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Paper for the House Committee meeting on 18 February 2000

Report of the Subcommittee on Factories and Industrial Undertakings (Loadshifting Machinery) Regulation

Purpose

This paper reports on the deliberations of the Subcommittee on Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (the Regulation).

Background

2. Loadshifting machines are machines used to move a load sideways, upwards or downwards. These include excavators, loaders and other earth-moving equipment used in the construction industry and forklift trucks used at various workplaces such as warehouses, cargo terminals and other storage establishments.

3. There is a general duty provision under section 6A of the Factories and Industrial Undertakings Ordinance (FIUO), Cap. 59, requiring an employer to provide training to ensure the health and safety at work of all persons employed by him. Contractors or owners of specified loadshifting machines are also required under the Construction Sites (Safety) Regulations and the FIU (Cargo and Container Handling) Regulations to ensure that such machines are operated by trained and competent persons. However, existing legislation does not specify details or standards of the training nor require certification on the competency of such persons.

4. As inadequate training is identified as a common factor contributing to accidents associated with the operation of loadshifting machines, the Administration has proposed to introduce mandatory training and certification requirements for operators of such machines on construction sites and forklift trucks in all industrial undertakings.

The Regulation

5. The Regulation provides that the responsible person of a loadshifting machine shall ensure that the loadshifting machine is operated by a person aged 18 or above and holds a valid certificate, and the responsible person shall arrange for the operator to attend recognized training course. The operator of a loadshifting machine will also have the duty to attend the training course provided and to produce the certificate for inspection when required. Non-compliance with these requirements will be offences subject to penalties under section 8 of the proposed Regulation.

6. While the training requirement will take immediate effect upon enactment, the other provisions in the Regulation will come into operation 18 months after enactment. The Regulation will apply to the specified machinery in two phases having regard to the training capacity. The first phase will apply to operators of bulldozers, loaders, excavators, trucks and lorries on construction sites and forklift trucks in industrial undertakings. However, truck and lorry drivers in possession of driving licence appropriate to the class of vehicle concerned will be exempt from the mandatory training requirement. The statutory requirements will be extended to operators of compactors, dumpers, graders, locomotives and scrapers on a construction site in the second phase.

The Subcommittee

7. At the House Committee meeting on 2 July 1999, a subcommittee was formed to study the proposed Regulation. Chaired by Hon Mrs Miriam LAU Kin-ye, the Subcommittee has held six meetings to discuss the Regulation, including one meeting with the deputations.

8. The membership list of the Subcommittee is in **Appendix I**. A list of the organizations consulted is in **Appendix II**.

Deliberations of the Subcommittee

9. The Subcommittee is generally in support of the requirement for operators of specified loadshifting machines to receive training and to acquire a certificate for the safe operation of such machines. However, members have expressed concern about the high training fees, the training capacity and the certification/exemption criteria. Some members have also expressed reservations about the strict liability offences of responsible persons under the proposed Regulation. The deliberations of the Subcommittee are summarized in the following paragraphs.

Consultation

10. Members have noted that the Administration has consulted the Advisory Committee on Certificate of Operators of Specified Plants and Equipment, the Labour Advisory Board and the Transport and Physical Distribution Training Board of the Vocational Training Council (VTC) on the proposed Regulation. Due to the time constraint in introducing the proposed Regulation into the Legislative Council before the end of the 1998-1999 session, the Administration was not able to consult the Legislative Council Panel on Manpower beforehand.

11. The Subcommittee has invited submissions from affected industries and concerned organizations. Members have noted that while most organizations consulted are generally supportive of the Regulation, they are concerned about the training arrangements, the training and certification standards, and other implementation details. The Subcommittee has discussed these concerns with the Administration as indicated below.

Training capacity

12. The Subcommittee notes that there is no authoritative estimate of the training demand. According to the Construction Industry Training Authority (CITA), about 5 000 to 6 000 operators of loadshifting machines in the construction industry have no formal training. The CITA currently organizes free courses for new operators of earth-moving machines in construction sites, and plans to conduct a two-day refresher course for existing operators in anticipation of the enactment of the proposed Regulation. The CITA envisages no problem in meeting the potential demand for refresher training.

