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Health and Safety Executive / Local Authorities Enforcement Liaison Committee (HELA)

Local Authority Circular

- **Subject:** Work equipment
- **Open Government Status:** Open
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To: Directors of Environmental Health/ Chief Environmental Health Officers of London, Metropolitan, District and Unitary Authorities and Chief Executives of County Councils.

For the attention of: Environmental Services/Trading Standards/Fire Authorities/Other

This circular gives advice to local authority enforcement officers

THE LIFTING OPERATIONS AND LIFTING EQUIPMENT REGULATIONS 1998

The attached operational circular OC 234/11 is equally relevant to both HSE/LA inspectors

Health and Safety Executive Operational Circular

OC 234/11

| | | | |
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To
 AFQ Inspectors (Bands 0-4)
 RSG/SSG Specialist Inspectors (Elec, Mech) (Bands 0-3)
 CHID Inspectors (Bands 0-4)
 Mines Inspectors (Bands 0-2)
 OSD Inspectors (Bands 0-3)
 Railway Inspectors (Bands 0-3)

THE LIFTING OPERATIONS AND LIFTING EQUIPMENT REGULATIONS 1998

This OC provides guidance on the key issues on inspection and enforcement arising from the implementation of the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998 No 2307) (LOLER).

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INTRODUCTION

1 Practical guidance on the Regulations is given in HSE's approved code of practice L113 *Safe Use of Lifting Equipment* (FOD file 234) which should be read in conjunction with this OC. Further sector-specific guidance

has been, or is being prepared.

2 The Regulations build on the Provision and Use of Work Equipment Regulations 1998 (PUWER) - see LAC 90/3.

3 Further information or advice concerning aspects of these Regulations which are not covered by this OC, in sector-specific guidance or in HSE ACoP L113, can be obtained by contacting FOD Safety Unit, North West Region.

4 In this OC, enforcement information is provided after the general information on implementation and interpretation. This deals with matters to consider where 'formal' enforcement is proposed (notices and legal proceedings), but should be considered alongside HSC's Enforcement Policy and the guidance in HSE's Enforcement Handbook.

RELEVANCE OF RISK IN APPLYING LOLER

5 The guidance in ACoP L113 paras 28 and 29 makes it clear that LOLER applies to a wide range of equipment across all sectors and goes beyond what was covered by previous lifting legislation. However, the introduction to the guidance also emphasises that LOLER should not be applied in isolation from other legislation, including reg.3 of the Management of Health and Safety at Work Regulations 1992 (MHSWR). **In practical terms this means that LOLER should be applied in a proportionate way that reflects the extent and nature of the risks involved.**

6 The risk includes the **potential** of a falling load to cause injury by virtue of height lifted, weight, nature, size and position in relation to people. Other characteristics of the load, eg that it is flammable, toxic, corrosive or radioactive, may form an important element of the lifting plan (reg.8) but should be excluded in considering other aspects of LOLER, such as the need for thorough examination.

7 The motive force of the equipment may be manual. For example, in the case of a worker hauling up a bucket of cement using a rope and pulley, risk considerations include the possibility of the rope breaking (overload, frayed rope, obstruction during hoisting, etc) but also factors affecting the operator, eg if they should let go of the rope (exhaustion, inadequate training, etc).

8 The Regulations should not be applied where risks are low, for example raising someone in a barber's chair, (which, in any case, may be considered as a 'height adjustment' rather than a 'lifting operation'). Other equipment, such as a vehicle jack, which may seem similar to this example, is more likely to involve risk and LOLER should be applied.

9 Sectors will give guidance on the appropriate requirements for the main equipment in their industries. For example:

1) experience in motor vehicle repair of the use, maintenance standards and failures of vehicle jacks indicates that the risks justify periodic thorough examination of this equipment. Engineering and Utilities Sector has advised, however, that it would be unreasonable to require thorough examination of a jack kept for emergency

use in the boot of a car, for example belonging to a sales representative; and

2) there are few agricultural accidents involving failure of tractor fore-end loaders and the Agriculture Sector have consequently advised the industry that it need not go beyond current practice (eg thorough examination is **not** necessary) for equipment which is used conventionally. However, when such equipment is used for other types of work, eg barn construction involving other people, the risk assessment would change and thorough examination may well be needed.

INTERPRETATION (REG.2)

Use of definitions

10 There are few definitions in the Regulations because there are legal risks in defining terms which are not defined in the Directive which LOLER implements.

11 LOLER replaces nearly all earlier lifting legislation, such as the Factories Act (FA 1961) s.27 and the Construction (Lifting Operations) Regulations 1961. This earlier legislation was concerned with cranes and other lifting machines but had narrow definitions, for example excluding fork lift trucks (FLT) as lifting machines. LOLER overcomes some of these problems.

12 Regulation 2 provides separate interpretations of 'lifting equipment' and 'accessory for lifting'. The latter is a specific type of lifting equipment, as is 'machinery for lifting loads', an expression used in reg.7. In addition there is a category of lifting equipment which is neither 'machinery' nor 'accessory'; this is known as 'interchangeable equipment' in supply legislation (see [para 19](#)). LOLER applies to all this equipment.

Lifting equipment

13 Examples of lifting equipment are given in ACoP L113, paras 28 and 29. The use in this circular of the term 'traditional' lifting equipment refers to that equipment described in L113 para 28 as being covered by earlier legislation.

14 L113 para 29 includes examples of machinery, eg the roll hoisting mechanism on a paper making machine, which are now covered by LOLER, as is the paper lifting mechanism on a photocopier. However, **the measures that need to be taken** under LOLER will depend upon the 'risk'. While LOLER applies to most work equipment used for lifting, in practice the risk assessment may result in there being few (if any) measures necessary to comply with the Regulations. Examples include a pallet truck (which raises the load a small distance) and small storage and retrieval systems with trays on a continuous chain.

15 By definition, lifting equipment is work equipment. The definition of 'work equipment' includes 'machinery'. This should be interpreted widely to include, for example, a gin wheel, because such a device is a simple machine (rather than an **appliance**). Any work equipment used for attaching loads to it should be classed as an accessory for lifting.

16 'Lifting equipment' includes the attachments used for anchoring, fixing or supporting it. This covers, for example, the runway of an overhead travelling (OHT) crane or the bolts supporting a wall mounted lifting arm. Although the runway of an OHT crane is not 'attached' to the crane, it is nevertheless supporting it and is part of the lifting equipment.

