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by the Administration)

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Legislative Council

**Subcommittee on Electricity Ordinance (Commencement) Notice 1999 and
Electrical Products (Safety) Regulation (Commencement) Notice 1999**

**Minutes of meeting held on
Wednesday, 3 February 1999, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam (Chairman)
Dr Hon Raymond HO Chung-tai, JP
Hon LEE Kai-ming, JP
Hon Fred LI Wah-ming
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon SIN Chung-kai
- Public officers attending** : Mr Eric JOHNSON
Principal Assistant Secretary for Economic Services
Economic Services Bureau
- Mr LEUNG Cham-tim
Regulatory Services Controller
Electrical and Mechanical Services Department
(EMSD)
- Mr CHAN Hung-cheung
Chief Engineer (Electricity Legislation)
EMSD
- Mr CHOW Shu-lin
Senior Engineer
EMSD

Clerk in attendance : Ms Estella CHAN
Chief Assistant Secretary (1)4

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Daniel HUI
Senior Assistant Secretary (1)5

I. Election of Chairman

Members agreed that Mr CHAN Kam-lam should preside at the election of Chairman of the Subcommittee.

2. Mr CHAN Kam-lam was nominated by Dr HO Chung-tai and seconded by Mr LEE Kai-ming to be the Chairman of the Subcommittee. Mr CHAN accepted the nomination. There being no other nomination, Mr CHAN was announced Chairman of the Subcommittee.

II Meeting with the Administration

(LegCo Brief (Ref : ECON 5/3231/85) issued by the Economic Services Bureau on 21 January 1999,
Legal Service Division Report LS105/98-99 dated 25 January 1999)

3. The Chinese translation of Legal Adviser's letter to the Administration seeking clarification in respect of some legal issues relating to the commencement notices and the Administration's reply were tabled at the meeting.

(Post-meeting note : The Legal Adviser's letter and the Administration's reply have been circulated to members vide LC Paper No. CB(1)859/98-99)

Scope of definition of "supply"

4. At the Chairman's invitation, the Assistant Legal Adviser 1 (ALA1) advised that the existing definition of "supply" in section 2 of the Electricity Ordinance (Cap 406) included the situation where electrical products were supplied in a property to be sold or rented out and that the owner or landlord concerned had the responsibility of complying with the certificate of safety compliance (CSC) requirement when the property was sold or let. In the minutes of the former Bills Committee on Electricity (Amendment) Bill 1996, there was no indication that LegCo Members then had envisaged that the scope of definition of "supply" would cover electrical products supplied in a property to be sold or let. She further advised that after the case of Pepper v. Hart, a court would only interpret provisions in an Ordinance according to the literal meaning.

5. The Principal Assistant Secretary for Economic Services (PAS/ES) said that the intention of the definition of “supply” in the Ordinance was to include all of the commercial means through which a product might reach a consumer in order to adequately safeguard consumers against unsafe electrical products. He confirmed that the definition included the situation where electrical products were supplied in a property to be sold or rented out and that the owner or landlord concerned had the responsibility of complying with the CSC requirement.

6. Mr SIN Chung-kai enquired about the legal responsibility in a case in which a person sold a flat supplied with electrical products such as refrigerators and air-conditioners and later on a short circuit of one of the appliances concerned caused a fire in the flat. ALA1 advised that since the scope of definition of “supply” covered electrical products supplied in a property to be sold or rented out, the original owner of the flat could be prosecuted under section 29(1)(a) for supplying unsafe electrical products, and under section 29(1)(b) if there were no certificates of safety compliance covering the electrical appliances supplied in the flat when the flat was sold. She further advised that legal actions could be taken by the Government or by the buyer of the property suing for damage, or by both the Government and the buyer separately.

7. Mr Fred LI Wah-ming opined that if owners of properties supplied with electrical products were required to comply with the CSC requirement, the Administration had to remind property agents to include this requirement as a standard condition in the sales and purchase agreement covering property transactions to protect the interests of parties involved. The Regulatory Services Controller of the Electrical and Mechanical Services Department (RSC/EMSD) responded that from a public safety point of view, it was rational that the scope of definition of “supply” should cover electrical products supplied in a property to be sold or rented out. He pointed out that developers of new building should have no difficulty in complying with the CSC requirement as newly installed electrical appliances would be covered by CSC issued when the products were first supplied after the relevant provisions became effective. For electrical products already installed or supplied in second hand properties, owners of the properties would have to arrange qualified technicians to certify the safety standard of the electrical products concerned before selling or renting out the properties. These safety tests would be rather simple and need not cost a lot of money. The Chief Engineer/Electricity Legislation (CE/EL) supplemented that the certification of safety standards of electrical products in second hand property needed to be done only once as the relevant safety certificates could be carried forward and reused when the property was resold. As such, the problem of testing of electrical products in second hand properties would decrease over time.

8. Mr SIN pointed out that in 1997 there were about 140,000 property transactions, of which more than 100,000 were transactions of second hand properties. Even if second hand property transactions dropped to 50,000 cases per year with the current market depression, he doubted whether there would be sufficient technicians to meet the sudden surge in demand for testing services.

