

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Ref : CB1/SS/7/10

**Subcommittee on Buildings Energy Efficiency (Fees) Regulation and
Buildings Energy Efficiency (Registered Energy Assessors)
Regulation**

**Minutes of the first meeting held on
Tuesday, 22 February 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
- Members absent** : Hon CHAN Hak-kan
Hon Tanya CHAN
- Public Officers attending** : **Agenda item II**

Miss Katharine CHOI
Principal Assistant Secretary for the Environment (Energy)
Environment Bureau

Mr Philip HAR
Assistant Secretary for the Environment (Energy)³
Environment Bureau

Mr LI Kwok-keung
Assistant Director/Electricity and Energy Efficiency
Electrical and Mechanical Services Department

Mr MAK Ka-chun
Chief Engineer/Energy Efficiency B
Electrical and Mechanical Services Department

Miss Selina LAU
Senior Government Counsel
Department of Justice

Ms Mandy NG
Government Counsel
Department of Justice

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Mr Franco KWONG
Council Secretary (1)2

Action

I Election of Chairman

Ms Audrey EU was elected Chairman of the Subcommittee.

II Meeting with the Administration

(L.N. 18 of 2011

- Buildings Efficiency Regulation

Energy (Fees)

L.N.19 of 2011

- Buildings Efficiency Energy Regulation

Energy (Registered Assessors)

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| File Ref: ENB 24/26/22 | - | The Legislative Council Brief issued by the Environment Bureau |
| LC Paper No. LS 24/10-11 | - | Legal Service Division Report on subsidiary legislation gazetted on 21 January 2011 |
| LC Paper No. CB(1)1313/10-11 | - | Paper on Buildings Energy Efficiency (Fees) Regulation and Buildings Energy Efficiency (Registered Energy Assessors) Regulation prepared by the Legislative Council Secretariat (background brief) |
| LC Paper No. CB(1)1321/10-11(01) and (02) | - | Assistant Legal Adviser's letter dated 28 January 2011 to the Administration and the Administration's reply letter dated 8 February 2011 |
| LC Paper No. CB(1)1321/10-11(03) and (04) | - | Assistant Legal Adviser's letter dated 9 February 2011 to the Administration and the Administration's reply letter dated 11 February 2011) |

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Admin 3. To facilitate members' discussion, the Administration was requested to provide supplementary information on the following issues –

- (a) a summary highlighting any opposing views of the relevant organizations which had been consulted on the Buildings Energy Efficiency (Fees) Regulation and Buildings Energy Efficiency (Registered Energy Assessors) Regulation (the Regulations), and relevant minutes of meetings of the Technical Task Force;

Action

- (b) examples of the composition of other disciplinary boards under existing legislation;
- (c) a paper to explain what kind of experience or knowledge that a person was expected to possess in order to be eligible for registration as a Registered Energy Assessor (REA) under section 5(2) of the Buildings Energy Efficiency (Registered Energy Assessors) Regulation (the REA Regulation), and to provide examples of similar arrangement under other legislation;
- (d) response to a member's view that section 3 of the REA Regulation should also include the effective period of the registration of a REA in the Register of REAs; and
- (e) a sample of the specified form under section 4(2)(a) of the REA Regulation.

4. The Subcommittee agreed to hold the next meeting on 28 February 2011 to receive public views on the Regulations. In this connection, a notice to invite public views would be placed on the website of Legislative Council.

III Any other business

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

Council Business Division 1
Legislative Council Secretariat
2 August 2011

**Subcommittee on Buildings Energy Efficiency (Fees) Regulation and
Buildings Energy Efficiency (Registered Energy Assessors) Regulation**

