Occupational Safety and Health
(Display Screen Equipment) Regulation

Administration's response to
Issues raised by members of the Subcommittee meeting on
14 December 2000

1. To provide information on the regulation of the use of display screen equipment in overseas countries, including the provision of rest breaks for users.

The self-regulatory approach has been adopted by leading economies in regulation of the use of display screen equipment (DSE). Examples are given as follows -

European Union

The Council of the European Communities adopted the "Council Directive on the minimum safety and health requirements for work with display screen equipment" (Directive 90/270/EEC) in 1990. The Directive takes a similar approach as the proposed Regulation. It requires employers to, among other things, perform an analysis of workstations in order to evaluate the safety and health risks to users; take appropriate measures to remedy the risks identified; provide users with information and training on all respects of safety and health relating to their workstations; and ensure that workstations meet the stipulated minimum requirements. The workstation requirements given in the Directive are similar to those provided for in the health guide to be published by the Labour Department (LD). On rest breaks, the Directive requires employers to plan the users' activities in such a way that daily work on a DSE is periodically interrupted by breaks or changes of activity.

To comply with the Directive, Member States of the European Union should have brought in force the necessary legislative provisions on display screen equipment by end 1992. For example, the United Kingdom has made the Health and Safety (Display Screen Equipment) Regulations in 1992.

USA

At Federal level, the United States has made the Ergonomics Program Standard under its Code of Federal Regulations. The Standard applies to all general industry employers. Under the Standard, when the employees

report musculoskeletal disorders, the employer concerned is required to determine whether the employees' jobs have risk factors that meet the "action trigger", i.e. in the case of DSE work, the use of a keyboard or mouse in a steady state manner for more than 4 hours total in a work day. If the action trigger is met, he is required to established an ergonomics programme for the jobs concerned. The programme should include the following elements: hazard information and reporting, job hazard analysis and control, training and programme evaluation. As far as rest breaks are concerned, employers are required to organise DSE tasks so as to allow the employees to vary these tasks with other work activities, or to take micro-breaks or recovery pause while at the workstation. The Standard will come into effect in mid January 2001.

Australia

Australia takes a non-legislative approach in the regulation of health hazards associated with the use of DSE at work. The National Code of Practice and the Guidance Notes for the Prevention of Occupational Overuse Syndrome in Keyboard Employment were issued in 1994 and 1996 respectively for this purpose. Under the Code of Practice, employers are required to identify, assess and control the risks associated with DSE work, provide training to employees and keep records. Employees, on the other hand should cooperate with the employers in their efforts to discharge their duties. On rest breaks, they are advised under the Guidance Notes to spend part of the working day on alternative duties or to take work pauses if no suitable alternative duties are available. The length and frequency of work pauses will depend on the intensity of the DSE task.

Singapore

Singapore also takes a non-legislative approach and promotes the proper use of DSE at work through a set of guidelines first published in 1981. The guidelines outline the main ergonomic factors to be considered when selecting a DSE, setting up a workstation, adopting work posture or work practice and assessing the work environment. On rest breaks, the guidelines recommend a short rest pause for every hour of continuous DSE work.

Canada and New Zealand have issued guidelines or codes of practice in which the self-regulatory approach is promoted.

2. **To consider setting out in the Regulation the mechanism for lodging complaints by employees in relation to the use of display screen equipment, specific steps to be taken by employers to rectify the situation and serving notice of suspension.**

The proposed Regulation promotes the self-regulatory approach by which employers can identify and rectify health hazards associated with the workstation before symptoms develop in any user. Employees are therefore encouraged to report to their employers when they have detected any irregularities in their workstation so that their employers could follow up accordingly.

Nevertheless, if their employers do not take any action to remedy the irregularities, employees can lodge complaints to LD. Upon receipt of complaints, occupational safety officers of LD would inspect the workplace, during which risk assessment records will be checked to see if potential hazards have been identified and their risks evaluated and reduced. Where appropriate, improvement notice would be served under section 9 of the Occupational Safety and Health Ordinance.

We consider that the self-regulatory approach adopted in the proposed Regulation is better than the approach to act on complaints as suggested by Members. This is because the former can proactively prevent the development of health problems. As for the mechanism of serving improvement and suspension notices, given that it is present in the principal ordinance, there is no need to repeat it in the proposed Regulation.

3. To review the Chinese terminology of "risk".

"危險評估" was well-established as the Chinese rendition of "risk assessment" in similar context in the Factories and Industrial Undertakings (Confined Spaces) Regulation. The suggestion to render "risk" as "風險" is inappropriate as it is commonly used in the context of investment.

