

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 Tuesday, 23 November 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 Ronald ARCULLI, JP
Hon CHAN Wing-chan
Hon CHOY So-yuk
- Member Absent** : Hon Andrew CHENG Kar-foo
- 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. Administration's response to issues raised at the meeting on 20 October 1999

[Paper No. CB(2)436/99-00(01)]

At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) briefed members on the Administration's response to issues raised at the meeting on 20 October 1999.

Training capacity

2. PAS(EM) said that as requested by the Subcommittee, the Labour Department (LD) had tried to obtain more information on the number of forklift truck operators requiring training. LD had approached 22 establishments which were known to own forklift trucks or employ forklift truck operators. Based on the information obtained, the majority of forklift operators (about 98%) was employed in large establishments which preferred in-house training for their employees. It was estimated that a small number of operators employed by smaller establishments would have to rely on the training provided by outside training institutions such as the Vocational Training Council (VTC), Occupational Safety and Health Council (OSHC) and Harbour Transportation Workers General Union (HTWGU).

3. Mr CHAN Wing-chan asked whether the total number of training places provided by VTC, OSHC and HTWGU could accommodate the training needs of those establishments which did not provide in-house training for their employees. PAS(EM) responded that the 3 700 training places provided by the three training institutions in the 18-month grace period would be sufficient to meet the anticipated training demand. The Administration would closely monitor the training progress and adjust the grace period if necessary.

4. The Chairman said that two of the 12 large establishments had relayed to her their concern about the inadequate training places for the instructor course, as

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these establishments would need qualified instructors for conducting in-house training. According to these companies, the instructor course organized by VTC had a capacity of only 16 and was fully subscribed, while another course was scheduled six months later. She therefore urged the Administration to liaise with VTC and OSHC to provide sufficient training places for both operators and instructors to help the large establishments to plan their in-house training programmes.

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5. PAS(EM) said that both the OSHC and VTC organized instructor courses based on demand. The VTC training capacity was determined by the funding support provided by the Government, while the OSHC was funded by levy from the employees' compensation insurance. The OSHC was prepared to organize additional instructor courses to meet the demand. At the request of the Chairman, PAS(EM) agreed to obtain more information on the instructor courses of the VTC and OSHC.

6. Mr LEE Kai-ming declared interest as a member of the OSHC and expressed support for the large establishments to provide in-house training for their employees. However, he stressed that LD must monitor the quality of the in-house training courses to ensure consistent standards. On the supply of qualified instructors, Mr LEE said that the consultants and instructors of OSHC were qualified instructors who had participated in the Independent Training Standards Scheme and registered with the Association of Industrial Truck Trainers of the United Kingdom. The OSHC had developed an instructor training programme for experienced operators to become qualified trainers.

7. Assistant Commissioner for Labour (AC for L) responded that LD would prepare training guidelines setting out the standards and specifications on course structure and content, qualifications of trainers, the venue and facilities, etc. Moreover, LD would conduct surprise inspection on the training courses.

8. The Chairman asked whether employees of other companies could join the in-house training courses organized by the large establishments which might charge lower fees than the three training institutions. AC for L said that the legislation did not prohibit these large establishments from training workers other than their employees as long as their courses were approved by the Commissioner for Labour. It would be up to these establishments to decide whether to admit outsiders to their training courses. As far as he was aware, none of these establishments had admitted participants other than their employees to their in-house training courses. Mr HO Sai-chu remarked that there were considerations such as insurance and staff costs for companies to admit people other than their employees to in-house training programmes. It would be impractical to count the in-house training places of large companies in the planning of training places for casual workers and employees of small establishments.

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Training fees

9. The Chairman informed members that the OSHC and VTC had responded to the Subcommittee's request and indicated that they could reduce their training fees from \$2,280 to \$850 and from \$2,200 to \$2,000 respectively. The training fees of the Harbour Transportation Workers General Union (HTWGU) would be \$1,200 (or \$1,800 for non-members).

10. Mr CHAN Wing-chan asked about the reason for the substantial difference in the training fees between the OSHC and VTC. PAS(EM) responded that VTC was Government-funded while OSHC was financed by the levy from employees compensation insurance. The substantial reduction in the OSHC training fees would be attained by employing full-time instructors and purchasing (instead of hiring) its own forklift trucks for training. Mr LEE Kai-ming added that the cost reduction was partly attributed to the allocation of a suitable training site at the former Kai Tak Airport site by the Government at a concessionary rate.

11. Mr HO Sai-chu expressed appreciation of the OSHC's efforts in reducing the training costs. He asked whether OSHC would be able to meet the training demand from forklift truck operators who were not provided in-house training. PAS(EM) responded that 98% of forklift truck operators were employed by large establishments which would operate in-house training programmes. He was confident that OSHC would be able to meet the training demand from the remaining 2% of operators.

Duties of responsible person

12. The Chairman commented that the definition of "responsible person" in the Regulation was too broad. PAS(EM) responded that the legislative intent was to include anyone who had the management of or control over (but not the physical operation) the loadshifting machinery. In the case of a loadshifting machine operating on a construction site, the definition also included the contractor responsible for the site. The Administration held the view that both the principal contractor and other subcontractors should be responsible for the safe operation of earth-moving machines on the site. However, a contractor could discharge his obligations under the Regulation if he could prove that he had put in place a system to ensure compliance with the legislative requirements. He added that section 8(2) of the Regulation had provided a "reasonable excuse" for offences under section 4, and the Administration would amend section 8(1) to provide a similar "reasonable excuse" for offences under section 3.