**Proceedings of the first meeting
on Tuesday, 22 February 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000235 – 000405	Ir Dr Raymond HO Mr KAM Nai-wai Ms Audrey EU	Election of Chairman Ms Audrey EU was elected Chairman of the Subcommittee.	
Agenda item II – Meeting with the Administration			
000406 – 000720	Chairman Administration	Opening remarks	
000721 – 001440	Chairman Administration Mr KAM Nai-wai Mr Abraham SHEK	Members' agreement that a meeting would be held on 28 February 2011 to invite deputations to express their views on the Buildings Energy Efficiency (Fees) Regulation and Buildings Energy Efficiency (Registered Energy Assessors) Regulation (the Regulations). Mr Abraham SHEK's request that the Administration should provide a summary highlighting any opposing views of the relevant organizations which have been consulted on the Regulations, and relevant minutes of meetings of the Technical Task Force.	The Administration to provide information (para 3(a) of minutes)
001441 – 001710	Chairman Administration Mr KAM Nai-wai	The Administration's briefing on the major provisions of the Buildings Energy Efficiency (Fees) Regulation (the Fees Regulation). In response to the Chairman's enquiry, the Administration advised that no prescribed fee would be charged for a submission of a stage one declaration.	
001711 – 001826	Chairman Mr KAM Nai-wai Administration	<u>Discussion on Part 1 of the Fees Regulation</u> Mr KAM Nai-wai's enquiry on the basis for setting the fees at the proposed level and whether reference had been made to other similar legislation. The Administration's response – (a) in line with the Government policy on fee	

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		<p>charging, the fees levels were set on a cost-recovery basis; and</p> <p>(b) provisions relating to similar fees included the section 12(2) of the Lifts and Escalators (Safety) Ordinance (Cap. 327) and section 20(6) of the Electricity (Wiring) Regulations (Cap. 406E).</p>	
001827 – 002005	Mr KAM Nai-wai Administration Chairman	<p>Mr KAM Nai-wai's enquiry on the fees payable by individual owners and incorporations of owners (IO).</p> <p>The Administration's response –</p> <p>(a) a developer was required to make declarations for obtaining the Certificate of Compliance Registration (COCR), while the fee for a submission of a stage two declaration was prescribed at \$760;</p> <p>(b) COCR was valid for 10 years and the application for renewal of COCR was prescribed at \$760. As the property should have been sold to individual owners at that time, the fee for renewal should be paid by the relevant owners or IO; and</p> <p>(c) if an owner wished to apply for a duplicate of COCR, Form of Compliance (FOC) or energy audit form, the prescribed fee was \$155.</p>	
002006 – 002135	Chairman Administration Mr KAM Nai-wai	<p><u>Discussion on Part 2 of the Fees Regulation</u></p> <p>In response to Mr KAM Nai-wai's enquiry, the Administration advised that any amendment to the fee amounts prescribed in the Fees Regulation would be subject to negative vetting by the Legislative Council.</p>	
002136 – 002955	Chairman Administration	The Administration's briefing on the major provisions of the Buildings Energy Efficiency (Registered Energy Assessors) Regulation (the REA Regulation).	
002956 – 005045	Chairman Mr KAM Nai-wai Administration	<p>Mr KAM Nai-wai's enquiries on the composition of disciplinary board, penalty imposed by the disciplinary board and complaint mechanism against REAs.</p> <p>The Administration's response –</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) the compositions of the disciplinary board panel and disciplinary board were governed by sections 15 and 16 of the REA Regulation;</p> <p>(b) the disciplinary board could not impose imprisonment penalty, but it could make orders to remove an REA from the Register of REAs and/or impose fine on an REA;</p> <p>(c) the proposed penalty levels were in line with the penalty provisions of similar legislation such as the levels of fine imposed on registered electrical worker (\$10,000) and registered electrical contractor (\$100,000) under the Electricity Ordinance (Cap. 406) (EO). It was considered that the level of fine imposed on REA (not more than \$25 000) was appropriate;</p> <p>(d) if there was a complaint against a REA, the Electrical and Mechanical Services Department would carry out an investigation. Efforts would be made to promote the complaint channel after enactment of the REA Regulation;</p> <p>(e) under section 13(1)(a) of the REA Regulation, the Director of Electrical and Mechanical Services (DEMS) might institute disciplinary proceedings against an REA, if he considered there was evidence that an REA failed to comply with the Buildings Energy Efficiency Ordinance (Cap 610) (the Ordinance). Despite there was no complaint, the DEMS could exercise his discretion to institute disciplinary proceedings;</p> <p>(f) under the Ordinance, REAs who knowingly or recklessly issued any FOC or energy audit form or made any certification which was false or misleading in any material particular would be subject to a fine at level six (\$100,000) and imprisonment for six months; and</p> <p>(g) sampling inspections on the relevant buildings would be carried out. While the target of the percentage of sampling inspection was 5%, more resources would be allocated for carrying out more inspections if necessary.</p> <p>At the request of Mr KAM Nai-wai, the Administration agreed to provide supplementary</p>	

