

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

**Administration's Response to
Issues raised by Members at the Meeting
On 28 June 2001**

During the clause-by-clause examination of the proposed Regulation at the last Subcommittee meeting, Members and the Assistant Legal Advisor have raised concern over whether the provisions in the Regulation are consistent with similar provisions in the Occupational Safety and Health Ordinance ('OSHO'). This concern was raised in the light of section 28(1)(b) of the Interpretation and General Clauses Ordinance (Cap. 1) which provides that "no subsidiary legislation shall be inconsistent with the provisions of any Ordinance".

2. Apart from the general review on consistency, the Subcommittee also requests the Administration to consider certain technical amendments in sections 4(3)(b), (4)(a), (4)(b) and 8. We would comment on these in the latter part of this Response.

Part I: GENERAL REVIEW

3. To determine whether a subsidiary legislation is consistent with the provisions of its principal Ordinance, the test is whether the provisions in a subsidiary legislation can be read into the provisions in a principal Ordinance without any conflict. The difference in the use of words or the approach does not necessarily mean that the two provisions are inconsistent.

4. We submit our views on this issue by examining similar provisions in the OSHO (sections 6 & 8), which cover three important aspects of both principal and subsidiary legislation, namely provision of information, provision of safety and health training and employees' responsibility to co-operate with their employers.

Provision of information

5. Section 6 of the OSHO stipulates that:-

“(1) Every employer must, so far as reasonably practicable, ensure the safety and health at work of all the employer’s employees.

(2) The cases in which an employer fails to comply with subsection (1) include (but are not limited to) the following:

.....

(c) a failure to provide such information, instruction, training and supervision as may be necessary to ensure, so far as reasonably practicable, the safety and health at work of the employer’s employees;”

6. Section 6 of the Regulation stipulates that:-

“The person responsible for the workplace shall make available to users of a workstation in respect of which a risk assessment has been performed under section 4 a copy of the following documents-

- (a) a record of the findings of the risk assessment; and
- (b) a record of any action which he has taken after the assessment.”

7. To determine whether the two provisions are consistent, we could apply the test stated in paragraph 3, that is, whether section 6 of the Regulation can be read into section 6 of OSHO without any conflict. Section 6(1) of OSHO provides for a general duty and section 6(2) provides for a list of cases in which an employer will be regarded as having failed to comply with section 6(1). Although section 6(2) is framed in a negative form, it actually requires an employer to provide certain type of information which is described in a very broad sense. Section 6 of the Regulation sets out specific information and records that a person responsible for a workplace has to provide to the users of a workstation. Both provisions, in our view, can stand without any conflict.

8. Members are also concerned that the defence of reasonable practicability is available in section 6 of OSHO but not in section 6 of the Regulation. The Administration considers that such difference is justified because the responsibilities to be imposed are different. As section 6 of

OSHO imposes a general duty on the employers to ensure the safety and health at work of all employees, there may be circumstances that it is not reasonably practicable to do so. A defence of reasonable practicability is therefore provided in view of the broad application of OSHO. Whereas in section 6 of the Regulation, where a specific duty is imposed on the person responsible for a workplace to provide specific types of records, the Administration does not see the need to provide the defence of reasonable practicability because we cannot foresee any circumstances in which performance of such duty is not reasonably practicable. We do not anticipate any significant practical difficulties in complying with the provision.

9. Similar provisions in sections 27(1)(b) and 29 of the Occupational Safety and Health Regulation do not contain similar wordings as ‘so far as reasonably practicable’ or words to that effect.

Provision of safety and health training

10. Section 8 of the Regulation stipulates that: -

“An employer shall ensure that a user employed by him is provided with adequate safety and health training in the use of workstations.”

11. Section 6 of OSHO and section 8 of the Regulation are consistent. Section 6(1) imposes a general duty on the employer to ensure the safety and health of employees and section 6(2) requires an employer to provide certain type of training which is described in a broad sense. Section 8 imposes a specific duty on the employer to provide necessary training to employees in the use of workstations. Both provisions can stand together without any conflict.

12. A defence of reasonable practicability is provided in section 6 of OSHO but not in section 8 of the Regulation. It is because the former imposes a general duty. The provision of a statutory defence is justified in view of the broad application of the OSHO. Section 8 of the Regulation, on the other hand, is specific to training, where circumstances in which the performance of the specific duty is not reasonably practicable would unlikely arise.

13. Similar provision in section 31 of the Occupational Safety and Health Regulation does not contain similar wordings as ‘so far as reasonably

practicable' or words to that effect.

Users to co-operate with responsible person

14. Section 8 of OSHO stipulates that: -

“(1) An employee while at work: -

.....

