

LEGISLATIVE COUNCIL BRIEF

Factories and Industrial Undertakings Ordinance
(Chapter 59)

Factories and Industrial Undertakings (Loadshifting Machinery) Regulation

INTRODUCTION

At the meeting of the Executive Council on 29 June 1999, the Council ADVISED and the Chief Executive ORDERED that, subject to the approval of the Legislative Council, the Factories and Industrial Undertakings (FIU)(Loadshifting Machinery) Regulation, at the **Annex**, should be made by the Commissioner for Labour under section 7 of the Factories and Industrial Undertaking Ordinance to provide for training and certification requirements for operators of specified loadshifting machines.

BACKGROUND AND ARGUMENT

General Background

2. Loadshifting machines are machines used to move a mass (i.e. any load) sideways, upwards or downwards. They include excavators, loaders and other earth-moving equipment used in the construction industry and forklift trucks used in a variety of trades and workplaces, such as warehouses, cargo terminals and other storage establishments. Between 1994 and 1998, nine and six workers were killed while operating or working with earth-moving equipment respectively. The corresponding figures for forklift trucks are four and three respectively. Among the factors contributing to accidents associated with loadshifting machines, inadequate training for their competent and safe operation is a common one.

Present Position

3. Currently, there are specific provisions in the Construction Sites (Safety) Regulations and the Factories and Industrial Undertakings (Cargo and Container Handling) Regulations requiring contractors or owners of the specified loadshifting equipment to ensure that the machines are operated by trained and competent persons. There are also general duties provisions under the Factories and Industrial Undertakings Ordinance (FIUO) and the Occupational Safety and Health Ordinance, requiring employers to provide training for their employees. These provisions, however, do not specify the details of such training nor require any certification on the competency of the workers. As a result, the training being provided to the operators of the specified loadshifting machines has been conducted in a haphazard manner. There is no standard on the qualification of the instructors or the contents of the training, and little attention is being paid to the safety aspects of operating the loadshifting machines.

The Proposal

4. To enhance the competence of operators of specified loadshifting machines and their safe operations, the Administration **proposes** to make the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (the Regulation) to introduce mandatory training for workers operating such machines on construction sites and forklift trucks in all industrial undertakings. When the Regulation comes into force, all operators of the specified loadshifting machines must be in possession of a valid certificate. It is noted that the Construction Industry Training Authority (CITA) is running training courses for new operators of earth-moving machines in construction sites. These courses last between 32 to 50 working days and have an annual capacity of around 190 places. The CITA estimates that about 5,000 to 6,000 people who have no formal training are working full time or occasionally as operators of loadshifting machines in the construction industry. In anticipation of the new Regulation, it has applied to the Labour Department to organize a two-day refresher training course for existing operators who, upon passing a test at the end of the course, can be issued with the relevant certificate. The CITA anticipates no problem in meeting the potential demand for refresher training from the existing operators. As regards forklift trucks, the Vocational Training Council (VTC) and the Occupational Safety and Health Council (OSHC) are running refresher training courses for their operators. The two Councils are prepared to increase their combined training capacity to around 1,400 places

per year. We intend to recognise all these training courses for the purpose of the Regulation.

5. Taking into account the training capacity available, we **propose** that the training requirement should be introduced in two phases. The first phase will apply only to operators of bulldozers, loaders, excavators, trucks and lorries on construction sites and forklift trucks in industrial undertakings as they are more dangerous and need dexterity to operate safely. However, truck and lorry operators in possession of driving licenses issued in accordance with the Road Traffic Ordinance and appropriate to the class of vehicle concerned will be exempted. Subject to satisfactory progress in the first phase, we plan to extend the statutory requirement to operators of compactors, dumpers, graders, locomotives and scrapers on a construction site in the second phase.

