

**Buildings Energy Efficiency (Fees) Regulation and the Buildings
Energy Efficiency (Registered Energy Assessors) Regulation**

**The Administration's response to Action Items
at the Subcommittee meeting on 2 March 2011**

(a) Amendment to section 13(3)

At the Subcommittee meeting held on 2 March 2011, the Administration explained that section 13(2)(a) of the Buildings Energy Efficiency (Registered Energy Assessors) Regulation (“the REA Regulation”) empowers the Director of Electrical and Mechanical Services (“the Director”) to determine a disciplinary matter subject to section 13(3). Section 13(2)(b) specifies that the Director may refer a disciplinary case to the Secretary for the Environment (“the Secretary”) by notice in writing. Sections 13(2)(a) and 13(3) are to be read together. Section 13(3) only clarifies that in the scenarios mentioned in paragraphs (a) and (b) of that subsection, the Director must refer a case to the Secretary. In other words, under the scenarios covered in section 13(3), the Director cannot determine the case pursuant to section 13(2)(a) but must refer it to the Secretary pursuant to section 13(2)(b). That is why, in section 16(1), a reference is made to section 13(2)(b) only.

2. Since Members considered that section 13(3) should be amended to better reflect the above operation, the Administration proposes the amendment at Annex.

(b) Appointments of lay persons to the disciplinary board panel

3. Having regard to Members' strong view that lay persons should be appointed to the disciplinary board panel to be set up under section 15 of the REA Regulation, and each disciplinary board formed under section 16 should include a lay person, the Administration thus proposes the amendments to section 15 and 16 at Annex.

**(c) and (d) Cost of hearing and cost of engaging legal representatives
by the disciplinary board**

4. Section 19(2) provides that the disciplinary board may make any

order that it thinks fit regarding the payment of costs or expenses of the hearing. Members raised at the Subcommittee meeting of 2 March 2011 that REAs being disciplined should not be required to pay huge sum for the cost arising from the legal advice to the disciplinary board. Having regard to Members' views, the Administration proposes to amend section 19(2) to make it clear that while a disciplinary board may make any order as it thinks fit, the board will only make an order if it is satisfied that it is just and equitable in all circumstances of the case to do so. Similar formulation is also found in existing law, e.g. section 23 of the Engineers Registration Ordinance (Cap. 409) and section 15 of the Product Eco-responsibility Ordinance (Cap. 603).

5. After serious consideration, the Administration considers that the meanings of "costs" and "expenses" in disciplinary proceedings have been clear. They would normally include fees, charges, disbursements, expenses and remuneration. We thus do not consider it necessary to include the meaning of "costs" and "expenses" in the speech to be delivered by the Secretary when moving a resolution to amend the REA Regulation.

(e) The standard and burden of proof at disciplinary proceedings

6. Members asked at the Subcommittee meeting of 2 March 2011 about the standard of proof and burden of proof at disciplinary proceedings under the REA Regulation. We have sought legal advice in this regard. The party who initiates the disciplinary proceedings (the Director) would have the burden to prove that, on the balance of probabilities, the matter mentioned in section 13(1) is established in respect of the REA.

**Environment Bureau
Electrical and Mechanical Services Department
March 2011**

**Buildings Energy Efficiency (Registered Energy Assessors)
Regulation**

3. Register of Registered Energy Assessors

The Register of Registered Energy Assessors must contain in respect of every registered energy assessor—

- (a) the name of the assessor;
- (b) the registration number of the assessor;
- (c) the validity periods of all certificates of registration issued to the assessor under section 5(4)(b) or 6(6)(b); and the expiry date of the registration of the assessor; and
- (d) any other details as the Director thinks fit.

