

For information on
12 July 2010

Legislative Council Panel on Manpower
Factories and Industrial Undertakings
(Loadshifting Machinery) Regulation – Implementation of the
Second Phase Certification Requirement

Purpose

This paper informs Members of the Administration's proposal to bring into effect the certification requirement of the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Cap. 59AG) (the Regulation) for operators of loadshifting machines in the second phase to undergo relevant training and possess valid certificates.

Background

2. The Regulation sets out the training and certification requirements for operators of specified loadshifting machines. It 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 valid certificates.
3. On 5 April 2000, the Legislative Council (LegCo) approved the Regulation. The Schedule to the Regulation specifies 11 types of loadshifting machines in two parts: Part I covering forklift truck used in industrial undertakings, and Part II including bulldozer, loader, excavator, truck, lorry, compactor, dumper, grader, locomotive and scraper used on construction sites.

Approach to Implementing the Regulation

4. Taking into account the limited training capacity available at the time, the Administration proposed, when introducing the Regulation into LegCo, that the Regulation should be implemented in two phases. The first phase would apply only to operators of forklift trucks, bulldozers, loaders, excavators, trucks and lorries (loadshifting machines in the first phase). The second phase would cover operators of compactors, dumpers, graders, locomotives and scrapers, and would be brought into effect subject to satisfactory progress of the first phase.

5. To bring the regulatory requirements of the Regulation into effect, the provisions concerning training have to come into operation first to empower the Commissioner for Labour (the Commissioner) to recognise training courses for operators of loadshifting machines. This enables operators to receive recognised training and obtain valid certificates. After a sufficient number of operators have been trained and issued with certificates, the requirements for loadshifting machines to be operated only by persons with valid certificates may then be brought into effect.

Implementation of the Regulation

The First Phase

6. In line with the aforesaid approach, we brought into operation the first phase of the Regulation in two steps :-

- (a) *Training Requirement* – On 20 November 2000, relevant sections of the Regulation¹, including Part I and paragraphs (a) to (e) in Part II of the Schedule, came into operation, empowering the Commissioner to recognise training courses for operators of loadshifting machines in the first phase. This enabled operators of these machines to receive recognised training and obtain valid certificates.
- (b) *Certification Requirement* – After a sufficient number of operators of loadshifting machines in the first phase had been trained and issued with valid certificates, provisions requiring these machines to be operated only by persons in possession of valid certificates² came into operation on 1 September 2002.

7. As at end-2005, a total of 34 300 operators of forklift trucks and 10 500 operators of other loadshifting machines in the first phase had been trained and issued with certificates. In light of the satisfactory progress with the first phase, we have taken steps to prepare to extend the statutory requirements to loadshifting machines in the second phase.

¹ Sections 1, 2, 4, 5 and 7 of the Regulation as shown in **Annex**.

² Sections 3, 6 and 8 of the Regulation related to Part I and paragraphs (a) to (e) in Part II of the Schedule as shown in **Annex**.

The Second Phase

8. As with the first phase of the Regulation, the second phase would be brought into operation in two steps. This began on 1 September 2006 with the operation of paragraphs (f) to (j) in Part II of the Schedule, empowering the Commissioner to recognise training courses for operators of relevant loadshifting machines. The move enabled operators of these machines to receive recognised training pending implementation of the certification requirement. The intention was that, after a sufficient number of operators had been trained and issued with certificates, sections 3, 6 and 8 of the Regulation in relation to loadshifting machines in the second phase would be brought into operation.

Justifications

Availability of Relevant Training Opportunities

9. In respect of the five types of loadshifting machines to be covered in the second phase, the Labour Department (LD) has so far approved a number of training courses, including two compactor training courses which would open to operators of compactors in the market.

10. Graders, locomotives, dumpers and scrapers are not commonly used in the local construction industry. As a result, there is a lack of interest in the market to run such courses. Owners of these loadshifting machines would therefore need to provide recognised “in-house” training for their own operators.

11. In practice, when the Regulation was considered by LegCo in 1999, the Administration was well aware that machines like locomotives and scrapers were not in common use and that there might be difficulties in sourcing course providers for such courses. In response to the concerns raised by Members of the LegCo subcommittee on the Regulation and submissions made to the subcommittee at its meeting on 13 September 1999, the Administration noted that :-

“We realise that some machinery such as locomotives and scrapers identified for Phase 2 implementation are not commonly used. However, our experience in the certification of operators of other machinery indicates that the owners of these machines will arrange for the training of their own operators in most instances and the Labour Department will monitor the training and recognise the courses....”

