

ELECTRICITY SUPPLY LINES (PROTECTION) REGULATION

(Made by the Chief Executive in Council under section 59
of the Electricity Ordinance (Cap. 406) subject to
the approval of the Legislative Council)

Preliminary

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Economic Services by notice in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires -
"competent person" (合資格人士) means a person approved as a
competent person under section 3;

"overhead electricity line" (架空電纜) means an electricity supply
line located at or above ground level;

"site contractor" (工地承建商) means a person who carries out or is
engaged to carry out any works on a particular works site;

"underground electricity cable" (地下電纜) means an electricity
supply line located below ground level;

"works" (工程) means -

(a) any kind of works involving or in connection with -

(i) building works within the meaning
assigned to that term in section 2(1) of
the Buildings Ordinance (Cap. 123), and
for the purposes of this subparagraph
reference in that section to "ground

investigation in the scheduled areas" shall be read as a reference to "ground investigation";

(ii) the laying out, construction, alteration or repair of any road (whether or not at ground level), footpath, cycle track, pedestrian subway, footbridge, tunnel, airport runway, canal, reservoir, pipeline, railway or tramway;

(iii) trench works, including -

(A) water mains, storm water drains and sewers; and

(B) such works when carried out by or for any public utility;

(iv) the extraction of material from land or the seabed;

(v) landfill works, river training works, slope works or reclamation works; or

(vi) levelling, piling, ramming, dredging, boring, tunnelling or blasting works;

(b) the use of any crane or hoist (within the meaning assigned to those terms in regulation 2(1) of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg.)) or other equipment for the purpose of lifting objects;

(c) the use of any heavy machinery or other equipment for the purpose of earth moving,

but does not include works necessary to ascertain the alignment and depth of an underground electricity cable, nor

any electrical work carried out by a registered electrical worker or registered electrical contractor;

"works site" (工地) means any area in which works are being carried out.

Competent Persons

3. Approval, etc. of competent person

(1) The Director may, in accordance with this section, approve a person as a competent person for the purposes of this Regulation.

(2) An application for approval as a competent person shall be in such form as may be specified by the Director and shall be accompanied by the fee specified in the Schedule.

(3) Subject to subsection (4), the Director shall grant an application for approval as a competent person if -

(a) the Director is satisfied that -

(i) the person has attended and passed a course in the locating of underground electricity cables which has been approved by the Director for the purposes of this section; and

(ii) during the period of 3 years immediately preceding his application, the person has had not less than 6 months' practical experience in locating underground electricity cables, or has had such other practical experience as the Director may consider relevant and equivalent for the purposes of this Regulation; or

(b) in the opinion of the Director, the person is by reason of his knowledge and practical experience capable of carrying out the work of locating underground electricity cables in a competent manner,

and the Director may grant his approval subject to such conditions as he reasonably thinks fit.

(4) The Director may refuse an application for approval under this section if a previous approval granted to the person has been revoked on grounds other than the grounds specified in section 6(2)(d) or(e).

(5) An approval granted under this section shall be valid for a period of 3 years from the date of its grant.

(6) The Director shall publish in the Gazette notice of any approval, granted by him for the purposes of this section, of a course in the locating of underground electricity cables.

4. Variation of conditions of approval

(1) The Director may, on the application of a competent person accompanied by payment of the fee specified in the Schedule, vary the conditions subject to which an approval granted under section 3 has effect, but a variation of conditions under this subsection shall not result in the approval having effect subject to conditions which are more onerous than those applying before the variation.

(2) Where the Director is satisfied that the present circumstances in relation to a person who holds an approval under section 3 ("current approval") are such that, if the person were to make a fresh application for approval as a

competent person, any such approval ("new approval") would be granted subject to conditions which differ from the conditions applying in relation to the current approval, the Director may order that the conditions applying in relation to the current approval be varied so that they reflect the conditions that would apply in relation to any such new approval so granted, and the person's current approval shall as from the date of the order have effect subject to those conditions as so varied.

(3) For the purposes of subsection (2) -

- (a) no order shall be made by the Director under that subsection unless the Director has given to the person holding the approval notice of his intention to make such an order and has allowed that person an opportunity to be heard on the matter;
- (b) reference to the variation of conditions applying in relation to a current approval as a competent person includes reference to the imposition of conditions where no conditions apply in relation to that approval.