5. Determination of application

(1) The Director may allow an application under section 4 if the Director is satisfied that—

- (a) the applicant—
 - (i) is a registered professional engineer within the meaning of section 2(1) of the Engineers Registration Ordinance (Cap. 409) and is registered in the electrical, mechanical, environmental or building services discipline under that Ordinance;
 - (ii) has had at least 2 years practical experience in engineering works relating to energy efficiency in buildings acquired while being so registered;
 - (iii) has the knowledge required for the performance of the duties and functions of a registered energy assessor under the Ordinance; and
 - (iv) is a fit and proper person to be registered; or
- (b) the applicant—
 - (i) is a corporate member of the Hong Kong Institution of Engineers in the electrical, mechanical, environmental or building services discipline, or has an equivalent qualification recognized by the Institution as being of a standard not lower than that of a corporate member of the Institution in any of those disciplines;
 - (ii) has had at least 3 years practical experience in engineering works relating to energy efficiency in buildings acquired while being such a member;
 - (iii) has the knowledge required for the performance of the duties and functions of a registered energy assessor under the Ordinance; and
 - (iv) is a fit and proper person to be registered.

(2) The Director may also allow the application if the Director is satisfied that—

- (a) the applicant's knowledge, qualification, education, experience and training, if considered as a whole—
 - (i) are comparable to those matters set out in subsection (1)(a) or (b); and
 - (ii) enable the applicant to perform the duties and functions of a registered energy assessor under the Ordinance; and
 - (b) the applicant is a fit and proper person to be registered.
- (3) In determining whether the applicant is a fit and proper person to be registered for the purposes of subsection (1)(a)(iv) or (b)(iv) or (2)(b), the Director may take into account—
- (a) whether the applicant has been—
 - (i) convicted in Hong Kong or elsewhere of any offence which, if committed by a registered energy assessor, may bring the profession of registered energy assessor into disrepute; and
 - (ii) sentenced to imprisonment, whether suspended or not; and
 - (b) whether the applicant has committed any misconduct or neglect in a professional respect.
- (4) If the Director allows the application, the Director must register the applicant under section 30 of the Ordinance by—
- (a) entering in the Register of Registered Energy Assessors the details specified in section 3 in respect of the applicant; and
 - (b) issuing a certificate of registration to the applicant.
- (5) ~~Subject to section 9, the registration is valid for a period of 10 years beginning on the date on which the certificate of registration is issued.~~The registration is valid for the period beginning on the date on which the certificate of registration is issued and ending on the day before—
- (a) the 10th anniversary of the date on which the certificate is issued; or
 - (b) the date on which the name of the applicant is removed from the Register of Registered Energy Assessors under section 9,
whichever is the earlier.
- (6) If the Director refuses the application, the Director must notify the applicant in writing of the refusal and give reasons for the decision.

7. Validity of renewed registration

- (1) ~~Subject to section 9, a~~A registration renewed under section 6 is valid—
- (a) if the application for the renewal was submitted within the period of 4 months immediately before the expiry of the current registration, for the period beginning on the date on which a certificate under section 6(6)(b) is issued in respect of the application and ending on—
 - (i) the 10th anniversary of the expiry date of the current registration; or
 - (ii) the day before the date on which the name of the applicant is removed from the Register of Registered Energy Assessors under section 9,
whichever is the earlier;
 - (b) if the application for the renewal was submitted more than 4 months before the expiry of the current registration, for ~~a the~~the period ~~of 10 years~~beginning on the date on which a certificate under section

6(6)(b) is issued in respect of the application and ending on the day before—

(i) the 10th anniversary of the date on which the certificate is issued; or

(ii) the date on which the name of the applicant is removed from the Register of Registered Energy Assessors under section 9,

whichever is the earlier; or

(c) if the application for the renewal was submitted within the period specified in section 6(3)(b), for the period beginning on the date on which a certificate under section 6(6)(b) is issued in respect of the application and ending on—

(i) the 10th anniversary of the expiry date of the current registration; or

(ii) the day before the date on which the name of the applicant is removed from the Register of Registered Energy Assessors under section 9,

whichever is the earlier.

(2) In this section—

current registration (現有註冊), in relation to an application for the renewal of a registration under section 6, means the registration sought to be renewed.

