

立法會
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**Subcommittee on Factories and Industrial Undertakings
(Loadshifting Machinery) Regulation**

**Resolution under section 7 of the
Factories and Industrial Undertakings Ordinance (Cap. 59)**

**Minutes of Meeting
held on Wednesday, 20 October 1999 at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Mrs Miriam LAU Kin-ye, JP (Chairman)
Hon HO Sai-chu, SBS, JP
Hon Cyd HO Sau-lan
Hon LEE Kai-ming, SBS, JP
Hon Ronald ARCULLI, JP
Hon CHAN Wing-chan
Hon Andrew CHENG Kar-foo
- Member Absent** : Hon CHOY So-yuk
- Public Officers Attending** : Mr Herman CHO
Principal Assistant Secretary for Education and Manpower
- Mr Samson LAI
Assistant Secretary for Education and Manpower
- Mr William SIU
Assistant Commissioner for Labour
- Miss Marie SIU
Senior Government Counsel

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Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Stanley MA
Senior Assistant Secretary (2) 6

I. Meeting with the Administration
[Paper No. CB(2)119/99-00(01)]

At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) briefed members on the Administration's response to the written submissions and concerns raised at the meeting on 13 September 1999.

Training fees

2. Miss Cyd HO expressed concern about the high training fees and enquired whether Government would subsidize the training courses to reduce the fees. She said that although the general duties provisions in the Factories and Industrial Undertakings Ordinance (FIUO) had required proprietors to provide training to ensure the safety of their employees at workplaces, casual workers and employees of small firms might not be provided the training given the high costs. She was worried that some employers would choose to employ workers who already had the training certificate instead of providing training to existing workers.

3. In response, PAS(EM) said that the training fees were determined by the training providers on a cost-recovery basis. As explained in the previous meeting, the expensive costs were due to the high rentals for training venue and equipment, the low student-to-instructor ratio and the high remuneration for part-time instructors. Nevertheless, some trade associations had indicated interest to provide training for forklift truck operators at lower charges in conjunction with the training institutions such as the Vocational Training Council (VTC) and the Occupational Safety and Health Council (OSHC). The Labour Department was now consulting the industry on the training guidelines.

4. As regards members' suggestion for Government providing subsidies to the training, PAS(EM) said that the Administration held the view that proprietors

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and machine owners should be responsible for providing training to their employees.

5. In response to the Chairman, Assistant Commissioner for Labour (AC for L) said that previous experience in implementing the mandatory training and certification requirement for crane operators showed that many organizations were interested in conducting in-house training for their employees and the costs were met by the employers. He added that in-house training would provide the flexibility for proprietors to schedule employee training without interrupting the operation. He anticipated that following the enactment of the Regulation, more trade associations and organizations would choose to provide in-house training for their members and workers. The in-house training costs would vary depending on the availability of training venues, equipment and qualified instructors.

6. In view of the large number of loadshifting machinery operators who had to obtain a certificate within the 18 months grace period, Mr CHAN Wing-chan suggested that full-time instructors should be employed to reduce the training costs.

7. Mr LEE Kai-ming said that he was disappointed that the Administration did not agree to subsidize mandatory training courses. He considered that Government should provide assistance to the industry to facilitate compliance with the new legislative requirements, for example, a suitable training site at Kai Tak could be allocated for conducting such courses. Referring to deputations' comments on the high training fees, Mr LEE Kai-ming also urged the Administration to discuss with training providers ways to reduce the costs. On the proposal of Hong Kong Container Freight Station Association (HKCFSA) to organize training for its members, Mr LEE pointed out that one way to reduce the costs was to train up more trainers. In this connection, the Chairman asked whether new instructors could be trained by experienced instructors who had acquired the necessary qualifications.

8. PAS(EM) responded that those who had acquired the instructor qualifications could train experienced operators to become instructors. The VTC and OHSC had also been organizing "train the trainer" programmes for the trade. He anticipated that there would be increased training demand following enactment of the Regulation, and this would justify the employment of full-time instructors for the refresher courses, thus reducing the training costs. PAS(EM) also undertook to explore the feasibility of providing a suitable site at Kai Tak as the training venue.

