

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

**Administration's Response to
Issues raised by Members at the Meeting
On 10 October 2001**

At the meeting on 10 October 2001, the Administration was requested to consider incorporating a defence of reasonable practicability into sections 6, 8 and 9 of the proposed Regulation to allow some flexibility. It was also suggested by one Member that the proposed Regulation should be overhauled to focus on the occupational safety and health of employees in specific occupations which require continuous use of the display screen equipment (DSE) at work.

2. The Administration would make the following replies to the aforesaid major concerns, as well as other outstanding issues.

A defence of reasonable practicability

3. Sections 6, 8 and 9 of the proposed Regulation cover the responsible persons' responsibility for providing information, safety and health training and users' responsibility to co-operate with responsible persons respectively. In drafting these provisions, the Administration considered that the duties imposed were specific in nature and it would be unlikely that the responsible persons or users would encounter significant difficulties in complying with such requirements. We therefore did not provide a defence of reasonable practicability in these provisions.

4. During the meeting on 10 October 2001, an in-depth discussion was made regarding the desirability of a defence for these provisions. It was noted that the failure to comply with sections 6 and 8 of the proposed Regulation were liable for strict liability offences, subject to a defence of honest and reasonable mistake of fact. This was to be contrasted to the similar provisions in the principal Ordinance in which a defence of reasonable practicability was

provided. Having considered Members' concerns especially from the enforcement perspective, the Administration now proposes to include the defence of reasonable practicability in sections 6 and 8 of the proposed Regulation. This proposal is justified by providing the scope for responsible persons if there are indeed some unforeseen situations where it is not reasonably practicable to comply with the provisions. This notwithstanding, the responsible persons still have the primary responsibility to do what is required under those provisions. According to section 38 of the Occupational Safety and Health Ordinance, the onus to prove that the requirements are not reasonably practicable rests on the defendant, and from the enforcement perspective, the incorporation of the defence of reasonable practicability would not affect enforcement significantly, while the objective of the proposed Regulation to cater for the occupational safety and health of DSE users would be preserved.

5. In view of the proposed amendments to section 6 and 8, the Administration would also propose a defence of reasonable practicability in section 9 to allow the scope for users, who are required to co-operate with responsible persons, if there are some unforeseen situations where it is not reasonably practicable to comply with section 9. Similarly, the users have the onus to prove that the requirements in section 9 are not reasonably practicable.

6. As a result of the proposed amendment to section 6, we also propose to include a defence of reasonable practicability in section 4(5). Section 4(5) concerns the responsibility of the responsible person to keep a record of risk assessment. Section 6 relates to the responsibility of the responsible person to provide information to users in respect of risk assessment. These two provisions are related in substance, and we consider that a defence of reasonable practicability should also be provided in section 4(5) to ensure that the requirements in section 4(5) and 6 are consistent.

7. The draft Regulation is revised at Annex.

An overhaul of the proposed Regulation

8. The Administration was also requested to consider conducting an overhaul of the proposed Regulation, with a view to specifically protecting the occupational safety and health of those employees in specific occupations which require continuous use of DSE at work, e.g. key punch operators.

9. We take the view that the proposed Regulation aims to protect the occupational safety and health of employees in response to the ever-increasing use of DSE in a broad spectrum of occupations nowadays. The proposed Regulation does not only aim to cover users in occupations which require continuous use of DSE, such as data input operators or key punch operators, but also those who would use DSE as a significant part of their work. As defined in the Health Guide, the coverage is determined by the nature of work (i.e. whether the users normally use DSE as a significant part of their normal work), rather than by occupation alone.

10. If the proposed Regulation only focuses on users in those occupations which require continuous use of DSE, then the majority of the habitual users as defined in the proposed Regulation, e.g. secretarial or clerical workers, computer graphic designers, telecommunications operators, customer services operators etc. will fall outside the scope of the proposed Regulation. As the latter type of users would not be covered by the proposed Regulation, the policy intention of protecting the occupational safety and health of habitual DSE users would be undermined. On the other hand, those occupations which require continuous use of DSE are in fact being phased out in Hong Kong. The effect of the proposed Regulation which focuses on such occupations would be minimal. We therefore consider it inappropriate to overhaul the proposed Regulation in the manner proposed.

A defence of reasonable excuse

11. A defence of reasonable excuse for the strict liability offences under section 10 was suggested by Members at the last meeting. The underlying rationale was to allow some flexibility for the strict liability offences to cater for unforeseen situations possibly arising.

12. We have already considered and proposed to incorporate a defence of reasonable practicability for the strict liability offences concerning sections 6 and 8 in paragraph 4. Such a defence is also provided in sections 5 and 7. We therefore consider that the revised draft Regulation would have provided a sufficient defence against the strict liability offences.

Section 2: meaning of “主要部分”

13. The meaning of “主要部分” in the definition of ‘user’ under section 2 of the proposed Regulation was discussed at the meeting on 26 February 2001 and having taken Members’ suggestion, the Health Guide has since been revised to elaborate the definition. Paragraph 1.4 of Part I of the Health Guide explains that those users who normally use DSE as a significant part of their work are usually highly dependent on the use of DSE to do their jobs, and, inter alia, normally use the equipment for continuous periods of time and more or less daily. Examples of users include word processing operators, data input operators, telecommunication operators etc. The examples are not meant to be exhaustive but they provide a clear picture as to what is meant by “主要部分”.

Section 9

14. The Assistant Legal Advisor raised a concern that the references made to ‘any system of work and any work practice’ and ‘any risk reduction measure’ under section 9 of the proposed Regulation were not clear.

15. The drafting of section 9 has been improved to clarify that risk reduction measures refer to those measures taken as a result of risk assessment conducted under section 4. Also, any system of work and any work practices referred to under section 9 should mean the systems and practices established by the responsible person in compliance with the proposed Regulation.

Annex

《職業安全及健康(顯示屏幕設備)規例》

OCCUPATIONAL SAFETY AND HEALTH (DISPLAY SCREEN
EQUIPMENT) REGULATION

OSHDSEER/#26945 v7

**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~~
~~in~~ 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, so far as reasonably practicable, 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, so far as reasonably practicable, 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

(b) 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, so far as reasonably practicable, 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, so far as reasonably practicable -

(a) conform to any system of work and work practice that

the person responsible for the workplace has
established in order to comply with the requirements
imposed by this Regulation; and
(b) comply with any risk reduction measure taken as a result
of any risk identified in a risk assessment performed
under section 4.

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~~ and 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 ~~provided or~~ established by the person responsible for a workplace and by complying with any risk reduction measures taken as a result of risks identified in a risk assessment.
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.