section 7 of the proposed Regulation. Hence, C for L might be regarded as exercising her discretionary power as conferred on her by section 40 of OSHO. Viewing from this perspective, Mr LEE's proposed provision was not inconsistent with section 40 of OSHO.

10. Referring to ALA5's view, SGC said that section 40 of OSHO conferred a power on C for L to issue workplace codes of practice. Mr LEE's proposal sought to stipulate in the proposed Regulation that C for L must issue guidelines, rather than exercising her discretion to do so. It was inconsistent with the legislative intention of OSHO.

11. Mr SIN Chung-kai expressed reservations about Mr LEE's proposal. He said that if the guidelines for the purpose of section 7 of the proposed Regulation was admissible in evidence in the court proceedings, the guidelines should be scrutinised in great detail. He considered it not viable to put in place guidelines that were applicable to all industries. Mr SIN further said that it would not be difficult to prove whether a person responsible for a workplace had contravened the requirements for workstation under section 7 of the proposed Regulation, as the criteria were the safety and health of DSE users. However, non-compliance with the health guidelines did not necessary mean that the workstation concerned was unhealthy or unsafe, or vice versa. He was of the view that any liabilities or obligations imposed on a responsible person that were beyond the scope of requirements proposed under section 7 should be studied with the extreme care.

12. Mrs Miriam LAU said that with reference to the experience in drawing up codes of practice by C for L for specific trades, extensive consultation were carried out to cater for the unique practical difficulties for a particular trade. It would be extremely difficult to incorporate guidelines into the proposed Regulation that would be applicable to all industries and trades across-the-board, as proposed by Mr LEE Cheuk-yan. While she appreciated the importance to safeguard employees' occupational safety and health, Mrs LAU expressed reservations about the need for a workplace code of practice for the purposes of the proposed Regulation.

13. Mr LEE Cheuk-yan said that his proposal aimed to give legal effect to the Health Guide. In the absence of penalty for non-compliance with the Health Guide and compliance standards in the proposed Regulation, the proposed Regulation as presently drafted would not be implementable.

14. Mr SIN Chung-kai reiterated that he considered the proposed Regulation acceptable as it applied to the general working environment. Should the guidelines on requirements for workstation be admissible in evidence in the court proceedings, the guidelines should be studied carefully in full consultation with the affected parties. He pointed out that the use of DSE at work was getting very popular, it was practically difficult to consult the various affected industries and draw up guidelines applicable to all industries across-the-board. In his view, giving legal effect to the Health Guide would unnecessarily create tension between employers and employees. Mr SIN further said that having regard to the fact that hazards arising from use of DSE was not great, he questioned the need to impose such severe penalty on employers for

non-compliance with the guidelines.

15. Mrs Miriam LAU shared Mr SIN's view. Citing the construction industry as an example, Mrs LAU said that even though criminal liability was imposed on persons responsible for construction sites and the nature of work in construction sites would definitely give rise to more potential hazards than using DSE at work, there were no specific guidelines providing practical guidance to employers and employees on steps to be taken at work.

16. Mr LEE Cheuk-yan disagreed with Mrs LAU's comment. He stressed that his proposal was not to impose a criminal liability on employers for non-compliance with the guidelines for the purpose of section 7 of the proposed Regulation. His proposal sought to provide a reference point in the court proceedings.

17. Mr LEUNG Fu-wah said that to his understanding, Mr LEE's proposed provision was modelled directly on section 40 of OSHO. He believed that following the enactment of the proposed Regulation, C for L would issue guidelines on the compliance standards for the purposes of the proposed Regulation. Hence, he considered that Mr LEE's proposed new section 11 was unnecessary.

18. Mr LEE Cheuk-yan stressed that the Administration had so far made no undertaking that C for L would exercise her discretionary power conferred on her under section 40 of OSHO to issue a code of practice for the purpose of section 7 of the proposed Regulation. In the circumstances, he expressed concern that C for L might not exercise her discretionary power to issue a code of practice.

19. PAS(EM) reiterated that Mr LEE Cheuk-yan's proposed amendment was inconsistent with section 28(1)(b) of the Interpretation and General Clauses Ordinance. He emphasised that a workplace code of practice would be issued by C for L by exercising her discretionary power conferred on her under section 40 of OSHO, i.e. it would be issued on a need basis. PAS(EM) further said that the Health Guide, to a great extent, was different from a workplace code of practice as the former was applicable to the general working environment.

20. Mr SIN Chung-kai maintained the view that the Health Guide provided compliance standards for the purposes of the proposed Regulation, i.e. safeguarding the safety and health of DSE users. However, the issue of a workplace code of practice would extend the scope and application of section 7 of the proposed Regulation, and thereby was different from the purpose of issuing the Health Guide.

21. The Chairman concluded that having regard to members' views on Mr LEE Cheuk-yan's proposed new section 11, the Subcommittee did not support the proposed provision. He said that Mr LEE might consider pursuing his proposed amendments in his own name.

Revised section 9 of the proposed Regulation

22. PAS(EM) said that the Administration proposed to revise section 9 of the

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proposed Regulation to clarify the obligations of DSE users. The wording of revised section 9 was laid down in paragraph 1 of LC Paper No. CB(2) 1874/00-01(01). The proposed textual amendments to section 9 had also been incorporated in the Health Guide to ensure the consistency in wordings adopted for the proposed Regulation and the Health Guide. He further said that LD would from time to time review the Health Guide and revise it as necessary, taking into account the public views, with a view to giving clear guidance on the proposed Regulation.

