

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

**Minutes of meeting
held on Tuesday, 29 May 2001 at 10:45 am
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
Hon LEE Cheuk-yan
Hon HUI Cheung-ching
Hon SIN Chung-kai
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** : Ir Dr Hon Raymond HO Chung-tai, JP
Hon YEUNG Yiu-chung
Hon Mrs Miriam LAU Kin-ye, JP
- 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

Principal Assistant Secretary for Education and Manpower (PAS(EM)) said that the Administration had provided a revised proposed Regulation (version as at 28 May 2001) [LC Paper No. CB(2) 1660/00-01(01)], after incorporating members' concerns raised at the previous meetings.

2. Referring to the revised Regulation (version as at 28 May 2001), PAS(EM) explained the major amendments as follows -

Section 4

- (a) to make clearer that the risk assessment referred to in section 4(3) was related to the workstation, rather than the work in the workstation.
- (b) to rewrite sections 4(6) and (7) into the revised section 4(6) to make clearer that an occupational safety officer could request for the production for inspection all risk assessment records. However, the responsible person could deliver a copy of the record to the officer for inspection within a specified period, if the former could not produce such records during the inspection. The purpose of the amendment sought to provide more flexibility for the enforcement officers during inspection as well as to facilitate compliance with the Regulation by the responsible person.

Section 7

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- (c) the term "welfare" was deleted from section 7 to make clear that the proposed Regulation aimed at the occupational safety and health of display screen equipment (DSE) users. A consequential amendment was proposed to paragraph 8 of the Explanatory Note.

Section 10

- (d) amendment to section 10(1) was a consequential amendment to the proposed deletion of section 4(7).

3. PAS(EM) added that the Administration had also revised the draft Health Guide. He then took members through the amendments which were summarised below -

- (a) The meaning of "user" laid down in paragraph 1.4 of Part I was amended to give more indications as to who would be covered by the proposed Regulation. The Administration proposed to replace "spend long hours more or less daily on DSE work" with "normally use the equipment for continuous spells of an hour or more at a time and more or less daily. Significant training and/or particular skills may be required in performing the DSE work. Moreover, rapid transfer of information between the user and screen as well as high levels of attention and concentration may be important requirements of the job".
- (b) Corresponding to the amendment to section 4(3) of the proposed Regulation, the words "work in" were deleted from paragraph 2.2 of Part II.
- (c) In Part III, the following specific compliance standards were proposed -
- a distance of 35 to 60 cm from the screen would be appropriate for text of normal font size;
 - the seat height should be adjustable in the range of 40 to 50 cm from the floor;
 - if task lighting was not provided, the illuminance level of the work area should be 300 to 500 lux;
 - for general computer work, a noise level below 60dB(A) was recommended;
 - the temperature should preferably be controlled within 23 to 26°C in summer and 20 to 24°C in winter, and the relative humidity within 40 to 70%; and
 - fresh air should be supplied at a rate of 0.3 to 0.5 cubic metres per minute per person. The rate required would depend on the number of occupants

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and whether smoking was allowed at the workplace.

- (d) In paragraph 3.3, it was proposed that where non-DSE work could not be arranged, appropriate rest breaks were recommended, e.g. a 5 to 10 minutes break after 1 to 2 hours continuous DSE work depending on the intensity of the work.

Revised draft Health Guide

4. While appreciating providing specific compliance standards in the Health Guide, Mr MAK Kwok-fung expressed concern that in the absence of appropriate equipment, it would be very difficult to measure as to whether the requirements for a DSE workstation were met. He was also concerned about the possible disputes arising from the different interpretation of the requirements by employers and employees.

5. The Chairman concurred with Mr MAK. Citing the guidelines on fresh air supply as an example, the Chairman asked how employers would acquire the knowledge of the supply of fresh air for the workplace was at a rate of 0.3 to 0.5 cubic metres per minute per person.

6. Occupational Health Consultant (OHC) explained that the Health Guide was an advisory document which served to help duty holders understood the legal requirements under the proposed Regulation. Should problems be identified at the workplace, the responsible person might have to take objective measures and seek professional advice, if necessary. As regards the fresh air supply, OHC said that the requirements had already been laid down in the Occupational Safety and Health Regulation. It was not a new requirement.

7. PAS(EM) said that the specific compliance standards were proposed having regard to members' concerns raised at the previous meetings. He pointed out that in the event that there were risks at the workplace, the employee concerned would be the first one to know and be in a position to reflect the risks to the employer; a responsible employer would look into the problem and take rectification actions as far as practicable. Hence, the guidelines sought to recommend a range for taking improvement measures, but non-compliance with the guidelines would not be an offence.