5. Renewal of approval as competent person

(1) The Director may, on the application by a competent person, renew an approval granted to that person under section 3 if he is satisfied that, within the period of 3 years immediately preceding the application for renewal, the person has had not less than 3 months' practical experience in locating underground electricity cables.

(2) Application for renewal of approval as a competent person -

(a) shall be made at least 1 month before, but not earlier than 4 months before, the expiry of the current approval; and

(b) shall be in such form as may be specified by the Director and shall be accompanied by the fee specified in the Schedule.

(3) An approval which is renewed under this section -

(a) shall be valid for a further period of 3 years; and

(b) subject to any variation under section 4, shall have effect subject to the same conditions, if any, as applying to the approval immediately before the renewal takes effect.

6. Suspension, etc. of approval

(1) The Director may, in accordance with section 7, suspend a person's approval as a competent person for a period of up to 12 months if he considers that there is evidence that the person -

(a) has acted in breach of any provision of the Ordinance;

(b) has failed to perform his work as a competent person in good faith and with all due diligence; or

(c) has failed to perform his work as a competent person to the standard reasonably expected of a competent person.

(2) The Director may, in accordance with section 7, revoke a person's approval as a competent person if he is satisfied that -

- (a) the person has been convicted of an offence under this Regulation;
- (b) in performing his duties as a competent person, the person has acted in breach of any condition of the approval, or has been guilty of such negligence or misconduct as to render him unfit to be a competent person;
- (c) the person obtained his approval by fraud or on the basis of misleading or inaccurate information;
- (d) the approval was granted in error; or
- (e) the person is no longer capable of performing the duties of a competent person.

7. Notice of intention to suspend or revoke approval

(1) Where the Director considers that there are grounds for suspending or revoking an approval in accordance with section 6, he shall notify the competent person accordingly -

- (a) specifying the grounds; and
- (b) advising the competent person that he is entitled to a hearing or to submit a written representation, and that if he intends to request a hearing or submit a written representation he must do so within 4 weeks after the date of the Director's notice.

(2) If, within 4 weeks after the date of the notice sent under subsection (1), the Director does not receive from the competent person a request for a hearing he may, after considering the written representations (if any) submitted by the competent

person, suspend or revoke the certificate of approval, as the case may be.

(3) If, within 4 weeks after the date of the notice sent under subsection (1), the Director receives a request for a hearing, he shall afford the competent person a reasonable opportunity of being heard.

(4) After the hearing, or if the competent person fails without reasonable excuse to attend at the time set by the Director for the hearing, the Director may, if he so decides, exonerate the competent person or order the suspension or revocation of the certificate of approval, as the case may be.

(5) On service on the competent person of a notice informing him of the Director's decision to suspend or revoke a certificate of approval and stating the reasons for that decision, the person shall cease to be approved as a competent person.

8. Certificate of approval

(1) On granting or varying the conditions of an approval as a competent person or on renewing any such approval, the Director shall issue to the competent person a certificate confirming the approval and specifying the period of validity of the approval and the conditions, if any, subject to which the approval has been granted.

(2) A competent person who has been served with a notice of suspension or revocation of his approval shall, not later than 14 days after service of the notice, surrender to the Director any certificate of approval issued to him.

9. Notice of change of particulars

Where there is any change in the particulars of the name or address of a person who is approved as a competent person, the person shall give written notice to the Director of the changed particulars within 21 days after the change takes place.

Works in Vicinity of Electricity Supply Lines

10. Requirements relating to works in vicinity of electricity supply lines

(1) A person shall not -

- (a) carry out or cause or permit another to carry out in the vicinity of an underground electricity cable any works which are below ground level; or
- (b) carry out or cause or permit another to carry out in the vicinity of an overhead electricity line works of any kind,

unless before the works are begun all reasonable steps have been taken to ascertain the existence within the proposed works site and its vicinity of any such underground electricity cable and its alignment and depth or of any such overhead electricity line and its alignment, distance from the ground and voltage, as the case may be.

