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Paper for the House Committee meeting on 30 June 2006

**Report of the Subcommittee on
Factories and Industrial Undertakings (Loadshifting Machinery)
Regulation (Commencement) Notice 2006**

Purpose

This paper reports on the deliberations of the Subcommittee on Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Commencement) Notice 2006.

Background

2. Loadshifting machines are machines used to move a load sideways, upwards or downwards. These include excavators, loaders and other earth-moving equipment used in the construction industry and forklift trucks used at various workplaces such as warehouses, cargo terminals and other storage establishment.
3. The Regulation, which was approved by the Legislative Council (LegCo) on 5 April 2000, sets out the training and certification requirements for operators of specified loadshifting machines. The Schedule to the Regulation specifies 11 types of loadshifting machines. The Regulation also imposes a duty on responsible persons to ensure that loadshifting machines are only operated by persons who have received recognised training and are in possession of a valid certificate. The operator of a loadshifting machine also has the duty to attend the training course provided and to produce the certificate for inspection when required. It is an offence for not complying with these requirements, and the penalties (i.e. a fine at level 3 or level 5) are set out in section 8 of the Regulation.

4. Having regard to the limited training capacity available at the time of the introduction of the Regulation, the Administration decided that the Regulation should be implemented in two phases. The first phase would apply to operators of bulldozers, loaders, excavators, trucks and lorries on construction sites and forklift trucks in industrial undertakings. Subject to satisfactory progress of the first phase, the statutory requirements would be extended to the operators of compactors, dumpers, graders, locomotives and scrapers on construction sites in the second phase.

5. The first phase of the Regulation came into operation in two steps. The provisions concerning the training requirements came into operation on 20 November 2000. The Commissioner for Labour (C for L) is empowered to recognise training courses for operators of machines under the first phase, and this enabled operators of these machines to receive training. From 1 September 2002, machines under the first phase can only be operated by persons in possession of valid certificates.

6. According to the Administration, as at 31 December 2005, 34 300 operators of forklift trucks and 10 500 operators of the remaining machines under the first phase were trained and issued with certificates, and the number of persons waiting for training was 673. The training demand could be absorbed within a month, given a training capacity of not less than 3 000 per month. The Administration considers that satisfactory progress has been achieved in the first phase.

The Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Commencement) Notice 2006

7. In view of the smooth progress of the first phase, the Administration has proposed to implement the second phase. The Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Commencement) Notice 2006 was gazetted on 19 May 2006. The Notice appointed 1 September 2006 as the day on which paragraphs (f) to (j) in Part II of the Schedule to the Regulation (i.e. the second phase) will come into effect.

8. Paragraphs (f) to (j) in Part II of the Schedule specifies that a compactor, a dumper, a grader, a locomotive and a scraper are loadshifting machines used on construction sites. The Administration has proposed to implement the second phase in two steps, i.e. training requirement will come into operation first to enable C for L to recognise training courses for the operators of machines under the second phase. The requirements for these machines to be operated only by persons with valid certificates will come into effect after a sufficient number of operators have been trained and issued with certificates.

The Subcommittee

9. At the House Committee meeting on 26 May 2006, a subcommittee was formed to study the Commencement Notice. Chaired by Hon LEE Cheuk-yan, the Subcommittee has held two meetings to discuss with the Administration. The membership list of the Subcommittee is in **Appendix I**.

10. The scrutiny period of the Commencement Notice has been extended to 12 July 2006, by resolution of the Council on 21 June 2006.

Deliberations of the Subcommittee

General

11. While the Subcommittee is in support of the policy of requiring operators of loadshifting machines to receive training for the safe operation of such machines, some members have expressed concern about the high training fees and the criteria for existing operators to attend refresher courses. Some members have also expressed concern about the present system of issuing different certificates for the various industrial safety courses attended by construction workers. The deliberations of the Subcommittee are given in the following paragraphs.

Provision of training courses and setting of training fees

12. According to the Administration, there are not more than 900 workers employed at any one time to operate machines covered by the second phase of the Regulation. CITA has agreed to organise training courses for operators of compactors, while commercially-run training organisations, i.e. the Construction Machinery Technical Training Centre (CMTTC) and the Safety Specialist Services Limited (SSSL), are prepared to organise training courses for operators of dumpers. As regards graders, scrapers and locomotives, as they are not commonly used in the construction industry, public course providers are unlikely to be available in the market because the courses would not be commercially viable. In this connection, “in-house” training will be provided by owners of machines, and the two railway companies are prepared to conduct “in-house” safety training course for their locomotive operators. The training bill for the construction industry as a whole is estimated to be no more than \$2.7 million.

