

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

**Minutes of meeting
held on Monday, 26 February 2001 at 4:30 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 Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon HUI Cheung-ching
Hon SIN Chung-kai
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
- 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 Vicki LEE
Acting 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

Action

I. Meeting with the Administration
[LC Paper No. CB(2) 914/00-01(01)]

At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) said that specific response to issues raised by members at the previous meeting on 17 January 2001 and an outline of the strategy in protecting the occupational safety and health of employees using display screen equipment (DSE) were set out in the Administration's paper.

Background for introducing the proposed Regulation

2. Noting that there was no specific legislation on the use of DSE at work in Singapore, Mr Kenneth TING asked how the reported cases of occupational sickness caused by work related to DSE in Singapore compared with those in Hong Kong. In his view, occupational sickness caused by work related to DSE was uncommon in the industrial sector as DSE was not widely used. Mr TING said that to raise awareness of DSE users about the proper use would be more effective than simply introducing legislation to regulate the use of DSE at work.

3. PAS(EM) responded that the Administration had no ready information on the number of reported occupational sickness caused by work related to DSE in Singapore. He said that according to the findings of a survey conducted by the Occupational Safety and Health Council (OSHC) in 1997 on the occupational health of computer operators in various trades, it was revealed that a significant number of operators had eye discomfort, shoulder discomfort, neck discomfort or back discomfort. It also revealed that such symptoms were closely related to the use of computers at work. Although the extent of the problem in the industrial sector could not be revealed from OSHC's survey, PAS(EM) pointed out that the above health problems were more related to the nature of work and the duration of using DSE, rather than the sectors in which the operators were working.

Action

4. Mr Kenneth TING said that although the Labour Department (LD) had published a variety of educational materials to promote the proper use of DSE at work, such materials were available to the users upon request. He suggested that the Administration should expand the existing distribution network of these materials so that they could be easily accessible by DSE vendors and users. Mr TING's view was noted.

5. Mr Henry WU asked to what extent the introduction of the proposed Occupational Safety and Health (Display Screen Equipment) Regulation (the proposed Regulation) was originated from the findings of OSHC's survey.

6. PAS(EM) explained the background for introducing the proposed Regulation. He said that following a review of the effectiveness of existing measures to promote occupational safety and health conducted by the Administration in 1995, it was recommended that the concept of self-regulation would be the underlying philosophy for devising occupational safety and health legislation. This was enshrined in the Occupational Safety and Health Ordinance (OSHO) which was enacted in 1997. The proposed Regulation was the first Regulation made under OSHO adopting the self-regulatory approach. The concept of self-regulation had already emerged prior to conducting the survey by OSHC in 1997. He added that the report of OSHC's survey provided useful information for drawing up the proposed Regulation and the draft Health Guide.

7. Mr Henry WU pointed out that OSHC had omitted a crucial element, i.e. a control experiment, in conducting the survey in 1997. He said that the habits of individual respondents of the survey should have been taken into account when concluding the findings of the survey. For example, individuals' bad habits and incorrect posture might have attributed to the reported cases of physical discomfort. He believed that stepping up public education to promote the proper use of DSE at work as well as at home was far more effective than introducing legislation to regulate the use of DSE at work.

8. PAS(EM) said that while the Administration did not dispute the importance of stepping up educational publicity on the proper use of DSE, the proposed Regulation sought to raise the awareness of DSE users about the proper use of workstations at work and to provide objective standards for carrying out risk assessment. The concept of self-regulation aimed to enhance the co-operation between employers and employees in relation to the proper use of DSE at the workplace. He added that the guidelines for carrying out the risk assessment required under the proposed Regulation would be easily understood. He stressed that prosecution against non-compliance with the proposed Regulation would be the last resort.

Overseas experience in occupational safety and health laws

Action

9. Mr HUI Cheung-ching noted from the Administration's paper that there was no penalty for non-compliance with the regulations/standards on the use of DSE at work in most overseas countries. He asked for information on the enforcement of such regulations and standards in other countries. PAS(EM) responded that there was no standardized practice in relation to the regulation on the use of DSE at work. He referred members to the extracts of the prevailing regulations and standards on use of DSE at work in seven countries/regions at the Annex to the Administration's paper.

10. Mrs Miriam LAU asked whether the United Kingdom (UK) was the only country that had adopted legislation for the regulation of use of DSE at work. Occupational Health Consultant (OHC) explained that apart from UK, penalty provisions were also laid down in the occupational health and safety law in USA. The penalty for contravention of the Ergonomics Program Standard under the Code of Federal Regulations in USA was a fine of up to US\$7,000, and up to US\$70,000 for wilful or repeated violations. He added that the Ergonomics Program Standard under the Code of Federal Regulations in USA was legally binding.

11. Mrs Miriam LAU pointed out that non-compliance with regulations and standards relating to occupational safety and health in other countries would not be regarded as having committed a strict liability offence. For instance, the Ergonomics Program Standard under the Code of Federal Regulations in USA was applicable to those types of work that would likely cause symptoms of physical discomforts that were related to the use of computers. Investigations of non-compliance would be carried out upon complaints of discomforts from employees. In her view, the application of the occupational health and safety laws in other countries was entirely different from that proposed under the Regulation.

