

**The Administration's response to the points raised by
the Hong Kong Construction Association in its letter of 24 January 2000
to the Director of Electrical and Mechanical Services (the Director)
concerning the proposed
Electricity Supply Lines (Protection) Regulation (the Regulation)**

Point Gist of the HKCA's point and the Administration's response

1. *HKCA suggested that section 3(3) of the Regulation may give the impression that the Director is obliged to grant unconditional approval as a competent person if the applicant satisfies him on the points in subsections (3)(a) & (b).*

We intend that the Director should be obliged to grant approval as a competent person - subject to the provision for refusal in subsection (4) - if he is satisfied on the points in subsections (3)(a) & (b), but not necessarily unconditionally. The last clause of section 3(3) provides for the Director to grant his approval subject to such conditions as he reasonably thinks fit. We think that this is sufficiently clear and that section 3(3) could not be interpreted as containing an obligation to grant unconditional approval. We therefore do not propose any amendment to section 3(3).

2. *HKCA queried 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 need be shown (section 5(1)).*

Before granting an application for approval as a competent person, the Director has to be satisfied that the applicant has sufficient knowledge and practical experience to justify approval of him as a competent person for the purposes of the Regulation. We consider that the 6 months experience requirement is a reasonable and appropriate requirement for initial approval. The person's competence having been established, the Director needs to be satisfied when renewing an approval only that the competent person has actually performed some underground cable locating work over the preceding 3 years while approved as a competent person. We consider that 3 months practical experience is sufficient for this purpose.

3. *HKCA suggested that the provision in section 6(1) to the effect that the Director 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..., should be deleted lest this prejudice any subsequent proceedings to overturn the suspension.*

We consider that it is appropriate to require the Director to consider whether there is evidence of such a breach or failure to perform with due diligence before deciding whether to suspend a person’s approval as a competent person. This makes the process more demanding upon the Director and better safeguards the position of the competent person, as he then cannot be suspended without evidence of wrongdoing. The requirement for “evidence” under section 6(1) does not preclude the possibility of an appeal to the appeal board under section 43 of the Electricity Ordinance (Cap. 406) against a decision by the Director to suspend a competent person. We therefore do not propose any amendment to section 6(1).

4. *HKCA suggested that the criterion for suspension in section 6(1)(b) that the competent person has failed to perform his work “in good faith and with all due diligence” is rather vague and should be replaced with a more objective standard, such as a reference to the standard reasonably expected of a competent person.*

As drafted, section 6(1)(b) means that the Director shall not suspend a competent person’s approval if the person has acted in good faith (i.e. with honesty) and with all due diligence, without regard to whether the person concerned has performed to the standard reasonably expected of a competent person. Whilst we consider it appropriate to retain section 6(1)(b), we propose to add a new section 6(1)(c) to the effect that the Director may suspend a competent person’s approval if he has failed to perform his work as a competent person to the standard reasonably expected of a competent person.

5. *HKCA noted that there is no express provision for “emergency” suspension of approval as a competent person.*

We consider that 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.

6. *HKCA commented that it is not stated in section 10(3) and insufficiently clear from section 10(5) to whom the competent person should provide his written report.*

We consider that a competent person will not carry out an investigation to ascertain the existence etc of any underground electricity cable unless he is requested to do so. The Regulation assumes that there is a person requesting an investigation but does not (and nor does it need to) specify who should request the investigation. We consider it sufficient and clear enough to state in section 10(5)(d) that the competent person should provide the written report to the person requesting the investigation.

HKCA also suggested that there should be an obligation on the person to whom the report is submitted to retain the report until after the works have been safely completed.

We consider that the Regulation need not contain provisions as to custody of documents. However, we will include in the Code of Practice advice to the effect that the person to whom the competent person’s report is submitted should retain that report until after the works have been safely completed.

7. *HKCA suggested that section 11(7) should begin, “Where a remedial notice has been served and -”.*

The present wording of section 11(7) reflects the logical sequence of events, with the general (the approval of a code of practice for the requirements relating to works in the vicinity of electricity supply lines) preceding the specific (the serving of a remedial notice in relation to a contravention). We consider that the drafting of section 11(7) is appropriate.

In reviewing the drafting of section 11(7), we have concluded that the reference to “instructions” (and the references to “instruction” in section 11(8)) should be amended in each case to read “direction”, for consistency with the references to “directing” in section 11(1) and “direction” in sections 11(5) and 17(5). Under section 17(5), failure to comply with any direction specified in a remedial notice (i.e. failure to remedy the relevant contravention) 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; he has a choice as to the ways in which he can go about remedying the relevant contravention.

8. *HKCA suggested that section 14(1)(c)(i) should be amended as follows: “[...the Director may seize, remove and detain] anything ~~in respect of~~ which he has reasonable grounds for suspecting ~~that~~ has been or may be used in committing an offence against this Regulation has been committed; or”*

The wording of section 14(1)(c)(i) is the same as section 12(1)(e) of the Gas Safety Ordinance (Cap. 51). The 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, making it difficult for him to seize, for example, documents relevant to his investigation of the offence. We therefore do not propose any amendment to section 14(1)(c)(i).

9. &
10. *HKCA suggested that the words “not exceeding” should qualify the references to fines and imprisonment in section 17.*

It is the usual practice in legislation to state penalties in terms of liability to the maximum fine or imprisonment or both, as the case may be, that may be imposed by the court. The court may impose a lesser fine or term of imprisonment as it thinks fit. There is therefore no need to amend section 17 as proposed by HKCA.