8. The Chairman said that while he appreciated the incorporation of objective compliance standards into the Health Guide, he considered that most of the criteria were new concept for employers and employees. He was concerned that the parties concerned might have difficulties to comply with the requirements because of the lack of the relevant knowledge.

9. Mr MAK Kwok-fung said that the Administration might consider adding explanatory footnotes to the Health Guide on how to comply with specific criterion. For instance, it should be laid down that if an employer had doubt about the supply of

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fresh air at the workplace, he might seek assistance from the relevant professional. OHC said that the relevant guidelines were provided in the Health Guide for the sake of occupational health. Nevertheless, he agreed to consider Mr MAK's proposal to include such footnotes in the Health Guide for the purpose of the proposed Regulation.

10. While he fully agreed with the examples cited in the Health Guide that financial dealers were regular DSE users, Mr Henry WU reiterated his concerns about the practical difficulties and physical constraints faced by the financial trade to comply with the proposed Regulation. For example, the small work surface for each financial dealer would result in non-compliance. In addition, customers might use DSE at the dealers' offices which was beyond the control of the financial dealers. Mr WU also pointed out that the revised meaning of DSE users was unclear. As DSE would normally be switched onto the standby mode during office hours, it was practically difficult to determine whether the arrangement constituted a continuous use of DSE of more than an hour. The financial sector had expressed grave concern about compliance with the Health Guide, in particular financial dealers were cited as an illustrative example in the Health Guide as DSE users.

11. PAS(EM) clarified that customers were not regulated under the proposed Regulation as it sought to safeguard the occupational safety and health of employees at the workplace. The various trades mentioned in the Health Guide were for illustrative purpose. To address the trade's concern, he said that consideration might be given to deleting the financial dealers from the Health Guide. Moreover, the Administration could arrange further discussion with the trade to address their specific concerns, if required. As regards the operational difficulties pointed out by Mr Henry WU, PAS(EM) said that the Administration fully understood the problems faced by the financial sector. He explained that it was against this background that the Administration regarded the Health Guide as an advisory document and failing to comply with the guidelines would not be an offence. It hoped that the employers and employees could agree mutually on the improvement measures to be adopted for reducing risks at their workplace. He further said that following the coming into operation of the Occupational Safety and Health Ordinance (OSHO) in 1997, the Labour Department (LD) had provided training and launched publicity in respect of the self-regulatory approach. He stressed that the objective of the proposed Regulation was not to penalize the employers for non-compliance, but to encourage them to identify potential risks at workplace and adopt appropriate improvement measures. As use of DSE at work was getting popular, the Administration believed that there was a pressing need for the proposed Regulation.

12. OHC added that the Health Guide intended to help employers and employees minimise health risks associated with prolonged work with DSE in the general office environment. Responsible persons were regarded as having complied with the proposed Regulation if they had already taken appropriate improvement measures to reduce risks as far as reasonably practicable.

13. Mr Kenneth TING said that while he understood that the Health Guide was an advisory document, the compliance standards should be able to be complied with by the

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affected parties. The Administration should give due consideration to the practical problems faced by individual trades. Regarding the guideline on temperature, Mr TING opined that there was no need to differentiate recommended temperature for summer and winter. Mr Henry WU was of the view that the range was too narrow as individual's needs on room temperature might vary greatly.

Revised Regulation

14. Referring to section 4(6) of the revised Regulation, Mr LEUNG Fu-wah expressed concern that the provisions might reduce the deterrent effect of the proposed Regulation as most of the responsible persons would likely perform risk assessment only after being inspected by LD as they were now allowed to deliver a copy of the record to LD for inspection within a specified period. Dr LO Wing-lok shared Mr LEUNG's concern. He said that the revised section 4(6) might give rise to a loophole in the proposed Regulation.

15. Mr HUI Cheung-ching expressed reservations about the effectiveness of the proposed Regulation. He pointed out that it would be very difficult to verify the accuracy of risk assessment record.

16. PAS(EM) said that the proposed Regulation sought to introduce the concept of self-regulation for safeguarding occupational safety and health at the workplace. The purpose would be achieved if the responsible person performed the risk assessment and took rectification actions after the inspection of LD. Responding to Dr LO Wing-lok's enquiry about the number of inspections conducted by LD in a year, PAS(EM) said that LD carried out over 100 000 inspections of workplaces every year.