17 Some machines, eg FLT's and mobile cranes, have features both of mobile work equipment and of lifting equipment. Inspectors may be asked to distinguish the respective features or parts, eg to establish the limits of thorough examination (reg.9). Care is needed in specifying in detail which part(s) may be lifting equipment because it may be necessary to differentiate the parts to which LOLER reg.9 or PUWER reg.6 apply (see [para 80](#)). Where manoeuvrability and movement along the ground is an essential element of the equipment, eg a FLT, the lifting equipment should normally be considered to be limited to items such as the chains, forks, hoist mechanism and fork attachments. However, in the case of a machine which has relatively limited movement along the ground in the course of a lifting operation, eg a mobile crane, the parts which are critical for safe lifting are not merely the crane jib and counterweight but include much more of the vehicle and, for example, its outriggers. In these cases the 'lifting equipment' may extend to much of the whole machine.

18 LOLER applies to a lifting machine (which is lifting a load) which itself forms part of an 'installation', ie a complex assembly of plant falling within the PUWER definition of 'work equipment'. An example is a pallet raising machine located within a brick making plant. However, LOLER should not be applied if what is being lifted is part of the installation itself (see 'Excluded lifting equipment', [para 28](#)).

Interchangeable equipment

19 Some equipment which is fitted permanently or for extended periods to a crane hoist rope, eg hook, grab, bucket, magnet, or to a FLT, eg drum clamp, jib, has been treated in the past either as part of the machinery or as an accessory. These devices are usually considered under the Supply of Machinery (Safety) Regulations 1992 (SMR) to be 'interchangeable equipment' modifying the function of the machine. They should therefore be considered to be part of the lifting machinery, eg for the purposes of thorough examination (reg.9), not as 'accessories for lifting'.

20 Permanently fixed suspension chains and similar 'lifting tackle', eg attached to the hydraulic lifting arms of a skip recovery lorry, are considered to be part of the lifting machinery, rather than accessories.

21 A working platform used with a FLT is considered under SMR to be interchangeable equipment, ie it is lifting equipment.

Accessories for lifting

22 This definition covers those items described in earlier legislation, eg FA 1961 s.26, as 'lifting tackle', 'lifting gear' etc, for example chains, slings, hooks, shackles and eyebolts. Although some items, eg hooks and links of a chain, are not themselves 'accessories for lifting' but components of accessories, they should be subject to the same requirements as accessories.

23 Eyebolt is a generic term which includes:

- 1) eyebolts permanently fixed in the load (these form part of the load and are not lifting equipment);
- 2) removable eyebolts (or 'lifters') which do not form part of the load but are inserted into it in order to lift it; these are lifting accessories;
- 3) eyebolts which are secured into a structure as an anchorage point for lifting equipment, eg a pulley block or abseiling ropes (these should normally be treated as an **attachment** for fixing or securing the equipment (see **para 16**)); and
- 4) eyebolts fastened to a structure to secure fall arrest/restraint equipment. These are not lifting equipment and are not covered by LOLER (they should be considered as part of the fabric of the building (the Workplace Regulations may be relevant)).

Excluded lifting equipment

24 LOLER should not be applied to the range of tools and apparatus which perform only a limited lifting function, such as a tractor 3-point linkage which raises an attachment, eg a plough, in order to clear the ground. This example is included as a specific paragraph of ACoP L113 (para 31).

25 Pallets, skips, ladles, and similar containers for carrying material loads, and which are not permanently attached to the lifting machinery, should be treated as 'the load', as they normally remain with the contents once the lifting operation is complete. LOLER reg.4 applies to the strength of the container (and that of its lugs, for example). There should be adequate maintenance (PUWER reg.5) and pre-use checks (LOLER reg.8) of the container to ensure it is actually capable of containing the load safely and will not disintegrate or detach from the lifting equipment.

26 Transporters and runways are devices used for the conveyance of goods on an overhead track, the load being suspended from a carriage running on the track. The load may be moved along the track under power or by hand. Where the load maintains a constant distance from the track and no lifting takes place, such installations should be regarded as conveyors and outside the scope of LOLER, notwithstanding that the load may travel from one level to another, over slight elevations or obstructions, or in and out of tanks.

27 Equipment supporting an elevated platform, such as a hydraulically raised walkway connecting an airport terminal to an aircraft, should not be regarded as covered by LOLER as its primary function is height adjustment rather than the lifting of persons, etc.

28 Machinery, whose primary function is not that of raising or lowering but which includes some integral part performing a lifting function, eg the boom of a mobile concreting pump or a tipper lorry which raises its body to discharge the load, should not be regarded as lifting equipment. This exclusion extends to chains, ropes and lifting tackle forming an integral part of the plant, for example counterbalanced furnace doors or dock gates. Machinery which lifts itself, eg roller shutter doors, is also not considered to be lifting equipment.

29 In cases where LOLER does not apply, it is likely that PUWER will require similar levels of precautions.

In particular, where deterioration may result in risks which are significant, then inspections under PUWER reg.6 may be needed.

Lifting operation

30 HSE Solicitor has advised that a lifting operation includes all the activities associated with the lifting and lowering of the load; it therefore includes movement of the supported load.

31 In many lifting operations there is an element of transport, ie horizontal movement of a load, for example a FLT unloading a lorry. When equipment used for lifting is moved as a vehicle, transporting the load a significant distance, as when a FLT moves a load from a lorry to an indoor storage area, that operation should be regarded as transport, not lifting. Security of the load on a FLT would also normally be covered under HSW Act.

32 The application of LOLER should be limited to the events associated immediately (both in space and time) with the lifting activity. However, the equipment need not be continuously 'in use'. Loads may be suspended or supported because a lifting activity has temporarily ceased or been interrupted. When lifting equipment remains for some time in an elevated position supporting a load, the 'lifting operation' should normally be considered to continue. The Regulations should be applied, for example, to a raised vehicle servicing hoist which is in use.

33 LOLER should not be applied after completion of a lifting operation, the intention of which is to leave the load suspended from, or supported by, the equipment for a considerable time, eg jacking rigs beneath a large fabrication. Other legislation, eg the Workplace Regulations and/or the maintenance requirements of PUWER, may apply.

34 The requirements of LOLER are not relevant to most 'continuous operations', such as conveyance by means of pipelines, belt or pocket conveyors and elevators, or escalators (see ACoP L113 para 34).

35 Whilst LOLER applies primarily to vertical movement, lifting at an angle or on a slope does not automatically disapply it. However, horizontal movement **alone** of a load is not covered by LOLER. Therefore, LOLER does not apply to winching equipment if the resultant movement is primarily horizontal.

APPLICATION (REG.3)

Equipment provided primarily for use by members of the public

36 LOLER should not be applied to equipment provided as part of a work activity but primarily for use by, **and under the control of**, members of the public, eg a lift in a shopping mall (see L113 para 40) or as part of a leisure activity. In relation to fairgrounds in particular, lifting of persons may be incidental to the function of some fairground rides and central to others. HSE booklet HS(G)175 advises on requirements for thorough examination and inspection of fairgrounds which are considered to achieve equivalent standards of safety across a wide range of equipment. Inspectors should therefore, not seek to apply LOLER to fairground equipment. Note that (i) PUWER applies to such rides, and (ii) LOLER will be applied to some equipment,

such as a crane used for Bungee jumping.