Time marker	Speaker	Subject(s)	Action required
		information on the composition of other disciplinary boards under existing legislation.	The Administration to provide information (para 3(b) of minutes)
005046 – 005525	Chairman Administration	<p>Chairman's enquiry on whether there was a similar arrangement in existing legislation that an authority was required to deal with both registration and disciplinary matters of certain persons.</p> <p>The Administration's response –</p> <p>(a) similar arrangement could be found in other legislation such as the EO;</p> <p>(b) the powers of the DEMS to determine a case against an REA and to censure an REA were limited; and</p> <p>(c) the DEMS had to refer a case of prospective disciplinary proceedings to the Secretary for the Environment if the case was of a serious nature and fell within section 13(1)(b)(i) or (ii).</p>	
005526 – 010240	Chairman Administration	<p>Chairman's enquiry on what kind of experience and knowledge were referred to by the expressions "practical experience" and "knowledge required" in section 5(1) of the REA Regulation</p> <p>The Administration's response –</p> <p>(a) examples of "practical experience" included the experience applying energy efficiency requirements in building services installations and the experience of carrying out energy audits;</p> <p>(b) "knowledge required" meant the knowledge required for the performance of the duties and functions of an REA under the Ordinance. Guidelines and publicity materials on the procedural matters relating to this, as well as on the codes of practice concerning the energy efficiency and energy audit of building services installations would be published; and</p> <p>(c) in submitting an application, the applicant would be required to make a declaration that he had the knowledge required for the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>performance of the duties and functions of an REA under the Ordinance.</p> <p>Chairman's view that applicants should be required to attend a written examination to ensure that they had the practical experience and knowledge required.</p> <p>The Administration's response that sections 5(1)(a) and (b) were to cater for different groups of eligible persons, including registered professional engineers and corporate members of the Hong Kong Institution of Engineers (HKIE), to apply for registration as REAs. The eligible persons who possessed relevant post-qualification working experience (2 to 3 years) and knowledge about the performance of the duties and functions of an REA could apply for registration. The "practical experience" and "knowledge required" as explained were not academic qualifications, and therefore written examination was not necessary.</p>	
010241 – 011315	Chairman Prof Patrick LAU Administration	<p>Prof Patrick LAU's views –</p> <p>(a) the Administration should liaise with the HKIE to organize continuing professional development (CPD) courses on the relevant guidelines and codes of practice; and</p> <p>(b) persons from other professions such as surveyors and architects could also be eligible to be registered as REAs upon completion of the CPD courses.</p> <p>The Chairman shared the views of Prof Patrick LAU.</p> <p>The Administration's response –</p> <p>(a) the eligibility criteria for registration as REAs under the REA Regulation were drawn up by making reference to those of the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings;</p> <p>(b) persons from other professions who had an equivalent qualification recognized by the HKIE as being of a standard not lower than that of a corporate member of the HKIE could also apply for registration as REAs; and</p>	

