立法會
Legislative Council

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

Minutes of meeting
held on Thursday, 28 June 2001 at 8:30 am
in Conference Room A of the Legislative Council Building

Members present	:	Hon Andrew CHENG Kar-foo (Chairman) Hon Kenneth TING Woo-shou, JP Ir Dr Hon Raymond HO Chung-tai, JP Hon HUI Cheung-ching Hon YEUNG Yiu-chung 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
Members absent	:	Hon Cyd HO Sau-lan Hon LEE Cheuk-yan Hon SIN Chung-kai Dr Hon LO Wing-lok
Public Officers attending	:	Mr K K LAM Principal Assistant Secretary for Education and Manpower Mr Samson LAI Assistant Secretary for Education and Manpower

Dr L M LEUNG
Occupational Health Consultant
Labour Department

Ms Marie SIU
Senior Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2) 1

Staff in attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Miss Betty MA
Senior Assistant Secretary (2)1

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I. Meeting with the Administration

Assistant Secretary for Education and Manpower (AS(EM)) said that the Administration had reviewed the proposed Occupational Safety and Health (Display Screen Equipment) Regulation (the proposed Regulation) having regard to the issues and concerns raised by members at the last meeting [LC Paper No. CB(2) 1963/00-01(01)]. Members then proceeded with the discussion on the amendments proposed by the Administration to the proposed Regulation.

Section 2

2. AS(EM) said that the term "重要部分" in the Chinese version of section 2 was replaced with "主要部分" to avoid unnecessary misunderstanding.

Section 3

3. AS(EM) said that the Administration had revised section 3(1) after taking into account members' concern that there existed scenarios in which the responsible person might not be aware that a workstation under his control was used by users for work purposes. As using workstations temporarily would unlikely cause health hazards and that the use of such workstations might not be for work purposes, the Administration considered that the responsible person should not be required to comply with the proposed Regulation in cases of short-term or non-work-related use of a workstation. To clarify its policy intention, AS(EM) said that section 3(1) was amended such that a workstation would fall under the coverage of the proposed Regulation if it was -

(a) provided by the responsible person to be used by users for work;

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(b) not intended for use by the public; and

(c) normally used or intended to be normally used by users.

4. The Chairman welcomed the proposed revision to section 3 to make clear the scope of application of the proposed Regulation.

5. Mrs Miriam LAU noted that the scope of application of the proposed Regulation was clearly spelt out in section 3. In order to ascertain whether a responsible person had to abide by the proposed Regulation, Mrs LAU sought clarification as to whether there was any legal definition of "normally used by users". She further asked why the proposed Regulation did not cover the use of workstations by the public, e.g. use of workstations in a public library.

6. Senior Government Counsel (SGC) responded that as far as she was aware, there was no legal definition of "normally used" in this context. She said that the intention of spelling out "normally used" in section 3 was to regulate workstations which were frequently used by users. As regards using workstations in a public library by a member of the public, Principal Assistant Secretary for Education and Manpower (PAS(EM)) said that it was regarded that such workstations were not normally used or intended to be normally used by a specific member of public. It was therefore considered that the proposed Regulation would not cover a workstation intended for use by the public.

7. PAS(EM) added that in the context of employer and employee relationship, it was the obligation of employers to safeguard employees' occupational safety and health. As such, it would not be appropriate to require the responsible persons to safeguard the proper use of DSE by users who were not their employees, and to assume the responsibility that was expected from an employer. As for the definition of "normally used by users", PAS(EM) said that the meaning of "normally used" should be construed together with the definition of "user" in section 2.

Section 4

8. The Chairman enquired whether the Administration would improve the drafting of the Chinese version of section 4(3)(b), in particular "誰人可能有危險", to reflect more accurately the English expression that it was referred to a person at risk, rather than facing risks. Ir Dr Raymond HO shared the Chairman's view that the drafting of the Chinese text needed improvement.

9. SGC pointed out that the expression "at risk" was already adopted in the Occupational Safety and Health Regulation in the same context.

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10. Assistant Legal Adviser 5 (ALA5) suggested to add "對" before "誰人可能有危險" to qualify the risks were extrinsic to the person in question.

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11. The Chairman requested and SGC agreed to consider ALA5's suggestion.

12. On section 4(4)(a), AS(EM) said that responding to members' concern that the responsible person for the workplace should review the risk assessment performed whenever there were changes in the workstations, the Administration proposed to qualify the changes in question by replacing the Chinese rendition "可能已改變" with "已有重大改變". The English expression "may have changed" was amended to "there has been a significant change" correspondingly.

13. ALA5 pointed out that "a significant change" was adopted in the English version of section 4(4)(a) and (b). However, the corresponding Chinese expressions were different in these two sub-sections, viz. "有重大改變" and "顯著變動". The Chairman also expressed concern about the inconsistency in the use of expression in the proposed Regulation.

14. SGC explained that it was considered more appropriate to use "顯著變動" to describe changes in the workstations, which included DSE, work surface, furniture, etc., in section 4(4)(b).