37 Equipment which is provided for use in a non-work situation does not become work equipment merely because work is sometimes carried out on it, for example maintenance engineers or insurance surveyors working on a lift in a block of flats.

Supply (reg.3(5))

38 PUWER reg.10 requires that new equipment must satisfy the essential health and safety requirements (EHSRs) of any relevant product safety law, eg Supply of Machinery (Safety) Regulations (SMR) (as amended) or (for new lifts) the Lifts Regulations 1997. SMR applies to lifting accessories as well as to lifting machines, and compliance is usually achieved by manufacture to an appropriate European (or British) Standard.

39 PUWER reg.10(2) disapplies the 'hardware' requirements of PUWER to equipment to which the relevant EHSRs of the product supply law applied when it was supplied, even if it does not comply (see LAC 90/3). There is no such disapplication in relation to the hardware requirements in LOLER. All LOLER regulations will apply irrespective of the age of the equipment or whether the requirements of SMR, etc applied at any time.

Application to ships' lifting equipment (reg.3(6)- 3(11))

40 The application and disapplication of LOLER to ship's lifting equipment ensures that the Regulations apply, where appropriate, without conflicting with the requirements in merchant shipping legislation.

41 Inspectors should continue to deal with situations for which HSE is the 'lead authority' under the Memorandum of Understanding (MoU) with the Maritime and Coastguard Agency (MCA) and the Marine Accident Investigation Branch (MAIB). The MoU was revised mid-1999.

42 LOLER applies in respect of the health and safety of land-based workers (and others, eg the public, who may be affected by any activity). It applies to the crew only when they are working in a way which causes a risk to others. The following table summarises the application of LOLER to situations which commonly arise involving ship's lifting equipment.

| | Shore-based workers alone | Crew alone No risk to others | Crew alone Risk to others | Both together |
|-----------------------------|---------------------------|------------------------------|---------------------------|---------------|
| LOLER (except regs.6 and 8) | No* | No | No | No* |
| LOLER regs.6 and 8 only | Yes | No | Yes | Yes |

* Employer of shore-based workers must take all reasonable steps to ensure compliance with merchant shipping law.

Suitability (PUWER reg.4)

43 The 'package' of ACoP and guidance (L113) covers not only the duties under LOLER but also the general requirements contained in PUWER reg.4 and for example in relation to risk assessment, to MHSWR, as well as HSW Act. There is overlap between different requirements, eg the provision of edge protection may be both a 'suitability' issue under PUWER reg.4, as well as providing compliance with LOLER reg.5.

LIFTING EQUIPMENT USED FOR LIFTING PERSONS (REG.5)

44 The word 'carrier' is new to lifting legislation; it includes anything supporting persons. There is a distinction between carriers which are totally enclosed (covered by reg.5(1)(a)), such as a lift car, and those which are not fully enclosed (covered by reg.5(1)(b)), such as a window cleaner's cradle. The risks, for example, of someone being struck by something while they are in or on the carrier, or of falling from it, are very different between these types of carrier and the regulation deals separately with the 2 types.

Enclosed carriers (reg.5(1)(a))

45 The use of the word 'prevent' in the phrase 'such as to **prevent** a person using it being crushed, trapped or struck or falling from the carrier' makes it an absolute requirement. This regulation applies only to carriers such as lift cars where it is possible to meet this requirement.

46 'Using' in this context means 'travelling in it'. This regulation should not be applied to work, eg maintenance or examination of the car, shaft or hoisting ropes, carried out from the top of the lift car.

47 A paternoster lift cannot comply with reg.5(1)(a) and such equipment should be dealt with using the principles in reg.5(1)(b). This approach will maintain standards of safety enforced using earlier legislation, eg FA 1961 s.25(2).

Other carriers (reg.5(1)(b))

48 This requirement, which is qualified by 'so far as is reasonably practicable', applies to lifting equipment such as mobile elevating work platforms (MEWPs) and to operations where the person using the carrier is 'carrying out activities from the carrier'. Such equipment is used for 'working from' rather than 'travelling in' and it is normally not possible to fully enclose the carrier to prevent the user being struck or crushed.

49 In some work situations persons may 'use' such a carrier but:

- 1) not '**carry out activities** from it', eg someone being raised (transferred) in a crane skip; or
- 2) not carry out activities **from** the carrier, eg a maintenance engineer working on top of a lift car.

In such situations, although reg.5(1)(a) may then apply, in practice employers should comply with reg.5(1)(b) through the adoption of good working practices.

Prevention of carrier falling (reg.5(1)(c))

50 Because it may not be possible in practice to 'prevent' a carrier falling, devices such as twin ropes, and procedures, such as de-rating a lifting machine, can reduce the risk to an acceptable level. Where persons are lifted on a platform suspended from the hoist rope of a crane, the precautions should include de-rating the safe working load (SWL) by 50%.

Person trapped in carrier (reg.5(1)(d))

51 The word 'trapped' (which also appears in reg.5(1)(a)) should be interpreted as meaning that a person cannot escape from the carrier. (Note: usage of the word in some earlier legislation implied a 'crushing' risk).

Site and height differences (reg.5(2))

52 This requirement applies only to mines. In the sectors covered by FOD there are no site or height differences that would prevent suitable devices being used.

POSITIONING AND INSTALLATION (REG.6)

53 There is no significant difference intended between the wording of reg.6(a) 'of the equipment' and reg.6 (b) 'from a load'. Both phrases should be interpreted as referring to the **risks** to safety, eg arising from the failure of the equipment.

54 The words 'and it is otherwise safe' were included to cover situations such as 2 cranes colliding, or the equipment or load striking a building, with consequential risk to people. It is not intended to be an absolute requirement and compliance will be achieved if the risks are reduced as low as is reasonably practicable.

Prevention of falls down any shaft or hoistway (reg.6(2))

55 This requirement carries forward earlier legislation, eg FA 1961, although there is some duplication with the requirements of the Workplace Regulations.

56 Before there can be a hoistway, a hoist must be installed, but a shaft may exist at any time.

MARKING OF LIFTING EQUIPMENT (REG.7)

57 In a number of draft ENs, the term Working Load Limit (WLL) is replacing SWL as the load beyond which lifting equipment should not be used. WLL is the load value assigned to the 'maximum' safe working load under ideal conditions (by calculation) and in most cases WLL will be the same as the SWL. However, depending on the conditions of use, it may be necessary for the competent person to reduce the WLL to a practical SWL; it is this figure which should be marked on equipment to comply with reg.7 (and be used in determining its safe use for the purposes of reg.8). SWL may be the same or less than WLL but can never be

more.

Marking of safe working load (reg.7(a))

58 The regulation requires that (a) machinery and (b) accessories are clearly marked to **indicate** their safe working loads (SWL). Most 'traditional' lifting equipment, ie machinery and 'conventional' accessories, should be marked *with* the SWL, as should other equipment which present similar risks.

