

立法會
Legislative Council

LC Paper No. CB(2)865/98-99
(These minutes have been seen
by the Administration)

Ref : CB2/SS/9/98

**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 Friday, 23 July 1999 at 4:30 pm
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 CHAN Wing-chan
Hon CHOY So-yuk
- Members Absent** : Hon Ronald ARCULLI, JP
Hon Andrew CHENG Kar-foo
- Public Officers Attending** : Mr Herman CHO
Principal Assistant Secretary for Education and Manpower
- Mr Franco KWOK
Assistant Secretary for Education and Manpower
- Mr William SIU
Assistant Commissioner for Labour
- Miss Marie SIU
Senior Government Counsel

Action

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. Election of Chairman

Miss Cyd HO Sau-lan, Member of the highest precedence among members present at the meeting, called for nominations of the Chairman. Mr CHAN Wing-chan nominated Mrs Miriam LAU, and the nomination was seconded by Mr LEE Kai-ming. Mrs Miriam LAU accepted the nomination.

2. There being no other nomination, Miss Cyd HO declared Mrs Miriam LAU elected as Chairman of the Subcommittee. Mrs Miriam LAU then took the chair.

II. Meeting with the Administration

3. At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) briefed members on the objectives of the legislative proposal and the implementation plan as detailed in the Legislative Council Brief (Ref. EMB1/2961/98).

4. PAS(EM) said that the legislation was proposed in view of the high accident rate in connection with the operation of loadshifting machines in recent years. The following points were highlighted -

- (a) under the existing legislation, contractors or owners of the specified loadshifting machines were required to ensure that these machines were operated by trained and competent persons, and employers had the general duty to provide training for their employees. However, the existing legislation did not specify details or standards of such training nor require any certification on the competency of the operators;
- (b) to enhance the competence of operators of specified loadshifting machines and their safe operations, mandatory training was

Action

proposed for workers operating such machines on construction sites and forklift trucks in all industrial undertakings. When the proposed Regulation came into force, all operators of the specified loadshifting machines must possess a valid certificate;

- (c) taking into account the training capacity of the Construction Industry Training Authority (CITA), Vocational Training Council (VTC) and the Occupational Safety and Health Council (OSHC), the proposed training and certification requirements would be introduced in two phases. Truck and lorry operators in possession of the driving licence appropriate to the class of vehicle concerned would be exempted; and
- (d) the Administration had consulted the Advisory Committee on Certificate of Operators of Specified Plants and Equipment (ACCOSPE), Labour Advisory Board and the Transport and Physical Distribution Training Board of VTC on the proposed Regulation. These organizations had indicated support for the Regulation.

5. Noting that the operators of certain loadshifting machines were currently required to attend a two-day refresher course, Mr CHAN Wing-chan asked whether there would be any difference in the training requirements when the proposed Regulation came into operation. PAS(EM) responded that the proposed Regulation aimed at formalizing the existing training requirement for operators of specified loadshifting machines on construction sites and forklift trucks in all industrial undertakings. The legislative intent was to reduce the industrial accident rates by ensuring the competency of these operators who must be in possession of a valid training certificate when the Regulation became effective.

Public consultation

6. On the scope of public consultation, the Chairman and some members asked whether the Administration had consulted the Hong Kong Construction Association (HKCA), Hong Kong Construction Industry Employees General Union and the container and cargo handling industry. PAS(EM) replied that the Administration had consulted ACCOSPE which comprised representatives from various industries and the above organizations. At the request of Mr LEE Kai-ming, PAS(EM) agreed to provide the membership list of ACCOSPE after the meeting.

Admin

7. Mr LEE Kai-ming queried why the LegCo Panel on Manpower was not consulted before introduction of the proposed Regulation into LegCo. PAS(EM) responded that the legislative proposal was endorsed by the Executive Council

Action

on 29 June 1999 and introduced into LegCo at its last meeting on 14 July 1999 before the end of the 1998-99 session. The Administration had subsequently requested to brief the Panel on Manpower at its meeting on 22 July 1999. Mr LEE Kai-ming, Chairman of the Panel on Manpower, said that he had declined the Administration's request because a subcommittee had already been formed under the House Committee in early July 1999 to examine the proposed Regulation. The Chairman pointed out that the LegCo Panel should be consulted before discussion by the Executive Council.

Validity period of a training certificate

8. On the validity period of training certificates, Assistant Commissioner for Labour (AC for L) said that there were no definite views yet. As the duration of training would vary depending on the complexity and level of skill required for different machines, Labour Department would consult ACCOSPE and affected industries on the validity period of certificates. He informed members that the certificate issued by CITA in respect of crane operation currently had a validity period of five years, while the safety training certificates (green cards) were valid for three years.

9. Mr CHAN Wing-chan and Miss Cyd HO expressed concern that the Administration should have definite plans on the validity period of the proposed certificates as this would affect the employment of existing operators. Given the high training costs and the impact on the employment of these operators, Mr CHAN considered that such certificates should be valid for five years. PAS(EM) agreed to consider the suggestion.

Admin

Training costs

10. The Chairman and members noted with concern the high training fees which ranged from \$1200 to \$2280 for courses run by VTC/CITA and OSHC respectively. The Chairman inquired about the reasons for the high costs and requested the Administration to provide a list of the training institutions together with the breakdown of training costs.

Admin

11. PAS(EM) responded that the training fees were set by the training institutions themselves. The relatively high fees were probably due to the small class size (six to eight participants), insurance costs, high rental for machines and training venue, etc. He undertook to provide the requested information and discuss with the training institutions the possibility of shortening the duration of the refresher course with a view to reducing the fees.

