

立法會
Legislative Council

LC Paper No. CB(1) 1483/99-00
(These minutes have been seen
by the Administration)

Ref : CB1/SS/1/99/1

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

**Minutes of first meeting
held on Monday, 24 January 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
Dr Hon YEUNG Sum

Members absent : Hon Ronald ARCULLI, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam

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

Action

I. Election of Chairman

Ir Dr Raymond HO was elected chairman of the Subcommittee.

II. Meeting with the Administration

2. Upon the Chairman's invitation, the Principal Assistant Secretary for Economic Services (PAS/ES) briefed members on the resolution under section 59 of the Electricity Ordinance (Cap. 406) (the Resolution). The Electricity Supply Lines (Protection) Regulation (the Regulation) was made under section 59 of the Electricity Ordinance (Cap. 406) as amended by the Electricity (Amendment) Bill 1999, 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. To accommodate some of the concerns raised by the Bills Committee during the scrutiny process, the Administration had made a number of amendments to the draft Regulation. The amended draft of the Regulation was provided to the Bills Committee vide the Administration's letter dated 1 December 1999. He drew members' attention to the amendments made as set out in the letter and sought members' support to the Regulation.

3. The Chairman drew members' attention to the letter dated 24 January 2000 from the Hong Kong Construction Association Ltd (HKCA) which was tabled at the meeting. Members agreed that HKCA's comments on the Regulation should be considered during the examination of the Regulation.

(Post-meeting notes: the letter was circulated to members of the Subcommittee vide LC Paper No CB(1) 884/99-00 on 25 January 2000.)

Examination of the Regulation

Section 1

4. In response to Mr Fred LI's enquiry on the commencement date of the Regulation, the Chief Electrical and Mechanical Engineer (Electricity Legislation)/Electrical and Mechanical Services Department (CE(EL)/EMSD) said that there would be a six-month transitional period after the Regulation was passed to allow time for the registration of competent persons.

Section 2

5. Members noted the section.

Section 3

6. Mr YEUNG Sum sought the advice of the Assistant Legal Adviser 2(ALA2) on HKCA's comment that the wording of section 3(3) might give the impression that the Director of Electrical and Mechanical Services (the Director) was obliged to grant unconditional approval to a competent person if the applicant could satisfy the conditions under subsections (3)(a) and (b). ALA2 said that the amendments proposed by HKCA would not bring about any material change to the meaning of the subsection. It would be a matter of drafting style which should be up to the Law Drafting Division to decide. The Chairman asked the Administration to consider the suggested wordings and informed the Subcommittee of its views after the meeting.

Admin.

7. In reply to the Chairman's question on the time and documentary proof required for the registration of competent persons, CE(EL)/EMSD said that the normal time required for the registration would be 14 days. Applicants would be required to provide a certification from their employers confirming that they had not less than six months' practical experience in locating underground electricity cables or other relevant experience during the period of three years immediately preceding their applications. He also drew members' attention to HKCA's query on the reasons why an applicant for approval as a competent person should have to show six months' experience (section 3(3)(a)) while on renewal only three months' experience would be required (section 5(1)). He explained that before granting approval as a competent person, the Director had to be satisfied that the applicant had sufficient knowledge and practical experience. Once the person's competence had been established, the Director needed to be satisfied on renewal of the approval that the applicant had actually performed underground cable locating work over the preceding three years.

Action

Sections 4 and 5

8. Members noted the sections.

Section 6

9. As to the suggestion of HKCA that the words “that there is evidence” should be deleted from section 6(1), Mr Fred LI opined that there might not be any material change to the meaning of the subsection. The requirement of evidence when the Director ordered the suspension of the approval as a competent person should be understood whether or not this was explicitly set out in the Regulation. The Deputy Director (Regulatory Services)/EMSD (DD(RS)/EMSD) agreed that there might not be a real difference in application. Nevertheless, the suggestion needed to be further considered by the Law Drafting Division.

10. PAS/ES pointed out that it would be preferable for the law to be more specific and thus the words on the requirement of evidence should be retained. The Chairman agreed that the existing drafting of section 6(1) was more demanding on the Director in the suspension of an approval and thus it might not be desirable to delete the words on the requirement of evidence. Mr YEUNG Sum shared his view and asked the Administration to consider this further in light of members’ comments.

Admin.

