

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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

**Minutes of second meeting
held on Tuesday, 7 March 2000, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Ir Dr Hon Raymond HO Chung-tai, JP (Chairman)
Hon Fred LI Wah-ming, JP
Hon Ronald ARCULLI, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam

Member absent : Dr Hon YEUNG Sum

**Public officers
attending** : Mr Eric JOHNSON
Principal Assistant Secretary for Economic Services

Mr Roger LAI Sze-hoi
Deputy Director (Regulatory Services)
Electrical and Mechanical Services Department

Mr Stephen CHAN Hung-cheung
Chief Electrical & Mechanical Engineer (Electricity Legislation)
Electrical and Mechanical Services Department

Mr SIU Kam-wah
Senior Electrical & Mechanical Engineer (Nuclear & Utility
Safety)
Electrical and Mechanical Services Department

Ms Phyllis POON
Government Counsel

Clerk in attendance : Mrs Mary TANG
Chief Assistant Secretary (1)6

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Rosalind MA
Senior Assistant Secretary (1)6

I. Meeting with the Administration

The Chairman drew members' attention to the Administration's response to the comments made by the Hong Kong Construction Association Ltd (HKCA) in its letter dated 24 January 2000. The Administration's response and the revised draft of the Electricity Supply Lines (Protection) Regulation (the Regulation) were circulated to members vide LC Paper No. CB(1)933/99-00 on 14 February 2000. He invited the Administration to brief members on its response to HKCA and the proposed amendments to the draft Regulation.

(a) Approval of competent person (section 3(3))

2. The Chief Electrical and Mechanical Engineer (Electricity Legislation)/Electrical and Mechanical Services Department (CE(EL)/EMSD) said that HKCA was concerned that section 3(3) might give the impression that the Director was obliged to grant unconditional approval as a competent person if the applicant satisfied him on the conditions under subsections (3)(a) and (b). He explained that the Administration's intention was that the Director should be obliged to grant approval as a competent person, subject to the provision for refusal in subsection (4), if he was satisfied on the points in subsections (3)(a) and (b), but not necessarily unconditional. The last clause of section 3(3) provided that "the Director may grant his approval subject to such conditions as he reasonably thinks fit." The Administration considered that the drafting of section 3(3) was sufficiently clear and could not be interpreted as containing an obligation to grant unconditional approval. Therefore, the Administration did not propose any amendment to section 3(3).

3. Mr Ronald ARCULLI opined that it was clear from the drafting of section 3(3) that the Director could grant an approval subject to certain conditions he considered appropriate. He found no difference between the existing draft and that suggested by HKCA. He sought the Assistant Legal Adviser 2's (ALA2) views on this. ALA2 said that the drafting of section 3(3) was clear as to the power of the Director to grant an approval subject to conditions. Members agreed that no amendment should be made to section 3(3).

(b) Renewal of approval as competent person (section 5(1))

4. CE(EL)/EMSD briefed members on the Administration's response to HKCA's query on the difference in experience requirement for approval as a competent person and for renewal of approval. In granting an initial approval, the Director had to be satisfied that the applicant had sufficient knowledge and practical experience to justify approval of him as a competent person for the purpose of the Regulation. The six months' experience requirement was considered reasonable and appropriate. On renewal of approval, the applicant's competence having been established during the initial approval, he only needed to prove that he had actually performed some underground cable locating work over the preceding three years. Therefore, three months' practical experience was considered sufficient for this purpose.

5. Mr Ronald ARCULLI asked whether problem would arise if the applicant seeking for renewal had fulfilled the experience requirement in the first part of the three years and new types of equipment were introduced to the industry after that. The "competent person" with the Director's approval would have no practical experience in operating the new equipment at work. CE(EL)/EMSD responded that the types of equipment which the applicant could operate would be specified in his/her licence as a competent person. Therefore, the employer of the competent person would clearly know from the licence the type of equipment he/she had experience in using.

(c) Suspension of approval (section 6(1))

6. CE(EL)/EMSD said that in relation to HKCA's suggestion to delete the words "that there is evidence" from section 6(1), the Administration considered that the original drafting made the process more demanding upon the Director and better safeguard the position of the competent person. With the provision on "that there is evidence", the competent person could not be suspended without evidence of wrongdoing. This requirement for "evidence" did not preclude the possibility of an appeal to the appeal board under section 43 of the Electricity Ordinance (Cap. 406). Therefore, the Administration did not propose any amendment to section 6(1).

