

立法會 *Legislative Council*

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Paper for the House Committee meeting on 17 March 2000

Report of the Subcommittee on Resolution under section 59 of the Electricity Ordinance (Cap. 406)

Purpose

This paper reports on the deliberations of the Subcommittee on Resolution under section 59 of the Electricity Ordinance (Cap. 406).

Background

2. The Electricity Supply Lines (Protection) Regulation (the Regulation) is made under section 59 of the Electricity Ordinance (Cap. 406) as amended by the Electricity (Amendment) Bill 1999 (the Bill), which was passed by the Legislative Council on 3 November 1999. The draft Regulation was first considered by the Bills Committee on the Electricity (Amendment) Bill 1999 when scrutinizing the Bill. During the scrutiny process, members of Bills Committee expressed concern about certain provisions in the draft Regulation as it would provide for penalties including imprisonment for offences relating to the failure to ensure safety of works carried out in the vicinity of electricity supply lines. To allow time for the Legislative Council to study the Regulation, the Administration had agreed to the Bills Committee's request to move a Committee Stage amendment so that the Regulation would be subject to "positive vetting" by the Council.

3. The concerns raised by the Bills Committee were basically related to the defence provided for against a charge alleging contravention of requirements, role of the "competent person" and compliance with directions in a remedial notice. The Bills Committee considered it necessary to revise the draft Regulation to improve on the clarity of certain provisions.

The Electricity Supply Lines (Protection) Regulation

4. The Secretary for Economic Services gave notice to move the Resolution under section 59 of the Electricity Ordinance (Cap. 406) at the Council meeting on 19 January 2000 to seek the Council's approval of the Regulation. The purpose of the Regulation is to prescribe certain requirements designed to ensure that works activities carried out in the vicinity of underground electricity cables or overhead electricity lines do not prejudice safety or the continuity of the supply of electricity.

The Subcommittee

5. At the meeting of the House Committee on 11 January 2000, Members decided to form a Subcommittee to study the Regulation as contained in the Resolution. As the scrutiny was expected to take some time, in response to the request of the House Committee, the Administration withdrew notice for the Resolution. Ir Dr Hon Raymond HO was elected Chairman of the Subcommittee and the membership list of the Subcommittee is at **Appendix I**. The Subcommittee held two meetings to discuss the Regulation with the Administration.

Deliberations of the Subcommittee

6. The Subcommittee notes that the Regulation as contained in the Resolution has been amended to accommodate some of the concerns raised by the Bills Committee. These amendments included -

- (a) provision of deeming provisions under **section 10(4)** which states more explicitly that compliance with the relevant code of practice shall be deemed to constitute the taking of all reasonable steps to ensure that works in the vicinity of electricity supply lines proceed safely and without interruption to the electricity supply;
- (b) revision of **section 10(5)** which sets out more explicitly the role of the competent person and provides for him to be assisted by others under his direct supervision when he is undertaking cable investigation work;
- (c) inclusion of new **section 11(7)** which provides that where the Director of Electrical and Mechanical Services (DEMS) has served a remedial notice, compliance with the relevant code of practice and the direction in that remedial notice shall be deemed to constitute the taking of all reasonable steps to ensure that works in the vicinity of electricity supply lines proceed safely and without interruption to the electricity supply. Additionally, the new **section 11(8)** provides that, where there is any conflict or inconsistency between any provision in the code of practice and any direction in the remedial notice, then the latter shall prevail; and
- (d) revision of **section 18** to provide for a defence to a charge of failing to take all reasonable measures to ensure that works in the vicinity of electricity supply lines proceed safely and without interruption to the electricity supply, if the person charged shows that the failure in question was due to reliance on information provided by a competent person or an electricity supplier.

7. The Subcommittee also examined the provisions of the Regulation in the light of the comments from the Hong Kong Construction Association (HKCA), which were related mainly to drafting amendments made in the interest of clarity. In response to the Subcommittee's request, the Administration agreed to further amend the Regulation to take into account some of the drafting points raised by HKCA and the Legal Service Division -

(a) Suspension of approval (*section 6(1)*)

The Subcommittee concurs with HKCA that the provision in section 6(1) to the effect that DEMS may suspend approval as a competent person if he considers “that there is evidence” that the person has acted in breach of the Electricity Ordinance, etc., may prejudice any subsequent proceedings to overturn the suspension. As such, the Subcommittee considers that the phrase “that there is evidence” should be deleted. While the Administration maintains that the requirement for “evidence” would make it more demanding and would better safeguard the position of the competent person, it nevertheless agrees to the proposed deletion as such would not affect the decision of DEMS.

The Subcommittee also notes HKCA’s concern that the criterion for suspension of approval of a competent person under section 6(1)(b) on grounds that he has failed to perform his work “in good faith and with all due diligence” is rather vague. In response to the Subcommittee’s request, the Administration agrees to revise section 6(1)(b) as follows -

“has failed to perform his work as a competent person to the standard reasonably expected of a competent person”

(b) Remedial notices (*sections 11(7) and 11(8)*)

The Subcommittee has noted that there is no reference to “instructions” in section 17(5) regarding offences relating to remedial notices. While both the words “direction” and “instructions” are used in section 11, the offence under section 17(5) only refers to failure to comply with any “direction” specified in a remedial notice and not “instructions”. In reviewing the drafting, the Administration proposes to amend sections 11(7) and 11(8) such that references to “instructions” should be replaced by “direction”, for consistency with the references to “directing” in section 11(1) and “direction” in sections 11(5) and 17(5). Under the circumstances, failure to comply with any direction specified in a remedial notice is an offence. Failure to comply with instructions contained in a remedial notice is not made an offence because under section 11(4), the person concerned is not bound by any such instructions because he has a choice as to the ways in which he can go about remedying the relevant contravention. The Subcommittee is in agreement to the proposed amendments.

Recommendation

8. Subject to the amendments proposed, the Subcommittee recommends the moving of the Resolution under section 59 of the Electricity Ordinance (Cap 406) by the Administration to introduce the Regulation to the Council in April 2000.

Advice sought

9. Members are requested to support the recommendation of the Subcommittee at paragraph 8 above.

Council Business Division 1
Legislative Council Secretariat
14 March 2000

根據《電力條例》(第 406 章)第 59 條提出的決議案
小組委員會

Subcommittee on Resolution under
section 59 of the Electricity Ordinance (Cap. 406)

委員名單
Membership list

何鍾泰議員(主席)	Ir Dr Hon Raymond HO Chung-tai, JP (Chairman)
李華明議員	Hon Fred LI Wah-ming, JP
夏佳理議員	Hon Ronald ARCULLI, JP
許長青議員	Hon HUI Cheung-ching
陳鑑林議員	Hon CHAN Kam-lam
楊森議員	Dr Hon YEUNG Sum

合共： 6 位議員
Total : 6 Members

日期： 2000 年 1 月 24 日
Date : 24 January 2000