59 On chain and wire slings the SWL should be marked legibly and indelibly on a durable tag or label attached to the sling, or marked on the ferrule or master link.

60 The marking need not show the SWL if there are other ways of 'indicating' the safe working criteria for the equipment. In some cases a 'surrogate' marking may be acceptable, such as a capacity indicator on an excavator. Colour coding alone to denote SWL, whilst not normally acceptable, is a useful additional feature, eg of textile slings, and may be a key element in the marking of some equipment, eg access and rescue ropes.

61 Parts of some earth moving machinery, eg attachments such as grabs, forks and buckets, are interchangeable equipment under the definition used in SMR. These attachments are not normally marked with their SWL because they may be used in conjunction with a variety of machinery, eg different FLT's or agricultural tractors. In such cases, both the machine, eg its maximum load moment and the attachment, eg maximum lift capacity, need to be considered in determining the SWL of the combination. The latter information should be available to the operator to ensure that the equipment may be used safely but it need not be marked on the attachment.

62 Marking should not be required for other types of equipment if it does not contribute significantly to reducing risks.

Configuration (reg.7(b))

63 The technical meaning of the term 'configuration' relates to how a machine is physically set up, eg crane outrigger position and length of lattice jib. In this regulation, however, the term refers also to the way in which the SWL can vary as the load moves, eg with the inclination or extension of a jib. Where a single SWL cannot be assumed because of changing configurations, the operator must have a means of assessing the SWL at any instant. A series of markers on a crane jib, or a chart for a selection of radii, would be sufficient if the SWL can be applied safely to all work within that range.

64 The regulation requires only that information is provided, not that such equipment is provided with a device such as a load limiter (to stop the operation if the SWL is exceeded) or an indicator (to show the operator the radius and the corresponding SWL). However, where there is a significant hazard arising from its use, the equipment should be fitted with a device such as a rated capacity indicator (RCI) - formerly known as an automatic safe load indicator (ASLI) or moment load indicator and/or a rated capacity limiter (RCL).

65 It may not always be practicable to mark the machinery for each configuration but adequate information about the SWL should always be available to the operator. Where a machine's SWL is reduced by the fitting

of an attachment (such as a FLT fitted with a drum clamp or crane jib), the machine should be rated accordingly and may need to be de-rated.

66 It will be necessary for the various mast and jib sections of a crane to be suitably marked to enable them to be related to the appropriate examination reports for the crane of which they form a part.

Marking of accessories (reg.7(c))

67 The SWL of a multi-leg chain sling varies with the angle between the legs. This is one of the characteristics affecting safe use. Multi-leg slings are currently tagged to show the 3 SWLs corresponding to an angle of 45°, 90° and 120° between the legs, although developing European standards are likely to refer to the angle between a leg and the vertical.

Lifting of persons (regs.7(d) and (e))

68 In some circumstances, complying with reg.7(e) alone, could lead to a 'failure to danger', eg if the duty holder did not mark the equipment and it was used for lifting people when not safe for that purpose. Therefore, reg.7(d) was introduced to ensure a 'failure to safety' approach. The guidance gives some examples of what may be erroneously assumed as suitable for lifting people, eg a goods lift or a construction goods hoist.

69 The maximum number of persons who can be lifted safely in certain carriers, eg a hoist with an operator, will generally depend not only upon the SWL but also upon the number who can, without undue crowding, be accommodated in the carrier while allowing the operator complete freedom of movement to operate the controls. This is a matter for the manufacturer or other competent person to decide and certify. In determining the maximum number of persons who can be lifted safely on carriers from which work is carried out, eg MEWPs, account needs to be taken of equipment carried on the platform.

ORGANISATION OF LIFTING OPERATIONS (REG.8)

70 Compliance with this regulation is essential to the safe undertaking of operations involving lifting equipment.

Proper planning (reg.8(1)(a))

71 The person appointed to plan the lift (referred to as the 'competent person' at L113 para 219) will normally be an in-house employee. They should have adequate practical and theoretical knowledge and experience to plan the lifting operation properly. The plan should address issues such as "the lift" remaining safe for the whole of the operation, ie from where the load starts to where it finishes. Major operations, eg a 'tandem' lift using 2 cranes or 2 FLTs, will normally require a written plan. An example of a plan is given in the L113 para 221.

Appropriate supervision (reg.8(1)(b))

72 This regulation extends the duty of HSW Act s.2. The amount and quality of supervision should be proportional to the risk and take account of the people involved, eg an experienced FLT driver doing a routine job would not require much supervision. Supervision does not necessarily mean the direct physical presence of a supervisor at all times

Carried out in a safe manner (reg.8(1)(c))

73 There is no provision in the regulation for lifting beyond the SWL, although this was specifically allowed in some revoked regulations. The provision was deleted in view of the relative ease nowadays of obtaining lifting equipment which is suitable for any desired lift. Lifting loads in excess of the SWL is not good practice and ACoP L113 para 281 limits this practice to where it is required by a competent person for the purposes of a test. Note that the amendments to the Docks Regs 1988 contained in LOLER reg.14 do not extend to reg.13 (4) which still allows, in situations covered by those Regulations, the practice of loading non-mobile cranes above their SWL in exceptional circumstances, although qualified by the Docks Regs ACoP 25 para 37.

Pre-use check

74 A pre-use check is an important element of a safe system of work for lifting (ACoP L113 para 285). Employees should have appropriate training, instructions and experience so that they are able to carry it out effectively. Pre-use checks are one of the 3 'monitoring' controls in LOLER (the others being in reg.9, ie inspection and thorough examination) which together present a hierarchy of frequency and (inversely) intensity of checking. They are particularly important for lifting accessories (for which, normally, there is no inspection regime (see [para 113](#))).

THOROUGH EXAMINATION AND INSPECTION (REG.9)

Circumstances requiring thorough examination

75 The ACoP and guidance paras 297-299 describes the 4 situations in which thorough examination may be required. These are:

- 1) when lifting equipment is first 'supplied', ie used for the first time by that employer);
- 2) when certain equipment, eg a tower crane, is 'installed';
- 3) periodically during the lifetime of equipment; and
- 4) following exceptional circumstances.

76 The thorough examination requirements carry forward long-standing procedures, eg FA 1961 s.27, and are essentially unchanged from those earlier provisions. Where a thorough examination was required for 'traditional' lifting equipment under previous legislation, then such examinations should now be required under LOLER reg.9. Thorough examinations will also be needed where such lifting equipment is used in

premises (such as farms, universities) which were not previously subject to specific lifting law.

77 Other types of lifting equipment, such as MEWPs, also need a thorough examination as they present risks which are similar to those arising from the use of 'traditional' lifting equipment. Thorough examination will not be necessary for equipment used for lifting which presents only a low risk in the event of its failure. For example, the requirement relating to conditions causing deterioration applies where a 'dangerous situation' is more than the low, 'everyday' risks which are commonly experienced. Equipment definitely requiring thorough examination is that where a failure could foreseeably result in a major injury or worse.