15. Mr HUI Cheung-ching said that as one might not refer to both the English and Chinese versions simultaneously to construe the proposed Regulation, the Administration should ensure the consistency in both versions. Ir Dr Raymond HO said that "重大" referred to a substantial change whereas "重要" was to describe the quality of changes involved.

16. Mrs Miriam LAU asked whether "顯著變動" denoted visible changes. If this was the case, she pointed out that a change in the workstation though might not be visible, but was important.

17. The Chairman said that amending the expression "已有重大改變" to "可能有顯著改變" should have no policy implication, but it would ensure the consistency in the English and Chinese versions of the proposed Regulation.

18. ALA5 said that section 4(4)(a) referred to a change in the conditions of a previous assessment. In his view, the object of section 4(4) was whether a previous risk assessment was still applicable to the workstation concerned, irrespective of what changes there were in the workstation. If the risk assessment was considered no longer applicable to the workstation, the responsible person had to perform another assessment. It seemed that the circumstances prescribed under section 4(4)(a) would have already covered all possible scenarios regarding changes in a workstation.

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19. Occupational Health Consultant (OHC) explained that under section 4(4)(a), the responsible person was required to review the risk assessment if he suspected that there had been a significant change in the workstations or the working environment around the workstations concerned. Whilst for section 4(4)(b), the change referred to was confined to that being made in the workstation itself. Mr LEUNG FU-wah was of the view that section 4(4)(a) and (b) aimed to cover different circumstances under which responsible persons should review the risk assessment performed. The Chairman shared Mr LEUNG's view.

20. The Chairman stressed that the crux of members' concern was about the inconsistency in the English and Chinese versions of section 4(4) having regard to the fact that non-compliance with section 4(4) was liable to committing a strict liability offence. He maintained the view that "顯著改變" should be adopted as the Chinese rendition of a significant change in section 4(4)(a) and (b). Mr LEUNG Fu-wah and Ms LI Fung-ying shared the Chairman's view. Ms LI was of the view that even if the same expression was adopted in section 4(4)(a) and (b) to describe changes in the workstation, there would be no material effect on the meaning of the provisions.

21. PAS(EM) said that the legislative intent of section 4(4)(a) was to require a responsible person to perform risk assessment whenever he had reason to suspect that there had been a significant change in the conditions of a previous assessment.

22. Mrs Miriam LAU commented that given that contravention of section 4(4)(a) was a strict liability offence, the threshold for performing risk assessment required under section 4(4)(a) was too low as it was very difficult to prove the element of having reason to suspect. She considered it more appropriate if a responsible person was required to perform risk assessment whenever he believed that there had been a significant change in the conditions of a previous assessment. PAS(EM) undertook to

Admin consider Mrs LAU's suggestion.

23. In the light of members' views, the Chairman suggested and members agreed that the Administration should consider revising the relevant provision in the Chinese version of section 4(4)(a) and (b) as "有理由相信已有顯著改變" and "已發生顯著改

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Section 5

24. Responding to the Chairman, AS(EM) said that the Administration had taken into full account members' concern raised at the last meeting regarding the interpretation of reducing risks to the lowest extent and was of the view that section 5 as presently drafted was appropriate. The policy intention was to require the responsible persons to take steps to reduce any risks in the workplaces to the lowest extent.

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Sections 6 and 7

25. AS(EM) said that the Administration had proposed improvements to the drafting of sections 6 and 7. He pointed out that section 6 as originally drafted might be misinterpreted as the responsible persons should explain personally the findings of risk assessment to users. Section 6 was revised so as to spell out clearly that the responsible persons should be required to make available a copy of the findings of the risk assessment and a record of actions taken after the assessment for users' information.

Section 8

26. AS(EM) said that the Administration had re-considered the provision in section 8(1) and was of the view that the general safety and health training provided by the employer in respect of the use of workstation was already adequate to cater for changes in the workstation. Section 8(2) was therefore repealed.

27. Mrs Miriam LAU expressed concern about the meaning of provision of adequate safety and health training in the use of workstations. In her view, even when a responsible person had provided safety and health training to users, such training might not necessarily be regarded as adequate. As non-compliance with section 8 was an offence of strict liability, the responsible persons should be fully aware of the compliance standards. The provision as presently drafted was unfair to the responsible persons.

28. PAS(EM) said that section 8 sought to ensure that employers would provide safety and health training to users in order that the workstations in the workplace would be properly used by users of those workstations.

29. Mr Michael MAK enquired whether there were any guidelines on the provision of safety and health training. OHC pointed out that the provision of training aimed to enable users to recognise and understand the risks of DSE work, various precautions for avoiding the risks and their importance, how to report problems and symptoms and how to get assistance from employers. The requirements were elaborated in paragraph 3.5 of the draft Health Guide.

