The Administration's response to concerns raised on the FIU (Medical Examinations) Regulation at the meeting of the Subcommittee on Regulations relating to Occupational Safety and Health on 13 January 2000

(a) Section 2 – whether "industry" and "industrial undertaking" carry the same meaning for the purpose of this Regulation.

For the purpose of the FIU(Medical Examinations) Regulation, the term "industry" refers to industrial sectors, e.g. manufacturing, construction, transport, storage and communications, etc, whereas the term "industrial undertaking" has the meaning assigned to it in section 2(1) of the principal ordinance.

(b) Section 3(1) – it was not clear whether this subsection would apply only to new recruits as the text also referred to Schedule 2 which included periodic medical checks for existing workers.

Our legislative intent is that an employer can employ a person if that person has undergone periodic medical examination in a previous employment and his relevant fitness certificate remains valid. In our letter to the Legislative Council Legal Advisor dated 15 September 1999, we explained that "so long as the employee remains in a designated occupation, his fitness certificate remains valid until the next periodic medical examination is due. A fresh medical certificate is not required even if he works for another employer within the validity period". The medical examination requirement in section 3(1) should not therefore be confined to pre-employment examination.

(c) Section 10 – members were strongly of the view that there should be provisions under this section to protect the interests of those workers who were recommended temporary or permanent suspension of employment after medical check. Subsections (b) and (c) should specify that where a change of post was not possible, the worker should be granted paid sick leave. For workers recommended permanent suspension of employment, ex-gratia payments should be provided under subsection (d).

A worker who is certified by an appointed medical practitioner to be temporarily unfit for his particular occupation will normally be granted sick leave. On the uncommon occasions where sick leave is not granted for various reasons, the proprietor concerned should, where practicable, redeploy the worker to another suitable job and agree with the worker on the redeployment arrangement. As for Honourable Members' suggestion that if an agreement cannot be reached between the parties on the redeployment arrangement, then the proprietor should grant paid sick leave to the worker, we consider this inappropriate for the following reasons:

a) Entitlement to sick leave and sickness allowance is governed by the Employment Ordinance (EO), while that relating to compensation for temporary incapacity by the Employees' Compensation Ordinance (ECO). It is not the intention of this Regulation to increase or reduce the rights and benefits of employees under the EO or ECO.

b) The suggested arrangement is impractical, as it is likely that many employees will claim paid sick leave instead of agreeing to any redeployment arrangement, even if a suitable alternative job exists and the arrangement is reasonable.

As for ex-gratia payments for workers certified permanently unfit, we have already stated in our response to the same suggestion raised at the Subcommittee meeting on 15 December 1999 that there is little justification to provide for such entitlement under this Regulation.

(d) Section 13(1) – to include the requirement for specialist qualification rather than occupational health qualification for members of the Appeal Board.

We propose to add the following after subsection 13(1) :

"(2) The 2 medical practitioners mentioned in subsection (1) shall be medical practitioners :-

(a) qualified for appointment as appointed medical practitioners; or

(b) conferred by the Hong Kong Academy of Medicine with the designation of Fellow of the Hong Kong Academy of Medicine."

The numbering of the other subsections will be revised accordingly.

(e) Section 13(3) – whether the appellant should be given the right to demand a medical examination by the Appeal Board and whether a timeframe should be set for hearing an appeal.

If every appellant had the right to demand a fresh medical examination this would add to the costs of medical examinations. It is probably better that they be left to the discretion of the Appeal Board.

As regards setting a timeframe for the Board to hear an appeal, we consider it not practicable as the time needed for preparing a case varies to a great extent according to its nature and complexity. While straightforward cases may not require much preparation other than obtaining information from the appellant and the appointed medical practitioner concerned, this is not so for complicated cases which may also require workplace assessments to be conducted by the Labour Department.

(f) Section 13(6) – whether the Appeal Board should have the right to make new recommendations other than confirmation or revocation of the original recommendation, and whether the appellant could then appeal against the new recommendation.

We consider that the Appeal Board should be empowered to make new recommendations as there are occasions when the recommendation being appealed against has to be substituted by a new recommendation. For example, if the original recommendation is permanent suspension of the appellant, but the Board considers it more appropriate to suspend him on a temporary basis, then the original recommendation will have to be substituted by a new recommendation.

We are examining the desirability of allowing appeal against new recommendation of the Appeal Board and empowering the Board to review its own recommendation upon receipt of an objection, as well as some other alternative arrangements. We will report our views at the meeting of the Subcommittee on 24.1.2000. At the same time, it is noted that in our response to Members' concerns raised at the Subcommittee meeting on 27 July 1999, we agree to amend section 13 to provide that any person, who may be a proprietor or worker, aggrieved by the recommendation of an appointed medical practitioner may appeal to an Appeal Board. Section 13 will be accordingly amended.

Other concern

Dr Hon LEONG Che-hung had suggested specifying the range of fees for each type of medical examinations required under Schedule 2 for general information.

We will obtain information about fees for the statutory medical examinations from appointed medical practitioners, and will compile such information in a reference guide for proprietors and workers.

Consequential Amendments

It has been discovered that Clause 4 of the Factories and Industrial Undertakings (Amendment) Regulation 2000 has mistakenly included deletion of regulation 45(1)(c). A revised version of the Amendment Regulation rectifying the error is now enclosed for Members' reference.