Scope of thorough examination and inspection

78 A hoistway enclosure is part of a hoist. Therefore, the person making the report of an examination is required to notify defects not only of the parts of the hoist which move but also of the hoistway enclosure together with its gates and the guides for the hoist. This maintains the previous practice.

79 Devices fitted to machines, such as cranes, which cut-out hoisting, derricking or trolleying motions, eg when the SWL is exceeded, should be regarded as part of the lifting equipment and be included in the thorough examination. This applies also to any radius/load indicator fitted.

80 The thorough examination of a FLT should include at least the chains, forks, hoist mechanism, ie mast and cylinders, and any associated fork attachments, and will normally be limited to them. Other items may be included in the thorough examination as a result of risk assessment by the competent person or the equipment owner. Competent persons commonly include in the thorough examination other aspects of the truck, eg the counterbalance weights, the integrity of which needs to be maintained to ensure safety in lifting operations. Other parts of the FLT, relating to its mobile equipment function, may need to be inspected for the purposes of PUWER reg.6.

Competent person

81 It is usual practice for the competent person carrying out a thorough examination to be employed by a separate company, eg a third party examining company. However, the regulation does not prohibit an employer from selecting a member of its own staff to carry out thorough examinations provided that he/she is competent. However, any competent person must be able to act with the necessary degree of impartiality and independence (see L113 para 295) and inspectors should make this very clear to any company which wishes to use its own staff in this role.

82 A work platform designed for use with a FLT is an example of fairly simple lifting equipment to which inspectors should not take objection if thorough examinations are carried out 'in-house' by a competent employee who has adequate impartiality etc. However, such platforms are not appropriate for frequent and/or extensive use and may be suitable equipment for a scheme of examination, together with intermediate inspections (in-house) and pre-use checks by the operator.

83 Although the employer is responsible for ensuring that lifting equipment is thoroughly examined, eg under reg.9(3) "to ensure that health and safety conditions are maintained and that any deterioration can be detected

and remedied in good time", they will normally look to the competent person to provide expert guidance to the extent of the examination needed to achieve this. The competent person has to make a professional judgment about the level and extent of examination on a particular installation, including what tests, if any, are necessary. For example, if a chain block is suspended from a roof beam or other part of a structure, they should decide the part played by the beam and building structure in ensuring safety and examine it as necessary. If appropriate they should seek assistance from someone with the necessary competence for that part of the task.

84 The competent person drawing up an examination scheme and the one carrying out the examination may be different persons. In both cases, they may need to draw on others for advice on specific issues, such as testing (proof, non-destructive testing, etc) as part of the examination regime.

Testing

85 Because proof testing can cause damage to machinery (which, increasingly, is built to fine tolerances), the decision to test is one which may need to be made by someone with substantial expertise, suitably informed by advice from the manufacturer.

86 Earlier legislation required certificates of test (of lifting appliances and tackle) to be produced as part of certain thorough examinations. Such documentation is now not required by LOLER, nor by SMR in relation to the supply of new lifting equipment. Test certificates are now prepared at the discretion of the competent person carrying out the thorough examination (and who alone makes the decision as to the need for a test). Any certificate of test is not required to be on a prescribed form but should be attached to, or easily identifiable from, the report of thorough examination to which it relates.

Initial thorough examination (reg.9(1))

87 This requirement replicates earlier legislation which dealt with the initial integrity of (traditional) lifting equipment, ie machinery and tackle. It now extends to other non-traditional lifting equipment which presents a significant risk.

88 A reg.9(1) thorough examination is not required if there is sufficient evidence that the equipment has received a thorough examination in the recent past. Acceptable evidence is a declaration of conformity if the equipment is new or, if it is second hand, an unexpired (current) report of a thorough examination obtained from its previous owner.

89 Purchasers of new lifting equipment may find that the EC declaration of conformity which accompanies the equipment is more than 12 months old. In these cases the need for and extent of a reg.9(1) thorough examination should be guided by when the equipment was made and likely deterioration during storage which could increase risks in use. If an examination is necessary, its extent should reflect the likelihood of failure and the actual risk which could arise from any such failure.

90 A certificate accompanying a new wire rope should be accepted as compliance with this regulation. Wire ropes supplied as individual items, eg intended to replace worn ones on a crane, do not fall within the scope of

SMR (they are not relevant machinery, relevant safety components or interchangeable equipment) and there is no requirement for them to be accompanied by a declaration of conformity. However, SMR Schedule 3 para 4.3.1 refers to the need for a certificate for a wire rope and this form of documentation should normally be available. There is no requirement for the lifting machine with the replacement part to be examined before it is returned to use.

91 The 'traditional' test certificate, Form F87 *Certificate of test and examination of wire rope*, has been obsolete for some years. The declaration of conformity acts as a replacement for this.

92 Although a person using hired lifting equipment, eg a crane, always has a duty to comply with the requirements for thorough examination, it is usually the case that such examinations are, in fact, carried out by, or on behalf of, the plant hire firm. The responsibility in law, however, rests upon the user and they should, therefore, always satisfy themselves at the outset that there is a current report of thorough examination.

93 The requirement for lifting equipment obtained from the undertaking of another person to be accompanied by 'physical evidence' (before it is first put into service) complements the requirement in reg.9(4). L113 para 344 describes what information should be available.

Thorough examination after installation (reg.9(2))

94 The guidance emphasises that interpretation of 'installation' is fairly restricted, ie generally limited to that equipment, such as tower and OHT cranes, which require a considerable degree of assembly at the location before it is ready for use. This is likely to be the case if a runway carrying a chain block is fitted between the beams of a building, because issues such as twisting are likely to be important. If a simple pulley block is properly secured to a beam then this should not be considered to be an 'installation' (although the user should have appropriate documentation for the pulley block to comply with reg.9(1)).

95 L113 para 308 indicates that the use of an eye bolt as an anchorage for lifting purposes, eg rope access, is not an 'installation'. The competent person will, however, need to consider its integrity during each thorough examination under reg.9(3).

96 In reg.9(2)(b) the words "after assembly and before being put into service at a new site or in a new location" refer to reinstallation, eg when a tower crane is repositioned. On each such occasion the thorough examination should be repeated to ensure the equipment has been installed correctly and is safe to operate. For example, stability may have been affected either during erection or after removal or adjustment (which could involve changes in the counter-weighting, anchoring or other supports).