13. Hon LI Fung-ying and Hon WONG Kwok-hing have expressed concern whether the course fees would be affordable to the machine operators, having regard to the fact that the construction industry has remained in the doldrums over the past few years and many construction workers are under-employed. These members consider that in approving the training courses, C for L should

have a role in monitoring the setting of course fees by the course providers. They urge C for L to negotiate with the prospective course providers to further reduce the course fees and to provide financial assistance or loans to the trainees. Hon LEE Cheuk-yan is of the view that the Occupational Safety and Health Council (OSHC) and CITA have a role to play in the provision of industrial safety training courses, and they should subsidise the course fees.

14. According to the information provided by the Administration on the financial implications for organising the different types of courses under the second phase, a course provider for the compactor course would need to spend \$100,000 to \$500,000 to procure a compactor as training equipment. Given the capital outlay required vis-à-vis the limited training demand, it would be unlikely that commercially-run training organisations would provide such courses. The courses would be provided by CITA.

15. The Administration has advised that after its discussion with CITA, CITA has agreed to charge course fees on a cost-recovery basis, covering only expenditure on trainers and overheads. CITA will organise comprehensive training courses on compactors for new comers free of charge, and with a daily allowance of \$50 for each participant. A two-day course will be organised for experienced compactor operators, and the fee will be \$900.

16. For the dumper courses, the Administration has advised that a course provider needs to spend only \$20,000 to \$50,000 to buy a dumper as training equipment. In view of the comparatively small investment involved, prospective course providers (such as CMTTC and SSSL) would find running such courses viable. While the fees for the new comers are not yet available, the estimated course fees for experienced operators would range from \$1,000 to \$3,000. The Administration has requested the course providers to reduce the course fees as far as possible.

17. As for graders and scrapers, the Administration has advised that they are expensive machines. A grader costs \$1.4 million, while a scraper sells for \$2.3 million. While no commercial course providers are likely to be available, contractors using graders and scrapers (which are usually used in major civil engineering projects) would be able to run “in-house” courses for their operators at very little additional cost. These courses would be provided free of charge to the trainees.

18. As for locomotives, the one used for tunnelling costs about \$140,000, and the associated wagon costs about \$48,000. They are used in major civil engineering projects, and “in-house” training would be conducted by contractors of these projects. The other type of locomotive is used for maintenance of railways. It is extremely expensive and costs up to \$30 million. The equipment is used by the two railway companies only, and they would provide “in-house” training to their staff free of charge.

19. At the request of the Subcommittee, the Administration has provided a list of the training courses, together with the estimates fees and duration, in **Appendix II**.

Financial assistance for trainees

20. Noting that the fees for some courses would be in the range of \$1,000 to \$3,000, Hon LI Fung-ying, Hon WONG Kwok-hing and Hon WONG Ting-kwong consider that there should be some form of financial assistance to the trainees for attending such courses. They are of the view that the requirement to attend such courses should not become a barrier for new comers to enter the trade, and that no existing operator should become disqualified for operating such machines because of a lack of means to attend the courses. They have requested that some forms of subsidies, fee waiver or loan should be made available to trainees who had difficulties to pay the course fees.

21. The Administration has explained that most courses for new operators organised by CITA or through “in-house” training by owners of machines would be free of charge, and there should be no question of creating barriers for newcomers to enter the trade.

22. As regards the suggestion of providing financial assistance or fee waiver to existing or prospective operators, the Administration has advised that OSHC has agreed to launch a subsidy scheme for basic training courses for the second phase loadshifting machines. Under the scheme, OSHC will subsidise 70% of the course fee subject to a ceiling of \$2,000, and this will cover all the basic training courses for new and experienced operators as listed in **Appendix II**. Recognised course providers of these courses can participate in the scheme, which is expected to roll out upon the commencement of the second phase on 1 September 2006.

23. The Subcommittee is of the view that the proposed subsidy scheme should also cover the refresher courses for the second phase. The Administration has responded that the estimated course fees for refresher course will be in the range of \$110 to \$370. As operators would only need to attend the relevant refresher courses every five years, the Administration considers that the course fee levels would be affordable to the machine operators. As the refresher course will be conducted only a few years later, the Subcommittee agrees that the issue should be followed up by the Panel on Manpower.

Organising training courses outside working hours

24. In response to the Subcommittee's concern that many workers find it difficult to attend courses during working hours, the Administration has advised that CITA will organise training courses in evenings and during holidays to facilitate workers on active employment to attend the courses. The Administration will also encourage the commercial course providers to follow suit.