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9. The Chairman stressed that the Subcommittee had serious concern about the high training fees and advised the Administration to critically examine ways to reduce the fees. She said that the Subcommittee would require more

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information in this respect for giving support to the proposed Regulation. At the Chairman's request, PAS(EM) undertook to follow up with the training providers and provide information in about one month.

Training capacity

10. Miss Cyd HO reiterated her concern as to whether there would be sufficient training capacity for existing operators of specified loadshifting machinery within the 18-month grace period. In this connection, she asked whether the Administration would review the supply and demand situation 12 months after enactment of the Regulation. She suggested that the Administration should lengthen the grace period if necessary after 12 months.

11. PAS(EM) responded that the Commissioner for Labour (C for L) would give a grace period of 18 months for loadshifting machinery operators to obtain the required certificates. He said that there was no authoritative estimate on the training demand but some deputations had forecast a demand of 3 000-8 000 training places for forklift truck operators. The Administration would keep the situation under review. He stressed that the legislative intent of the proposed Regulation was to promote safety awareness in the operation of loadshifting machines. He said that the Administration would report the progress to the Panel on Manpower in due course.

12. Mr CHAN Wing-chan asked whether the Administration had ever extended the commencement date of a regulation made under the FIUO or the Occupational Safety and Health Ordinance (OSHO). AC for L replied that the commencement of the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation had been extended for six months.

13. In response to the Chairman and Miss Cyd HO, AC for L advised that casual workers and employees of small firms which did not provide in-house training could attend relevant courses provided by the OSHC, VTC or the Construction Industry Training Authority (CITA), etc.

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14. At the request of the Chairman, the Administration agreed to provide more information on the number of existing forklift truck operators and new operators requiring training.

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Recognition of training courses

15. Referring to paragraph 8 of the Administration's paper, Mr CHAN Wing-chan and Mr Andrew CHENG asked about the criteria for recognizing the training of previous CITA courses on loadshifting machinery operation. Mr CHENG also requested the Administration to publish a list of recognized courses for general information.

16. Senior Government Counsel (SGC) replied that the Commissioner for Labour was empowered under section 7 of FIUO to make regulations to control the employment of persons to operate loadshifting machines. The recognition of training course is part and parcel of the proposed scheme of control. It is within the administrative power of the Commissioner to give retrospective recognition to previous training courses and it is not necessary to specify such power or the criteria for recognizing training courses in the Regulation.

17. AC for L said that the CITA organized training courses for new operators of earth-moving machinery. Labour Department was now consulting the industries on retrospective recognition of such courses, subject to these courses having met the requirements for the purpose of the Regulation. The Labour Department would publish the recognized courses after consultation.

18. On the detailed training requirements for certification purposes, AC for L said that Labour Department had consulted the Advisory Committee on Certificate of Operators of Specified Plants and Equipment (ACCOSPE) at the meeting on 20 August 1999. Labour Department would issue a consultation paper in early November 1999 to obtain feedback from concerned industries in about two months. After consultation, Labour Department would prepare the training guidelines with specifications on the structure and contents of the training programme, the qualifications of instructors and the certification requirements, etc.

19. The Chairman asked whether in-house training provided by employers would be portable and recognized by other companies.

20. AC for L replied that the Administration was consulting the industries and training providers on the recognition of training courses. He said that some companies issued staff cards instead of certificates for operators who had completed in-house training. However, following enactment of the Regulation, the company providing in-house training in accordance with the specified standards would have to issue certificates for recognition by the industries. The Labour Department would prepare training guidelines to ensure consistent training standards. The guidelines would incorporate standards and specifications on course structure, content and duration, assessments, qualification of trainers, format of certificate, procedures of application, renewal

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arrangement, as well as approval and monitoring by the Labour Department. The training guidelines would be tailor-made for the situation of Hong Kong and made available for general information.

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21. At the suggestion of the Chairman, AC for L agreed to consult the ACCOSPE which comprised representatives of employees' association, the Hong Kong Construction Association, training institutions and industrial safety professionals.

22. Mr Andrew CHENG enquired about the weighting of the theory and practical tests for the issue of training certificate and the passing rate of these courses.

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23. AC for L responded that Labour Department did not specify the weighting of these tests. The practical test was more important while the theory test was conducted in the form of multiple-choice questions to cater for operators of a lower literacy level. As far as he was aware, the failure rate had been very low and he did not envisage any problem in this respect. He agreed to provide further information on the passing rate of course participants.