12. OHC said that the occupational health and safety law in USA did not stipulate explicitly as to whether non-compliance with the law was a strict liability offence. The remedial measures required under the US legislation were less stringent than those in other countries. Enforcement were carried out only upon receipt complaints. He pointed out that under the UK legislation, should a workplace be within the meaning of the legislation, the employers concerned were required to take all preventive and remedial actions before symptoms of occupational sickness developed in any users.

13. Mrs Miriam LAU asked whether the proposed Regulation was mirrored from the Health and Safety (Display Screen Equipment) Regulations in UK (UK Regulations); and if so, she wondered why the Administration did not adopt the entire UK Regulations. She pointed out that the compliance standards were laid down clearly in the UK Regulations.

14. OHC said that the enforcement of the occupational safety and health regulations/guidelines in most countries/regions was similar to the legislative proposal in question. He added that if the compliance standards were laid down in the proposed Regulation, it would be subject to frequent amendments in order to cope with the rapid development in the information technology field. The proposal to lay down the compliance standards in the Health Guide would allow flexibility in this respect.

Action

15. Mrs Miriam LAU pointed out that non-compliance with the proposed Regulation was liable to committing a strict liability offence, however, clear compliance standards were not set out in the proposed Regulation. She expressed doubt about whether such an approach would be fair to those who were to be regulated.

16. The Chairman noted from the Annex to the Administration's paper that there were no provisions on penalties for non-compliance in most of the occupational safety and health laws in other countries and regions. He said that in the absence of criteria for prolonged DSE work, the requirements for performing risk assessments and the provision of rest breaks in the proposed Regulation, members were concerned about whether the proposed Regulation could achieve its intended purpose.

17. Responding to members' concerns, PAS(EM) reiterated that prosecution for non-compliance was not the primary objective of the proposed Regulation. He said that during an inspection to a DSE workstation, LD would inspect the risk assessment records to see if potential health hazards had been identified and their risks evaluated and reduced. Improvement notices would be served where appropriate. If a person failed to comply with the improvement notice, he would be liable on conviction to a fine and imprisonment.

Enforcement of the proposed Regulation

18. Mr Henry WU said that although OHSC's survey conducted in 1997 was targeted at computer operators, the meaning of "users" in the proposed Regulation had been extended to all DSE users at work. He pointed out that having regard to the unique physical office layout and working environment in certain sectors, e.g. the information technology and financial sectors where DSE users might use more than one computer concurrently or work surface was small, there might be practical difficulties for the employers and DSE users in these offices to comply with the requirements for DSE workstations. The office layout of these small offices must be re-designed, entailing substantial financial implications.

19. PAS(EM) said that the Administration was aware that it was impossible to introduce across-the-board requirements for DSE workstations in different working environment. A non-prescriptive approach was therefore adopted and flexibility was intentionally built into the proposed Regulation. The Health Guide, which set out the compliance standards, would be published in conjunction with the coming into effect of proposed Regulation.

20. Mr Henry WU pointed out that in some circumstances, employers might have practical difficulties to comply with the rectification works as specified in the improvement notices. He asked how such a situation would be dealt with.

21. OHC responded that under the proposed Regulation, a person responsible for a workplace would only be required to take steps to reduce any risk identified in a risk assessment to the lowest extent as was reasonably practicable. It would be a defence

Action

for the person concerned if the rectification works were not reasonably practicable.

22. Mr LEE Cheuk-yan said that although the Administration would propose including in the Health Guide the recommendation that rest breaks be provided to DSE users, he observed that such requirement was stipulated in the related occupational safety and health laws in other countries. He asked whether the Administration would further consider including the provision of rest breaks in the proposed Regulation.

23. OHC responded that the Administration would include in the Health Guide the recommendation that, where no alternative duty could be arranged, appropriate rest breaks be provided to DSE users. The Health Guide would also stipulate the interval for providing rest breaks to DSE users, e.g. a 5 to 10-minute break after continuous use of DSE for one to two hours. He stressed that rest breaks could be provided subject to mutual agreement between employers and employees, which would depend very much on the nature of DSE work involved.

24. Mrs Miriam LAU sought clarification as to whether under OSHO, LD would institute prosecution against an employer only after the employer concerned had been served with an improvement notice and failed to take rectification steps within a specified period; and if so, whether such enforcement steps were applicable to the proposed Regulation.

25. OHC explained that LD was empowered under OSHO to issue an improvement notice to a person responsible for a workplace during its inspection for non-compliance with the requirements. However, in some circumstances, LD could bring about prosecutions without going through the process of serving improvement notices having regard to the seriousness and urgency of the contravention.

26. Mrs Miriam LAU expressed serious concern that a responsible person would be easily convicted of contravening the proposed Regulation. She pointed out that under the proposed Regulation as presently drafted, prosecution could be brought about without serving improvement notices. The Administration should consider including in the proposed Regulation a warning mechanism under which employers would become clearly aware of their obligations under the proposed Regulation.