12. To date, we have given approval for four companies to run training courses for their employees to operate compactors, graders and locomotives. As a further measure to assist the industry, we have secured the commitment of the Construction Industry Council Training Academy (CICTA)³ to prepare off-the-shelf training packages and assist in sourcing qualified trainers to facilitate contractors in running “in-house” training courses for operators of dumpers, graders and scrapers in case of need in future. In addition, the Occupational Safety and Health Council (OSHC) has also committed to developing a training package for operators of locomotives. We anticipate that these training packages will be available by the end of this year.

Availability of Trained Operators

13. LD had conducted a survey between 1 February 2010 to 31 March 2010 at all active civil engineering sites, construction sites and maintenance works of railways where loadshifting machines in the second phase would likely be used. The results indicated that there were a total of 149 such loadshifting machines, including 60 compactors, 2 dumpers, 2 graders and 85 locomotives, being used at 41 workplaces. Findings in the survey are summarised as follows :-

Findings of the 2010 survey

	No. of Existing Trained Operators	Findings		
		No. of Machines	Trained Operators	Untrained Operators
Compactors	1 091	60	104	44
Dumpers	18	2	3	0
Graders	6	3	6	8
Locomotives**	145	85	144	108
Scrapers	0	0	0	0

** 100 of the 108 untrained operators are now undergoing training offered by the two companies with approval to run in-house courses. Such training is expected to be completed by November 2010. We are processing applications from two other companies for running in-house training courses for locomotive operators.

³ The Construction Industry training Authority before 2008.

14. The survey indicated that, save for scrapers which had not been identified, there would be sufficient trained operators to meet the needs of the industry for the other four types of loadshifting machines. In addition, with the off-the-shelf training packages being developed by CICTA and OSHC, there will be flexibility for owners of the loadshifting machines to ensure, where required, that operators could receive the necessary training and certification in a timely manner in future.

Consultation

15. We have consulted the Committee on Occupational Safety and Health of the Labour Advisory Board and they supported the proposed commencement of the certification requirement of the Regulation for machines in the second phase. We have also consulted relevant trade associations, workers' unions, professional bodies, interest groups and training bodies as well as civil engineering works contractors on the readiness of the industry for the commencement of the second phase certification requirement of the Regulation. The feedback was generally positive.

Recommendation

16. In view of the developments set out in paragraphs 9 to 15 above, we consider that the conditions are ripe to bring the second phase certification requirement of the Regulation into operation. Subject to the progress of CICTA's and OSHC's work in providing the relevant training packages (paragraph 12 above), we intend to bring into force the second phase certification requirement of the Regulation by end-2010 or early-2011.

Conclusion

17. Members are invited to note the proposal as set out in this paper.

Chapter:	59AG	FACTORIES AND INDUSTRIAL UNDERTAKINGS (LOADSHIFTING MACHINERY) REGULATION	Gazette Number	Version Date
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		Empowering section		
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(Cap 59, section 7)

[Sections 1, 2, 4, 5 and 7; Part I and paragraphs (a) to (e) in Part II of the Schdule	}	20 November 2000 <i>L.N. 281 of 2000</i>
Sections 3, 6 and 8 of the Regulation (only in so far as they relate to Part I and paragraphs (a) to (e) in Part II of the Schedule)	}	1 September 2002 <i>L.N. 81 of 2002</i>
Paragraphs (f) to (j) in Part II of the Schdule	}	1 September 2006 <i>L.N. 120 of 2006</i>]

(Originally L.N. 85 of 2000)

Section:	1	(Omitted as spent)	L.N. 120 of 2006	01/09/2006
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(Omitted as spent)

Section:	2	Interpretation	L.N. 262 of 2003	28/11/2003
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- (1) In this Regulation, unless the context otherwise requires-
- "certificate" (證書) means a certificate issued to a person by the organizer of a training course which evidences that, by virtue of his attendance at the training course designed for that purpose, he is trained and competent to operate a particular type of loadshifting machine;
- "construction site" (建築地盤) has the meaning assigned to it by regulation 2(1) of the Construction Sites (Safety) Regulations (Cap 59 sub. leg. I);
- "fork-lift truck" (叉式起重車) means any self-propelled vehicle equipped with a mast along which travels a power-operated device for elevating and carrying loads;
- "loadshifting machine" (負荷物移動機) means a power-operated mobile machine of a type specified in the Schedule and which is operated by a person riding on the machine;
- "responsible person" (負責人), in relation to a loadshifting machine, means a person who is having the management or in charge of the machine but does not include a person who operates the machine, and the contractor who has control over the way any construction work which involves the use of the machine is carried out and, in the case of a loadshifting machine situated on or used in connection with work on a construction site, also means the contractor responsible for the construction site; (L.N. 262 of 2003)
- "training course" (訓練課程) means a training course that is-
- recognized by the Commissioner;
 - conducted for the purpose of instructing a person in the operation of a type of loadshifting machine; and
 - designed to ensure that a person is adequately trained and competent to operate a type of loadshifting machine.

