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**Paper for the House Committee meeting on 9 November 2001**

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

**Purpose**

This paper reports on the deliberations of the Subcommittee on Occupational Safety and Health (Display Screen Equipment) Regulation.

**Background**

2. The Secretary for Education and Manpower (SEM) gave notice to move a motion at the Legislative Council (LegCo) meeting on 6 December 2000 to seek the Council's approval for the Occupational Safety and Health (Display Screen Equipment) Regulation (Regulation) made by the Commissioner for Labour under section 42 of the Occupational Safety and Health Ordinance (Cap. 509) (OSHO) on 8 November 2000.

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

3. The Regulation seeks to protect the occupational safety and health of employees who normally use display screen equipment (DSE) as a significant part of their work. Under the Regulation, a person responsible for a workplace in which DSE users work is required, inter alia, to -

- (a) perform risk assessment of a workstation where any DSE user works, and record the findings;

- (b) reduce the risks to the safety and health of DSE users at their workstations, e.g. from the DSE and the design of the workstations, which include any chair, desk, work surface, printer, document holder or other peripheral to the DSE and the immediate working environment around the DSE; and
- (c) provide adequate safety and health training in the use of their workstations by DSE users.

4. The Administration proposes that non-compliance by a responsible person and an employer with the various requirements is made offences of strict liability punishable with a fine at level 5, i.e. \$50,000, and non-compliance by a DSE user with any system of work or any practice provided for his safety and health is subject to a fine at level 3, i.e. \$10,000.

5. The Administration also proposes a grace period of 12 months upon the enactment of the Regulation before it takes effect.

### **The Subcommittee**

6. At the meeting of the House Committee on 24 November 2000, Members agreed that a subcommittee be formed to study the Regulation. At the request of the House Committee, SEM withdrew the notice for moving the motion at the Council meeting on 6 December 2000 to allow time for the Subcommittee to study the Regulation.

7. The membership list of the Subcommittee is in **Appendix I**. Under the chairmanship of Hon Andrew CHENG Kar-foo, the Subcommittee has held 11 meetings with the Administration.

### **Deliberations of the Subcommittee**

8. The Subcommittee has discussed in detail the provisions in the Regulation and the Health Guide on Working with Display Screen Equipment to be issued by the Labour Department (LD). The Subcommittee has also made reference to legislation as well as guidelines and codes of practice adopted by other countries and places provided by the Administration. The main deliberations of the Subcommittee are summarised below.

#### Need for the Regulation

9. Members are in support of the objective of protecting the occupational safety and health of DSE users, and some members express support for early enactment of the Regulation. However, some members have expressed concern whether it is necessary to introduce the Regulation at this stage, especially when non-compliance with the provisions in the Regulation by responsible persons, employers and DSE users at

workplaces will commit an offence. According to the information provided by the Administration, while the United Kingdom (UK), the United States (US) and Taiwan have adopted a legislative approach to regulate the use of DSE at work, Australia, Canada, New Zealand and Singapore have adopted a non-legislative approach by promoting the proper use of DSE at work through the publication of guidelines or codes of practice. These members have queried why a legislative approach is proposed for Hong Kong. They consider that the Administration should step up publicity efforts and public education to raise awareness on the proper use of DSE rather than introduce the Regulation.

10. The Administration has explained that there is an increasing trend that employees spend a considerable part of their working hours working with DSE in a workstation and encounter health problems. Examples include upper limb pains and discomfort, eye strain, fatigue and stress. These health problems are closely related to the design of workstations, working posture, working environment and work organisation, and they can develop into chronic health problems if ignored over a considerable period of time. To address the problem and to arouse the awareness of responsible persons and DSE users about the proper use of workstations for work, the Administration proposes to introduce the Regulation which is premised on the concept of self-regulation. Self-regulation has been the underlying philosophy for devising occupational safety and health legislation since the Review of Industrial Safety in Hong Kong in 1995 and has been enshrined in the OSHO.