Revised draft Health Guide

23. PAS(EM) said that the Administration had further revised the Health Guide (third version as at June 2001). He pointed out that no amendments were proposed to Parts I and II of the Health Guide. He then took members through the revision proposed to Part III, which covered screen, keyboard, work surface, illumination, reflections and glare, noise as well as the diagram on page 12, paragraphs 3.5 and 3.8. He added that items 2 and 5 of the computer workstation risk assessment checklist (Appendix B of the Health Guide) were also revised.

24. The Chairman noted that the Administration proposed to replace "should" with "should preferably", "desirable" or "can" in the Health Guide. He asked for the criteria in determining when a person should comply with the standards laid down in the Health Guide.

25. OHC responded that textual amendments to the Health Guide were proposed after incorporating members' views expressed at the previous meetings. He said that generally speaking, the word "should" was used to qualify the requirements under which all employers must comply with in the workplace, e.g. the provision of suitable work surface and chair. The word "should" was not used for cases where the compliance standards would depend on the actual working environment. OHC stressed that the compliance standards laid down in the Health Guide had no legal effect.

26. Mr Henry WU shared the Chairman's view and said that the inconsistency of use of words in the Health Guide would need further study. Mr WU then referred to paragraph 1.4 of the revised Health Guide and said that it was inappropriate to cite financial dealers as an example of DSE users for the purposes of the proposed Regulation. He pointed out that stock transaction did not generate much data input work for financial dealers.

27. PAS(EM) said that the Administration had agreed to delete "financial dealers" from the example of DSE users mentioned in the Health Guide. He undertook to follow up the matter. As regard the use of words in the Health Guide, he reiterated that the Health Guide intended to provide general guidance to all industries on the use of DSE at work. Nevertheless, the Administration would incorporate members' views into the Health Guide as far as practicable.

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Amendments proposed by the Chairman

28. The Chairman referred members to his proposed resolution to amend the proposed Regulation which was tabled at the meeting. The Chairman said that his proposal, which was along the lines of paragraph 3.3 of the Health Guide, sought to add a new section 7A to the proposed Regulation requiring an employer to provide periodic breaks to DSE users or change duties after prolonged DSE work. Upon conviction for contravening the provision, a person responsible for the workplace was liable to a fine at level 5. The proposed provision was modelled directly on the United Kingdom Health and Safety (Display Screen Equipment) Regulations. He added that the proposed resolution was proposed on behalf of the Democratic Party.

29. PAS(EM) said that as the proposed resolution was tabled at the meeting, he could only offer his initial response from the policy perspective. He said that the Administration was studying the subject on arrangement for rest breaks. The Census and Statistics Department had just completed a survey on rest breaks of employees. As the findings had yet to be compiled, he considered that it would be premature to add a statutory provisions of arrangement of duties at work and rest breaks to the proposed Regulation ahead of the policy decision on the matter.

30. Mrs Miriam LAU said that as the intensity of using DSE varied greatly among individual trades, the respective needs for rest breaks of DSE users would be different. Given that under the Chairman's proposal, contravention with the requirement for arranging alternative duties or providing rest breaks would be liable to criminal liability, the proposed Regulation should spell out clearly the circumstances for different trades under which DSE users should perform alternative duties or take a rest break. Mrs LAU expressed reservations as to how the proposal could be put into implementation. She considered that the existing OSHO had already provided sufficient safeguard in this respect.

31. Mr Kenneth TING shared a similar concern with Mrs Miriam LAU. Mr TING said that as the Labour Advisory Board had been consulted on the Health Guide and expressed support for the compliance standards, it would be more appropriate for employers and employees to agree mutually on work practices according to their operational needs.

32. The Chairman clarified that his proposed resolution sought to draw the attention of the responsible persons to the need for arranging alternative tasks, and if not feasible, appropriate rest breaks, for safeguarding occupational safety and health. Given that such arrangements were already incorporated in the Health Guide, the Chairman said that his proposal aimed to spell out explicitly the requirement in the proposed Regulation to promote the good practices in the workplace. Hence, his proposal was different from the issue of rest breaks being studied by the Administration.

33. Mr SIN Chung-kai expressed support for the Chairman's proposed resolution. He pointed out that under the proposed resolution, DSE users were required to perform alternative duties or take a rest break if no other duties could be arranged only after they had used their own workstation for a continuous period. In his view, under practical situation, apart from data input operators, most users seldom used DSE continuously for such a long period of time without changing the nature of work. He

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believed that the requirement would not create additional responsibility for employers. Mr SIN further said that as similar legislation was adopted in the United States and United Kingdom, he urged that the Administration should consider taking up the proposed amendments.

34. Mr Henry WU said that he did not see the need to incorporate in the proposed Regulation that alternative duties should be arranged or rest breaks should be provided if no alternative duties could be arranged. This was because employees would take a break if they felt fatigued with the use of DSE. Mr Kenneth TING concurred with Mr WU. Mr TING said that more importantly, the Administration should promote the good practice of using DSE through publicity and public education, particularly for the youngsters.

35. Mrs Miriam LAU said that she would move a resolution to delete section 10(4), which created offences under the proposed Regulation as strict liability offences. The Chairman said that Mrs LAU's proposed amendment would be studied at the next meeting. To facilitate members' consideration of the amendments proposed by the Chairman and Mrs Miriam LAU, the Chairman requested that the Administration should provide a written response for discussion at the next meeting.

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36. The Chairman reminded members that the next meeting would be held on 21 June 2001 at 8:30 am.

37. There being no other business, the meeting ended at 2:30 pm.

Legislative Council Secretariat

9 October 2001