9. Removal from Register of Registered Energy Assessors

(1) The Director may remove from the Register of Registered Energy Assessors the name of any person if—

(a) the person has died;

(b) the person has requested to discontinue the person's registration;

(c) where the person is registered by virtue of section 5(1)(a), the person does not meet or no longer meets the criterion set out in section 5(1)(a)(i);

(d) where the person is registered by virtue of section 5(1)(b), the person does not meet or no longer meets the criterion set out in section 5(1)(b)(i);

(e) where the person is registered by virtue of section 5(2), the person does not hold or no longer holds a submitted qualification;

(f) where the person is registered under section 8, the person is no longer a public officer, or the official duties of the person no longer require the person to perform the duties and functions of a registered energy assessor under the Ordinance;

(g) the registration of the person has expired; or

(h) the disciplinary board has made an order under section 19(1)(a) for the removal of the person's name from the Register of Registered Energy Assessors.

(2) If the Director intends to remove the name of any person under subsection (1)(b), (c), (d), (e), (f), (g) or (h), the Director must—

(a) notify the person in writing of the intention and the ground for the removal by registered post addressed to the correspondence address of the person; and

(b) specify in the notice the date on which the name will be removed, which date must not be earlier than 28 days after the date of posting the notice.

- (3) If the Director gives notice to the person, the person (other than a person mentioned in subsection (1)(b) or (h)) may make representation to the Director before the date specified in the notice to show cause why the person's name should not be removed.
- (4) If, after considering the representation (if any), the Director is satisfied that—
 - (a) in the case of a removal under subsection (1)(c), the person meets the criterion set out in section 5(1)(a)(i);
 - (b) in the case of a removal under subsection (1)(d), the person meets the criterion set out in section 5(1)(b)(i);
 - (c) in the case of a removal under subsection (1)(e), the person holds the submitted qualification concerned;
 - (d) in the case of a removal under subsection (1)(f), the person is still a public officer, and the official duties of the person still require the person to perform the duties and functions of a registered energy assessor under the Ordinance; or
 - (e) in the case of a removal under subsection (1)(g), the registration of the person has not expired,the Director must not remove the name of the person on the ground set out in the notice.

~~(5) On the removal of the name of the person, the registration of the person ceases to be valid.~~

13. Commencement of disciplinary proceedings

- (1) The Director may institute disciplinary proceedings against a registered energy assessor if the Director considers there is evidence that the assessor—
 - (a) has failed to comply with the Ordinance; or
 - (b) has been convicted in Hong Kong or elsewhere of any offence, or has been negligent or misconducted himself or herself in a professional respect, and the conviction, negligence or misconduct—
 - (i) renders the assessor unfit to be a registered energy assessor;
 - (ii) makes the inclusion in the Register of Registered Energy Assessors of the assessor prejudicial to the due administration of the Ordinance; or
 - (iii) renders the assessor deserving of censure.
- (2) If the Director decides to institute disciplinary proceedings against a registered energy assessor, the Director may, after considering the nature and the seriousness of the matter concerned—
 - (a) subject to subsection (3), determine the case under section 14; or
 - (b) refer the case to the Secretary by notice in writing.
- (3) The Director must refer a case ~~of prospective disciplinary proceedings~~ to the Secretary under subsection (2)(b) if—
 - (a) the case falls within subsection (1)(b)(i) or (ii); or
 - (b) at any time before the Director determines the case under section 14(3), the registered energy assessor has requested the case to be heard by a disciplinary board.

15. Disciplinary board panel

- (1) The Secretary is to appoint the members of a disciplinary board panel which is to consist of—
 - (a) not more than 10 members who are corporate members of the Hong Kong Institution of Engineers and are in the electrical discipline;
 - (b) not more than 10 members who are corporate members of the Hong Kong Institution of Engineers and are in the mechanical discipline;
 - (c) not more than 10 members who are corporate members of the Hong Kong Institution of Engineers and are in the building services discipline;
 - (d) not more than 10 members who are corporate members of the Hong Kong Institution of Engineers and are in the environmental discipline; ~~and~~
 - (e) not more than 10 members who are members of the Engineers Registration Board established under the Engineers Registration Ordinance (Cap. 409); ~~and-~~
 - (f) not more than 10 members who have never practised in the engineering profession.
- (2) A person who is in 2 or more of the 5 disciplines mentioned in paragraphs (a), (b), (c), (d) and (e) of subsection (1) is, for the purpose of subsections (1) and (7)(d), regarded as being in only one of those disciplines designated by the Secretary at the time of the person's appointment.
- (3) A person is eligible for appointment under subsection (1) only if the person—
 - (a) is not a public officer; and
 - (b) (in the case of an appointment under subsection (1)(a), (b), (c), (d) or (e)) has practised in the engineering profession in Hong Kong for at least 10 years.
- (4) A member of the disciplinary board panel is to be appointed for a term of 3 years and may be reappointed on the expiry of a term.
- (5) The Secretary must give notice in the Gazette of any appointment or reappointment under this section.
- (6) A member of the disciplinary board panel may, at any time, resign by issuing a notice in writing to the Secretary.
- (7) The Secretary may terminate the office of a member of the disciplinary board panel if the Secretary is satisfied that the member—
 - (a) has become a public officer;
 - (b) has become bankrupt or has entered into a voluntary arrangement within the meaning of section 2 of the Bankruptcy Ordinance (Cap. 6) with his or her creditors;
 - (c) is incapacitated by physical or mental illness;
 - (d) has ceased to be of the capacity by virtue of which the person was appointed; or
 - (e) is otherwise unable or unfit to perform the functions of a member.
- (8) The Secretary must give notice in the Gazette of any termination of office under this section.