11. The Administration has assured the Subcommittee that it recognises the importance of education and publicity and has published a variety of educational materials to promote the proper use of DSE at work. These materials cover general occupational health issues associated with DSE work, workstation design, lighting and ventilation. Although the LD had issued guidelines on the use of computers at work since early 1980s, it was revealed from a survey conducted by the Occupational Safety and Health Council in 1997 that health problems caused by improper use of DSE should be given more attention. In addition, about 206 cases of tenosynovitis (inflammation of tendons or tendon sheaths) had been notified to the LD between 1998 and 2000. Of these, 47 cases were likely to have been caused by work related to DSE. The Administration considers that it will be more effective to arouse public awareness of the propose use of DSE at work through enactment of the Regulation.

#### Application of the Regulation

12. Section 3(1) of the Regulation provides that the Regulation covers all workplaces where DSE is used for or in connection with work. Members have pointed out that there exist situations, e.g. use of a workstation in a public library by a member of the public, where the responsible person may not be aware that a workstation is used by a person, who is a user as defined in the Regulation, for work purposes. Under such circumstances, the responsible person will have to comply with the provisions in the Regulation. Members have also pointed out that some workstations may be temporarily

used by users for work purposes, and that short-term use of a workstation is unlikely to cause health hazards. Members have therefore sought clarification on the scope of application of the Regulation.

13. The Administration has clarified that a workstation will fall under the application of the Regulation if it is -

- (a) provided by the responsible person 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.

14. To reflect its policy intent clearly, the Administration has agreed to amend section 3(1) of the Regulation accordingly.

#### Enforcement of the Regulation

15. In the absence of compliance standards in the Regulation, members have expressed concern about how employers and persons responsible for workplaces could discharge their responsibilities properly and how the Regulation could be effectively enforced. For instance, under the Regulation, a person responsible for a workplace is required to ensure that the workstations in the workplace are suitable having regard to the safety and health of users of those workstations. Should there be any risks identified in a risk assessment of a workstation, the person responsible for the workplace is required to take appropriate measures to reduce the risks. However, the requirements for a workstation e.g. the heights of the work surfaces for the screen and keyboard, the height of chair, etc. are not set out in the Regulation.

16. The Administration has explained that the OSHO and its subsidiary legislation apply to all sectors of employment. Given the variety of usage of DSE in different trades, it is difficult to prescribe compliance standards which are applicable to all trades. A non-prescriptive approach is therefore adopted and flexibility is intentionally built into the Regulation. To help employers and employees better understand the requirements under the Regulation, the Health Guide on Working with Display Screen Equipment will be published with the coming into effect of the Regulation. The Health Guide explains the meaning of DSE, workstation and user in the context of the Regulation. It sets out various health issues related to prolonged work with DSE and the importance of risk assessment of workstations. It also provides easy-to-follow steps for performing risk assessment. The Health Guide gives practical guidance on the ergonomic requirements of workstations and measures for preventing common health problems, including safety and health training. With the assistance of the Health Guide, coupled with common sense for day-to-day computer operations and workplace hygiene, responsible persons would be able to apply the general rules flexibly to their specific workplace.

## Guidelines or codes of practice for implementation of the Regulation

17. Members have examined in detail the draft Health Guide provided by the Administration. In response to members' suggestions, the Administration has revised the draft Health Guide. The Administration has also informed members that the LD will review the Health Guide in the light of enforcement experience.

18. Members note that the Health Guide is only an advisory document with no legal effect. Given that compliance standards are not set out in the Regulation and that non-compliance with the recommendations in the Health Guide will not be subject to penalty, some members have expressed concern about the effectiveness of the Regulation.

19. Hon LEE Cheuk-yan has proposed to add to the Regulation a new section 11 concerning guidelines for implementation of the Regulation which is modelled on section 40 of the OSHO. Under Mr LEE's proposed amendments, the Commissioner for Labour (C for L) is required to issue guidelines to the persons responsible for workplaces for the purpose of providing practical guidance on compliance with the requirements for workstations as specified in section 7 of the Regulation. The proposed amendments also provide that a person will not incur a civil or criminal liability only because the person has contravened a guideline issued by the C for L under new section 11. However, 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, the guideline is admissible in evidence in the proceedings. Mr LEE also proposes that the guidelines should be subject to the scrutiny of LegCo.