11. The Chairman sought the Administration’s views on the comments of HKCA on section 6(1)(b). HKCA considered that the criterion for suspension in the subsection that the competent person had failed to perform his work “in good faith and with all due diligence” was vague and suggested that the wordings be amended as “has failed to perform his work as a competent person with all due diligence and for to the standard that might reasonably be expected of an experienced individual competently carrying out the work of locating underground electricity cables”. Mr Fred LI pointed out that the suggestion had kept the criterion of “due diligence” while removing that of “in good faith”. Members agreed that the Administration should consider reviewing the wordings and inform the Subcommittee of its recommendations after the meeting.

Admin.

12. As to the comments of HKCA about the absence of facility for emergency suspension of approval for a competent person, CE(EL)/EMSD explained that the Director had the authority to suspend approval in accordance with the conditions set out in section 6. Nevertheless, any suspension of approval as a competent person should be subject to the process set out in section 7. There must be time for consideration of the evidence and for any representations to be heard.

Sections 7, 8 and 9

13. Members noted the sections.

Action

Section 10

14. With reference to the comments of HKCA on section 10(3) concerning the party to whom the competent person should provide the written report, DD(RS)/EMSD explained that the proposed amendments aimed at clarifying the responsibilities of relevant parties. The proposed amendments had to be further examined before decision could be made on any changes to the Regulation. Members agreed that the Administration should consider the proposed amendments in detail and inform members of its views after the meeting.

Admin.

Section 11

15. For section 11(7), HKCA suggested to add “a remedial notice has been served and” after the word “where”. In response to the Chairman’s enquiry on whether the suggested amendments were acceptable, the Government Counsel (GC) said that the condition of serving a remedial notice was stated in section 11(7)(b). She pointed out that the original drafting was clearer in presentation and thus the proposed amendments were not recommended. DD(RS)/EMSD added that the existing presentation of section 11(7) reflected the sequence of events, with the general (approval of a code of practice in section 11(7)(a)) preceding the specific (the serving of a remedial notice in section 11(7)(b)). Members agreed that the existing drafting provided a clearer presentation and no amendment would be required.

Section 12

16. Members noted the section.

Section 13

17. In relation to the quorum of the appeal board as set out in section 13(1)(d), Mr YEUNG Sum opined that the proposed quorum of four members was an even number which might pose difficulties in voting. He suggested that an odd number should be set for the quorum instead. CE(EL)/EMSD clarified that the appeal board should have a total of six members, one of whom would be a public officer while the other five would be from different fields such as engineering, academics, electricity supply and construction industry. The set quorum of four members included one public officer and three members from other sectors. As the public officer would remain neutral in the decision of the appeal board, the remaining three members would make an odd number in voting, if this was required.

Section 14

18. The Administration undertook to consider HKCA’s proposed amendments to section 14(1)(c)(i) and inform members of its views after the meeting.

Admin.

Sections 15 and 16

19. Members noted the sections.

Section 17

20. The Chairman sought the Administration's comments on HKCA's proposal of revising the wordings in sections 17(4) and (6) to the effect that it would explicitly state that the fine levels mentioned was the maximum fine level to be imposed. ALA2 pointed out that it was usual in legislation to state the maximum fine that could be imposed by the court. The exact amount of fine payable by an offender would be subject to the decision of the judge in court. GC added that the Chinese word "可" before the different fine levels mentioned in section 17 provided for the flexibility in deciding the actual amount of fine imposed.

Section 18

21. In response to the Chairman's concern on the requirement of taking "all reasonable steps" set out in section 18(a), CE(EL)/EMSD said that provision was given in section 10(4) that compliance with the code of practice should be deemed to constitute the taking of all reasonable steps. This arrangement was considered acceptable by HKCA.

22. In conclusion, the Chairman requested the Administration to consider the comments made by HKCA as agreed at the meeting and inform members of its views after the meeting.

(Post-meeting note: the Administration's response to the points raised by HKCA and the revised draft of the Regulation was circulated to members vide LC Paper No. CB(1) 933/99-00 on 14 February 2000.)

III. Date of the next meeting and any other business

23. Members agreed to decide on the need for a second meeting upon receipt of the Administration's response.

(Post-meeting note: the second meeting of the Subcommittee was scheduled for Tuesday, 7 March 2000 at 2:30 pm.)

24. There being no other business, the meeting ended at 3:30 pm.

Legislative Council Secretariat

2 May 2000