30. Mr LEUNG Fu-wah sought clarification as to whether the requirement of providing adequate training to employees was already spelt out in the Occupational Safety and Health Ordinance (OSHO). If this was the case, he considered that the requirement under section 8 had not imposed extra responsibility on employers.

31. ALA5 responded that in accordance with section 6 of OSHO, employers assumed the general responsibility to ensure safety and health of employees. An employer was required to, among others, provide instruction, training and supervision as might be necessary to ensure, so far as reasonably practicable, the safety and health at work of the employer's employees. He pointed out that the extent of training to be provided by employers under OSHO was "necessary", but not "adequate" as required

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under section 8 of the proposed Regulation.

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32. Mr LEUNG Fu-wah proposed to replace "adequate" with "necessary" in section 8 of the proposed Regulation to in line with the requirement under OSHO. PAS(EM) agreed. In view of the discrepancy between the terms used for qualifying training to be provided by employers in OSHO and the proposed Regulation, the Chairman requested the Administration to review the proposed Regulation to ensure that the expressions used in the proposed Regulation should be consistent with those in OSHO.

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33. Mrs Miriam LAU reiterated that having regard to the fact that non-compliance with certain offences under the proposed Regulation was offences of strict liability, it was of the utmost importance that the responsible persons should be clearly informed of their responsibilities for the purpose of the proposed Regulation.

34. SGC said that the prosecution would have to prove beyond doubt that the responsible persons had contravened the requirements. She considered that it was no easy task for the prosecution.

35. Responding to Mr LEUNG Fu-wah's enquiry about the defence for strict liability offence, ALA5 said that strict liability did not mean that a defendant would have absolutely no defence for the offence but the defences available to him would be much reduced. Responsible persons were provided with safeguard in section 7 of the proposed Regulation in that they should only so far as reasonably practicable ensure that the workstations in the workplace were suitable having regard to the safety and health of users.

36. PAS(EM) stressed that even in the absence of the proposed Regulation, responsible persons were already required to assume the responsibility to ensure safety and health of their employees, including the use of workstations.

37. ALA5 said that the requirements under the proposed Regulation were apparently more stringent than those under OSHO. He pointed out that an employer was required under section 6 of OSHO to provide training as might be necessary to ensure, so far as reasonably practicable, the safety and health at work of the employer's employees. However, under section 8 of the proposed Regulation, an employer should ensure that a user employed by him was provided with *adequate* safety and health training in the use of the workstations. In addition, the employer concerned had not been provided with the safeguard that the provision of training was as reasonably practicable. He further pointed out that non-compliance with section 6 of OSHO would not constitute an offence of strict liability, whereas failure to comply with section 8 of the proposed Regulation was an offence of strict liability. Viewing from this perspective, ALA5 expressed doubt as to whether the proposed Regulation was incompatible with OSHO.

38. SGC responded that OSHO provided for the general responsibility of employers and employees in the context of occupational safety and health. The proposed Regulation was drawn up specifically for protecting the occupational safety and health of employees who normally used workstations in their work. As such, she was of the

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view that the provisions of OSHO and the proposed Regulation were not in conflict. As regards making some offences under the proposed Regulation strict liability offences, SGC said that section 42 of OSHO sought to confer a power on the Commissioner for Labour (C for L) to make certain offences created under any regulations made by C for L to be offences of strict liability.

39. In response to Mr LEUNG Fu-wah, ALA5 further elaborated his concern and said that although offences under the proposed Regulation were similar in nature to those in OSHO, the penalty for offences in the proposed Regulation was severer than that in OSHO. The Administration might be invited to give an account of the underlying reasons for the difference from the policy perspective. Moreover, in the Administration's previous advice on a member's proposal to make the Health Guide a workplace code of practice, it had pointed out that no subsidiary legislation should be inconsistent with the provisions of any Ordinance. It would be ultra vires OSHO to make the Health Guide a workplace code of practice. From the legal point of view, ALA5 said that members might also wish to study application of the Administration's previous advice in the context of imposing different levels of penalty for similar offences in OSHO and the proposed Regulation.

40. Mrs Miriam LAU agreed that members should be very careful in the matter. Should certain provisions be finally regarded by the court as ultra vires OSHO when they were put before it for a judgment, the primary objective of the proposed Regulation to safeguard the occupational safety and health could not be achieved.

41. The Chairman requested the Administration to provide a written response to the points raised by ALA5. The Administration was also requested to provide a comparison of the offences in OSHO with similar offences created under the proposed Regulation, together with the relevant provisions and penalties. PAS(EM) agreed.

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Sections 9 and 10

42. AS(EM) said that the drafting of section 9 was simplified taking into account members' views raised at the previous meeting. Section 10(2) was amended as a result of repealing section 8(2).

43. Members agreed that the next meeting would be scheduled for October 2001. Members would be notified of the date of meeting nearer the time.

(*Post-meeting note* : The next meeting would be held on 10 October 2001.)

44. There being no other business, the meeting ended at 10:10 am.

Legislative Council Secretariat
4 October 2001