17. OHC added that the requirements for workstation as spelt out in section 7 of the proposed Regulation were that a responsible person should as far as reasonably practicable ensure that the workstations normally used by users in the workplace were suitable having regard to the safety and health of those users. Even if a responsible person was allowed to produce a risk assessment record subsequent to the inspection of LD, he considered that the arrangement had no impact on the overall effectiveness of the proposed Regulation. He believed that most employers and responsible persons would comply with the requirements to perform risk assessment with a view to ensuring the provision of a suitable workstation for DSE users.

Offences

18. Mr SIN Chung-kai said that under section 10, non-compliance with section 4(1), (5) and (6)(b) would be an offence. He sought clarifications on the following -

- (a) whether section 4(1) was applicable to a workstation put into use after the commencement of the proposed Regulation; if not, whether a responsible person would commit an offence if he had not performed risk assessments for workstations currently being in use;

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- (b) whether a responsible person committed an offence under section 4(5) if he failed to keep a record for more than two years, although he had performed the risk assessment and taken improvement actions; and if so, whether the penalty for contravening section 4(5) was too severe; and
- (c) whether the revised section 4(6)(b) was in contradiction with section 4(5) as a responsible person was allowed to deliver a copy of the assessment record to LD after being inspected. However, it was an offence if the responsible person failed to keep the record for at least two years.

19. Mr Kenneth TING and Dr LO Wing-lok shared the points raised by Mr SIN. Mr TING said that as a responsible person was allowed to produce a risk assessment record after LD's inspection, he saw no reason for making failure to keep the assessment record for at least two years an offence.

20. The Chairman said that as far as he was aware, there were no similar provisions in other overseas legislation under which failing to keep risk assessment records would constitute to committing a criminal offence.

21. The Administration made the following response -

- (a) for workstations in service in the workplace immediately before the commencement of the proposed Regulation, a grace period of 14 days was allowed under section 4(2) for a responsible person to perform a risk assessment of the workstations concerned;
- (b) it would be an offence if a responsible person failed to retain a risk assessment record for a period of at least two years after the workstation ceased to be used by any user; and
- (c) the retention of risk assessment record aimed to facilitate responsible persons to review risk assessment where necessary so as to form the basis for taking appropriate improvement measures to reduce risks at the workplace. Having regard to members' concern, the Administration agreed to review the penalty for contravening section 4(5).

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22. Responding to Dr LO Wing-lok, Assistant Secretary for Education and Manpower said that the revised section 4(6) was proposed having regard to members' concern about the liability for a responsible person for failing to produce a risk assessment record during LD inspection.

23. Mr SIN Chung-kai said that he raised no objection to the revised sections 4(6)(b), 5, 6 and 7 as the relevant parties would not be caught by the provisions unintentionally. However, he requested the Administration to consider improving the drafting of section 4(1),(2), (4) and (5).

24. Ms Cyd HO was of the view the Administration should provide a defence

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provision for the employers and responsible persons so that they would not be held responsible if they had taken actions to reduce risks at the workplace with due diligence or reasonable practicability. The Administration should also consider confining the responsibility of an employer to taking steps to reduce risks to areas which were under his direct control for the purpose of the proposed Regulation. PAS(EM) noted Ms HO's view and agreed to consider the suggestion.

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25. As a responsible person was required under section 4(2) to perform risk assessment within 14 days after the commencement of the proposed Regulation, Ms Cyd HO said that the Administration should ensure that there was sufficient publicity to arouse the public awareness of the requirement. Ms HO asked about the time-table for the implementation of the proposed Regulation.

26. PAS(EM) said that the Administration intended to bring the proposed Regulation into operation 12 months after enactment. Hence, the performance of risk assessment as required under section 4(2) would have to be carried out 14 days after the 12-month grace period. This would allow sufficient time for employers and employees to prepare themselves for their new obligations. LD would also provide employers and employees with guidance on compliance with the legal requirements.

27. Mr LEE Cheuk-yan asked whether a responsible person was still liable to committing an offence under section 4(2) if he had not performed a risk assessment, but delivered a copy of the risk assessment record to LD after being inspected in accordance with the revised section 4(6).

28. Assistant Legal Adviser 5 (ALA5) pointed out that the application of sections 4(2) and (6) was different. If a workstation was used by any user before the commencement of the proposed Regulation, a person responsible for the workstation in the workplace should perform risk assessment within 14 days after the commencement in accordance with section 4(2). Regardless of section 4(6), the person responsible for a workplace would be liable to be prosecuted if he failed to perform a risk assessment of a workstation required under sections 4(1) and (2). Revised section 4(6) was to additionally require a responsible person to produce risk assessment records.