13. As regards the forklift trucks, the Administration originally estimated that there were about 2 000 forklift truck operators in various industrial undertakings. However, a number of organizations forecast a greater training demand ranging from 3 000 to 8 000 operators, as forklift trucks are often operated on a two-shift or three-shift system. The Subcommittee has therefore asked the Administration to conduct a survey to ascertain the training demand in this respect. Members are concerned that there should be adequate supply of qualified instructors and trained operators to enable the trade to comply with the mandatory training and certification requirements within the 18 months grace period.

14. To address members' concerns, the Labour Department has obtained information from 22 establishments which employ forklift trucks in work processes on their premises. According to the survey, the majority of forklift truck operators are employed by large companies which provide in-house training for their staff. Only a small percentage of operators are employed by smaller establishments which have to rely on the training provided by outside bodies such as the VTC, the Occupational Safety and Health Council (OSHC) or the Harbour Transportation Workers General Union (HTWGU). As the

demand from new operators is considered to be relatively small, the Administration believes that the combined 3 700 training places now offered by the three institutions within 18 months should be sufficient. The Administration will keep the situation under review and may adjust the length of the grace period to ensure that the majority of the operators will have obtained the certificate before the Regulation comes into effect.

15. Some members have suggested that trade unions, employers and suppliers of special loadshifting machines should be encouraged to organize refresher training for operators. The Administration has informed members that some organizations and employers have already indicated interest in operating such courses.

Training costs

16. Members have expressed much concern about the high training fees for the refresher courses to be operated by the CITA, VTC and OHSC. They have urged the Administration to discuss with these training providers ways to reduce the costs and the financial burden on employers and employees.

17. The Administration has advised that the relatively high course fees are due to the low students to instructor ratio, the high rental for training venue and equipment, and the insurance costs. As the CITA is now providing free training courses for new operators of loadshifting machinery, there should be no direct cost to the owners of the equipment or the contractors of the construction industry. With regard to the two-day refresher course, the CITA intends to charge \$1,200 per person (including the costs of testing and issue of certificates) which will be paid by the employers in most circumstances. About \$7 million will be incurred by the industry in this connection.

18. Upon the request of the Subcommittee and the Administration, the VTC and OHSC have agreed to reduce the refresher course fees for forklift truck operators from \$2,200 to \$2,000 and from \$2,280 to around \$850 respectively. The significant fee reduction for the OSHC course is to be attained by employing full-time instructors and purchasing (instead of hiring) forklift trucks for training. A suitable site has also been identified at Kai Tak for the OSHC to organize its training course.

19. As regards some members' suggestion of Government providing financial subsidy to the refresher course, the Administration is of the view that risks at work should be managed by those persons who create them, i.e. the employers and workers. Employers are required under existing legislation to provide training for their employees to ensure their safety at work. While the Administration will be responsible for providing the legal framework, and promoting and enforcing the safety standards, the Administration considers that training should be part of the investment made by the proprietors.

Training requirements

20. A few members have suggested that the Administration should stipulate minimum service requirements for the refresher/certification course and the re-validation course to avoid a high failure rate of the participants. A member further suggests that existing operators in the trade with good safety records should be exempt from attending the refresher course if there is no change in the type of loadshifting machine they are operating.

21. The Administration has advised that the failure rate of existing courses is very low. As the refresher courses aim at updating and reinforcing the safety awareness of operators, the Administration does not consider it appropriate to exempt existing operators from attending the refresher courses. The service requirement for attending the refresher/certification course are one year for forklift trucks and two years for earth-moving equipment. As for the re-validation course for the renewal of certificate, the service requirements for forklift trucks and earth-moving machinery are respectively two years and three years operational service in the preceding five years.

22. On the monitoring of training and certification standards, the Administration has advised that training guidelines will be prepared in consultation with the industry to provide standards and specifications on the course structure and content, qualifications of trainers, assessments and certification requirements, etc. The training guidelines will be made available to any person who is interested in becoming an approved course provider. The standards of such courses will be monitored by the Labour Department.

Recognition of previous training

23. At the request of members, the Administration has agreed in principle to give retrospective recognition to existing courses run by the CITA and VTC if the training has met the specified requirements.

Exemption

24. A few members have suggested that drivers who are holding the Special Purpose Vehicle Driving licence issued under the Road Traffic Ordinance should also be exempt from the mandatory training and certification requirements. Nevertheless, the Administration has responded that these drivers should not be exempt from the requirements because such licences are issued without a driving test and that these drivers may not have received training on the use of forklift trucks.

