

立法會
Legislative Council

LC Paper No. CB(1)691/07-08
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/06/1

**Bills Committee on
Energy Efficiency (Labelling of Products) Bill**

**Minutes of the twelfth meeting
held on Monday, 7 January 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG Kang, JP
Hon WONG Ting-kwong, BBS

Member absent : Hon CHOY So-yuk, JP

Public officers attending : Environment Bureau
Miss Emmy WONG
Principal Assistant Secretary for the Environment (Energy) 1

Miss Joceline CHUI
Assistant Secretary for the Environment (Energy) 3

Electrical and Mechanical Services Department
Mr Stephen CHAN, JP
Deputy Director/Regulatory Services

Mr Michael CHEUNG
Chief Engineer /Energy Efficiency A

Department of Justice

Ms Phyllis POON
Senior Government Counsel (Acting)

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Debbie YAU
Senior Council Secretary (1)1

I Confirmation of minutes

- (LC Paper No. CB(1) 427/07-08 -- Minutes of the meeting held on
27 November 2007
LC Paper No. CB(1) 513/07-08 -- Minutes of the meeting held on
6 December 2007

The minutes of the meetings held on 27 November and 6 December 2007 were confirmed.

II Meeting with the Administration

- (LC Paper No. CB(1) 514/07-08(01) -- List of follow-up actions arising
from the discussion on 6 December
2007
LC Paper No. CB(1) 514/07-08(02) -- Administration's response to LC
Paper No. CB(1) 514/07-08(01)
LC Paper No. CB(3) 457/06-07 -- The Bill
Ref: EP 86/08/70 (07) -- The Legislative Council Brief
LC Paper No. CB(1) 1913/06-07(03) -- A list of questions raised by
Hon CHOY So-yuk
LC Paper No. CB(1) 2065/06-07(01) -- Administration's response to LC
Paper No. CB(1) 1913/06-07(03)
LC Paper No. CB(1) 2423/06-07(03) -- Summary of deputations' views on
individual clauses of the Bill

2. The Committee deliberated (Index of proceedings attached at **Annex A**).

3. The Administration was requested to

- (a) Review whether the proposed amendment to the six-month time limit for prosecution of summary offences could sufficiently cover the scenario of a further testing conducted under clause 27;

- (b) Consider making clear that both the appellant and the Government could recover the costs awarded or imposed under clause 38(6) as a civil debt. To also review whether the Chinese rendition of "即屬違罪" under clause 38(7) should read "即屬犯罪";
 - (c) Review whether the Chinese rendition of the term "approved code of practice" under clause 41(3) should read "經核准實務守則";
 - (d) Advise the rationale for holding employees liable for an offence under clause 4 or 5; and
 - (e) Respond to recent media reports on the alleged health and environmental hazards associated with the use of compact fluorescent lamps (CFLs) and disposal of used CFLs respectively.
4. The next two meetings would be held as follows -
- (a) Thursday, 17 January 2008, at 8:30 am; and
 - (b) Thursday, 31 January 2008, at 8:30 am.

III Any other business

5. There being no other business, the meeting ended at 6:30 pm.

**Proceedings of the meeting of the
Bills Committee on Energy Efficiency (Labelling of Products) Bill
Meeting on Monday, 7 January 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000208	Chairman	Confirmation of minutes of the meetings held on 27 November and 6 December 2007 (LC Paper Nos. CB(1)427/07-08 and CB(1)513/07-08 respectively)	
000209 – 002149	Administration Chairman Mr WONG Ting-kwong Mr Vincent FANG Dr LUI Ming-wah	<p>Briefing by the Administration on its response to the list of follow-up actions arising from the discussion at the meeting on 6 December 2007 (LC Paper No. CB(1)514/07-08(02))</p> <p><u>Time limit for prosecution of summary offences</u></p> <p>Mr WONG's view that the time at which the offence coming to the notice of the Director might be subject to disputes</p> <p>Mr FANG's concern about the long lead time for proceedings against questionable compact fluorescent lamps (CFLs) given the long lapse time for conducting testing of CFLs which had a service life as long as 8 000 hours</p> <p>Dr LUI's view that the Administration should act upon complaints about non-compliance and take prosecution against products in question as early as possible</p>	
002150 – 004004	Assistant Legal Adviser 2 (ALA2) Administration Chairman Mr SIN Chung-kai Ms Emily LAU Dr LUI Ming-wah Mr Vincent FANG	<p><u>Testing arrangements under clause 27 of the Bill</u></p> <p>Discussion on whether the proposed amendment to the six-month time limit for prosecution of summary offences could sufficiently cover the scenario of a further testing conducted under clause 27</p>	The Administration to review whether the proposed amendment to the six-month time limit for prosecution of summary offences could sufficiently cover the scenario of a further testing conducted under clause 27