20. From the legal point of view, the Administration considers that the amendments proposed by Hon LEE Cheuk-yan are inconsistent with section 40 of the OSHO. The Administration has explained that section 40 of the OSHO confers a power on the C for L to issue codes of practice. The guidelines as referred to in the proposed new section will be construed as codes of practice under section 40 of the OSHO. The C for L has discretion whether or not to issue a code of practice. The amendments proposed by Hon LEE Cheuk-yan would impose an obligation on the C for L to issue a code of practice, thereby disabling the C for L from exercising her discretionary power under section 40 of the OSHO. The Administration considers that the Regulation would be ultra vires the OSHO if the new section 11 as proposed is added, because under section 28(1)(b) of the Interpretation and General Clauses Ordinance (Cap.1), no subsidiary legislation shall be inconsistent with the provisions of any Ordinance.

21. However, the legal adviser to the Subcommittee is of the view that the Regulation is to be made by the C for L under the power conferred on her by the OSHO. The amendments, if adopted, would mean that the C for L has undertaken to issue guidelines for the purpose of section 7 of the Regulation. Hence, the C for L may be regarded as having exercised her discretion under section 40 of the OSHO. Viewing from this

perspective, the amendments proposed by Hon LEE Cheuk-yan are not inconsistent with section 40 of the OSHO.

22. Some members have expressed reservations about the amendments proposed by Hon LEE Cheuk-yan. These members share the view of the Administration that a code of practice normally stipulates work practices and standards which are agreed by and adopted in the trade concerned. The Regulation, however, covers all trades in which DSE is extensively used for work. Given the wide variety of DSE usage in different trades, it is impracticable to issue a code of practice setting work practices and standards which are applicable to and agreed by all trades across-the-board. These members are also of the view that giving legal effect to the guidelines, codes of practice or the Health Guide would unnecessarily create tension between employers and employees.

#### Provision of rest breaks

23. According to the information provided by the Administration, provisions concerning rest breaks for DSE users are included in the relevant legislation governing the use of DSE in UK and US. As rest breaks are important to protect the health of DSE users, some members consider that a provision to require employers to allow DSE users to take appropriate rest breaks or alternative tasks after prolonged DSE work should be added to the Regulation. Hon Andrew CHENG Kar-foo has proposed to add a provision to this effect. He has also proposed that an employer who fails to comply with this provision will be subject to a maximum fine of \$50,000. Details of the rest break arrangements, e.g. the duration of rest breaks, should be set out in the Health Guide.

24. While supporting the objective of promoting occupational safety and health of employees, some members do not agree with the proposed amendments concerning rest breaks. These members are of the view that since circumstances in different trades differ, a statutory requirement to allow DSE users to take rest breaks or alternative duty may affect the operation of individual trades. In addition, they have expressed doubts about how the provisions could be enforced.

25. The Administration does not agree with the amendments proposed by Hon Andrew CHENG Kar-foo. In the view of the Administration, working hours should be arranged by mutual agreement between employers and employees. Good practices of such arrangement should be promoted through publicity and public education. There is sufficient guidance on this aspect, because the Health Guide has already included a recommendation that DSE users should vary DSE tasks with other duties, and where no alternative duty could be arranged, appropriate rest breaks should be provided to DSE users. With this recommendation, the Administration believes that employers or responsible persons would be well aware of the need for such an arrangement for protecting the occupational safety and health of DSE users.

#### Risk assessment

26. Under the Regulation, a person responsible for a workplace in which DSE users work is required to perform risk assessment of a workstation where any DSE user works and record the findings. A person responsible for a workplace is also required to take steps to reduce any risks identified in a risk assessment performed by him. These are provided in sections 4 and 5 of the Regulation respectively. In the absence of compliance standards in the Regulation, members have expressed doubts about whether a person responsible for the workplace would have sufficient knowledge to perform a risk assessment and take such steps as necessary to reduce the risks.

27. The Administration has responded that conducting a risk assessment for a workstation is a relatively simple process which may be easily completed by using a checklist as provided in the Health Guide. The aim is to identify potential hazards arising from the workstation and evaluate the risks so that appropriate measures may be taken, if necessary, to safeguard the health of DSE users. In the view of the Administration, any person who has a good understanding of the use of DSE and the associated health risks should be able to complete the checklist. Only in complicated cases, which should be quite rare, should a risk assessment be conducted by a safety and health consultant.

