

**FACTORIES AND INDUSTRIAL UNDERTAKINGS
(LOADSHIFTING MACHINERY) REGULATION**

(Made under section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59) subject to the approval of the Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Commissioner for Labour by notice in the Gazette.

2. Interpretation

(1) In this Regulation, unless the context otherwise requires -

"certificate" (證書) means a certificate issued to a person

which evidences that, by virtue of his attendance at a 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.);

"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 power-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, in the case of a loadshifting machine situated on or used in connection with work on a construction site, also means includes the contractor responsible for the construction site;

"training course" (訓練課程) means a training course that is (a)

recognized by the Commissioner;

(b) conducted for the purpose of instructing a person in the operation of a type of loadshifting machine; and

(c) 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.

3. Operation of a loadshifting machine

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.

4. Duty of responsible person to provide training course

(1) ~~Subject to subsection (2), Before~~ the responsible person of a loadshifting machine instructs (whether directly or indirectly) a person employed by him to operate the machine, he shall ensure that -

(a) he has provided a training course to that person on the type of loadshifting machine to which the machine belongs; and

(b) that person has obtained a certificate in respect of the training course.

~~shall ensure the provision to every person who is to operate that machine~~

~~of training course conducted for the type of loadshifting machine to which that machine belongs, to be evidenced by the issue of a certificate.~~

(2) The responsible person of a loadshifting machine is not obliged to ~~provide training course under~~comply with subsection (1) ~~to a person who is to operate that machine if~~ the second-mentioned person holds a valid certificate

applicable to the type of loadshifting machine to which that machine belongs.

5. Duty of person to attend training course

~~Every~~ A person who is instructed to operate a loadshifting machine 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.

6. Production of certificate

(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.

7. Exemption

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.

8. Offences and penalties

(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) Any person who is instructed to operate a loadshifting machine and 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

[s. 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.

Commissioner for Labour

1999

Explanatory Note

The purpose of this Regulation is to ensure that loadshifting machines are operated by competent persons. It provides that the machines may only be operated by persons who have attained the age of 18 years and who holds a valid certificate. It further imposes a duty on responsible person to provide training courses designed to ensure that operators are adequately trained and competent to operate them. Operators are required to attend training course provided by responsible persons. The Regulation also provides for ancillary matters such as the duty to produce valid certificate, exemption and specifies the offences and

penalties for contravention of the provisions.