

立法會
Legislative Council

LC Paper No. CB(1)513/07-08
(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 eleventh meeting
held on Thursday, 6 December 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon WONG Ting-kwong, BBS
- Members absent** : Hon Fred LI Wah-ming, JP
Hon Vincent FANG Kang, 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
Assistant Director/Energy Efficiency (Acting)

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 Meeting with the Administration

- (LC Paper No. CB(1) 388/07-08(01) -- List of follow-up actions arising from the discussion on 27 November 2007
- LC Paper No. CB(1) 388/07-08(02) -- Administration's response to LC Paper No. CB(1) 388/07-08(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)

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

2. The Administration was requested to
- (a) Consider extending the usual time limit of six months for prosecution of summary offences, taking into account the long lapse time for testing of compact fluorescent lamps in the event of non-compliance;
 - (b) Consider including in the codes of practice clear arrangements on how the Director would exercise the power to require testing under clause 27 of the Bill, including the parties which should bear the cost of testing;
 - (c) Review the Chinese rendition of clause 28 to ensure consistency in the use of words, particularly for the term "collect";

- (d) Advise the rationale for allowing the District Court to deal with claims exceeding its jurisdiction. To also confirm that claimants might claim transportation cost under clause 31;
- (e) Consider including in the codes of practices criteria which the Director would adopt in deciding whether or not to suspend his decisions which were the subject of an appeal under clause 32(1);
- (f) Clarify how the 14-day period under clause 33(2)(a) was counted;
- (g) Re-consider the need for appointing a legal professional to the appeal board panel under clause 34 taking into account the need for delivering judgment; and
- (h) Advise whether meetings of the appeal board under clause 35 were held in camera and if so, the rationale behind such an arrangement.

3. The next meeting would be held on Monday, 7 January 2008, at 4:30 pm. Members agreed to schedule two more meetings to continue examination of the Bill.

II Any other business

4. There being no other business, the meeting ended at 10:35 am.

**Proceedings of the meeting of the
Bills Committee on Energy Efficiency (Labelling of Products) Bill
Meeting on Thursday, 6 December 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 - 000814	Chairman Administration	Briefing by the Administration on its response to the list of follow-up actions arising from the discussion at the meeting on 27 November 2007 (LC Paper No. CB(1) 388/07-08(02))	
000815 - 001618	Dr LUI Ming-wah Administration	<p>Dr LUI's view that samples for product required to be re-tested under clause 27 by the Director should be selected from the same retail outlet as the previous product which was found to be not in compliance with the requirement under the Bill unless the product concerned was sold out</p> <p>The Administration's explanation that based on the results of the compliance monitoring testing, the Director would select product samples either from the same or different retail outlets or from the stock of the specified person. Testing of samples from different batches would help ascertain whether the non-compliance in question was due to a systematic or accidental error</p>	
001619 - 002344	Mr WONG Ting-kwong Administration Chairman	<p>Enquiry about the basis upon which the need for further testing was arrived at and the parties which should bear the costs of compliance monitoring testing and further testing</p> <p>Administration's advice that the Director planned to routinely select samples from the market for compliance monitoring testing and the Government would bear the cost of such tests. The Consumer Council (CC) would also arrange similar tests to be conducted at their own cost. The trade members were of the view that they should have an opportunity to prove that their products complied with the requirements under the Bill should the above sample tests</p>	The Administration to consider including in the codes of practice clear arrangements on how the Director would exercise the power to require testing under clause 27 of the Bill, including the parties which should bear the cost of testing

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		<p>commissioned by the Director or CC suggested otherwise. As such, the Administration proposed clause 27 to confer the Director with the power to order further testing of a prescribed product if he had reasonable grounds to do so. All costs relating to the required test would be borne by the specified person, regardless of the test results</p>	
002345 - 003138	<p>Ms Emily LAU Administration Mr WONG Tin-kwong</p>	<p>Ms LAU's enquiry on the action to be taken if the results of further testing showed that the products were actually in compliance with the requirements under the Bill.</p> <p>Administration's advice that the Electrical and Mechanical Services Department (EMSD) would conduct a detailed investigation into the testing methodology and procedures adopted by the different laboratories to ensure consistency. EMSD would also ascertain whether non-compliances as revealed by the monitoring test was production-related or otherwise</p> <p>Ms LAU's further enquiry on the use of the term "reasonable grounds" in clause 27(1)</p> <p>The Administration's explanation that the Director would require re-testing based on certain information which enabled him to reasonably suspect that a prescribed product did not conform to the test results submitted to him by the specified person. If "non-compliance" or "contravention" was specified in clause 27(1), the Director would have no choice in those situations but to either serve an improvement/prohibition notice or remove the relevant reference number as required under the Bill</p>	
003139 - 003541	<p>Chairman Assistant Legal Adviser 2 (ALA2) Administration</p>	<p>ALA2's concern whether the usual time limit of six months for prosecution of summary offences should be extended taking into</p>	<p>The Administration to consider extending the usual time limit of six months for</p>

