

**《建築物能源效益條例草案》
當局對二零一零年七月二十二日法案委員會會議
跟進事項的回應**

違反遵行規定登記證明書、遵行規定表格及敦促改善通知書會否成為取消物業交易的原因；及當局推行的措施，以協助律師或地產代理在物業交易前確認是否已遵從遵行規定登記證明書、遵行規定表格及敦促改善通知書的規定

《建築物能源效益條例草案》（「《條例草案》」）只會有可能令該些須遵從遵行規定登記證明書、遵行規定表格及敦促改善通知書的人士招致個人法律責任。《條例草案》並不會招致任何財產的押記。因此，當局認為因違反遵行規定登記證明書、遵行規定表格或敦促改善通知書而招致的個人法律責任，不應被視作為使物業的業權有欠妥善，或令物業受產權負擔限制。

2. 有利害關係的人士（Interested parties），如有關物業的準買家，應向賣方查問屋宇裝備裝置的能源效益表現。如存疑問，有利害關係的人士應當尋求專業人士如註冊能源效益評核人的協助，以確認有關的裝置是否已遵從《建築物能源效益條例》（「《條例》」）的要求。當局會在《條例》獲通過後推出宣傳計劃，增加公眾對《條例》規定的認識。

以流程圖表示遵行規定登記證明書、遵行規定表格及敦促改善通知書的應用及違反有關規定的罰則

3. 附件A載有流程圖，顯示物業發展商及負責人分別獲取遵行規定登記證明書及遵行規定表格的責任，及當機電工程署署長（「署長」）發出及跟進敦促改善通知書的情況。

就法定上訴的程序及其他相關事宜的立法政策

4. 當局已在編號 CB(1)2609/09-10(04) 的立法會文件中解釋，現時並無標準的安排以訂明上訴委員會的程序。有關程序規定可透過主體法例或附屬法例訂明，而兩者就上訴機制涵蓋的程序事宜內容大致相同。因應個別立法建議的實際需要，亦會有不同的安排。

由誰人判斷主要裝修工程是否完成或何時完成，特別是物業在主要裝修工程進行期間已易手；以及應否一如當局對第 17(1)條建議的委員會階段修正案（「修正案」）般，修訂第 17(2)條

5. 條例草案的第 17(1)條說明，如就服務某建築物的任何單位或公用地方的任何屋宇裝備裝置進行主要裝修工程，則該單位的負責人或該公用地方的擁有人須在工程完成之後的兩個月內，取得就該裝置發出的遵行規定表格。當局已在編號 CB(1)2140/09-10(02)的立法會文件中解釋，有關法律責任於該主要裝修工程完成時出現。我們的政策原意是要求當有關法律責任出現的一刻（即主要裝修工程完成的一刻），當時的相關負責人履行責任。

6. 第 17(3)條指明，為施行第 17(1)及(2)款，當主要裝修工程「已進行，而所有該等裝置可供隨時作其設計主要功能之用」，則該工程須視為完成。當局已在編號 CB(1)1799/09-10(01)的立法會文件回應助理法律顧問的提問時解釋，採納「裝置可供隨時作其設計主要功能之用」作為觸發點，目的是盡量減少在界定何時完成主要裝修工程時產生歧義。至於某裝置是否已可供隨時作其設計主要功能之用，則是事實的判定。

7. 當局同意應以類似修訂第 17(1)條的方式，修訂第 17(2)條。當局會建議適當的修正案。

在對第 18(5)條的修正案建議中恢復第 18(5)(b)條

8. 經參考法案委員會於二零一零年七月二十二日會議的意見，當局同意在對第 18(5)條的修正案建議中恢復第 18(5)(b)條，規定發出遵行規定表格的註冊能源效益評核人須將表格的文本送交有關建築物的物業管理公司（或在不能找到或確定有關物業管理公司的情況下，送交該建築物的擁有人）。

為提高委任上訴委員團成員的彈性，在第34(1)(a)至(e)條中以「最少」(at least)代替「不超過」(not more than)；及香港工程師學會對有關的委任機制的意見

9. 當局已檢視第 34(1)條及為修訂該條文而建議的修正案。正如當局在編號 CB(1)2444/09-10(03) 的立法會文件中已解釋，當局建議修訂第 34(1)條，將該條中每個段落所指的專業界別名額上限，由五個增加至十個。這使上訴委員團有更多成員，以便組成個別的上訴委員會。上訴委員團名額上限的建議，已經當局深思熟慮。

