

LEGISLATIVE COUNCIL BRIEF

Factories and Industrial Undertakings Ordinance
(Chapter 59)

FACTORIES AND INDUSTRIAL UNDERTAKINGS (LOADSHIFTING MACHINERY) REGULATION (COMMENCEMENT) NOTICE 2011

INTRODUCTION

Pursuant to section 1 of the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Cap 59 sub. leg. AG) (the Regulation), the Commissioner for Labour (the Commissioner) has made the Commencement Notice at **Annex** to commence the certification requirements for operators of loadshifting machines in the second phase.

JUSTIFICATIONS

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.

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.

The First Phase

5. We brought into operation the first phase of the Regulation in two steps –

- (a) *Training Requirement* – On 20 November 2000, sections 1, 2, 4, 5 and 7 of the Regulation as well as 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, sections 3, 6 and 8 of the Regulation requiring these machines to be operated only by persons in possession of valid certificates came into operation on 1 September 2002.

The Second Phase

6. 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 requirements. 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.

Availability of Relevant Training Opportunities

7. 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 be open to operators of compactors in the market.

8. 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.

9. To date, LD has given approval for five companies to run “in-house” training courses for their employees to operate compactors, graders and locomotives. As a further measure to assist the industry, the Construction Industry Council Training Academy (CICTA) has prepared off-the-shelf training packages and sourced qualified trainers to facilitate contractors in running “in-house” training courses for operators of dumpers, graders and scrapers in case of need in future. The Occupational Safety and Health Council (OSHC) has also developed a training package for operators of locomotives.

Availability of Trained Operators

10. 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. Findings in the survey are summarised as follows -

	No. of Existing Trained Operators (as at 31 Dec 2010)	Findings in the survey (From 1 Feb to 31 Mar 2010)		
		No. of Machines	Trained Operators	Untrained Operators
Compactors	1 128	60	104	44
Dumpers	18	2	3	0
Graders	19	3	6	8
Locomotives	212	85	144	108
Scrapers	0	0	0	0

11. 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 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

12. LD had, in March 2009, 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 requirements of the Regulation. The feedback was generally positive.

13. We had also consulted the Committee on Occupational Safety and Health (COSH) of the Labour Advisory Board (LAB) as well as the LAB on 26 January 2010 and 5 July 2010 respectively. Members of both COSH and LAB raised no objection to the proposed commencement of the certification requirements for machines in the second phase by end 2010 or early 2011. The LegCo Panel on Manpower also discussed the proposal at its meeting on 12 July 2010 and raised no objection.

14. In view of the above, we consider that the conditions are ripe to bring into operation the certification requirements of the Regulation for loadshifting machines in the second phase.

COMMENCEMENT NOTICE

15. The Commencement Notice aims to put into effect on 31 March 2011 the certification requirements for operators of loadshifting machines in the second phase.

LEGISLATIVE TIMETABLE

16. The legislative timetable of the Commencement Notice is as follows –

Publication in the Gazette	21 January 2011
Tabling at the LegCo	26 January 2011
Date of commencement	31 March 2011

IMPLICATIONS OF THE COMMENCEMENT NOTICE

17. Upon the commencement of the provisions referred to in paragraph 15 above, the responsible persons of compactors, dumpers, graders, locomotives and scrapers shall ensure that the machines are only operated by persons who have received recognised training and are in possession of valid certificates.

18. The Commencement Notice is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental or sustainability implications.

PUBLICITY

19. A press release will be issued on 21 January 2011 to announce the gazettal of the Commencement Notice. A letter will also be issued on the same day to inform interested parties of the Administration's plan to bring into operation of the requirements on 31 March 2011 and remind them to ensure loadshifting machines in the second phase are only operated by persons who have received recognised training and are in possession of valid certificates on the effective date and thereafter.

ENQUIRIES

20. Enquiries on this brief may be addressed to Mr LEUNG Chun-ho, Chief Occupational Safety Officer (Support Services), of LD, at 28524963.

Labour and Welfare Bureau
January 2011

Factories and Industrial Undertakings (Loadshifting Machinery) Regulation
(Commencement) Notice 2011

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Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Commencement) Notice 2011

Under section 1 of the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Cap. 59 sub. leg. AG), I appoint 31 March 2011 as the day on which sections 3, 6 and 8 of the Regulation (in so far as they relate to paragraphs (f) to (j) in Part II of the Schedule) come into operation.



Cheuk Wing Hing
Commissioner for Labour

12 January 2011