97 Certain cranes are manufactured and supplied with mast and jib sections, or jibs which provide variations in height of lift and radii. Variations made to the crane in the course of its use by the addition or removal of such mast sections should not be regarded as substantial alteration requiring a further thorough examination, provided that the thorough examination for which a report is available included those rated variations in radii and lifts. A thorough examination should only be required where the additions and alterations to the structure are not provided for in the original design of the crane or have not been covered by the existing report of thorough examination. Such changes would fall within the term 'reconfiguration' used in ACoP L113 para

305. See also para 117 for guidance on inspection following such changes.

98 It is sometimes necessary to interchange parts of cranes. This should not be regarded as a substantial alteration or repair provided that the replacement attachment is covered by the current thorough examination of the complete machine.

99 In some cases modification to, or repair of, lifting equipment is so substantial or significant that it effectively creates a new item of equipment. In such cases a thorough examination should be required after the modification or repair. Such action may also be required using reg.9(3)(a)(iv), 'exceptional circumstances'.

Periodic thorough examination (reg.9(3)(a))

100 L113 para 298 advises that all lifting equipment deteriorates in use and should be thoroughly examined.

101 Even when an employer is using the fixed periods between thorough examination contained in reg.9(3)(a) (i) and (ii), the competent person should still confirm that those periods are appropriate by considering the use of the equipment, eg the number of hours it works and the conditions in which it is used.

102 Lifting equipment used in arduous conditions is likely to require a thorough examination more frequently than the maximum periods stated in reg.9(3)(a)(i) and (ii). The words 'at least' in those regulations give the competent person the facility to recommend shorter periods. Alternatively, they may prefer to recommend the adoption of a scheme of examination which formalises this need. L113 explains the factors to be taken into account when designing or amending a scheme of examination.

103 For equipment used in much less arduous conditions, employers can also make use of the flexibility which a scheme of examination allows in extending the 'traditional' periods of examination given in the regulation.

104 Inspectors should not insist on examination at fixed periods of lifting equipment used very infrequently as long as such equipment is thoroughly examined immediately before use. Such equipment may be most appropriate for inclusion under a scheme of examination, possibly supplemented by an (in-house) inspection immediately before use.

105 In sectors for which there was no specific lifting legislation, HSW Act was previously used as the legal basis for requiring the periodic thorough examination of some lifting equipment. Where, using that basis, an interval of 12 months between examinations was previously considered acceptable, there is likely to be little justification for now reducing it to 6 months, where that is the corresponding 'fixed period' determined by reg.9(3)(a). If the longer period is to be adopted, where that is justified on risk grounds, the equipment should be examined within a scheme of examination.

106 The frequency of thorough examination for certain lifting equipment may now alter. Some equipment, including wire ropes on vehicle service hoists and FLT chains, was classed as lifting accessories under earlier legislation (and received 6-monthly examinations) but is now considered to be part of the lifting machinery (annual examination, if no scheme of examination). Inspectors may find that 6-monthly examinations will

continue to be requested by competent persons carrying out examinations, for example as a result of risk assessment of work carried out underneath a vehicle on a service hoist or to persons being lifted on it. Inspectors should not object to such requests if the risks justify them.

107 The 6-monthly period between thorough examinations specified in reg.9(3)(a)(i) applies to all lifting accessories, whether or not they are used for lifting persons. The regulation also applies to all other lifting equipment used for lifting persons. Such machinery, eg a crane or FLT, even if intended to be used only occasionally for lifting persons, should be examined in accordance with reg.9(3)(a)(i) unless the employer arranges to have the equipment examined in accordance with a scheme of examination.

Exceptional circumstances (reg. 9(3)(a)(iv))

108 'Exceptional circumstances' include some alterations and repairs, as well as incidents or use which may have affected the integrity of the equipment. It includes, for example, using equipment in demanding conditions, such as a crane used for piling or demolition work. The employer should advise the competent person of such exceptional circumstances so they can assess any effects on the condition of the equipment and consider if a thorough examination is necessary (as well as its extent).

109 Changes to the configuration of lifting machinery, which are within scope of a current report of thorough examination, should not be regarded as a substantial alteration requiring a further thorough examination (see ACoP L113 para 304 to reg.9(1) and commentary on reg.9(2)).

Inspection (reg.9(3)(b))

110 The requirement for an inspection of lifting equipment, where this is appropriate, is new for many workplaces, including factories, but was previously required for certain lifting equipment by construction legislation.

111 An 'inspection' is something more than an operator check under LOLER reg.8 or a maintenance check under PUWER reg.5. Note that a record should be made of the inspection (see reg.10(2)).

112 The ACoP para 332 refers to the need for inspection where a risk assessment (under MHSWR 1992 reg.3) has identified a 'significant' risk to the operator or other workers. In general, if lifting machinery receives a thorough examination it is presumed to present a significant risk and it should therefore, also be inspected as necessary at intervals between thorough examinations. An inspection is not required if it will not help identify defects. Further guidance on the purpose and extent of inspection can be found in the PUWER ACoP L22 paras 140-147.

113 Inspections would normally be carried out by an in-house competent person and include visual and functional checks, for example that the alarm operates correctly on a crane overload device. They may be weekly or less frequent (monthly, quarterly) and will normally be carried out on machinery, eg a crane, rather than accessories (it is considered that detachable chains and slings, etc should receive a pre-use check by the operator, rather than periodic inspections).

114 Inspections are, for most lifting **machinery**, a key part of ensuring lifting safety and there should be a very good reason if they are not carried out. However, reg.9(3)(b) refers to inspections being carried out between thorough examinations. There is therefore, no legal requirement in LOLER to inspect lifting equipment if it is not receiving a thorough examination.

115 Because lifting equipment is excluded from the inspection requirements of PUWER reg.6, it follows that there is no requirement to carry out any inspection of lifting equipment which is not subject to a thorough examination under LOLER reg.9. Where deficiencies are found in such lifting equipment, the maintenance requirements of PUWER will be relevant (and there may also be PUWER reg.6 inspection requirements in respect of any non-lifting parts of the equipment).

116 There are likely to be few machines subject to both PUWER and LOLER inspections. For example, an inspection (in between thorough examinations) of a FLT under LOLER may be limited to the lifting mechanism but other parts, such as brakes, lights and roll-over protection, may well need inspection under PUWER. In such cases, the LOLER and PUWER inspection procedures can sensibly be combined where appropriate.

117 Variations made to lifting machinery in the course of its use, eg by the addition, removal or repair of mast sections of a crane, do not normally (see para 97) require a further thorough examination under reg.9(2). However, in these circumstances an inspection by an appropriate competent person should normally be carried out. Matters which should be checked after the height of a tower crane has been altered, for example, include the condition of the tower or mast extension, the condition of any extra rope brought into use, and the calibration and operation of the safety devices.

118 Although an inspection will normally be done by an 'in-house' employee, the person carrying it out must be competent to do so, ie they should be able to detect and appreciate the significance of defects and be able to draw attention to them. A suitable person may be a fitter or engineer or, with sufficient instruction, the equipment operator.