Minimum age for operators

25. Some members have sought clarification on the arrangement for existing operators who are below 18 years of age when the Regulation comes into force.

The Administration has advised that persons below the age of 18 are currently not allowed to work on construction sites, and proprietors in industrial undertakings should not employ young persons below 16½ years to operate such machines. Existing operators who are below 18 years of age will have met the minimum age requirement under section 3 after the 18 months grace period. However, the Labour Department is prepared to consider the circumstances of each case if under-age operators are still in employment when the Regulation comes into operation.

Responsible person

26. Members have expressed much concern about the definition of "responsible person" under section 2 and his duties under sections 3 and 4 of the proposed Regulation. Some members have pointed out that site contractors often hire the service of a loadshifting machine together with the operator who is employed by the machine owner. In these cases, the site contractor will have no control over the qualifications of the machine operator. Members have therefore sought clarification as to whether the principal contractor or sub-contractor on the construction site should be liable for the provisions in sections 3 and 4 in these circumstances.

27. The Administration has confirmed that it is the policy intention that "responsible person" includes anyone who has the management or control over (but not the physical operation of) the loadshifting machine. In the situation of a construction site, it will cover the "contractor responsible for the site" as defined in section 2(2) of the Regulation. The Administration considers that the principal contractor and subcontractors may be held liable because they should be concerned that any loadshifting machines operating on the site should work safely. However, a contractor can discharge his obligation under the proposed Regulation if he can prove that he has exercised due diligence and has put in place a system to ensure that the requirements are complied with. The Administration has advised that there are similar provisions in existing legislation and that the strict liability offences are not as absolute as they appear.

28. To address members' concerns, the Administration has agreed to explicitly provide for "a reasonable excuse" for the responsible person under section 8 in respect of the offences and penalties in sections 3 and 4.

29. The Chairman and some members have also pointed out that the wording of the proposed section 4 is unclear as to its coverage and the duties of the responsible person. These members consider that it may catch other unintended categories. It also has the legal effect that an employer must guarantee that his employee will pass the refresher course and obtain the certificate. After discussion, the Administration has accepted the Subcommittee's views and amended section 4. The revised version makes it clear that the responsible person shall provide training for his employee who is instructed by him to operate a loadshifting machine; if the employee fails to

obtain a certificate in the first attempt, the responsible person will have to arrange the employee to attend an additional course.

Operation of a machine without a certificate

30. A member has suggested that it should be an offence for a person to operate a loadshifting machine without a certificate and without the authorization of the responsible person. The Administration has advised that it is already an offence under section 6B of the FIUO for a person employed at an industrial undertaking to do anything which will likely endanger himself or other persons. Moreover, an operator who is unable to produce his certificate for inspection within a reasonable time is an offence under section 8(4) of the proposed Regulation.

Commencement of the second phase

31. With regard to members' concern about the commencement date of the second phase, the Administration has advised that the commencement notice to be made under section 2 is subsidiary legislation subject to the negative vetting procedures of the Legislative Council.

Proposed amendments to the Regulation

32. The Administration has proposed a revised version of the Regulation incorporating changes to address members' concerns and to improve the presentation and clarity of the provisions. The Subcommittee has not proposed any amendments. The revised version of the Regulation is in **Appendix III**.

Recommendation of the Subcommittee

33. The Subcommittee supports the revised version of the Regulation.

Advice sought

34. Members are requested to note the Subcommittee's recommendation in paragraph 33.

Legislative Council Secretariat

17 February 2000

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

Membership List

Hon Mrs Miriam LAU Kin-yee, 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

Hon Andrew CHENG Kar-foo

Total : 8 Members

Date : 26 July 1999

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

List of organizations consulted

1. Central Container Handling Safety Committee
2. CityU SCOPE OSH Alumni Association
3. Construction Industry Training Authority
4. Harbour Transportation Workers General Union
5. Hong Kong Construction Association Ltd
6. Hong Kong Container Freight Station Association Ltd
7. Hong Kong Storehouses and Transportation Staff Association
8. Occupational Safety & Health Council
9. Society of Registered Safety Officers
10. The Chinese General Chamber of Commerce
11. The Federation of Hong Kong & Kowloon Labour Unions
12. The Hong Kong Small and Medium Business Association
13. Vocational Training Council