27. Mr SIN Chung-kai concurred with Mrs Miriam LAU's concern. While agreeing with the legislative intent of the proposed Regulation, he expressed reservations about the enforcement of the proposed Regulation as presently drafted. He said that the Administration had made no specific response to this issue raised by members at the previous meetings. It should critically consider improving the drafting of the proposed Regulation with a view to setting out a warning mechanism (i.e. serving of improvement notices) in the proposed Regulation so that employers were well aware of their responsibilities and the specific steps to be taken to reduce the risks at a workplace. Imposing penalty on employers and responsible persons would be reasonable only if the parties concerned were fully aware of their obligations under the proposed Regulation. He believed that the proposal would be more effective in protecting the occupational safety and health of DSE users.

Action

28. OHC explained that employers were bound by the "general duties" provision of OSHO. The mechanism for serving improvement and suspension notices were already laid down in OSHO. LD would bring about prosecution if the employer failed to take appropriate improvement measures within a specified period after receiving an improvement notice.

29. PAS(EM) reiterated that the proposed Regulation aimed to require an employer to conduct risk assessment so as to take appropriate steps to reduce the risk at a workplace. He further said that as the mechanism for serving improvement notices by LD for non-compliance was already laid down in OSHO, there was no need to repeat in the proposed Regulation.

30. Mr LEE Cheuk-yan asked whether the duration of using DSE at work was an evaluation factor in performing the risk assessment. PAS(EM) responded that the object of the proposed Regulation was to set up a mechanism requiring employers or persons responsible for a workplace to perform risk assessment and take appropriate steps to reduce the risks identified so as to ensure that a DSE workstation was suitable for use by users having regard to the latter's safety and health. The duration of using DSE was apparently outside the scope of risk assessment. The guidelines for performing risk assessment would be laid down in the Health Guide.

31. Mr LEE Cheuk-yan disagreed with PAS(EM)'s remarks. He was of the view that prolonged DSE work attributed to the major cause for health problems related to DSE work. While he had no strong views on bringing about prosecutions against those employers who contravened the proposed Regulation, he reiterated that the duration of using DSE should be taken into account in performing risk assessment.

32. Assistant Legal Adviser 5 (ALA5) pointed out that under section 4(3)(a) of the proposed Regulation, a risk assessment should consist of identifying the potential hazards arising from the work in the workstation. The proposed provision might have the effect of covering risk associated with the work process, such as the duration of using DSE, in the risk assessment. The Chairman requested the Administration to clarify this point.

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33. Ms LI Fung-ying echoed ALA5's observation. She pointed out that employers were bound by the "general duties" provision in OSHO to ensure the safety and health at work of all employees. She considered it unacceptable and contradictory if the duration of using DSE at work was not evaluated in determining the extent of risk of prolonged DSE work to the safety or health of employees.

34. The Chairman said that members had repeatedly expressed reservations about the enforcement of the proposed Regulation. He urged that the Administration should consider spelling out clearly the criteria for "continuous DSE work" and requirements of risk assessments. He also urged the Administration to address members' concern about the penalties for non-compliance. He said that in the absence of clear compliance standards in the proposed Regulation, non-compliance by a responsible

Action

Admin person or an employer with the various requirements should not be made an offence of strict liability. PAS(EM) agreed to consider and revert to the Subcommittee at the next meeting.

35. On the question of rest breaks, the Chairman suggested that the Administration should consider setting out in the proposed Regulation that employers should allow DSE users to take appropriate rest breaks or alternative duty after prolonged DSE work along the lines of section 4 of the UK Regulation, which stipulated that "Every employer shall so plan the activities of users at work in his undertaking that their daily work on display screen equipment is periodically interrupted by such breaks or changes of activity as reduce their workload at that equipment.". He also suggested that details of rest break arrangements for different job types could be set out in the Health Guide.

36. While expressing no objection to the Chairman's proposal, Mr SIN Chung-kai pointed out that it might be of little purpose as manual data input was becoming less popular nowadays. Mr Henry WU echoed Mr SIN's view. Mrs Miriam LAU considered that the UK Regulations allowed sufficient flexibility for enforcement.

Admin 37. The Chairman requested the Administration to consider including in the proposed Regulation the provision of rest breaks along the lines of section 4 of the UK Regulations. PAS(EM) agreed to consider.

Admin 38. In response to the Chairman, PAS(EM) said that the definition of "user" was laid down in section 2 of the proposed Regulation, instead of being defined in the Health Guide. The Chairman suggested that the definition of "user" be added to the Health Guide. PAS(EM) agreed to consider.

39. Responding to Mr SIN Chung-kai, ALA5 advised that the proposed Regulation would be subject to the approval of the Legislative Council, i.e. positive vetting procedure.

40. Members agreed that the next meeting would be scheduled pending the Administration's response to the issues and concerns raised by members at the meeting.

41. There being no other business, the meeting ended at 6:05 pm.

Legislative Council Secretariat

29 May 2001