Time marker	Speaker	Subject(s)	Action required
		(c) it was agreed to discuss with the HKIE on the feasibility of organizing CPD courses.	
011316 – 011700	Chairman Administration	<p>Chairman's enquiry on the policy intent of the section 5(2).</p> <p>The Administration's response that it was intended to cover an applicant whose competence was comparable to his counterparts seeking registration under section 5(1) by looking at his knowledge, qualification, education, experience and training as a whole. Section 5(2) provided flexibility for the DEMS to allow registration from a competent candidate who had a qualification not locally recognized but had expertise and extensive practical experience.</p>	
011701 – 011920	Chairman Administration	<p>Chairman's enquiry on the rationale for requesting public officers to apply for registration as REAs under section 8 of the REA Regulation.</p> <p>The Administration's response –</p> <p>(a) as the Ordinance applied to the Government's buildings, the certification of compliance with the code of practice for government premises would have to be performed by public officers who had registered as REAs;</p> <p>(b) the Register of REAs would indicate which REAs were public officers; and</p> <p>(c) the public officers could not perform their duties for non-government premises.</p>	
011921 – 012324	Chairman ALA8 Administration	<p>Regarding the proposed mechanism of disciplinary proceedings, ALA8's advice that -</p> <p>(a) the DEMS might decide to institute disciplinary proceedings against an REA under section 13 and he might also determine the disciplinary case under section 14. In view of the fact that the DEMS was the party who determined the application for registration of a person as an REA, it might be more appropriate for another party to institute disciplinary proceedings against an REA and also to decide on the disciplinary case concerned in order to satisfy the requirement of impartiality; and</p>	

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		<p>(b) it should be noted that there was no appeal mechanism to review the decisions of the disciplinary board.</p> <p>The Administration's response –</p> <p>(a) similar arrangement for an authority dealing with both registration and disciplinary matters could be found in the Gas Safety Ordinance (Cap. 51) and EO. The Administration considered that such arrangement would not affect the impartiality of the disciplinary proceedings; and</p> <p>(b) both the Ordinance and the REA Regulation did not provide for further statutory appeal mechanisms against the decisions of the appeal board and disciplinary board. However, the decisions would be subject to judicial review by the Court of First Instance.</p>	
012325 – 012435	Chairman Administration	<p><u>Clause-by-clause Examination of the Fees Regulation</u></p> <p>The Administration's explanation on the Commencement, Interpretation and Prescribed fees (sections 1 to 3 of the Fees Regulation)</p>	
012436 – 012621	Administration Chairman	<p>Discussion on the Schedule – Table of Fees</p> <p>In response to the Chairman's enquiry, the Administration confirmed that the Fees Regulation had prescribed all the fees payable under the Ordinance.</p>	
012622 – 012636	Chairman Administration	<p><u>Clause-by-clause Examination of the REA Regulation</u></p> <p>Section 1 – Commencement</p>	
012637 – 012814	Chairman Administration	Section 2 – Interpretation	
012815 – 013122	Chairman Administration	<p>Section 3 – Register of Registered Energy Assessors</p> <p>The Chairman considered that the Register should contain the effective date of registration. Consideration should also be given to specifying in the Register of REAs whether an REA was</p>	<p>The Administration to provide information (para 3(d) of</p>

Time marker	Speaker	Subject(s)	Action required
		registered under section 5(1)(a), 5(1)(b) or 5(2).	minutes)
013123 – 013620	Chairman Administration	<p>Section 4 – Application for registration</p> <p>At the Chairman's request, the Administration agreed to provide a sample of the specified form under section 4(2)(a).</p> <p>In response to the Chairman's enquiry, the Administration advised that public officers who applied for registration under section 8 were not required to pay prescribed fees.</p>	The Administration to provide information (para 3(e) of minutes)
013621 – 020200	Chairman Administration Mr KAM Nai-wai	<p>Section 5 – Determination of application</p> <p>While generally agreeing to the policy intent of section 5(2), members were concerned about its scope of application. They considered that this provision failed to provide an objective basis to facilitate the DEMS's consideration of applicants without the required qualifications setting out in sections 5(1)(a) & (b) for registration as an REA.</p> <p>The Administration restated the policy intent of section 5(2) and further advised that the HKIE also offered a mature candidate route for applicants who did not have the relevant academic qualifications to apply for registration as members of HKIE. Similar arrangement could also be found in other registration mechanisms for the relevant authorities to determine special cases.</p> <p>Discussion on the difference in meaning between the terms "comparable" and "equivalent".</p> <p>At the Chairman's request, the Administration agreed to provide supplementary information on what kind of experience or knowledge that a person was expected to possess in order to be eligible for registration as an REA under section 5(2) and to provide examples of similar arrangement under other legislation.</p>	The Administration to provide information (para 3(c) of minutes)
020201 – 020315	Chairman	Scheduling the next meeting	

Council Business Division 1
Legislative Council Secretariat
2 August 2011