(b) as regards any requirements imposed in the interests of safety and health on the employees' employers or any other person by this or any other Ordinance, must, so far as reasonably practicable, co-operate with the employer or other person so far as may be necessary to enable the requirement to be complied with.”

15. Section 9 of the Regulation stipulates that: -

“A user of a workstation in a workplace shall: -

(a) conform to any system of work and any work practice; and
(b) comply with any risk reduction measure,

that the person responsible for the workplace has established or taken for the safety and health of users at the workstation.”

16. These two provisions deal with different subject matters. Section 8(1)(b) of OSHO imposes an obligation on the employee to *co-operate with the employer to enable the employer* to comply with requirements imposed on the employer under the OSHO or other Ordinance, whereas section 9 of the Regulation imposes a duty on the employee *himself* to comply with any system of work, any work practice and any risk reduction measure established by the person responsible for the workplace. The obligations imposed on the employees under the two sections do not conflict with each other.

Offences

17. Section 6 of the OSHO does not have express provision for strict liability. However, the wordings in section 6(1) and (2) of the Ordinance are very similar to wordings in section 2(1) and (2) of the Health and Safety at

Work etc. Act 1974 of UK. According to the case of *R v Gateway Foodmarkets Limited* [1997] 3 All ER 78, it was held that section 2(1) of that Act imposed strict liability on an employer whenever there was a failure to ensure his employees' health, safety and welfare at work. Having obtained legal advice, we are of the view that notwithstanding the absence of an express provision for strict liability, section 6(3) creates a strict liability offence in respect of a failure to comply with section 6(1) of the Ordinance. As such, the nature of the offence in section 6 of the OSHO is the same as the nature of the offences created under sections 6 and 8 of the Regulation.

Part II: AMENDMENTS

18. Having considered the views of the Subcommittee, we propose the following amendments.

Section 4(3)(b)

Add “對” before “誰人可能有危險”.

Section 4(4)(a)

Revise “suspect” as “believe”, and the Chinese rendition from “有理由懷疑” and “已有重大改變” as “有理由相信” and “已有顯著改變” respectively.

Section 4(4)(b)

Revise “顯著變動” as “顯著改變”.

Section 8

Revise “adequate” as “necessary”, and the Chinese rendition from “足夠” to “所需” accordingly.

19. These amendments have been incorporated into the revised draft Regulation at Annex.

28-SEP-2001 10:37 FROM DoJ %65 P.12

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TO

29-SEP-2001 11:16
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ANNEX

《職業安全及健康(顯示屏幕設備)規例》

OCCUPATIONAL SAFETY AND HEALTH (DISPLAY SCREEN
EQUIPMENT) REGULATION

OSHDSER/#26945 v6

TO Leg Co Sha*Ray P.12/26

29-SEP-2001 11:14 FROM EMB Division 2

**OCCUPATIONAL SAFETY AND HEALTH (DISPLAY
SCREEN EQUIPMENT) REGULATION**

(Made under section 42 of the Occupational Safety and
Health Ordinance (Cap. 509) subject to the
approval of the Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed
by the Commissioner for Labour by notice published in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires -
"display screen equipment" (顯示屏幕設備) means any display screen
which shows letters, numbers, characters or graphics, regardless
of the display process involved;

"user" (使用者) means an employee who normally uses display screen
equipment as a significant part of his normal work;

"workstation" (工作間) means an assembly comprising -

- (a) display screen equipment;
- (b) any chair, desk, work surface, printer, document holder
or other item peripheral to the display screen
equipment; and
- (c) the immediate working environment around the display
screen equipment.

3. Application

- (1) ~~This Regulation applies to all workplaces in which display~~

~~screen equipment is used for or in connection with work. This Regulation applies to a workstation in a workplace that is:-~~

- ~~(a) provided by a person responsible for the workplace to be used by users for work;~~
- ~~(b) not intended for use by the public; and~~
- ~~(c) normally used or intended to be normally used by users.~~

(2) This Regulation does not apply to or in relation to the following -

- (a) display screen equipment that is used mainly to show pictures, television or films;
- (b) drivers' cabs or control cabs for vehicles or machinery;
- (c) display screen equipment on board a means of public transport;
- (d) portable systems not in prolonged use;
- (e) calculators, cash registers or any equipment having a small data or measurement display required for direct use of the equipment; or
- (f) window typewriters.

4. Risk assessment

(1) The person responsible for a workplace shall perform a risk assessment of a workstation in the workplace before it is first used by users.

(2) For workstations in service in the workplace immediately before the commencement of this Regulation and used by users on or after that commencement, the person responsible for the workplace shall perform a risk assessment of those workstations within 14 days after

that commencement.