Workplace code of practice

29. Mr LEE Cheuk-yan opined that the crux of the proposed Regulation was the performance of risk assessments for workplaces and the provision of suitable workstations to users as required under section 7. However, the specific requirements were spelt out in the Health Guide which were not legally binding. As such, Mr LEE considered that the introduction of the proposed Regulation was mainly for publicity purpose. He expressed doubt about whether it could achieve the purpose of safeguarding the occupational safety and health of employees. To enhance the effectiveness of the Health Guide, Mr LEE suggested that the Administration should make the Health Guide a workplace code of practice under section 40 of OSHO. Moreover, to facilitate compliance with the Health Guide, the Administration should also consider streamlining the Health Guide to cover areas directly related to the use of

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DSE at work. For instance, compliance standards in respect of light, noise and supply of fresh air were not specially for the use of DSE in the workplace.

30. Ms Cyd HO expressed support for Mr LEE Cheuk-yan's suggestion. She said that the scope of the Health Guide should be streamlined to areas that were not beyond the capability of the responsible persons and rectification actions could be carried out as was reasonably practicable.

31. PAS(EM) responded that while agreeing some areas covered in Part III of the Health Guide might have to be streamlined, the other areas in the Health Guide, in his view, were directly related to the use of DSE at work. The Health Guide sought to provide a range and flexibility for compliance. On the question of making the Health Guide a workplace code of practice, he said that the Administration had no such intention at the moment.

32. The Chairman said that the compliance standards should be objective and easy to comply with. He considered that making the Health Guide a workplace code of practice could enable the Health Guide to be admissible in evidence in court proceedings. The Chairman requested the Administration to further consider members' suggestion.

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33. Mr LEE Cheuk-yan sought clarification on the drafting aspect for making the Health Guide a workplace code of practice. ALA5 advised that under section 40 of OSHO, the Commissioner for Labour (C for L) might issue codes of practice for the purpose of providing practical guidance to employers and employees. According to section 41 of OSHO, a person did not incur a civil or criminal liability only because the person had contravened a provision of a workplace code of practice. However, the code of practice was admissible in evidence in court proceedings.

34. Responding to Ms Cyd HO, ALA5 said that although C for L had to publish the codes of practice in the Gazette, a workplace code of practice was not subsidiary legislation under OSHO.

General comments on the proposed Regulation

35. Ms LI Fung-ying said that although the Health Guide was not legally binding, it still provided standards for the employers and employees to comply with. In the absence of compliance standards, she was doubtful on how to assess whether a responsible person had so far as reasonably practicable ensured that the workplace was suitable for users of DSE. She commented that the Administration should state clearly its stance on the proposed Regulation, and to address the concerns raised by the individual trades, rather than making unnecessary compromise. She was given an impression that the Administration was not whole-hearted in safeguarding the occupational safety and health of employees.

36. PAS(EM) responded that the Administration was endeavouring to better safeguard the occupational safety and health of employees. The Health Guide

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provided practical guidance for both employers and employees in meeting the requirements under the proposed Regulation. As to whether the responsible person had, so far as reasonably practicable, ensured that the workstations were suitable for the use of DSE, it would be a matter for the court.

37. The Chairman agreed with Ms LI Fung-ying that it was difficult to judge whether the actions taken by a responsible person to ensure the suitability of a workstation for use of DSE users were reasonably practicable. He believed that the court would adopt a literal approach in interpreting the legislative intent of the proposed Regulation.

38. As most members had repeatedly expressed reservations about the binding effect of the Health Guide and overall effectiveness of the proposed Regulation, the Chairman urged that the Administration should give due regard to members' views and strike the right balance over the matter.

39. Mr SIN Chung-kai said that he would accept a range of compliance standards on the basis that the Health Guide did not form part of the legislation. Mr SIN further said that the proposed Regulation as presently drafted could provide sufficient flexibility for the employers to take remedial actions, even after being inspected by LD. Against this background, he considered that the proposed Regulation was acceptable provided that employers and responsible persons were fully aware of their obligations and liabilities.

40. Mr LEUNG Fu-wah commented that the discussion had been dragged on for an unduly long time. He urged members to expedite the deliberations on the proposed Regulation.

41. Responding to Mr LEE Cheuk-yan, the Chairman said that if the motion on the proposed Regulation was to be moved in the Council in this legislative session, the Subcommittee had to make a report to the House Committee at its meeting on 29 June 2001. Members agreed that the next two meetings would be scheduled for 14 and 21 June 2001 at 8:30 am.

42. There being no other business, the meeting ended at 12:55 pm.

Legislative Council Secretariat

4 October 2001