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr SIN's concern that the specified person might take the opportunity to sell the products in the market during the further testing</p> <p>Dr LUI's view that the Administration should proceed with prosecution if the compliance monitoring testing had identified non-compliance. Mr FANG's remark that the supplier should be allowed to appeal against the results of the compliance monitoring testing</p> <p>ALA2's concern that if a further testing required by the Director under clause 27 took longer than six months, the proposed amendment to the time limit for prosecution of summary offences would lapse before the completion of the compliance monitoring testing which formed the basis of reasonable grounds of suspicion under clause 27(1)</p> <p>Administration's advice –</p> <p>(a) Under clause 15, the Director might serve a notice to prohibit the specified person from supplying the prescribed product; and</p> <p>(b) The Director would only give the specified person an opportunity to arrange for further testing of a prescribed product according to clause 27 under the circumstances that the concerned non-compliance was unlikely an offence that would lead to direct prosecution action</p>	
004005 – 005436	Chairman Administration Mr Vincent FANG Dr LUI Ming-wah	<p><u>Compensation for seizure and detention of products</u></p> <p>Discussion on whether a supplier could claim compensation if the Director's decision to serve prohibition notice under clause 15</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>turned out to be a wrong decision</p> <p>Administration's advice that the Director would act prudently and serve prohibition notice only when he reasonably believed that the prescribed product in question did not conform with the requirement under the Bill</p>	
005437 – 010529	<p>Ms Emily LAU Mr Vincent FANG Administration Chairman Dr LUI Ming-wah</p>	<p>Discussion on whether the products prohibited from supplying under clause 15 could be regarded to have been seized/detained and were thus eligible for compensation under clause 31</p>	
010530 – 010947	<p>Administration ALA2 Chairman</p>	<p><u>Continuation of clause-by-clause examination of the Bill</u> (LC Paper Nos. CB(1)1913/06-07(03), 2065/06-07(01) and 2423/06-07(03))</p> <p><u>Clause 37</u></p> <p>Administration's clarification that the appellant and the Director might appear at any proceedings before the appeal board or be represented by a legal representative or an agent</p>	
010948 – 011934	<p>Administration Ms Emily LAU Chairman ALA2 Dr LUI Ming-wah</p>	<p><u>Clause 38</u></p> <p>Discussion on whether the appellant could recover the costs awarded or imposed under clause 38</p> <p>ALA2's request for the Administration to review whether the Chinese rendition of “即屬違罪” under clause 38(7) should read “即屬犯罪”</p>	<p>The Administration to consider making clear that both the appellant and the Government could recover the costs awarded or imposed under clause 38(6) as a civil debt, and review whether the Chinese rendition of “即屬違罪” under clause 38(7) should read “即屬犯罪”</p>
011935 – 012058	<p>Administration Chairman Dr LUI Ming-wah</p>	<p><u>Clause 39</u></p> <p>Discussion on the quorum for a meeting of an appeal board</p>	

Time Marker	Speaker	Subject(s)	Action Required
012059 – 012548	Administration Chairman	<p><u>Clause 40</u></p> <p>Administration's confirmation that Committee Stage amendments (CSAs) to clause 40 would be prepared to include the requirement that the relevant authority should consult stakeholders in the course of preparing codes of practice</p>	
012549 – 012657	Administration ALA2	<p><u>Clause 41</u></p> <p>ALA2's request for the Administration to review whether the Chinese rendition of the term "approved code of practice" under clause 41(3) should read "經核准實務守則"</p>	The Administration to review whether the Chinese rendition of the term "approved code of practice" under clause 41(3) should read "經核准實務守則"
012658 – 012725	Administration	<p><u>Clause 42</u></p> <p>Briefing by the Administration</p>	
012726 – 012839	Administration Chairman	<p><u>Clause 43</u></p> <p>Administration's advice that CSAs would be moved as the relevant clause under the Hazardous Chemicals Control Bill which the clause was modeled on was subsequently amended</p>	
012840 – 020119	Administration Chairman Ms Emily LAU Dr LUI Ming-wah ALA2 Mr Vincent FANG	<p><u>Clause 44</u></p> <p>Discussion on the circumstances under which employees would be held liable for an offence under clause 4 or 5</p> <p>Ms LAU's opinion that instead of employees, employers who were usually the decision makers should be held liable. Dr LUI's similar view that the company and its shareholders should also be held liable. Mr FANG's different view that proceedings against any person should be based on evidence</p>	The Administration to advise the rationale for holding employees liable for an offence under clause 4 or 5

Time Marker	Speaker	Subject(s)	Action Required
		<p>ALA2's advice that similar defence for employees was also available in other ordinances, and that the liability of employers would be provided under the amended clause 43</p> <p>Chairman's concern about the limited scope of defence for employees under clause 44. Besides, employees were prohibited from supplying prescribed products without reference number and energy label under clause 5</p> <p>Administration's response that clause 5 applied to any person, including employers and employees. However, it would be a defence for an employee if he acted in accordance with the instructions given to him by his employer in the course of his employment and had no reasonable ground to believe that the prescribed product was not a product of a list model and did not bear an energy label</p>	
020120 – 020208	Mr Vincent FANG Ms Emily LAU Administration	Member's request for the Administration to respond to recent media reports on the alleged health and environmental hazards associated with the use of CFLs and disposal of used CFLs respectively	The Administration to respond to recent media reports on the alleged health and environmental hazards associated with the use of CFLs and disposal of used CFLs respectively
020209 – 020308	Chairman Ms Emily LAU	Dates of next two meetings	