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

Background Brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on Members' discussions on the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation and the concerns raised by the Panel on Manpower relating to the Commencement Notice gazetted on 19 May 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 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. Non-compliance with these requirements offences subject to penalties under section 8 of the Regulation.

4. A subcommittee was formed in July 1999 to scrutinise the draft Regulation before it was approved by LegCo. During scrutiny, some members of the subcommittee expressed concern about the training fees, the training capacity, the certification exemption criteria, and also the strict liability offences of responsible persons.

5. On the training costs, the Administration had advised the subcommittee that the Construction Industry Training Authority (CITA) provided free training courses for new operators of most loadshifting machines, and large companies also provided in-house training for their forklift truck operators. As regards the refresher courses, the Administration had advised that the training fees of CITA would be paid by the employers in most circumstances, while the Vocational Training Council and the Occupational Safety and Health Council had agreed to lower their course fee for forklift truck operators. As regards the suggestion of providing subsidy to the refresher courses, the Administration was of the view that training should be part of the investment made by the proprietors.

6. The subcommittee noted that while the training requirements would take immediate effect upon enactment, the other provisions of the Regulation would come into operation in two phases having regard to the training capacity. The first phase would apply to operators of bulldozers, loaders, excavators, trucks and lorries on construction sites and forklift trucks in industrial undertakings. The second phase would apply to operators of compactors, dumpers, graders, locomotives and scrapers on a construction site.

Implementation of the first phase

7. The provisions concerning the training requirements came into operation on 20 November 2000. The Commissioner for Labour (C for L) was empowered to recognise training courses for operators of machines under the first phase, to enable operators of these machines to receive training. From 1 September 2002, machines under the first phase could only be operated by persons in possession of valid certificates.

8. According to the Administration's paper provided to the Panel on Manpower in April 2006, 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

9. The Administration gazetted the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Commencement) Notice 2006 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.

10. 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. the 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.

Discussion by the Panel on Manpower on the Commencement Notice

11. The Panel on Manpower was briefed at its meeting on 28 April 2006 on the Administration's proposal to implement the second phase of the Regulation.

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. CITA has agreed to organise training courses for operators of compactors, while commercially-run training organisations 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, "in-house" training will be provided by owner of these machines. In this connection, the two railway corporations are prepared to conduct "in-house" safety training courses for their locomotive operators.

13. Some Panel members expressed concern whether the course fees would be affordable to the machine operators. They requested the Administration to consider providing subsidies to course participants, and also discuss with course providers the possibility of providing such courses after working hours or during weekends.

14. The Administration estimated that the course fees for operators of compactors and dumpers would range from \$1,000 to \$3,000, while very little additional cost would be incurred by contractors in running "in-house" training courses for graders, scrapers and locomotives. The training bill for the construction industry as a whole was estimated at no more than \$2,700,000. On the suggestion of providing subsidy to course participants, the Administration pointed out that some of the costs had already been absorbed by the training body.

15. At the Panel meeting, some members requested the Administration to streamline the procedures for obtaining and renewing the certificates. A member questioned the need for operators in possession of valid certificates to attend refresher courses for the renewal of the certificates. The Administration explained that refresher courses were vital to assist operators to keep abreast of the technical development and latest safety standards and measures.

Relevant papers

16. The Administration's papers and other relevant papers for the meeting of Panel on Manpower on 28 April 2006 are available on the Council website at <http://www.legco.gov.hk/english/index.htm>.

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