

Buildings Energy Efficiency Bill

The Administration's response to Action Items at the Bills Committee meeting on 7 July 2010

Introducing the element of "reasonable suspicion" for authorized officers before they may exercise the powers under clause 29(1)

As explained in LC Paper No. CB(1)2444/09-10(03), the whole purpose for an authorized officer to enter a prescribed building to inspect and examine any building services installations is to ascertain whether the legislation has been or is being complied with. It would be very difficult to gather evidence of non-compliance with the relevant provisions by making observation outside the premises or making simple enquiries. In reality, it is very difficult, if not totally impossible, for the Director of Electrical and Mechanical Services ("DEMS") to prove the reasonableness of his suspicion of non-compliance before an authorized officer ever enters a building and inspects the relevant building services installations. Hence, the Administration considers it inappropriate to include the element of "reasonable suspicion" at clause 29(1).

2. The Administration already undertook to introduce a mechanism under which the owner or responsible person concerned is not obliged to permit entry of an authorized officer unless two-week notice was issued. This mechanism should have gone a long way to reduce the inconvenience which may be caused to relevant parties, while maintaining the Administration's power to enforce the Bill.

Reviewing the term "residential unit" in clause 29(1)(a) and consider replacing the phrase with "a unit in a residential building"; and advising whether the powers under clause 29(1)(a) apply to old composite buildings, harmony houses and street sleeper shelters.

3. Having regard to the views of the Bills Committee at its meeting of 7 July 2010, the Administration has reviewed clause 29(1)(a). Clause 29(1)(a) provides that an authorized officer may enter any part of a prescribed building that is not a residential unit. It is inappropriate to replace the term "residential unit" with "a unit in a residential building", as by doing so the officer will not be allowed to enter common store rooms, plant rooms, and switch rooms, etc. which are units but also common area of a residential building. To better reflect the policy intention of this clause, the Administration will revise the term "residential unit" in clauses 29(1)(a) and 38(1)(b). The guiding

principle is that authorized officers exercising the power of clause 29(1)(a) (or clause 38(1)(b)) would not enter a unit that is used for residential purposes. This principle is also applicable to old composite buildings, harmony houses and street sleeper shelters.

Reviewing clause 29(1)(c) regarding the requirement to produce requisite documents

4. Clause 29(1)(c) provides that an authorized officer may require the responsible person of any prescribed building, or any unit of a prescribed building, or any person who has been involved in the installation of any building services installation in any prescribed building to produce any document relating to the building services installations in the building, including any drawing, test record on the energy efficiency performance of the building services installations, purchasing order and works contract, or any document that the officer reasonably believes to be relevant to an offence under the Bill. The gist of the provision is that the relevant person concerned (a responsible person or a person involved in the installation works) may be required to produce any relevant document. The documents named at clause 29(1)(c)(i) such as “drawing” or “test record”, etc., are examples of the relevant documents that a responsible person may be asked to produce. However, whether a particular person has genuine difficulties in producing a particular document depends on the facts of a case. Clause 29(3) already makes it clear that a person would only commit an offence by failing to comply with clause 29(1)(c) without reasonable excuse.

Including in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate on the Bill that when appointing members to the Buildings Energy Efficiency Appeal Board Panel, the Administration will observe the “6-6 Policy” and the gender mainstreaming as far as practicable

5. The Administration has been observing the “Six-year Rule” and “Six-board Rule”, as well as the policy on gender mainstreaming as far as practicable. We will state in the speech of the Secretary for the Environment (“SEN”) at the resumption of Second Reading Debate that the Administration will continue to observe these rules and policies as far as practicable when appointing members to the Buildings Energy Efficiency Appeal Board Panel.

Stating it clear in the proposed Committee Stage Amendments to clause 35 that the appeal being heard shall not continue if more than two “original” members of an Appeal Board have resigned or their membership are terminated

6. The Administration agreed that an appeal board formed under clause 35 shall not continue to hear an appeal if more than two original members resigned or have their membership terminated. The Administration will make it clear in the proposed Committee Stage Amendments (“CSAs”) that if such case arises, the appeal board must be dissolved. A new appeal board will then be formed to hear the appeal afresh.

Providing examples of existing legislation, under both the Environment Bureau and other bureaux, where the procedures of the proceedings of appeal board are/are not set out in subsidiary legislation

7. We have examined the appeal board arrangements under various legislation under the purview of the Environment Bureau, as well as that under the Buildings Ordinance which is similar to this Bill in the sense that it is also related to buildings. There is no universal treatment across the board regarding setting out the procedures of appeal boards by means of a subsidiary legislation. Irrespective of where the provisions appear (whether or not by means of subsidiary legislation), the crux of the procedural matters provided in legislation is more or less the same, including a reasonable notice by the appeal board to the appeal parties regarding the date, time and place of the hearing, the proceedings, whether the appeal is open to the public, means of representation of different parties etc.. We consider that all crucial matters have already been provided for under clauses 35 to 39 of the Bill. We have summarized at Annex A legislative provisions on appeal board arrangements under the aforesaid legislation.

The coverage of “costs of the appeal proceedings” in clause 39(2)(a)

8. The “costs” at clause 39 is not limited to legal costs but generally all relevant costs to an appeal. The Administration will propose CSAs to revise the Chinese text to make this clear. The “costs of the appeal proceedings” at clause 39(2)(a) refers to the costs relevant to the conduct of the appeal board proceedings, including expenses for the use of venue and other miscellaneous items including stationery, etc. For the loss of income of witnesses or any other costs relevant to an appellant of the

appeal, they should be covered under clause 39(2)(b).