4. To review the drafting of the proposed section 4 on risk assessment in order to allow more flexibility.

To discharge the liabilities under section 4 of the proposed Regulation, the person responsible for a workplace should (a) perform risk assessment of the workstation; and (b) keep the record of assessment.

Section 4(6) of the Regulation requires the responsible person, upon request by an occupational safety officer (OSO) of LD, to produce the record of the risk assessment for inspection. Section 4(7) requires the responsible person, upon written request by an OSO, to deliver the record within a specified period to the OSO's inspection. Failing to comply with either section constitutes an offence and the responsible person is liable on conviction to a fine at level 5.

During an inspection, OSOs will check the workstations to ensure that they are suitable for use by users. They may also request the responsible person to produce risk assessment records for inspection under section 4(6) of the proposed Regulation. Given that the responsible person may not be able to produce the records right away, OSOs may make a written request under section 4(7) for copy of the records to be delivered to LD within a specified period.

Although prosecution action for section 4(6) would not normally be initiated, the section is essential to authorise immediate inspection by an OSO. We will take into account Members' comments and consider the feasibility of amending section 10 such that failure to produce risk assessment records during LD's inspection in accordance with section 4(6) does not constitute an offence.

5. On the proposed section 10 of the Regulation, to explain -

(a) the policy intent for setting different level of fines for non-compliance with the provisions of the Regulation as referred to in the proposed section;

The person responsible for a workplace exercises control over the workplace. The employer has management responsibility for the users. Their non-compliance may result in 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 convicted responsible persons and employers is therefore higher.

(b) why the offences as referred to in the proposed section 10(1) and (2) are offences of strict liability having regard to the fact that some of the standards/requirements in the relevant sections are not clear;

In previous prosecution actions, where a legislation is silent on whether an offence is a strict liability offence, the prosecution has to prove the mens rea of the defendant, or argue that an offence is a strict liability offence. In deciding whether an offence is a strict liability offence, the court will apply the principles laid down in *Gammon (Hong Kong) Ltd. v A.G. [1985] AC1* ("*Gammon*"). If we could, in appropriate cases, provide in the legislation that an offence is a strict liability offence, it will save considerable resources of the court and parties involved. It is therefore the Administration's intention to make the offences under sections 10(1) and 10(2) strict liability offences.

In deciding the matter, we have considered the principles laid down in *Gammon*. In short, the presumption of law that mens rea is required before a person can be held guilty of a criminal offence can be displaced where a 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 objects of the legislation by encouraging greater vigilance to prevent the commission of the prohibited act.

The present Regulation is concerned with the safety and health of DSE users, which is an issue of social concern. Further, 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 a defendant. An employer or a person responsible for the workplace will be more alert to ensure that they comply with the duties imposed upon them by the Regulation. In view of the above, it is likely that a court will construe the offences in question as strict liability offences even if the relevant sections are silent on the nature of the offences.

Nevertheless, "strict liability" does not mean that a defendant will have no defence for the offence. According to the cases of *Uniglobe Telecom (Far East) Ltd. v HKSAR (FACC No.5 of 1998) and AG v Fong Chin Yue [1995] 1 HKC 21*, 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 provision of the Regulation.

(c) why an employee who may be a person responsible for a workplace would be subject to the provision in the proposed section 10(1) bearing in mind that the purpose of the Regulation is for protection of employees in terms of occupational safety and health.

Although a person responsible for a workplace may be an employee, he has the overall control of the workplace and the safety and health of all employees therein. For reasons given in (a), we consider it reasonable for the level of fine imposed on the responsible person to be similar to that on an employer.

The spirit of the Occupational Safety and Health Ordinance is to hold employers liable for the safety and health at the workplace. In this connection, it is the standing practice for LD to prosecute the company concerned when non-compliance is identified. Under section 33 of the Ordinance, where a company is convicted of an

offence, the management personnel will not be guilty of an offence unless it can be proved that the offence was committed with their consent or connivance, or was attributable to any neglect on their part.

6. To provide statistics on the number of prosecutions made under the Occupational Safety and Health Ordinance since the coming into operation of the Ordinance.

Since the Occupational Safety and Health Ordinance has come into effect, LD has issued 19 warning letters and 8 improvement notices in respect of workstations.

7. To review the drafting of the Regulation taking into account the views expressed by members.

As explained in Q4 above, we will consider the feasibility of amending section 10 of the proposed Regulation. As for the draft Health Guide on Working with Display Screen Equipment, we will take into account comments of Members raised at the last Subcommittee meeting and give clearer indication as to how to comply with the risk assessment requirements in the proposed Regulation.

Education and Manpower Bureau
January 2001