(2) A person who -

- (a) carries out or causes or permits another to carry out in the vicinity of an underground electricity cable any works which are below ground level; or
- (b) carries out or causes or permits another to carry out in the vicinity of an overhead electricity line works of any kind,

shall ensure that all reasonable measures are taken to prevent the occurrence of an electrical accident or an interruption to the supply of electricity arising from those works.

(3) For the purposes of subsection (1) as it applies in relation to works in the vicinity of an underground electricity cable, and without affecting the generality of that subsection, reasonable steps shall not be regarded as having been taken unless a competent person has undertaken an investigation for the purpose of ascertaining the existence within the proposed works site and its vicinity of any such underground electricity cable and its alignment and depth and has provided a written report of his findings as to those matters.

(4) Subject to section 11(7), where the Director has approved a code of practice for any of the requirements of paragraph (a) or (b) of subsection (1) or (2), then, subject to subsection (3), compliance with the provisions of that code shall be deemed to constitute the taking of all reasonable steps, or the taking of all reasonable measures, as the case may be, for the purposes of that requirement.

(5) A competent person who undertakes an investigation to ascertain the existence, alignment and depth of an underground electricity cable -

- (a) shall not delegate the function and duty of the investigation to another person;
- (b) may carry out the investigation with the assistance of any other persons, but such persons shall be directly supervised by that competent person at the proposed works site in the course of the investigation;

- (c) shall carry out the investigation in a manner that does not cause damage to, or impair the operation of, the underground electricity cable; and
- (d) shall provide the person requesting the investigation with a written report of his findings as to that matter.

Remedial Notices

11. Remedial notices

(1) Where the Director is of the opinion that a person -

- (a) is contravening a requirement under this Regulation; or
- (b) has contravened such a requirement in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on the person a notice ("remedial notice") stating that he is of that opinion, giving particulars as to why he is of that opinion, and directing the person to remedy the contravention or the matter occasioning it, as the case may be, within the period specified in the notice.

(2) Except as provided in subsection (3), the period to be specified in a remedial notice under subsection (1) shall be a period of not less than 14 days.

(3) If the Director is of the opinion that the circumstances of the contravention are such that there is an undue risk of an electrical accident or an interruption to the supply of electricity occurring, he may specify in the remedial notice such

lesser period as he reasonably considers appropriate in the circumstances.

(4) A remedial notice may contain instructions as to the measures to be taken to remedy any contravention or matter to which the notice relates, and any such instructions may be framed -

- (a) wholly or in part by reference to any approved code of practice; and
- (b) so as to afford the person on whom the notice is served a choice between different ways of remedying such contravention or matter.

(5) Subject to section 43(4) of the Ordinance, a direction specified in a remedial notice shall take effect at the time of the notice being served or at such later date, if any, as may be specified in the notice.

(6) In addition to service as provided under section 52 of the Ordinance, service of a remedial notice on a person who is a site contractor may also be effected by delivering the notice to a person at the works site who appears to be the person in charge of the site activities or who identifies himself as being the site contractor's representative on the site.

(7) Where -

- (a) the Director has approved a code of practice for any of the requirements of paragraph (a) or (b) of section 10(1) or (2); and
- (b) the Director has served a remedial notice under subsection (1) in relation to a contravention of the same paragraph,

then, subject to section 10(3), compliance with the provisions of that code and the direction in that notice shall be deemed to constitute the taking of all reasonable steps, or the taking of all reasonable measures, as the case may be, for the purposes of that requirement.

(8) For the purposes of subsection (7), where there is any conflict or inconsistency between any provision in the code of practice and any direction in the remedial notice, then that direction shall, to the extent of that conflict or inconsistency, as the case may be, prevail over that provision.

12. Failure to comply with remedial notice

(1) If a person on whom a remedial notice is served fails to remedy the contravention or the matter occasioning it, as the case may be, within the period specified in the notice, then the Director may, after giving notice of his intention to the person, do either or both of the following -

- (a) he may prohibit the carrying out of all or any particular works on the works site;
- (b) he may himself do, or cause to be done, anything necessary to remedy the contravention or the matter occasioning it, as the case may be.

(2) If the Director exercises his power under subsection (1)(a), he shall display prominently on or near the works site a notice, in the Chinese and English languages -

- (a) stating that the carrying out of certain or all works on the works site has been prohibited; and
- (b) setting out the provisions of subsection (3) and section 17(6) and (7).