(3) For the purpose of complying with subsections (1) and (2), the risk assessment shall consist of a process of -

- (a) identifying the potential hazards arising from ~~the work~~ ~~at~~ the workstation;
- (b) deciding who might be at risk and how the person is affected;
- (c) evaluating the risks arising from the potential hazards and deciding whether existing precautions are adequate; and
- (d) recording the findings.

(4) If -

- (a) the person responsible for a workplace has reason to ~~suspect~~ believe that there has been a significant change in the conditions of a previous assessment ~~may have~~ changed; or
- (b) there has been a significant change in a workstation,

the person responsible for the workplace shall review the risk assessment performed in respect of the workstation and revise the record of findings accordingly.

(5) The person responsible for a workplace shall keep a record of all risk assessments performed by him in respect of a workstation, which shall include all findings recorded or revised under subsections (3) (d) and (4), and shall retain that record for a period of at least 2 years after that workstation ceases to be used by any user.

(6) The person responsible for a workplace shall -

- (a) upon request by an occupational safety officer, produce

for inspection any record kept and retained by him under subsection (5); or

~~(b) in case he is unable to comply with paragraph (a), deliver a copy of the record to the officer for inspection within such period as may be specified in a request in writing sent by the officer.~~

~~(6) Upon request by an occupational safety officer, the person responsible for a workplace shall produce for inspection any record kept and retained by him under subsection (5).~~

~~(7) Upon request in writing by an occupational safety officer, the person responsible for a workplace shall, within such period as may be specified in the request, deliver to the officer a copy of any record kept and retained by him under subsection (5).~~

5. Reduction of risks

The person responsible for a workplace shall take steps to reduce any risks identified in a risk assessment performed by him under section 4 to the lowest extent as is reasonably practicable.

6. Provision of information

The person responsible for a workplace shall ~~inform~~ make available to users ~~who normally use~~ of a workstation in respect of which a risk assessment has been performed under section 4 a copy of the following documents:-

(a) about a record of the findings of the risk assessment;

and

(h) a record of any action he has taken after the assessment.

7. Requirements for workstation

The person responsible for a workplace shall so far as reasonably practicable ensure that the workstations ~~normally used by users~~ in the workplace are suitable having regard to the safety, and health and welfare of those users of those workstations.

8. Provision of safety and health training

~~(1) An employer shall ensure that a user employed by him is provided with adequate necessary safety and health training in the use of the workstations normally used by the user.~~

~~(2) Whenever the organization of a workstation normally used by a user is substantially modified, an employer shall ensure that the user is provided with adequate safety and health training with regard to the workstation as modified.~~

9. Users to co-operate with responsible person

~~A user shall conform to any system of work and any work practices that the person responsible for the workplace at which the user is employed has provided or established for the safety and health of users at the workplace.~~

A user of a workstation in a workplace shall -

(a) conform to any system of work and any work practices;

and

(b) comply with any risk reduction measure.

that the person responsible for the workplace has established or taken

for the safety and health of users at the workstation.

10. Offences

(1) A person responsible for a workplace who fails to comply with section 4(1), (2), (4), (5) ~~or (6)(b) or (7)~~, 5, 6 or 7 commits an offence and is liable on conviction to a fine at level 5.

(2) An employer who fails to comply with section 8 ~~(1) or (2)~~ commits an offence and is liable on conviction to a fine at level 5.

(3) A user who fails to comply with section 9 commits an offence and is liable on conviction to a fine at level 3.

(4) The offences mentioned in subsections (1) and (2) are offences of strict liability.

Commissioner for Labour

November 2000

Explanatory Note

The purpose of this Regulation is to protect the occupational safety and health of employees who normally use workstations (which include display screen equipment such as computer monitors) in their work.

2. Section 1 provides for the commencement of the Regulation.

3. Section 2 defines certain expressions used in the Regulation.
4. Section 3 describes the scope of application of the Regulation.
5. Section 4 contains provisions outlining the risk assessment which has to be performed by the person responsible for a workplace.
6. Section 5 imposes a duty on the person responsible for a workplace to take steps to reduce any risk identified by him.
7. Section 6 imposes a duty on the person responsible for a workplace to ~~inform~~ make available to users of a record of the findings of the risk assessment and of the actions he has taken after the assessment.
8. Section 7 requires the person responsible for a workplace to ensure that the workstations are suitable having regard to the safety, and health and welfare of users.
9. Section 8 requires an employer to ensure that a user has been provided with ~~adequate~~ necessary safety and health training.
10. Section 9 imposes a duty on a user to avoid risks by conforming to a system of work and work practices, and by complying with any risk reduction measures, provided or established or taken by the person responsible for a workplace.
11. Section 10 creates offences for failure to comply with the provisions of the Regulation and sets out the penalties to be imposed on offenders.