24. The Chairman suggested that the theory test could be conducted orally for illiterate participants.

25. Mr LEE Kai-ming agreed that a test should be conducted after training to enhance the effectiveness of training.

Duties of responsible persons

26. Mr Andrew CHENG sought clarifications on the definition of "responsible person" under the proposed Regulation, particularly the meaning of "very likely" in paragraph 14 of the Administration's paper. He asked whether a proprietor or contractor who hired subcontractors or loadshifting machine companies to undertake work on his premises should be caught by the definition of "responsible person" under the Regulation. He was of the view that the proposed Regulation should specify the responsibility of the principal contractor under different circumstances.

27. SGC advised that under section 2 of the proposed Regulation, "responsible person" was defined as "a person who is having the management or in charge of the machine and, in the case of a loadshifting machine situated on or used in connection with work on a construction site, includes the contractor responsible for the construction site". She pointed out that there would be circumstances where a proprietor or contractor of the premises would not be regarded as the responsible person of the loadshifting machine(s) operating in the premises.

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28. AC for L supplemented that the definition of "responsible person" had to be kept sufficiently broad to cover all possible situations. Basically, the policy intention was to cover persons who were responsible for the management or control of the premises on which the machine operated. If the machine was hired or owned by the sub-contractor who was in control of its operation on the site, then the sub-contractor would be the responsible person. In enforcing the provisions, Labour Department would try to identify the person who directly controlled the operation of the machine.

29. The Chairman expressed much concern about the strict liabilities of the "responsible person" under sections 3 and 4 of the proposed Regulation. She commented that the principal contractor and some site controllers did not have control of the machinery operating on the site. For example, the principal contractor could not ensure that the subcontractor who owned or hired the machine would provide training to the operator employed by the subcontractor. In this connection, she asked the Administration to clarify the legislative intent. The Chairman stressed that a reasonable excuse provision should be included under section 8 in respect of offences of the responsible persons under sections 3 and 4 of the proposed Regulation concerning the qualifications of operators and provision of training to operators.

30. AC for L responded that the principal ordinance had adopted a wide definition of "proprietor", and that the definition and liability of "responsible person" followed those for "contractor" and "proprietor" in the principal ordinance. The definition of "responsible person" in the proposed Regulation also included the proprietor who should ensure the provision of training to operators of the loadshifting machinery. AC for L stressed that Labour Department would examine the evidence before taking prosecution against the responsible person, for example, whether the proprietor had established a system and work procedures in the workplace to comply with the legislative requirements.

31. The Chairman reiterated that a "reasonable excuse" in respect of offences of a responsible person under sections 3 and 4 should be included in the proposed Regulation. She pointed out that the words "shall ensure" in these sections would mean a strict liability of the responsible person and it would be extremely difficult to convince the Court to accept excuses. She was concerned about the enforcement of a strict liability provision in circumstances in paragraph 29.

32. SGC pointed out that section 8(2) of the proposed Regulation had provided a "reasonable excuse" provision for offences under section 4. The Chairman considered that a similar "reasonable excuse" provision should be provided for offences under section 3.

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33. Assistant Legal Adviser 5 (ALA5) said it would appear from the definition of "responsible person" that the responsible person should be "a person having the management or in charge of the machine", and that the qualification should also apply, in the case of a construction site, to "the contractor responsible for the construction site".

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34. PAS(EM) undertook to consider the Chairman's suggestions in respect of the definition and liability of "responsible person".

Application of the Regulation to sea-based operation

35. Miss Cyd HO enquired whether the proposed Regulation would cover forklift trucks operated on a ship. PAS(EM) responded that land-based and sea-based operations of loadshifting machinery were governed by different legislation. The proposed Regulation would apply if the loadshifting machinery was located on land. He added that the legislation on safety requirements for sea-based operation was being revised in line with the requirements under the Factories and Industrial Undertakings Ordinance.

Date of next meeting

36. Members agreed to hold the next meeting at 4:30 pm on 23 November 1999.

II. Any other business

37. There being no other business, the meeting ended at 10:20 am.

Legislative Council Secretariat
25 February 2000