7. Mr Ronald ARCULLI opined that the words "that there is evidence" would not be adequate to provide for the safeguard to the competent person as the Administration intended. On the contrary, it would set a rather low threshold for the Director to suspend the approval and might prejudice any subsequent proceedings to overturn the suspension. He pointed out that even if the words "that there is evidence" were deleted, the Director would still have the legal obligation to provide evidence and justifications for the suspension of an approval. Otherwise, the decision of suspension would be subject to an appeal. He said that if the Administration's intention was to lower the threshold for suspension, the words "that there is evidence" should be retained in section 6(1). However, if the Administration intended to have a fair process for suspension, the words should be deleted.

8. The Deputy Director (Regulatory Services)/EMSD (DD/EMSD) said that the Administration intended to ensure that the Director had to produce evidence of a breach or failure to perform with due diligence before deciding whether to suspend a person's approval as a competent person. He reiterated that this would make the process more demanding upon the Director and better safeguard the position of the competent person.

Admin. Nevertheless, the Administration agreed to the deletion of the phrase “that there is evidence” as requested by the Subcommittee.

9. On the criteria for suspension in section 6(1) (a) to (c), Mr HUI Cheung-ching enquired whether the provision of section 6(1)(c), which was a new subsection proposed by the Administration, would impose a stricter requirement on the competent person. CE(EL)/EMSD responded that the Administration had taken into account the comments of HKCA on the criterion for suspension in section 6(1)(b) that the competent person had failed to perform his work “in good faith and with all due diligence” was rather vague and its suggestion of replacing this with a more objective standard. Whilst the Administration considered it appropriate to retain section 6(1)(b), a new section 6(1)(c) was proposed to cater for HKCA’s request for a more objective standard, i.e. if the competent person had failed to perform his work to the standard reasonably expected of a competent person.

Admin. 10. Mr Ronald ARCULLI said that section 6(1)(b) provided a higher threshold for the suspension, which was the requirement of “due diligence”. This requirement usually appeared in other ordinances as a defence clause rather than as an offence clause as in section 6(1)(b). He pointed out that sections 6(1)(b) and (c) set different thresholds for the suspension of approval. He suggested that the Administration should keep either one of the subsections so as to avoid confusion which might arise from the different thresholds. The Chairman and Mr CHAN Kam-lam shared his views and commented that it would be unnecessary to have such a high threshold for suspension as the “good faith and due diligence” provided in section 6(1)(b). Members agreed to keep the provision in section 6(1)(c) and delete that of section 6(1)(b) and requested the Administration to make amendment to section 6(1) accordingly.

(d) Remedial notices (sections 11(7) and (8))

11. Members noted the amendments proposed by the Administration to sections 11(7) and (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 was an offence. Failure to comply with instructions contained in a remedial notice was not made an offence because under section 11(4), the person concerned was not bound by any such instructions as he had a choice as to the ways in which he could go about remedying the relevant contravention. Members agreed with the proposed amendments.

(e) Power of entry (section 14(1)(c))

12. Members agreed with the Administration’s proposal of not making any amendment to section 14(1)(c)(i) as the HKCA’s proposed words “anything which ... has been or may be used ...” would restrict the Director’s power to seizure of articles used in committing an offence. This would result in difficulties for the Director to seize, for example, documents relevant to investigation of the offence.

13. In response to Mr Ronald ARCULLI’s concern on the power of entry to domestic premises, CE(EL)/EMSD said that this would be subject to additional requirements in section 14(4). In section 14(4)(a), for entry to domestic premises, a

warrant issued by a magistrate would be required.

14. Concluding the discussion, the Chairman said that having completed examination of the Regulation, the Subcommittee would submit a report to the House Committee on 17 March 2000. Subject to the endorsement of the report by the House Committee, the Administration would be informed to move the resolution on the Regulation in early April 2000.

(Post-meeting note: the Administration would move the resolution at the Council meeting scheduled for 12 April 2000.)

15. There being no other business, the meeting ended at 3:10 pm.

Legislative Council Secretariat

2 May 2000