28. Having regard to the small office size of most small and medium enterprises in Hong Kong, some members have pointed out that there may be the practical difficulties for employers to take actions to reduce any risks identified due to the physical constraints of the workplaces. For instance, the unique working environment of some occupations, such as the limited work surface provided for finance, securities and foreign exchange dealers, may pose practical difficulties for employers to comply with the requirements for DSE workstation.

29. Some members have also expressed concern that under sections 4 and 5 of the Regulation as presently drafted, a responsible person would be easily convicted of contravening the provisions. They have suggested that a warning mechanism be added so that an improvement notice would be served for non-compliance with the requirements of the Regulation before prosecutions are instituted.

30. The Administration has responded that under section 5 of the Regulation, the person responsible for a workplace is required to take steps to reduce any risks identified in a risk assessment to the lowest extent as is reasonably practicable. During an inspection to a DSE workstation, an occupational safety officer of the LD would check whether reasonably practicable actions have been taken to reduce risks identified in a risk assessment. If the responsible person has taken all reasonably practicable steps to reduce the risks identified, he would have complied with the requirement under section 5, and the LD would not institute prosecution.

31. As regards the mechanism for serving improvement notices by the LD for non-compliance, the Administration has advised that the relevant provision is already laid down in the OSHO. It is therefore not necessary to repeat it in the Regulation.

Nevertheless, to address members' concerns, the Administration has agreed to amend section 4(6) of the Regulation to the effect that the person responsible for a workplace shall, upon request by an occupational safety officer, produce for inspection any record of risk assessments; or in the case where he is unable to produce such record upon request, he shall deliver a copy of such record to the officer for inspection within a period as specified in a written request sent by the officer.

#### Penalty for failure to keep record of risk assessment

32. Under section 4(5) of the Regulation, a person responsible for a workplace is required to keep a record of all risk assessments performed by him in respect of a workstation and retain that record for a period of at least two years after that workstation ceases to be used by any user. As provided under section 10(1) of the Regulation, failure to comply with section 4(5) is liable on conviction to a maximum fine of \$50,000. Some members consider that the penalty for contravening section 4(5) is too severe and have questioned the rationale for imposing such a penalty.

33. The Administration considers that it is necessary to impose an obligation for a person responsible for a workplace to keep a record of risk assessment for the following reasons -

- (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 two years from its occurrence or onset, the employee concerned may rely on the record of the risk assessment to prove that the injury or disease is work-related. On the other hand, the employer concerned may rely on the record as evidence that he has discharged his responsibilities under the Regulation; and
- (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.

34. The Administration has pointed out that under the Occupational Safety and Health Regulation, failure to keep records of risk assessments in respect of manual handling operations is liable to a maximum fine of \$100,000, as improper practices in manual handling operations would lead to serious bodily injuries. The Administration considers that the penalty for failure to keep records of risk assessments as required under section 4(5) of the Regulation at a maximum fine of \$50,000 is appropriate.



### Offences of strict liability

35. Under the Regulation, failure of a person responsible for a workplace or an employer to comply with the various requirements commits an offence and is liable on conviction to a maximum fine of \$50,000. These are provided in section 10(1) and (2). Section 10(3) provides that a user who fails to comply with any system of work and any work practices provided or established by the person responsible for the workplace at which the user is employed commits an offence and is liable on conviction to a maximum fine of \$10,000. Section 10(4) of the Regulation provides that the offences referred in section 10(1) and (2) are offences of strict liability.

36. In the absence of clear compliance standards and requirements in the Regulation, some members have expressed strong reservations about making the offences referred to in section 10(1) and (2) as offences of strict liability. They have also questioned why there is a difference in the level of fines for non-compliance by a user and that by an employer or a person responsible for a workplace.

37. The Administration has explained that the person responsible for a workplace exercises control over the workplace, and the employer has management responsibility for the users. Their non-compliance with the requirements in the Regulation may have greater impact on the safety and health at the workplace than that of a user, whose responsibility is limited to conforming to the system of work and established work practices. The level of fine for non-compliance by responsible persons and employers is therefore higher.