10. 香港工程師學會支持《條例草案》。請參閱該會在編號 CB(1)1064/09-10(08) 的立法會文件內的意見。當局並沒有接獲香港工程師學會就上訴委員團的委任機制有任何意見。

檢視建議的第34(1A)條，以說明某上訴委員團成員因何身分被委任，及在該條文中「the Secretary」(局長)一詞後加入「at the time of appointment」(在委任時)

11. 正如當局在法案委員會於二零一零年七月二十二日的會議中解釋，建議的第 34(1A)條的原意，是某人即使是多於一個第 34(1)條所訂的香港工程師學會不同界別的法定會員，該人亦只可憑藉其中一個由局長指明的身分獲委任至上訴委員團。當局會修訂建議的第 34(1A)條，以明確指明有關安排。

檢視建議的第 36(3B)(a)及(b)條以提供更大彈性，處理當有三名上訴委員會成員在短期內相繼辭職或被終止職務；及考慮參考《產品環保責任條例》(第 603 章)第 16(5)條或其他條文有關上訴委員會在解散後重新進行聆訊的安排，以取代「is deemed to have received a notice of appeal delivered」

12. 當局同意修訂建議的第 36(3B)條。該條的原意是當有三名上訴委員會成員辭職或被終止職務時，上訴委員會須解散而局長須委任一個新的上訴委員會。該三名成員可同時或在不同時候辭職或被終止職務。

13. 根據《條例草案》的第 33 條，上訴人可藉向機電工

程署署長（「署長」）發出通知書，提出上訴。署長在接獲通知書後，須將該通知交付局長，而局長則會根據第 35 條委任一個上訴委員會以聆聽有關上訴。正如當局在法案委員會於二零一零年七月二十二日的會議中解釋，建議的第 36(3B) 條的草擬方式說明當某些條件發生而須組成一個新的上訴委員會時，「局長會被視作已接獲根據第 33 條送達的上訴通知書」。此草擬方式確立由哪一條條文賦權局長委任上訴委員會委員（即第 33 條）。這亦有助確保其他相關條文下的跟進工作會獲妥善執行（如第 35(1)條指明組成上訴委員會的時限）。當局認為現時的草擬方式恰當，無需修訂。

14. 《產品環保責任條例》（第 603 章）第 16(5)條有關上訴委員會的組成及上訴機制與本條例草案建議的方式不同。當局認為該條對於本《條例草案》並不適用。

若第 39(2)(a)條所指的訟費並不限於法律訴訟的費用，應在該條的「訟費」後加上「**and expenses**」（及開支）；及在局長就草案恢復二讀辯論的演辭中加入有關「法律程序的訟費」確切所包含的項目

15. 為使條文更為清晰，當局已在編號 CB(1)2609/09-10(04) 的立法會文件中建議提出修正案修訂此條文的中文本，以清楚指明有關款項是「訟費」或是「費用」。為更進一步免生疑問，法案委員會建議，而當局亦同意，在第 39(2)(a)條「costs」一詞後加入「**and expenses**」。我們亦會修訂第 39(3)條，以「**and expenses ordered to be paid**」取代「**awarded**」。

16. 當局認為「訟費」一詞在法律程序中的含義清晰。建議的修正案將修訂第 41 條，以清楚指明上訴委員會的法律程序為該條文所指的「法律程序」，而「訟費」一詞一般包括費用、收費、代墊付費用、開支及酬金。我們認為無需在局長就《條例草案》恢復二讀辯論的演辭中加入有關「訟費」的含義。