Time Marker	Speaker	Subject(s)	Action Required
		account the long lapse time for testing of compact fluorescent lamps (CFLs) in the event of non-compliance	prosecution of summary offences, taking into account the long lapse time for testing of CFLs in the event of non-compliance
003542 - 004742	Chairman Administration Ms Emily LAU Mr Abraham SHEK ALA2	<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)) <u>Clause 28</u> Discussion on the need to serve a further notice if the prescribed product or the thing seized from a person was not collected within 30 days of service of the first notice, and the need for the Director to deliver the seized product or things to the owner after investigation ALA2's request for the Administration to review the Chinese rendition of clause 28, particularly for the term "collect"	The Administration to review the Chinese rendition of clause 28 to ensure consistency in the use of words, particularly for the term "collect"
004743 - 004819	Administration Chairman	<u>Clause 29</u> Briefing by the Administration	
004820 - 005410	Administration Chairman Ms Emily LAU	<u>Clause 30</u> Discussion on the circumstances under which the Director, having regard to the impact of each non-compliance case on the public, would either publicize non-compliance or require the supplier to do so, or take both actions	
005411 - 010814	Administration Chairman Ms Emily LAU ALA2	<u>Clause 31</u> Chairman's concern about the rationale for the Administration to deviate from the normal practice of allowing the District Court to deal with claims exceeding its jurisdiction, i.e. \$1 million	The Administration to advise the rationale for allowing the District Court to deal with claims exceeding its jurisdiction. To also confirm that claimants might claim

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		<p>Administration's advice that the policy intent was to help lower the legal cost as in the case of some existing ordinances. The person concerned might also choose to make a claim for compensation in a higher level of courts</p> <p>Discussion on whether a claimant might claim transportation cost incurred from collecting the prescribed product or things after investigation</p>	<p>transportation cost under clause 31</p>
010815 - 014628	<p>Administration Ms Emily LAU Chairman Mr WONG Ting-kwong</p>	<p><u>Clause 32</u></p> <p>Enquiry on the circumstances under which the Director would decide to suspend his decision or direction which was the subject of an appeal</p> <p>Administration's advice that in general, the Director would not suspend his decision or direction concerned in the interests of the consumers unless the appellant could put up a strong case or under very special circumstances, such as a CFL supplier might need more time to provide further evidence since it would take a longer time for re-testing of CFLs. Nevertheless, the Director would exercise prudence in making such an exceptional decision to ensure that the suspension would not be exploited for the purpose of clearing the stock of the product in question</p> <p>Mr WONG's view that the Director's decisions and direction under clauses 14 and 16 might be suspended during the interim of appeal due to cost consideration, but not for those under clause 15 taking into account the need to protect consumers' interest. His view was shared by the Chairman</p>	<p>The Administration to consider including in the codes of practices criteria which the Director would adopt in deciding whether or not to suspend his decisions which were the subject of an appeal under clause 32(1)</p>
014629 - 015234	<p>Administration Chairman Mr WONG Ting-kwong</p>	<p><u>Clause 33</u></p> <p>Discussion on whether the date on</p>	<p>The Administration to clarify how the 14-day period under clause</p>

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	<p>ALA2 Ms Emily LAU</p>	<p>which the appellant was notified of the decision or direction appealed against should be the date stated on the letter of notification or the date the appellant received the letter</p> <p>Administration's advice that the manner in which a notice or other documents were deemed to have been served or sent under the Bill was provided in clause 46</p> <p>Chairman's request for the Administration to clarify how the 14-day period under clause 33(2) was counted. ALA2's advice that reference could be made to section 8 of the Interpretation and General Clauses Ordinance (Cap. 1) on service by post</p>	<p>33(2)(a) was counted</p>
<p>015235 - 020349</p>	<p>Chairman Administration Ms Emily LAU</p>	<p><u>Clauses 34 and 35</u></p> <p>Chairman's concern that it was not common for the chairman of an appeal board to be elected from among its members. It was pointed out that the chairman of an appeal board was usually legal professional, as in the case of the Inland Revenue Ordinance (Cap. 112), since he would need to deliver judgment, which might be subject to judicial review</p> <p>Administration's explanation that the categories of persons to be appointed to the appeal board panel was drawn up having regard to the nature of the possible appeals under the Bill and the composition of other similar appeal boards. Besides, a legal adviser might be present at any proceedings before the appeal board under clause 37(4) to give advice on related matters</p> <p>Discussion on the manner of conducting meetings of the appeal board</p> <p>Ms LAU's urge for the Administration to enhance the transparency of the</p>	<p>The Administration to re-consider the need for appointing a legal professional to the appeal board panel under clause 34 taking into account the need for delivering judgment</p> <p>The Administration to advise whether meetings of the appeal board under clause 35 were held in camera and if so, the rationale</p>

Time Marker	Speaker	Subject(s)	Action Required
		appeal proceedings	behind such an arrangement
020350 - 020428	Ms Emily LAU Chairman Mr WONG Ting-kwong	Date of next meeting and the need for two more meetings to complete scrutiny of the Bill	

Council Business Division 1
Legislative Council Secretariat
31 December 2007