Requisite requirements for existing operators to attend refresher courses

25. Hon LI Fung-ying and Hon WONG Kwok-hing have requested the Administration to consider relaxing the requirements for experienced operators to attend refresher courses.

26. The Administration has responded that it is necessary for operators to attend refresher courses, in order to keep themselves abreast of the new technologies and latest safety standards and measures. For those who are not regular machine operators, refresher courses serve to ensure the competency of the operators in handling loadshifting machines, both existing and new or improved models.

27. Hon LI Fung-ying and Hon WONG Kwok-hing have pointed out that many operators of loadshifting machines were under-employed in recent years, and they may not have the required number of years of experience for attending the refresher course which is essential for the renewal of their certificates. Moreover, the "self-employed" operators also have difficulties in obtaining the requisite proof of experience.

28. To address members' concerns, the Administration has raised the issue for discussion at a meeting of the Advisory Committee on Certification of Operators of Specified Plants and Equipment on 8 June 2006. The Committee has agreed to relax the requirements and accept the following as meeting the pre-requisite for attending refresher courses –

- (a) current employer's certification showing that the operator has operated the type of loadshifting machinery in question for at least six working days; or
- (b) one and a half years' experience in operating the type of loadshifting machinery in question in the past five years; or
- (c) six months' experience in operating the type of loadshifting machinery in question in the preceding year.

As for the self-employed, a self-declaration of such experience made in front of a Commissioner for Oaths will be accepted as proof of their working experience. The Administration will promulgate the above relaxation to the service providers shortly.

Proposal of a smart card

29. The Subcommittee has noted that construction workers and operators of loadshifting machines are required to obtain the relevant certificates for working on construction sites and operating different types of machines. As these workers have to carry the various cards or certificates at work, such cards or certificates are easily worn out or damaged given the tough working conditions on construction sites. The Subcommittee has urged the Administration to seriously consider introducing a smart card to replace the various certificates relating to industrial safety training.

30. The Administration has agreed to conduct a feasibility study on the suggestion. According to the tentative timetable for the study, the Administration will consult the various stakeholders from October 2006 to March 2007, prepare tender documents from April to June 2007 for selection of a consultant to conduct the study, and commence the consultancy study in July 2007.

31. The Subcommittee has requested the Administration to expedite the consultation process, and provide the revised timetable for the consultancy study to the Panel on Manpower.

Follow-up action required

32. The Subcommittee agrees that the Panel on Manpower should be requested to follow up with the Administration on the following –

- (a) the issue of extending the subsidy scheme of OSHC to refresher courses for the loadshifting machines in the second phase (paragraph 23);
- (b) the revised timetable for conducting the consultancy study on introducing a smart card to replace the various certificates relating to industrial safety training (paragraph 31).

Recommendations

33. The Subcommittee supports the Commencement Notice.

Advice sought

34. Members are requested to note the Subcommittee's deliberations.

Council Business Division 2
Legislative Council Secretariat
29 June 2006

**Subcommittee on
Factories and Industrial Undertakings (Loadshifting Machinery) Regulation
(Commencement) Notice 2006**

Membership list

Chairman	Hon LEE Cheuk-yan
Members	Hon CHAN Kam-lam, SBS, JP Hon LI Fung-ying, BBS, JP Hon WONG Kwok-hing, MH Hon WONG Ting-kwong, BBS (Total : 5 members)
Clerk	Mrs Constance LI
Legal adviser	Miss Anita HO
Date	6 June 2006

Estimated Course Fees for Second Phase Loadshifting Machinery Training Courses

Type of Machines	Prospective Course Providers	Type of Courses	Duration of Courses	Estimated Course Fees (HK\$)	Remarks
Compactor	Construction Industry Training Authority	New operators	13 days	Free of charge and \$50 allowance/day	---
		Experienced operators	2 days	\$900	CITA charges the lowest course fees on a cost recovery basis, covering only the expenditure on trainers and overheads.
Dumper	Construction Machinery Technical Training Centre	New operators	13 days	Not available	The Administration has requested course providers to reduce course fees as far as possible.
		Experienced operators	2 days	\$1,000 to \$2,000	
	Safety Specialist Services Limited	New operators	13 days	Not available	The Administration has requested course providers to reduce course fees as far as possible.
		Experienced operators	2 days	\$3,000	
Grader/ Scraper	In-house training	New operators	13 days	Free of charge	---
		Experienced operators	2 days		
Locomotive	In-house training	New operators	6-10 days	Free of charge	---
		Experienced operators	2 days		