12. Mr HO Sai-chu suggested that Government should subsidize the training courses. PAS(EM) advised that it was not Government policy to subsidize vocational/industrial training courses. He clarified that CITA was currently

Action

providing free training courses for new operators of loadshifting machinery and there would be no direct cost to the owners of the equipment and contractors of the construction industry. As for the refresher course, CITA would charge about \$1200 per person.

13. Mr LEE Kai-ming remarked that most employers would bear the training costs, but it would add to the employers' burden if the employee failed in the first attempt and had to re-sit the test. Miss Cyd HO then asked about the arrangements for the operator to re-sit the test immediately and whether additional fees would be necessary. AC for L said Government would have to discuss with the training institutions the re-sitting arrangements. He also made reference to the arrangement for the mandatory safety training courses which allowed a re-test on the same day free of charge.

Requirement for attending the refresher course

14. In view of the high fees for refresher course, Miss Cyd HO asked whether it would be a mandatory requirement for operators in possession of a certificate to attend the refresher course for renewal of certificate. Miss CHOY So-yuk considered that renewal of certificate should be automatic if the holders had all along been working with the same type of machine. If new machines were introduced, these operators could then be required to attend a short refresher course at a lower fee.

15. AC for L said that the requirement for attending a refresher course for renewal of certificate was generally supported by the industries during consultation. He said that the refresher course of CITA described in the LegCo Brief was intended for existing operators who had not received any formal training. As regards the future refresher course for renewal of certificate, the Administration had yet to discuss with ACCOSPE on the detailed arrangements. He added that refresher courses were necessary as new machines and modern safety measures would be introduced into the market every three or five years.

16. PAS(EM) stressed that the refresher course was to keep operators of loadshifting machinery, particularly those temporary or part-time operators, abreast of the modern skills and safety requirements. Similar requirements had been provided under the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations. Nevertheless, he agreed that for those operators who had already attended a recognized training course, consideration could be given to shortening the duration of the refresher course and reducing the fees. He undertook to relay members' concern to the training institutions.

Admin

17. Mr CHAN Wing-chan asked whether there was any service requirement for attending the refresher course. PAS(EM) replied that the proposed

Action

Regulation did not specify any minimum service requirement for the purpose. In this connection, the Chairman expressed concern as to whether existing operators would have a reasonable chance of passing the test at the end of the refresher course. To avoid a high failure rate, she suggested stipulating a minimum service requirement for attending the refresher course. AC for L responded that the refresher course would include practice sessions. He said that if a service requirement was set for attending the refresher course, some existing operators not meeting the requirement would have to undergo the full induction course of a longer duration. The income of the operators would be affected even though a training allowance was payable.

Admin

18. Mr CHAN Wing-chan and Mr LEE Kai-ming stressed that the Administration should formulate concrete plans for the refresher courses and renewal of certificate as soon as possible. In view of members' concerns, the Chairman advised the Administration to further consult the industries and training institutions and provide more information on the refresher courses.

Training capacity

Admin

19. Miss Cyd HO asked whether the recognized training institutions would have sufficient instructors and capacity to train the affected workforce. PAS(EM) said that according to the estimates of CITA, about 5000 - 6000 people who had no formal training were working as full-time or occasionally as operators of loadshifting machines in the construction industry. CITA had envisaged no problem in meeting the potential demand for refresher training. As regards forklift trucks, VTC and OSHC would be prepared to increase their training capacity to provide about 1400 places a year. To enable members to have a clearer picture of the forecast supply and demand, the Chairman advised the Administration to provide a breakdown of the estimated demand and supply and the timetable for meeting the demand.

Exemptions

20. Mr LEE Kai-ming suggested that operators of forklift trucks who were in possession of a special vehicle licence under the Road Traffic Ordinance be exempted from the requirement for attending a refresher course. He also asked whether these drivers would be exempted from the mandatory safety training requirement under the recently enacted Factories and Industrial Undertakings (Amendment) Ordinance (FIUAO) 1999.

21. PAS(EM) responded that the requirements for a forklift truck driving licence were different from that for the certificate under the proposed Regulation. Holders of the forklift truck driving licence would not be exempted from the training certificate requirement under FIUAO 1999 and the proposed Regulation, and vice versa. In other words, all forklift truck drivers would still

Action

need a safety training certificate (green card) for working on construction sites and at the container handling workplaces under FIUAO 1999.

Admin

22. With regard to the training certificates issued by CITA, VTC and OSHC before commencement of the proposed Regulation, AC for L advised that these would be recognized for the purpose of the Regulation. The Chairman suggested that recognition of these existing training certificates should be specified in the Regulation. PAS(EM) agreed to consider the suggestion.

Offences and penalties

23. In response to Mr LEE Kai-ming, PAS(EM) advised that the penalties under the proposed Regulation were the same as other similar Regulations under the Factories and Industrial Undertakings Ordinance (FIUO). AC for L added that operators who could not produce his certificate upon demand would commit an offence under section 6 of the proposed Regulation and liable to a fine at level 3 (maximum of \$10,000). However, it would not be an offence under the proposed Regulation if the operator did not possess a valid certificate. The latter would be governed by the general duty provisions under the principal ordinance (FIUO).

24. In reply to the Chairman, PAS(EM) said that an operator would commit an offence under sections 5 and 6 under the proposed Regulation for failure to attend the training course and to produce the certificate upon demand. As regards the liability of the "responsible person", PAS(EM) advised that sections 3 and 4 of the proposed Regulation would apply.

III. Any other business

Date of next meeting

25. Members agreed to hold the next meeting on 13 September 1999 at 8:30 am to meet deputations. The Chairman asked members to forward to the Clerk to Subcommittee the names of organizations to be invited.

26. There being no other business, the meeting ended at 6:00 pm.

Legislative Council Secretariat

14 January 2000