Providing in clause 40(4) the need for consultation before the code of practice is made or revised

9. The Administration had already explained in LC Paper No. CB(1)1799/09-10(01) that though the Bill does not provide for a legal consultation requirement on the issue or approval of code of practice, the Electrical and Mechanical Services Department (“EMSD”) will continue to consult the Technical Task Force in future on the review of the code of practice to reflect the latest technological development and trade practices. Having considered the views of the Bills Committee at its meeting on 7 July 2010, the Administration plans to revise clause 40 to make relevant consultation a statutory requirement.

Whether appeals under Part 8 of the Bill fall within the meaning of “legal proceedings” under clause 41

10. To better reflect the policy intention, the Administration will revise clause 41 so that appeals under Part 8 of the Bill would fall within the meaning of “legal proceedings” in clause 41.

Providing examples of existing legislation where codes of practice are admissible in evidence in legal proceedings as provided in clause 41

11. There are numerous examples in existing legislation across different subjects where Codes of Practice are admissible in evidence. Examples include section 78L of the Public Health and Municipal Services Ordinance (Cap. 132), section 30 of the Unsolicited Electronic Messages Ordinance (Cap. 593), section 43 of the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) and section 28 of the Entertainment Special Effects Ordinance (Cap. 560).

Reviewing clause 41(2) to allow greater flexibility to enable admissibility of the soft copy of the code of practice in evidence

12. Having regard to the views of the Bills Committee at its meeting on 7 July 2010, the Administration has reviewed clause 41(2). It should be noted that the phrase “Government Printer’s copy” does not necessarily mean a particular set of hardcopy printed by the Government Printer. Government Gazettes, including legal notices, have already been available at the website of the Government Logistics Department. The Administration considers that a printout of an electronic version of a

Gazette, which is published online by the Government's Printer, is still a "Government Printer's copy" for the purpose of clause 41(2), and hence amendments are not necessary for that clause.

Reviewing the propriety of using the negative vetting procedures for amendments to Schedules under clause 43

13. The Administration considers it appropriate for SEN to amend any Schedule to the Bill by notice published in the Gazette. The subsidiary legislation will first be published in the Gazette and then laid on the table of the Legislative Council at its meetings. The Legislative Council may always amend a piece of subsidiary legislation by a resolution passed at a Council meeting during the vetting period.

Committee Stage Amendments

14. A list of proposed CSAs is at **Annex B**.

**Environment Bureau
Electrical and Mechanical Services Department
July 2010**

Annex A

**Existing arrangement of providing procedural matters of
appeal boards in legislations under the purview of the Environment
Bureau and under the Buildings Ordinance**

No.	Subject matter of the Appeal Board	Legislation		
1.	Gas Safety	Gas Safety Ordinance	Cap. 51	Sections 17-26
2.	Electricity	Electricity Ordinance	Cap. 406	Sections 43-47
3.	Air Pollution Control	Air Pollution Control (Appeal Board) Regulations	Cap. 311D	
4.	Dumping at Sea	Dumping at Sea Ordinance	Cap. 466	Sections 27-30
5.	Energy Efficiency (Labelling of Products)	Energy Efficiency (Labelling of Products) Ordinance	Cap. 598	Sections 33-41
6.	Environmental Impact Assessment	Environmental Impact Assessment (Appeal Board) Regulation	Cap. 499A	
7.	Noise Control	Noise Control (Appeal Board) Regulations	Cap. 400B	
8.	Waste Disposal	Waste Disposal (Appeal Board) Regulation	Cap. 354B	
9.	Water Pollution Control	Water Pollution Control (Appeal Board) Regulations	Cap. 358C	
10.	Product Eco-responsibility	Product Eco-responsibility Ordinance	Cap. 603	Sections 13-16
11.	Buildings	Building (Appeal) Regulation	Cap. 123L	

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”.
- 18(5) By deleting everything after “a Form of Compliance” and substituting “must send a copy of it together with the document specified in the Form of Compliance to the Director.”.
- 18 By deleting subclauses (7) to (10).
- 29(1) By deleting paragraph (a) and substituting –
“(a) subject to subsection (2A), enter any part of a prescribed building (including a prescribed building under construction) that is not for residential use during reasonable hours;”.

- 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 subsection (1), to be taken as being in only one of the disciplines the person is in at the choice of the Secretary.”.

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) appointments have been made under section 35(2A) to replace any 2 of the 5 original members of an appeal board; and
- (b) a vacancy occurs in the office of any remaining original member,

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 “費用或” after “以下”.
- 39(2) In paragraph (a), in the Chinese text, by deleting “訟費” and substituting “費用”.

39(3) In the Chinese text, by adding “費用或” before “訟費”.

40 By adding –

“(6A) The Director is to, 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
item 7 In the English text, by deleting “predominately” and substituting
 “principally”.

Schedule 1
item 8 In the English text, by deleting “predominantly” and substituting
 “principally”.

Schedule 1
item 9 In the English text, by deleting “predominantly” and substituting
 “principally”.

Schedule 1
item 10 In the English text, by deleting “predominantly” and substituting
 “principally”.

Schedule 1
item 11 In the English text, by deleting “predominantly” and substituting
 “principally”.

Schedule 3 In the English text, in Note (1)(a), by deleting “carpark” and
 substituting “car park”.

Schedule 4
item 2 By deleting the item and substituting –
 “2. A portion of a composite building that is for
 commercial use.”.