38. Regarding offences of strict liability, the Administration has explained that under the principles laid down in a previous court case, the presumption of law that mens rea is required before a person is held guilty of a criminal offence can be displaced when a piece of legislation is concerned with an issue of social concern and if it can also be shown that the creation of strict liability will be effective to promote the objectives of the legislation by encouraging greater vigilance to prevent the commission of the prohibited act. The Administration explains that the Regulation is concerned with the safety and health of DSE users, which is an issue of social concern. Furthermore, the creation of strict liability will promote the protection of the safety and health of users as prosecution is not required to prove the state of mind of the defendant. An employer or a person responsible for the workplace will be more alert to ensure that they have complied with the obligations imposed on them by the Regulation. In view of these, it is likely that a court will construe the offences referred to in section 10(1) and (2) as strict liability offences even if the relevant sections are silent on the nature of the offences. Explicitly providing in the Regulation that these offences are strict liability offences will save considerable resources of the court and the parties involved in establishing whether an offence is a strict liability offence.

39. The Administration has further explained that an offence of strict liability does not mean that a defendant will have no defence for the offence. In accordance with the

judgments of two court cases, it would be a defence to the offences in question if a defendant could prove on a balance of probabilities that he believes for good and sufficient reason that he has complied with the provisions of the Regulation.

40. Some members have pointed out that the requirements under the Regulation are apparently more stringent than those similar provisions under the OSHO, and that the penalty for offences in the Regulation is more severe than that in the OSHO. For instance, an employer is required under section 6 of the OSHO to provide training as may be necessary to ensure, so far as reasonably practicable, the safety and health at work of his employees. However, under section 8 of the Regulation, an employer should ensure that a user employed by him is provided with adequate safety and health training in the use of the workstations. In addition, the employer concerned has not been provided with the safeguard that the provision of training is reasonably practicable. Non-compliance with section 6 of the OSHO will not constitute an offence of strict liability, whereas failure to comply with section 8 of the Regulation is an offence of strict liability.

41. These members have also pointed out that a defence of reasonable practicability is provided in section 6 of the OSHO in respect of provision of information by employers to ensure the safety and health of employees at work. However, such a defence is not provided in section 6 of the Regulation which concerns the provision of information by persons responsible for the workplaces to DSE users. In addition, a defence of reasonable practicability is provided in section 8 of the OSHO concerning employees' obligation to co-operate with the employer to enable the employer's compliance with the requirements. However, such a defence is not available under section 9 of the Regulation which requires users to conform to any system of work and work practices, and any risk reduction measures established by the person responsible for the workplace. They have suggested that a defence of reasonable practicability should be provided in sections 6, 8 and 9 of the Regulation. They have also suggested that a defence of reasonable excuse for the strict liability offences under section 10 should be provided to allow some flexibility for such offences to cater for unforeseen situations that may possibly arise.

42. The Administration has responded that sections 6, 8 and 9 of the Regulation cover the responsible person's responsibility for providing information, safety and health training and users' responsibility to co-operate with responsible persons respectively. A defence of reasonable practicability is not provided in these provisions because the duties imposed are specific in nature and it is unlikely that the responsible persons or users would encounter significant difficulties in complying with such requirements.

43. Nevertheless, having considered members' concerns, the Administration has agreed to include the defence of reasonable practicability in sections 6, 8 and 9 of the Regulation. The inclusion of such a defence will cater for some unforeseen situations where it is not reasonably practicable to comply with the provisions. According to section 38 of the OSHO, 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 Regulation to cater for the occupational safety and health of DSE users would be preserved.

44. 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. As these two provisions are related in substance, the Administration will also include a defence of reasonable practicability in section 4(5) to ensure that the requirements in sections 4(5) and 6 are consistent.

45. Regarding the suggestion of providing a defence of reasonable excuse for the strict liability offences under section 10, the Administration has explained that a defence of reasonable practicability for the strict liability offences concerning sections 4(5), 6 and 8 will be added and such a defence is already provided in sections 5 and 7. The Administration therefore considers that there will be sufficient flexibility and defence for the strict liability offences.

#### Other amendments

46. At members' suggestions, the Administration has agreed to amend sections 6, 7, 8 and 9 of the Regulation to improve the drafting. The Administration has also agreed to make some technical and minor amendments to the Regulation.

