

敬啓者：

## **《職業安全及健康（顯示屏幕設備）規例》擬議修訂**

本人曾於 6 月 14 日會會議上表示，本人建議在以上規例加入一新條文，訂明勞工處處長有責任提供為實務指引而發出工作守則。吸收了上次會議提出的意見，本人現隨函附上一經修正的擬議修訂稿，以供小組委員會主席及各委員參考；簡略來說，新擬議條文（第 11 條）訂明勞工處處長有責任向工作地點的負責人發出「指引」（而非原建議的「工作守則」），說明如何履行規例第 7 條的規定，發出、修訂或撤銷有關指引的公告須於憲報刊登，指引本身不會直接引致任何民事或刑事法律責任，但可以在法庭的法律程序中被接納為證據。

政府曾指出，本人建議的新條文向處長施加發出「指引」的責任，與主體法例（《職業安全及健康條例》）第 40 條授權處長可發出工作場地工作守則的賦權條文互相矛盾；對於政府有關論點，本人不能贊同。

本人擬加入的規例第 11 條所提及的「指引」，與主體法例第 40 條提述的「工作場地工作守則」並無任何法律關係。擬議規例第 11 條提及的「指引」，法律根據是主體法例第 42 條，該條文授權處長訂立規例，而訂立規例的範圍相當廣泛，因此本人相信在附屬法例中要求處長發出「指引」完全合乎主體法例第 42 條規定，亦不存在與主體法例第 40 條互相矛盾或越權的問題。

本人希望在小組委員會下次會議上加以討論以上項目。謝謝！

此致

《職業安全及健康（顯示屏幕設備）規例》  
小組委員會主席及各委員

李卓人 謹啓

2001 年 6 月 18 日

## 11. Guidelines

(1) The Commissioner is required to issue guidelines to the persons responsible for workplaces for the purpose of providing practical guidance on compliance with section 7.

(2) The Commissioner may amend or revoke a guideline issued under this section.

(3) The Commissioner is required to publish in both English and Chinese —

(a) any guideline issued under this section; and

(b) if the guideline is subsequently amended, the amendments made to the guideline.

The publication may be in such form as the Commissioner considers will communicate the contents of the guideline or of the amendments to the people affected.

(4) Whenever a guideline is issued under this section or the guideline is amended or revoked, the Commissioner is required to publish in the Gazette a notice of the issue, amendment or revocation.

(5) The Commissioner is required to make available at the head office of the Labour Department, during ordinary business hours, all guidelines issued under this section for inspection by members of the public. No charge is to be made for the inspection of a guideline.

(6) A guideline takes effect on the date on which notice of the guideline is published in the Gazette or on such later date as is specified in the notice.

(7) An amendment to a guideline takes effect on the date on which notice of the amendment is published in the Gazette or on such later date as is specified in the notice.

(8) A guideline ceases to have effect on the date on which notice of revocation of the guideline is published in the Gazette or on such later date as is specified in the notice.

(9) A person does not incur a civil or criminal liability only because the person has contravened a guideline issued under this section but, if, in any legal proceedings the court is satisfied that a guideline is relevant to determining a matter that is in issue in the proceedings —

(a) the guideline is admissible in evidence in the proceedings; and

(b) proof that the person contravened or did not contravene a relevant provision of the guideline may be relied on by any party to the proceedings as tending to establish or negate that matter.

(10) In any legal proceedings, a document that purports to be a copy of a guideline issued under this section is, in the absence of evidence to the contrary, to be presumed to be a true copy of the guideline.