13. Mr Ronald ARCULLI pointed out that the definition of "responsible person" under section 2(1) of the Regulation did not include the principal contractor or sub-contractor. However, section 2(2) expressly stated that if there

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was more than one contractor undertaking construction work on the site, the responsible person would be the principal contractor. He queried whether this would imply that the principal contractor would automatically be held liable for an offence, if there was more than one contractor on the construction site.

14. AC for L responded that the phrase "contractor responsible for the site" was modelled on the Construction Sites (Safety) Regulations under the Factories and Industrial Undertakings Ordinance (FIUO). He said that Government had no intention to hold the principal contractor liable in all circumstances and the responsible person should be the one having the management, or in charge of the loadshifting machine in question.

15. Mr Ronald ARCULLI said that for the purpose of section 3, a principal contractor should not be the responsible person if he had appointed a subcontractor to provide the earth-moving machine together with the operator. He asked the Administration to clarify who should be the "responsible person" if an operator employed by a subcontractor was found operating an earth-moving machine without a valid certificate or not meeting the age requirement. In these circumstances, he asked whether it should be an offence under the Regulation for a person to operate a loadshifting machine without a valid certificate and without authorization of the responsible person.

16. AC for L explained the meaning of "responsible person". He said that the person who had the management of or in charge of the loadshifting machine would be the responsible person. In the case of a loadshifting machine operating on a construction site, the responsible person would include the contractor responsible for the site under section 2(1). Depending on individual circumstances, the responsible person could be the principal contractor or the subcontractor under section 2(2), and the Administration could institute legal proceedings against either one of them, or both. Before taking prosecution action, LD would first identify the party directly responsible for the offence and take into account other factors such as the maintenance of a safety management system by the contractor.

17. PAS(EM) supplemented that the objective of the legislation was to require employers to provide training for operators of loadshifting machines and to ensure that only qualified persons should operate loadshifting machines. The operator would also have the duty to attend the training provided under section 5 of the proposed Regulation; refusal to attend training would be an offence under section 8(3). As for a person operating a loadshifting machine without a certificate, it was already an offence under section 6B(3) of the FIUO for a person employed at an industrial undertaking who wilfully and without reasonable excuse did anything while at work likely to endanger himself or other persons.

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18. Mr Ronald ARCULLI said that the construction industry supported legislation to enhance industrial safety but objected to the policy that the principal contractor should be held liable for non-compliance by subcontractors and their workers. He expressed dissatisfaction that Government had been adopting the practice of holding the principal contractor responsible for non-compliance with legislative requirements applicable to the construction industry, irrespective of whether it was the subcontractor who was at fault in these cases. He stressed that Government should hold the subcontractor at fault, instead of the principal contractor, responsible for offences under these legislation.

19. AC for L responded that the Regulation would incorporate a reasonable excuse provision for offences under sections 3 and 4. He said that if a safety management system had been put in place on the construction site setting out properly the delegation of authority and responsibilities, and the supervision and monitoring to ensure compliance with the legislative requirements, the principal contractor could be discharged of their responsibilities.

20. Assistant Legal Adviser 5 advised that the definition of "responsible person under section 2(2) would include a principal contractor (in case there was more than one contractor on a construction site), in addition to a person who had the management or in charge of the loadshifting machine. These persons would also be subject to section 4(1) which required the responsible person of a loadshifting machine to ensure the provision of appropriate training to every person who was to operate the loadshifting machine. He agreed that the provisions as presently drafted did not spell out clearly whether the principal contractor or the subcontractor should be held liable for offences under sections 3 and 4. In the case of a person operating a loadshifting machine without a valid certificate, the responsible person might have committed two offences, namely, not providing the required training for the operator under section 4 and allowing an unqualified person to operate the machine under section 3.

21. The Chairman enquired whether the Administration could specify in the Regulation the measures which should be taken by the principal contractors and subcontractors, to enable them to discharge their responsibility in ensuring that loadshifting machinery on the site were operated by qualified operators. She held a strong view that section 4 as presently drafted would cover a much wider scope than was necessary. She considered that the Regulation should pinpoint which party, i.e. the principal contractor, the subcontractor, or the machine owner, should be held responsible for the requirements under sections 3 and 4. She also urged the Administration to provide justifications if the legislative intent was to hold the principal contractor responsible for breaches of requirements by an employee of the subcontractor.

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Admin 22. PAS(EM) responded that the Administration would review the drafting of the definition and provisions concerning the responsibility of "responsible person" in the light of members' comments.

Admin 23. Mr Ronald ARCULLI commented that the wording of section 4 such as "who is to operate" would make the Regulation unenforceable. He requested the Administration to consider improving the drafting of the relevant sections concerning the responsible person, in particular, the terms "the management of the machine", "in charge of the machine" and "who is to operate" in sections 2, 4 and 5. Senior Government Counsel undertook to review the drafting of the relevant clauses.

Admin 24. Members also sought clarification on the application of section 3 to cases where an operator did not have the relevant certificate or his certificate had expired. Mr Ronald ARCULLI considered that it should be an offence under the Regulation for a person to operate a loadshifting machine without a valid certificate. PAS(EM) undertook to consider the issue.

Review of training progress

Admin 25. PAS(EM) said that the Administration would report to the Panel on Manpower the progress in the training of loadshifting machinery operators some time after enactment of the Regulation.

Date of next meeting

26. Members agreed to hold the next meeting at 8:30 am on 14 December 1999.

(Post-meeting note : At the request of the Administration, the next meeting was subsequently re-scheduled to 21 December 1999.)

II. Clause-by-clause examination

27. Members agreed to start clause-by-clause examination at the next meeting.

III. Any other business

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

Legislative Council Secretariat

2 March 2000