THE REGULATION

6. The Regulation provides that :-

- (a) the responsible person of a loadshifting machine shall ensure that the machine is operated by a person aged 18 or above and holds a valid certificate; **(Regulation 3)**
- (b) the responsible person of a loadshifting machine shall make provisions for the operators to attend recognised training course; **(Regulation 4)**
- (c) the operator of a loadshifting machine shall attend the training course provided for him; **(Regulation 5)**
- (d) the operator of a loadshifting machine shall produce his certificate for inspection when required; **(Regulation 6)**
- (e) a truck or lorry driver is exempted from the application of this Regulation if he holds a driving licence of the class to which the truck or lorry belongs; **(Regulation 7)** and
- (f) the maximum fines for breaching the Regulation by the responsible person and operator of a loadshifting machine are \$50,000 and \$10,000 respectively. **(Regulation 8)**

LEGISLATIVE TIMETABLE

7. A Legislative Council Subcommittee will be formed to study the Regulation.

IMPLEMENTATION

8. With the exception of the requirement for training of operators which should take immediate effect, we **propose** that the Regulation should come into operation 18 months after enactment. This would allow training to start as early as possible and sufficient number of workers to be trained and certified to operate the loadshifting machines before the Regulation becomes effective.

BASIC LAW IMPLICATIONS

9. The Department of Justice advises that the Regulation does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

10. The Department of Justice advises that the Regulation is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

11. There are no financial or staffing implications for Government.

ECONOMIC IMPLICATIONS

12. It is estimated that about 2,500 workers are employed at any one time to operate earth-moving machines in the construction industry and two-third of them, about 1,600, are operating those equipment covered by the first phase of the certification requirement. CITA is providing free training courses for new operators of loadshifting machinery and there should be no direct cost to the owners of the equipment and contractors of the construction industry. As for the two-day refresher course, CITA intends to charge \$1,200 per person, including the cost of testing and issue of certificates. Assuming that all the 5,000 to 6,000 workers without formal training will attend the refresher

courses, the industry as a whole will have to spend about \$7 million on the refresher training.

13. About 2,000 forklift trucks are currently in use in various industrial undertakings. The VTC and the OSHC are running training courses for forklift truck operators at a fee of \$1,200-\$1,800 and \$2,280 per person respectively. To train 2,000 workers to operate the forklift trucks, the cost would be \$2.4 million to \$4.5 million for all the industries concerned. On the other hand, the contractors and proprietors of industrial undertakings and the society at large would benefit from savings in fewer damage to machines and work stoppages as a result of accidents, as well as in medical expenses and compensation for workers.

PUBLIC CONSULTATION

14. The Advisory Committee on Certificate of Operators of Specified Plants and Equipment, which consists of representatives from workers union, the Hong Kong Construction Association, training institutions and safety professionals, has been consulted and given its support to the proposed training and certification requirement. The Transport and Physical Distribution Training Board of the VTC, the Labour Advisory Board and its Committee on Occupational Safety and Health have also been consulted and all have indicated their support for the Regulation.

PUBLICITY

15. A press release will be issued on 12 July and a spokesman will be available to handle media enquiries.

Education and Manpower Bureau
Subject Officer : Mr Herman Cho
Tel No. : 2810 3561
12 July 1999

**FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE
(Chapter 59)**

**Factories and Industrial Undertakings
(Loadshifting Machinery) Regulation**

Annex: Factories and Industrial Undertakings (Loadshifting Machinery) Regulation

**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 mobile machine of a type specified in the Schedule and 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 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;

"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 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 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), the responsible person of a loadshifting machine 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 subsection (1) to a person who is to operate that machine if the second-mentioned person holds a certificate applicable to the type of loadshifting machine to which that machine belongs.

5. Duty of person to attend training course

Every person who is 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 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 certificate to the officer for inspection.

(2) A person who is unable to produce his 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 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 commits an offence and is liable to a fine at level 5.

(3) Any person who is 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.

Matthew K.C. Cheung
Commissioner for Labour

29 June 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 hold a 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 certificate, exemption and specifies the offences and penalties for contravention of the provisions.