9. The Chairman said that it was possible that many electrical products supplied in a property to be sold or let were very old appliances and it might not be worthwhile to spend money to engage a technician to certify the safety of these old electrical products before selling or renting out the property. In response, CE/EL advised that if the electrical products concerned were so old, they should be supplied as scrap or supplied for the purpose of reconditioning. Section 3(2)(c) and (d) of Electrical Products (Safety) Regulation (EPSR) specified that the Regulation did not apply to an electrical product which was supplied for reconditioning or supplied as scrap. The Chairman remarked that then the relevant sales and purchase agreement of the property had to specify that the electrical products were supplied as scrap or for reconditioning to protect the interests of parties concerned but he was concerned that the general public or property agents might not be aware of the implication of this issue on property transactions.

10. Mrs Selina CHOW LIANG Shuk-yee said that being Chairman of the Bills Committee on the Electricity (Amendment) Bill 1996, she recalled that members of the Bills Committee were not aware that the scope of definition of “supply” included electrical products supplied with a property to be sold or let. While she agreed that second hand electrical products sold in retailing outlets should be covered by the CSC provisions, she queried whether it was appropriate to cover electrical products supplied with a property to be sold or let. The extended scope of the definition of “supply” would entail economic costs to property owners. Moreover, she doubted whether extending the CSC requirement to electrical products supplied with a property would enhance public safety because improper use of electrical products was a major cause of accidents arising from use of electrical products. She urged the Administration to consider amendments to the definition of “supply” to exclude electrical products supplied in a property to be sold or let from the coverage of the CSC requirement.

11. Dr Raymond HO Chung-tai and Mr LEE Kai-ming expressed that since the operation of the CSC provision would have wide public implications, particularly in respect of selling and letting of properties, and these implications had not been considered by LegCo before, they would not support the Commencement Notices. The issue should be thoroughly reviewed by the Administration.

Transitional arrangements

12. The Chairman enquired about the Administration’s reply to the legal issues in connection with the transitional arrangements. ALA1 advised that section 8 of the EPSR specified four types of documents which would be accepted by the Director of Electrical and Mechanical Services (DEMS) as a certificate of safety compliance. However, the declarations of conformity from local importers which was one of the transitional arrangements agreed between the Government and local importers of parallel imports was not one of the acceptable instruments specified under section 8 of the EPSR. She had therefore requested the Administration to clarify the legal basis for enforcing the transitional arrangements.

The Administration had replied that the DEMS, recognizing that there might be practical difficulties for suppliers of second hand electrical goods and parallel-imported 110V electrical products in producing the CSC, would during the transitional period take into account whether the suppliers concerned had exercised due diligence in certifying the safety level of the product before deciding whether to prosecute the supplier concerned. She had also drew to the Administration's attention that if some parallel-importers of electrical products or suppliers of second hand electrical products failed to meet requirements under the transitional arrangement, any legal action the Administration wished to take in this respect would have to be based on the existing CSC provisions, which did not provide for the transitional arrangements. She advised that it would be tidier from a legal point of view if the transitional arrangement could be written in the EPSR by relevant legislative amendments. Furthermore, the EPSR so amended would pre-empt private prosecutions which might arise in cases where suppliers had only complied with the "transitional arrangements" but not the CSC requirements during the transitional period.

13. PAS/ES advised that existing provisions in EPSR had provided DEMS with the authority of accepting different forms of CSC and the Administration considered the provisions standard and consistent and did not therefore propose to amend the relevant provisions. He supplemented that before deciding whether to prosecute a supplier for contravening the CSC requirement, the Administration would consider whether the supplier had exercised due diligence in certifying the safety standards of electrical products. Compliance with the transitional arrangements by the importers/suppliers concerned would be considered as exercising due diligence.

Publicity

14. Regarding the transitional arrangements for supply of parallel imported electrical products, second hand products and locally fabricated personal computers, RSC/EMSD advised that the arrangements had been drawn up in consultation with the relevant trade associations and so these associations were well aware of the finalized transitional arrangements. However, members were concerned that the general public had not been adequately informed of the implications of the implementation of the CSC requirement in general and, in particular, the responsibility of the landlord in letting or owner selling a property supplied with electrical appliances. Hon Fred LI Wah-ming remarked that as far as he was aware, not even the Estate Agents Authority was aware of the implications of the CSC requirement with respect to property transactions.

Repeal of the commencement notices

15. In the light of the above deliberation, members agreed to recommend to the House Committee that the two Commencement Notices be repealed. A verbal report on the Subcommittee's deliberations would be presented at the House Committee meeting to be held on 5 February 1999. Members also agreed that the Chairman on behalf of the Subcommittee should give notice of a motion to

repeal the two Commencement Notices at the Council meeting on 10 February 1999.

16. Concluding the discussion, the Chairman said that the Administration should take the opportunity to consider narrowing the scope of the definition of “supply” and re-examine practical difficulties faced by the trade in complying with the CSC requirement and work out better arrangements in respect of supply of parallel imported electrical products, second hand products and locally fabricated personal computers. The Administration should consult the relevant Panel on subsequent legislative and publicity proposals to address the concerns raised by the Subcommittee before submitting them to the Legislative Council.

III Any other business

17. Members noted that Mr LAU Chin-shek had withdrawn his membership from this Subcommittee.

18. There being no other business, the meeting ended at 9:45 am.

Legislative Council Secretariat

12 May 1999