Transfer of equipment (reg.9(4))

119 This replicates earlier requirements to have available a copy of the report of the last thorough examination. The guidance advises how such information can be provided in the case of accessories, eg slings, for which it has not been normal practice to require reports.

REPORTS AND DEFECTS (REG.10)

Reports to the employer (reg.10(1)(b))

120 Under both reg.10(1)(a) and (b), the competent person may specify a time scale for repair, eg 'hoist rope worn, replace within one month'. There is no prescribed format or official form for the information but the particulars necessary are specified in Schedule 1.

121 If the owner of lifting equipment refuses to allow the whole or part of an examination, the competent

person has to decide whether the refused items are essential to the examination. It would be a fundamental failing, for example, if a competent person were denied the opportunity to satisfy themselves of the equipment's SWL. If the items to which access cannot be gained are essential to the thorough examination, the competent person will be unable to complete the examination and should not issue a report.

122 The competent person also has to confirm in the report (Schedule 1, items 6 and 7) that the equipment 'would be safe to operate'. They have to decide what tests, if any, are necessary to establish such safe condition, and whether they are essential to the examination. Where any tests which are desirable, but not essential, cannot be carried out the report may need to be qualified to reflect any consequent uncertainty. If the competent person is able to complete the examination but concludes that the equipment is not safe to operate, eg because of defective interlocks, the report should be issued stating this conclusion.

123 It is helpful to the employer if the competent person clearly differentiates the report containing the statutory information from any other document they issue, eg to confirm that contracted work has been carried out. This may be particularly important if the report of thorough examination cannot be issued or is qualified. In order not to mislead the employer, competent persons should be advised to produce any document regarding a partial or incomplete examination in a format that cannot be confused with a completed report containing the statutory information.

Notification to enforcing authority (reg.10(1)(c))

124 This replicates earlier requirements for a competent person to report serious defects to the enforcing authority, but there are significant changes from earlier arrangements. In reg.10(1)(c) the words 'existing or imminent risk of serious personal injury' are crucial to understanding the purpose of the regulation, which is to restrict notifications to those defects which are of immediate significance in terms of the continuing safe use of the equipment.

125 In earlier legislation the notification requirement was limited to machines, ie it did not apply to accessories. Under LOLER the requirement applies to all lifting equipment and, although such notifications will normally relate to the actual lifting machine, they may also cover lifting accessories.

126 Many insurance companies carrying out thorough examinations categorise defects, eg 'A' for the immediately dangerous, 'B' requiring urgent attention, eg within one month, and 'C' for those of lower priority which need to be attended to within, say, 3 months. Only the 'A' defects under such a scheme should be notified to the enforcing authority. An example of a defect which is likely to fall into the 'B' category (and not require notification) is a worn lift rope which needs replacement within a month. The majority of defects in lifting accessories are likely to fall into categories 'B' or 'C' (needing to be reported only to the employer controlling their use and not to be notified to the enforcing authority) because they are identified well before the equipment is likely to fail under application of its marked SWL.

127 If a competent person is prevented from carrying out certain tests they may be unable to identify potentially dangerous defects covered by reg.10(1)(c). In such cases there is no requirement to notify the enforcing authority. The competent person may want to draw the owner's attention to the implications of not being able to issue a report and the consequences of using possibly unsafe equipment. They also have the

option of voluntarily and in confidence notifying the enforcing authority where they have serious concern, eg sending a copy of any interim document.

128 Notifications under reg.10(1)(c) should be dealt with following the FOD procedure for handling adverse insurance reports.

Records of inspection (reg.10(2))

129 All inspections should be recorded. A simple tick box form is acceptable, as is a record form (such as that used with earlier construction legislation).

130 There is no obligation under LOLER for the employer to rectify any defect before the lifting equipment is used again, merely because it has been reported under reg.10(2) following an inspection. An inspection is normally carried out by an in-house employee. The employee's duty is limited to notifying the employer who then has the opportunity to decide if action is needed, eg whether continuing use of unsuitable equipment would be in breach of LOLER.

131 Note that there is a difference in terminology between reg.10(1) which refers to reports of thorough examination and reg.10(2) which refers to records of inspection.

KEEPING OF INFORMATION (REG.11)

132 The requirement to keep the 'initial' report (eg the declaration of conformity) and 'installation' reports is of most relevance to machinery but accessories do have declarations of conformity, as they come within scope of SMR. Some accessories, eg shackles, are not normally accompanied by an individual declaration of conformity for each item; the manufacturer produces one declaration for a batch. However, the declaration should contain sufficient information to relate it to the individual item.

133 Regulation 11(2)(b) requires the employer to keep the information contained in each inspection record until the next such record is made. It will be normal to retain the record made at the time of the inspection but the information may be kept in a different form, eg as a computer record. The record can be destroyed immediately the next inspection is done. It is, however, good practice for a succession of records, eg at least 3, to be kept to provide adequate evidence that inspections are done and to give the employer information about adverse 'trends'. This is particularly relevant when a scheme of examination is adopted as the appropriateness of the intervals needs to be kept under review.

AMENDMENTS, REPEALS AND REVOCATIONS (REGS.13-17)

134 Almost all earlier lifting legislation has been repealed or revoked. The amendments, eg to the Shipbuilding and Ship-repairing Regulations 1960, are to remove only the lifting requirements from those Regulations, eg deletion of definitions (SWL, lifting appliance/gear) and specific detail, eg tests and annealing, most of which are now contained in the LOLER ACoP or guidance.

135 Those regulations in the Docks Regulations 1988 (Docks Regs) which were inconsistent with LOLER

have been revoked. Some 'lifting' parts have been retained because they go beyond LOLER, eg reg.16 concerns marking the weight of lifting accessories if they are significantly heavy.

136 The effects of the Docks Regs are also slightly amended by the new provisions in PUWER and LOLER, in particular the planning and execution of dock operations (see LOLER reg.8) (and the safe use of vehicles (see PUWER Part III)). The guidance in COP25 (FOD file 780) is due to be revised and this will clarify the interface between LOLER and the Docks Regs, in particular:

- 1) the incidental activities listed in para (c) of the definition of 'dock operations' have to be incidental to the loading or unloading of goods, or the embarking or disembarking of passengers - LOLER extends, for example, to the mooring of ships for lay up or repair purposes, and to the provisioning of such ships;
- 2) the operational maintenance and repair of plant and equipment referred to in para 3 of the guidance relates to such operations carried out on site, eg on a berth or quay - LOLER applies also to such work where it is undertaken in separate permanent workshops; and
- 3) 'hard-arms' and other marine loading arms, excluded from the definition of 'lifting appliance' in the Docks Regs, may be in scope of LOLER (although the practical effect is minimal).

SCHEDULE 1

137 The detailed information to be contained in a report is almost identical to earlier requirements contained in Forms F2530 and 2531 (the generic records of test and thorough examination produced for the Lifting Plant and Equipment (Records of Test and Examination) Regulations 1992).

