

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

**Administration's Response to
Issues/Concerns Raised by Members at the Meeting on
29 May 2001**

- 1. To consider whether section 4(6)(a) and (b) should be further amended having regard to some members' concern that the provisions might reduce the deterrent effect of the proposed Regulation as an employer or a responsible person would likely to take improvement measures to reduce risks in the workplace only after being inspected by the Labour Department.**

The Administration does not agree that the deterrent effect of the proposed Regulation has been compromised by proposing the revised section 4(6). Notwithstanding section 4(6), the person responsible for a workplace will still be liable to be prosecuted if he fails to perform a risk assessment of a workstation required under sections 4(1) and 4(2).

Most importantly, section 7 of the proposed Regulation requires a responsible person to ensure, so far as reasonably practicable, that the workstations are suitable having regard to the safety and health of the users concerned. Irrespective of whether a risk assessment under section 4 is performed or not, occupational safety officers may still proceed with prosecution action if the workstation is found unsuitable for use by users.

- 2. To review the penalty imposed on contravening section 4(5) of the proposed Regulation as some members consider that the penalty for failing to keep risk assessment record for at least two years is too severe.**

We wish to clarify the requirement of section 4(5) of the proposed Regulation: a responsible person is required under that section to keep the record of the risk assessment (a) throughout the period that workstation is used by users (as defined in the proposed Regulation) and (b) for a period

of at least two years after that workstation ceases to be used by any users. The penalty for contravening section 4(5) is a fine at level 5, i.e. \$50,000.

Members are advised that it is necessary to impose an obligation for the responsible person to keep records of the risk assessments because –

- (a) section 4(4) requires that the responsible person shall review the risk assessment in case of significant changes in the workstation concerned. Keeping record is essential to facilitate the responsible person to comply with his legal obligation;
- (b) in case of a claim made under the Employees' Compensation Ordinance for compensation arising from occupational injury or occupational disease, which could normally be made from at most 2 years from its occurrence or onset, the employee concerned may, on the one hand, rely on the record of the risk assessment to prove that the injury or disease is work-related, the employer concerned may, on the other hand, rely on the record as evidence that he has discharged his liabilities under the occupational safety and health legislation.
- (c) as a matter of policy, every statutory obligation should be paired with a penalty so as to maintain the deterrent effect and facilitate prosecution, where necessary.

In response to Members' request, however, the Administration has reviewed the penalty level for section 4(5) and believes that it is appropriate. This is because, under the Occupational Safety and Health Regulation, a penalty is also imposed for failure to keep records of risk assessments (on manual handling operations). Since improper practices in manual handling operations would lead to severe bodily injuries, the penalty for failing to keep risk assessment records under the Occupational Safety and Health Regulation is a fine at level 6.

- 3. To consider the suggestion of confining the responsibility of an employer to taking steps to reduce risks to areas which are under his direct control for the purpose of the proposed Regulation, and providing a defence for the employer concerned for failing to take**

rectification actions if the actions required are beyond his capability.

Under the Occupational Safety and Health Ordinance, a responsible person means –

- (a) the employer of the employees who are employed to carry out work in the workplace concerned; or
- (b) if the employer does not exercise any degree of control over the relevant part or aspect of the workplace, means the occupier of the workplace.

It follows that, if the employer concerned does not exercise control over the relevant part or aspect of the workplace, he will not be the responsible person for the purpose of the proposed Regulation. Even if he falls under the definition of “responsible person”, section 5 has already provided that the responsible person shall take steps to reduce any risks identified in a risk assessment to the lowest extent as is reasonably practicable. This has provided the employers with the necessary safeguard against being held liable for rectification actions which are beyond their control.

4. To consider the suggestion of stipulating in the proposed Regulation that the Health Guide is a workplace code of practice, and streamlining the Health Guide to cover areas directly related to the use of display screen equipment at work.

It is inappropriate to make the Health Guide a Workplace Code of Practice under section 40 of the Occupational Safety and Health Ordinance. This is because a Workplace Code of Practice normally stipulates work practices and standards which are agreed by and adopted in the industry concerned. As far as the proposed Regulation is concerned, it covers all industries in which display screen equipment is extensively used for work. It is impracticable to set work practices and standards which are applicable to and agreed by all industries across-the-board. Yet a Health Guide would provide general guidance for different industries.

We agree that the Health Guide could be streamlined to cover areas

directly related to the use of display screen equipment at work. That said, responsible persons are still liable to comply with other provisions regarding the immediate working environment around the display screen equipment, such as fresh air supply to the workplace as required under the Occupational Safety and Health Regulation.

5. To provide a revised Regulation and Health Guide taking into account Members' suggestions/concerns.

Since we do not propose any amendments to the proposed Regulation, Members may refer to the version provided at the last Subcommittee meeting.