#### Suggestion to overhaul the Regulation

47. Although the Administration has, in response to members' concerns and suggestions, proposed a number of amendments to the Regulation, some members still have reservations about whether the Regulation can achieve its intended purpose of protecting the safety and health of DSE users. Having regard to the concerns about the wide implications of the Regulation on all sectors and the doubt as to whether the Regulation can be effectively implemented, Hon SIN Chung-kai has suggested that the

Regulation should be overhauled 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.

48. The Administration has responded that the 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. The Regulation does not only aim to cover users in specific 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.

49. In the view of the Administration, if the Regulation only focuses on users in those occupations which require continuous use of DSE, then the majority of the habitual users, e.g. secretarial or clerical workers, computer graphic designers, telecommunications operators, customer services operators, etc. would fall outside the scope of the Regulation. As the latter type of users would not be covered by the Regulation, the policy intention of protecting the occupational safety and health of habitual DSE users would be undermined. As those occupations which require continuous use of DSE, such as key punch operators, are being phased out in Hong Kong, the effect of re-drafting the Regulation to focus on such occupations would be minimal. The Administration therefore considers that it is inappropriate to overhaul the Regulation as suggested.

#### Commencement of the Regulation

50. Members notes that the Regulation shall come into operation on a day to be appointed by the C for L by notice in the Gazette, and that the Administration has proposed a 12-month grace period before the Regulation takes effect.

51. Having regard to the fact that the Regulation has attracted much controversy, members have urged the Administration to state in its speech when moving the motion on the Regulation that the Administration will brief the Panel on Manpower on the proposed commencement date of the Regulation and any changes made to the Health Guide before the commencement notice is published in the Gazette.

#### **Recommendation**

52. The Administration will revise the Regulation by incorporating the agreed amendments. A revised version of the Regulation showing the changes made is in **Appendix II**.

53. Hon LEE Cheuk-yan and Hon Andrew CHENG Kar-foo will separately move amendments to the motion on the Regulation. Their draft amendments are in **Appendices III and IV** respectively.

54. The Subcommittee recommends that the motion on the Regulation be moved by the Secretary for Education and Manpower at the Council meeting on 21 November 2001.

### **Advice Sought**

55. Members are invited to support the recommendation in paragraph 54 above.

Council Business Division 2  
Legislative Council Secretariat  
5 November 2001

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

**Membership list**

<b>Chairman</b>	Hon Andrew CHENG Kar-foo
<b>Members</b>	Hon Kenneth TING Woo-shou, JP Hon Cyd HO Sau-lan Ir Dr Hon Raymond HO Chung-tai, JP Hon LEE Cheuk-yan Hon HUI Cheung-ching, JP Hon SIN Chung-kai Hon YEUNG Yiu-chung, BBS Hon Mrs Miriam LAU Kin-yee, JP 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
	(Total : 14 Members)
<b>Clerk</b>	Mrs Sharon TONG LEE Yin-ping
<b>Legal Adviser</b>	Mr Arthur CHEUNG
<b>Date</b>	3 July 2001

《職業安全及健康（顯示屏幕設備）規例》

OCCUPATIONAL SAFETY AND HEALTH (DISPLAY SCREEN  
EQUIPMENT) REGULATION

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, 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 these 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~~ 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

Amendments proposed by Hon LEE Cheuk-yan

**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.

OCCUPATIONAL SAFETY AND HEALTH ORDINANCE  
AND  
RULE 29(6) OF THE RULES OF PROCEDURE OF THE  
LEGISLATIVE COUNCIL RULES OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

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AMENDING MOTION TO BE MOVED BY HONORABLE  
ANDREW CHENG KAR-FOO

OCCUPATIONAL SAFETY AND HEALTH (DISPLAY SCREEN  
EQUIPMENT) REGULATION

RESOLVED that the motion to be moved by the Commissioner for Labour under section 42 of the Occupational Safety and Health Ordinance (Cap.509) at the Legislative Council meeting on 2001 be amended to the effect that the Occupational Safety and Health (Display Screen Equipment) Regulation made by the Commissioner for Labour on 8 November 2000 is subject to the following amendments -

- (a) by adding -

**"7A. Periodical Break**

An employer shall so plan the activities of users at work in the workstations at the workplace that their daily work on display screen equipment is periodically interrupted by such breaks or changes of activity as to reduce their workload at the equipment.";

- (b) in section 10(2), by adding "7A," after "with section".