於建議的第 40(6A)條的英文本以「**must**」取代「**is to**」

17. 當局同意於建議的第 40(6A)條的英文本以「**must**」取代「**is to**」。

檢視應否透過「先訂立，後審議」的程序修訂透過第43條訂立的附表1至附表4

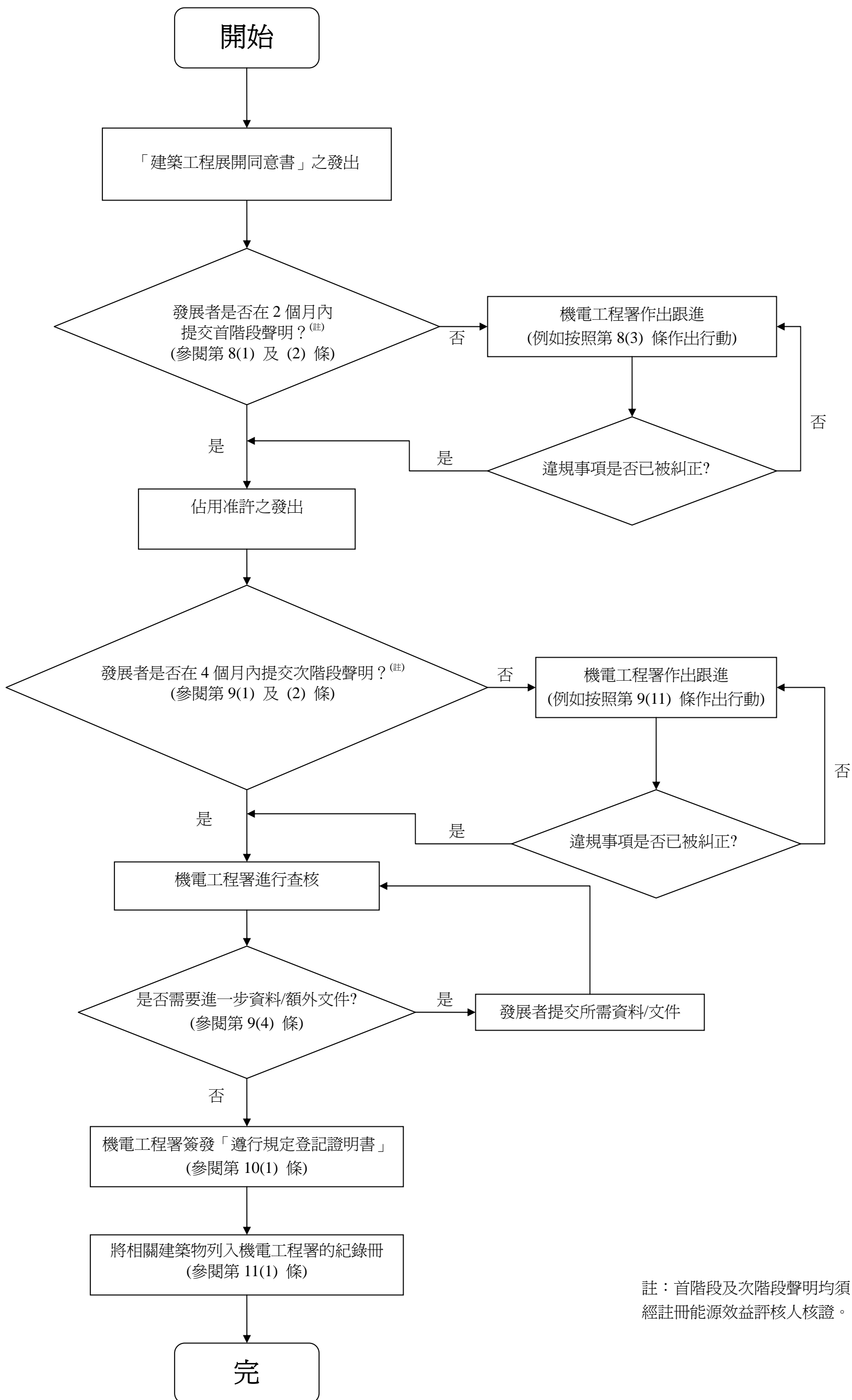
18. 當局認為以「先訂立，後審議」的方式修訂法例的附表是普遍的做法。這亦適用於本《條例草案》的附表。