(2) For the purposes of this Regulation, a contractor is responsible for a construction site if he is undertaking construction work there or, where there is more than one contractor undertaking construction work at the site, if he is the principal contractor undertaking construction work there.

Section:	3	Operation of loadshifting machine	L.N. 81 of 2002	01/09/2002
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Remarks:

This section has commenced operation since 1 September 2002 only in so far as it relates to Part I and paragraphs (a)

to (e) in Part II of the Schedule.- see L.N. 81 of 2002.

The responsible person of a loadshifting machine shall ensure that the machine is only operated by a person who-

- (a) has attained the age of 18 years; and
- (b) holds a valid certificate applicable to the type of loadshifting machine to which that machine belongs.

Section:	4	Duty of responsible person to provide training course	L.N. 281 of 2000	20/11/2000
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(1) Subject to subsection (3), the responsible person of a loadshifting machine shall ensure the provision to each of his employees who is instructed (whether directly or indirectly) by him to operate a loadshifting machine of a training course conducted for the type of loadshifting machine to which that machine belongs.

(2) In case the employee fails to obtain a certificate after attending the training course, the responsible person of a loadshifting machine shall ensure the provision of an additional training course conducted for the same type of loadshifting machine as the first-mentioned training course for the employee.

(3) The responsible person of a loadshifting machine is not obliged to comply with subsection (1) if the employee holds a valid certificate applicable to the type of loadshifting machine to which that machine belongs.

Section:	5	Duty of person to attend training course	L.N. 281 of 2000	20/11/2000
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An employee referred to in section 4(1) is required to attend such training course as may be provided by the responsible person of the loadshifting machine unless he holds a valid certificate applicable to the type of loadshifting machine to which that machine belongs.

Section:	6	Production of certificate	L.N. 81 of 2002	01/09/2002
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Remarks:

This section has commenced operation since 1 September 2002 only in so far as it relates to Part I and paragraphs (a) to (e) in Part II of the Schedule.- see L.N. 81 of 2002.

(1) A person who operates a loadshifting machine shall, on being so required by an occupational safety officer, produce his valid certificate to the officer for inspection.

(2) A person who is unable to produce his valid certificate for inspection when required to do so under subsection (1), shall produce it for inspection by the officer within such reasonable time and at such reasonable place as required by the officer.

Section:	7	Exemption	L.N. 281 of 2000	20/11/2000
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This Regulation does not apply to a person who operates a truck or lorry if he is the holder of a valid driving licence issued under the Road Traffic Ordinance (Cap 374) of the class to which the truck or lorry belongs.

Section:	8	Offences and penalties	L.N. 81 of 2002	01/09/2002
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Remarks:

This section has commenced operation since 1 September 2002 only in so far as it relates to Part I and paragraphs (a) to (e) in Part II of the Schedule.- see L.N. 81 of 2002.

(1) A responsible person who without reasonable excuse contravenes section 3 commits an offence and is liable to a fine at level 5.

(2) A responsible person who without reasonable excuse contravenes section 4(1) commits an offence and is liable to a fine at level 5.

(3) An employee referred to in section 4(1) who without reasonable excuse contravenes section 5 commits an offence and is liable to a fine at level 3.

(4) Any person who operates a loadshifting machine and who without reasonable excuse contravenes section 6

commits an offence and is liable to a fine at level 3.

Schedule:		SCHEDULE	L.N. 120 of 2006	01/09/2006
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[section 2]

PART I

Loadshifting machines used in industrial undertakings-

- (a) a fork-lift truck.

PART II

Loadshifting machines used on construction sites-

- (a) a bulldozer;
- (b) a loader;
- (c) an excavator;
- (d) a truck;
- (e) a lorry;
- (f) a compactor;
- (g) a dumper;
- (h) a grader;
- (i) a locomotive;
- (j) a scraper.