Paragraph 5

138 The requirement to record the SWL 'for the last configuration in which it was examined' means that where a machine, eg a crane, is examined in a range of configurations, eg with an additional jib, all the information is provided.

Paragraph 6

139 The words in (b) 'would be safe to operate' should have read 'and is safe to operate'.

Paragraphs 6 and 7

140 The competent person is required to state whether the examination is carried out in compliance with (para 6) reg.9(2); or - for any other examination, (para 7) - reg.9(3). There is no requirement to say anything about an examination under reg.9(1) and, if one is carried out, the competent person cannot strictly comply with the requirements of the Schedule. Competent persons should be advised to refer to reg.9(1) examinations and enter details in the normal way.

ENFORCEMENT - GENERAL

141 This section, and the one following, gives advice on the general approach to enforcement of LOLER and particular regulations, based on inspection strategies, evidential requirements and on risk/compliance judgments. They provide information to assist inspectors in determine the appropriate enforcement response to be used in the framework of the Enforcement Management Model (EMM).

142 Inspectors should be aware of the policy on the enforcement of the new requirements, which was endorsed by HSC on 23 June 1998:

'HSE will take a similar enforcement approach to that used in the implementation of the '6-pack' regulations, when HSE made it clear that employers would be given time to assimilate the new requirements. However, where there are serious risks or what needs to be done is not new, inspectors will be prepared to take firm enforcement action.'

Most of LOLER's requirements are direct replacements for those in earlier legislation (or were enforced using HSW Act powers) so generally enforcement action should not be influenced by their introduction.

143 Inspectors should look firstly to LOLER for specific legislation relating to lifting but, as the Guidance in ACoP L113 para 1 makes clear, LOLER builds on the requirements of PUWER. In considering enforcement action, therefore, inspectors should be guided also by advice in the PUWER OC (200/27), particularly regarding inspection (PUWER reg.6).

144 Enforcement action taken under LOLER should be proportionate to the risks and the extent to which the duty holder is failing to comply with the law. The EMM provides a framework for informing inspectors' enforcement decisions. However, in general:

1) In dealing with 'traditional' industries and the use of conventional equipment, existing standards and precautions should be maintained. Conversely, where no specific lifting law applied and a precaution was not previously deemed necessary under HSW Act, it is very unlikely that LOLER would require it now.

2) Inspectors should seek to enforce individual regulations to the extent that there is a risk and that the specific regulation can have a practical effect.

145 In general, the word 'risk' should be interpreted to mean 'significant risk', meaning that a failure could foreseeably result in major injury or worse.

146 Inspectors should apply and enforce LOLER to 'traditional' lifting equipment and other equipment used for lifting which presents similar risks (see L113 paras 28-29), particularly where HSW Act has been used in the past to achieve acceptable standards. A similar approach should be used towards enforcement of regs.4 and 8, both of which are relevant to the load being lifted. LOLER should not be applied to the types of equipment described in this OC paras 24-28, and 36, or in ACoP L113, eg para 31.

147 Since there is no disapplication in PUWER reg.10(2) relating to the hardware provisions in LOLER, enforcement action relating to these can be taken under LOLER regardless of any 'supply' requirements.

ENFORCEMENT - SPECIFIC PROVISIONS

Regulation 5

148 Regulation 5(1)(a) applies to carriers such as lift cars and construction hoists used for carrying people. The regulation should be enforced strongly to maintain traditional standards of safeguarding on this equipment. Other equipment to which reg.5(1)(b) applies may only be able to meet this same standard 'as far as is reasonably practicable'.

Regulation 6

149 For the purposes of enforcement the words "and it is otherwise safe" should be interpreted to require compliance 'as far as is reasonably practicable'.

Regulation 7

150 Following the principle of 'proportionality', inspectors should not seek to enforce the marking provisions on low risk equipment.

Regulation 7(b)

151 Where it is necessary to take enforcement action to require the fitting of a RCI or RCL, then HSW Act should be used. Action against an employer who removes an RCI from a machine, where it was provided to comply with earlier legislation, should be based on breach of HSW Act or PUWER reg.24. It will also be appropriate to refer to the LOLER ACoP L113 para 190.

Regulation 8

152 This regulation should be enforced to achieve 'so far as is reasonably practicable' that operations involving lifting equipment are planned, supervised and carried out without exposing anyone to significant risk of injury.

153 Enforcement action should not be taken under LOLER reg.8 if the slope up which the load is being raised is less than about 15⁰ as this is not considered to be a 'lifting operation'.

Regulation 8(1)(c)

154 Although pre-use checks by the operator are an implicit rather than an explicit requirement, they may be referred to in a schedule to a Notice as one method of ensuring that lifting equipment is safe to use. In

particular they may be useful in this way in situations where there are legal problems in requiring inspection under reg.9(3).

Regulation 9

155 Enforcement action regarding the thorough examination of lifting equipment falls into 2 categories:

- 1) inspectors should continue to require thorough examination of 'traditional' lifting equipment in sectors such as manufacturing and construction, and in other sectors where such equipment is used. Notices or prosecution should be used to secure these precautions; and
- 2) a similar enforcement approach should be used to require thorough examination of other types of equipment, such as a MEWP or skip loading vehicle, which present similar risks. However, it may be appropriate to use enforcement notices in the first instance.

Inspectors should not enforce the requirement for a thorough examination of equipment outside these categories, unless there is strong evidence that there is a significant risk (due to deterioration, reg.9(3)) and that thorough examination would contribute significantly towards risk reduction.

Regulation 9(1)

156 Inspectors should not seek to apply or enforce this regulation in cases where such examination would not contribute to improved safety, in particular for 'low risk' equipment. Where **new** equipment has remained in the supply chain for more than 12 months and the declaration of conformity is more than one year old, inspectors should not insist on a thorough examination being carried out unless there is evidence that the initial integrity may have deteriorated. This will depend on the equipment and how it has been stored.

Regulation 9(3)

157 For the purposes of enforcement, interchangeable equipment (see [para 19](#)) should be treated as part of the lifting machinery, as should permanently fixed hooks, suspension chains, etc.

Regulation 9(3)(a)

158 The thorough examination of a FLT should be considered to be complied with if the examination has included the chains, forks, hoist mechanism (ie mast and cylinders) and any associated fork attachments. For other parts of the truck, including the brakes, enforcement action should be taken under the inspection requirements of PUWER reg.6 (LAC 90/3 paras 34 (3)).

Regulation 9(3)(b)

159 Where inspectors are contemplating enforcement action covering the inspection of lifting equipment, there should be evidence that the equipment has, or should have, received a thorough examination (even if, in

fact, it has not been thoroughly examined). There should also be evidence that there is a significant risk arising from its failure and evidence that either no inspection system has been set up, or it is not being undertaken properly. HSW Act should not be used to require an inspection where this regulation does not require it.

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