16. Disciplinary board

- (1) Within 21 days after receiving a notice under section 13(2)(b), the Secretary must appoint from among the members of the disciplinary board panel a disciplinary board to hear the case concerned.
- (2) A disciplinary board is to consist of 5 members appointed from ~~at least 5~~ different categories of members specified in section 15(1), one of whom must be a member appointed under section 15(1)(f).
- (3) Subject to section 17(5), if a vacancy occurs in a disciplinary board, the Secretary must, as soon as practicable, make appointment from among the members of the disciplinary board panel to fill the vacancy.
- (4) The members of the disciplinary board must elect a Chairperson from among themselves to preside at the hearing.
- (5) The members of a disciplinary board may be paid out of the general revenue any remuneration that the Financial Secretary determines.

18. Hearing

- (1) At a hearing before a disciplinary board in respect of a registered energy assessor, the Director and the assessor are parties to the hearing.
- (2) The Chairperson of a disciplinary board must notify the parties of the date, time and place of the hearing at least 14 days before the hearing.
- (3) At a hearing before a disciplinary board—
 - (a) the registered energy assessor may be represented by a barrister or solicitor; and
 - (b) the Director may be represented by—
 - (i) a barrister or solicitor; or
 - (ii) a public officer.
- (4) A disciplinary board may engage any barrister or solicitor to attend a hearing of the board to advise it on any matter relating to the hearing.
- (5) The hearing must be open to the public unless the disciplinary board determines that there is a good reason for it to be held in camera.
- (6) A disciplinary board may, by a notice signed by the Chairperson and issued to a person—
 - (a) direct the person to attend before the board and to give evidence; or
 - (b) direct the person to produce documents.
- (7) A person who fails to comply with a direction under subsection (6) commits an offence and is liable on conviction to a fine at level 5.
- (8) Despite subsection (6), no person to whom a direction is given under that subsection is required to give any evidence or produce any document which—
 - (a) tends to incriminate himself or herself; or
 - (b) the person would on grounds of legal professional privilege be entitled to refuse to give or produce.

19. Determination of disciplinary board

- (1) If, after a hearing conducted under this Part, a disciplinary board is satisfied that the matter mentioned in section 13(1) is established in respect of a registered energy assessor, the board may make any or all of the following orders—
 - (a) an order that the name of the assessor be removed from the Register of Registered Energy Assessors;

- (b) an order that the assessor be reprimanded;
 - (c) (if an order is made under paragraph (a)) an order that the Director must not allow an application from the assessor for registration as a registered energy assessor within a period directed by the board;
 - (d) an order that a fine of not more than \$25,000 be imposed on the assessor;
 - (e) an order that its findings and any order made under this subsection be published in the Gazette.
- (2) The disciplinary board may, if it is satisfied that it is just and equitable in all circumstances of the case to do so, make any order that it thinks fit with regard to the payment of—
- (a) costs or expenses of the hearing; or
 - (b) costs or expenses of the Director or any other person in the proceedings.
- (3) A fine imposed under subsection (1) and costs and expenses ordered to be paid under subsection (2) are recoverable as a civil debt.