委員會審議階段修正案

19. 附件B載列經修改後的修正案。

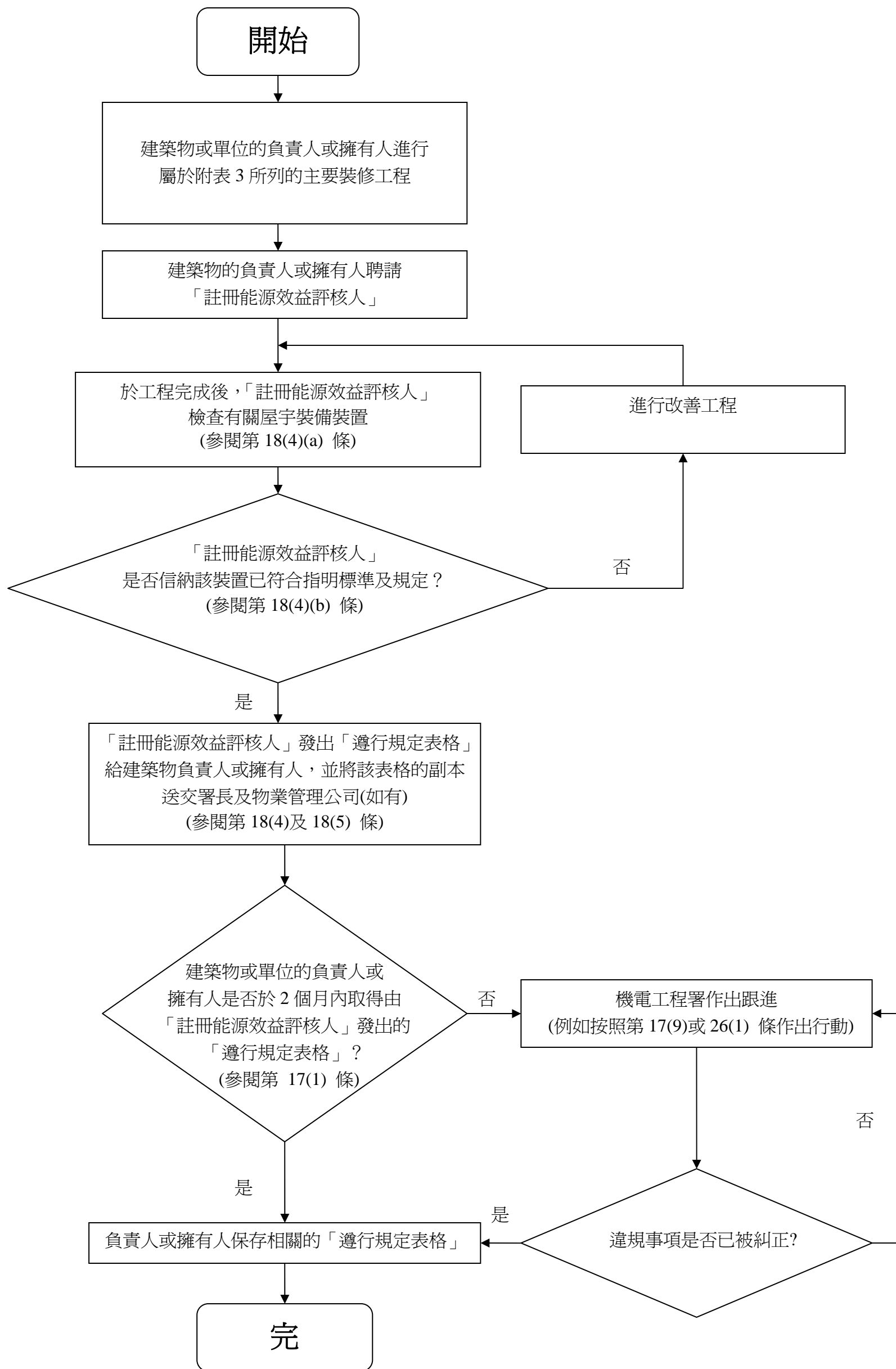
環境局
機電工程署
二零一零年九月

「遵行規定登記證明書」流程

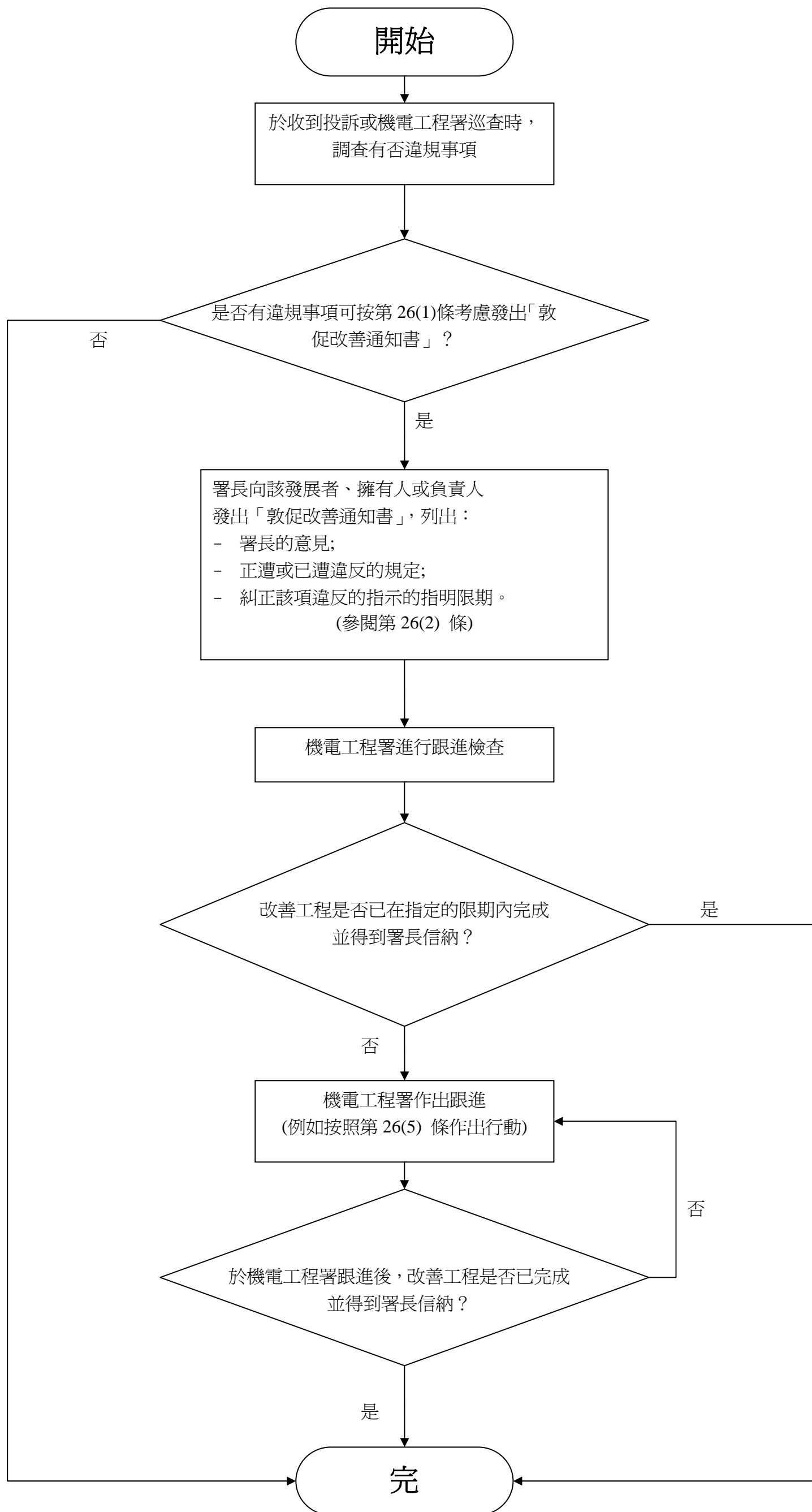


註：首階段及次階段聲明均須經註冊能源效益評核人核證。

「遵行規定表格」流程



「敦促改善通知書」流程



BUILDINGS ENERGY EFFICIENCY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	In paragraph (b) of the definition of “common area”, by deleting “without limiting paragraph (a), includes” and substituting “includes, unless so specified,”.
2	In the definition of “composite building”, by adding “, having regard to the definitions of “commercial building”, “industrial building” and “residential building”,” after “means”.
2	In the definition of “residential building”, by deleting paragraph (b) and substituting – “(b) a portion of a composite building that is for residential use,”.

- 4(1) By deleting paragraph (b) and substituting –
- “(b) a building –
 - (i) of not more than 3 storeys;
 - (ii) having a roofed-over area of not more than 65.03m²; and
 - (iii) having a height of not more than 8.23m;”.
- 8(3) By adding “and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues” before the fullstop.
- 9(11) By adding “and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues” before the fullstop.
- 11(3) By deleting everything after “the Director” and substituting –
- “must –
 - (a) make a copy of the register kept under subsection (1) available for members of the public to inspect free of charge at all reasonable times; and
 - (b) make the content of the register available for inspection free of charge through the internet.”.

- 12 By adding before subclause (1) –
“(1A) This section applies in relation to a building in respect of which a Certificate of Compliance Registration has been issued.”.
- 17(1) By deleting “the responsible person of the unit or the owner of the common area, as may be appropriate” and substituting “a person who is the responsible person of the unit or the owner of the common area, as may be appropriate, as at the completion of the works”.
- 17(2) By deleting “the owner of the installation” and substituting “a person who is the owner of the installation as at the completion of the works”.
- 18 By deleting subclauses (7) to (10).
- 22(1) By deleting “common areas” and substituting “central building services installations”.
- 22(2) By deleting “common areas” and substituting “central building services installations”.

22(3) By deleting “common areas” and substituting “central building services installations”.

29(1) By deleting paragraph (a) and substituting –

“(a) subject to subsection (2A), enter during reasonable hours any part of a prescribed building (including a prescribed building under construction) that is not for residential use;”.

29 By adding –

“(2A) The power conferred by subsection (1)(a) may not be exercised unless –

- (a) the Director has given at least 14 days’ notice to the responsible person of the relevant part of the prescribed building;
- (b) the Director has given shorter notice to which the responsible person agrees; or
- (c) the responsible person agrees to waive any notice.

(2B) A notice given under subsection (2A) must state the reason for the proposed entry.”.

- 31(3) By deleting everything after “the Director” and substituting –
- “must –
- (a) make a copy of the Register of Registered Energy Assessors available for members of the public to inspect free of charge at all reasonable time; and
 - (b) make the content of the Register available for inspection free of charge through the internet.”.
- 34(1) By deleting “5 members” wherever it appears and substituting “10 members”.
- 34 By adding –
- “(1A) A person who is in 2 or more of the 5 disciplines mentioned in paragraphs (a) to (e) of subsection (1) is, for the purpose of subsections (1) and (6)(d), regarded as being in only one of those disciplines designated by the Secretary at the time of the person’s appointment.”.
- 35 By adding –
- “(2A) Subject to section 36(3B), if a vacancy occurs in an appeal board, the Secretary must, as soon as practicable, make appointment from among the members of the appeal board panel to fill the vacancy.”

36(1) By deleting “4 members “ and substituting “3 members”.

36 By adding –

“(3A) An appeal board may perform any of its functions, and its proceedings are valid, despite –

(a) subject to subsection (3B), a vacancy in the board; or

(b) a defect in the appointment or qualification of a person purporting to be a member of the board.

(3B) If –

(a) any vacancy occurs in the office of an original member of the appeal board; and

(b) as a result fewer than 3 original members of the appeal board remain in office,

the appeal board must be dissolved and the Secretary is deemed to have received a notice of appeal delivered under section 33 in relation to the subject matter of the appeal.”.

37(3) By adding “it” after “advise”.

- 37(7) By deleting “bound” and substituting “required to give any evidence or produce any document which tends”.
- 38(1) In paragraph (b), by deleting “other than a residential unit” and substituting “that is not for residential use”.
- 39(2) In the Chinese text, by adding “或費用” before “的支付”.
- 39(2) In paragraph (a), by adding “or expenses” after “costs”.
- 39(3) By deleting “awarded” and substituting “ordered to be paid”.
- 40 By adding –
- “(6A) The Director must, before exercising the power conferred by subsection (1), (4) or (6), consult as the Director thinks fit such organizations or individuals who, in the opinion of the Director, have technical expertise or professional experience in building services installations.”.

- 41 By deleting subclause (3) and substituting –
- “(3) In this section –
- “court” (法院) includes a magistrate and an appeal board;
- “legal proceedings” (法律程序) includes proceedings before an appeal board.”.
- Schedule 1 By deleting the item and substituting –
item 2
- “2. A portion of a composite building that is not for residential or industrial use.”.
- Schedule 1 By deleting the item and substituting –
item 5
- “5. Common area of a portion of a composite building that is for residential or industrial use.”.
- Schedule 1 In the English text, by deleting “predominately” and substituting
item 7
- “principally”.
- Schedule 1 In the English text, by deleting “predominantly” and substituting
item 8
- “principally”.
- Schedule 1 In the English text, by deleting “predominantly” and substituting
item 9
- “principally”.