(3) No person shall without the consent in writing of the Director -

- (a) carry out on the works site any works which he knows or ought reasonably to know have been prohibited by the Director under subsection (1)(a);
or
- (b) remove or mark, or damage or destroy, a notice referred to in subsection (2).

(4) If the Director takes any action under subsection (1)(b) in connection with remedying the contravention or the matter occasioning it, the person on whom the remedial notice was served shall be liable to reimburse the Director for the amount of any expenses reasonably incurred by the Director in taking that action, and such amount shall be recoverable summarily as a civil debt.

(5) Section 11(6) applies to the giving of a notice under subsection (1) as it applies to the service of a remedial notice under section 11.

13. Appeals against notices under sections 11 and 12

(1) Part IX of the Ordinance, in its application to or in relation to an appeal against a decision or action of the Director under section 11 or 12, shall have effect subject to the following modifications and variations -

- (a) a notice of appeal as required under section 43(2) of the Ordinance shall be delivered to the Director within 14 days of the decision or action being appealed against;

- (b) the Secretary for Economic Services shall appoint to the appeal board panel provided for under section 44(1) of the Ordinance not more than 5 persons from organizations that he considers represent the interests of the construction industry;
- (c) an appeal board appointed under section 45(1) of the Ordinance to hear an appeal shall consist of a public officer, one member from each of the categories specified in section 44(1)(a), (b) and (c) of the Ordinance and 2 members from the category specified in paragraph (b);
- (d) the quorum of an appeal board appointed pursuant to this section is 4 members;
- (e) the powers conferred on an appeal board under section 47(1) of the Ordinance shall include the power to authorize a person to inspect a works site or former works site and, for that purpose, to authorize entry into premises other than domestic premises on which the works site is or was situated.

(2) Unless the context otherwise requires, reference in the Ordinance or any other Ordinance to an appeal under, or an appeal board appointed under, Part IX of the Ordinance includes reference to an appeal pursuant to, or an appeal board appointed pursuant to, this section.

Powers of Entry, etc.

14. Powers of entry, etc.

(1) Subject to this section, the Director may -

- (a) enter, inspect and examine any premises or place in which works are being undertaken in the vicinity of an electricity supply line or in which he reasonably suspects such works are being undertaken, and may, in the interests of safety or of ensuring the continuity of supply of electricity, there make enquiries as to the observance of any requirement under this Regulation and all matters and things relating to the electricity supply line concerned;
- (b) enter and search any premises or place, forcibly if necessary, in which he reasonably suspects that there may be anything which is liable to seizure under paragraph (c); and
- (c) seize, remove and detain -
 - (i) anything in respect of which he has reasonable grounds for suspecting that an offence against this Regulation has been committed; or
 - (ii) any other thing which appears to him likely to be or to contain evidence of any such offence.

(2) For the purpose of exercising the powers conferred under section 12(1)(b), but subject to this section, the Director may enter, inspect and examine any premises or place, forcibly if necessary, in respect of which a notice has been given under section 12(1) and may there do such things as are necessary to

remedy the contravention or the matter occasioning it, as the case may be.

(3) The powers conferred under subsections (1)(a) and (2) to enter, inspect and examine a premises or place may be exercised at any time of the day or night, but in exercising that power the Director shall use every effort to avoid unnecessarily impeding or obstructing works being carried out in the premises or place.

(4) The powers conferred under subsections (1) and (2) to enter and search any premises may be exercised in relation to any domestic premises if, and only if, one or other of the following requirements is satisfied -

- (a) a warrant has been issued by a magistrate, where the magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Regulation has been, is being or is about to be, committed in such premises or there is in such premises anything likely to be or to contain evidence of such offence;
- (b) the Director is of the opinion, having regard to the circumstances of the case, that the delay likely to be occasioned in obtaining a warrant as is mentioned in paragraph (a) would be likely to result in the occurrence of an electrical accident.

(5) The Director may exercise any of his powers under this section with the assistance of such other persons as he thinks fit.

15. Approval of code of practice by Director

(1) For the purposes of providing practical guidance in respect of any requirement under this Regulation, the Director may -

- (a) approve and issue such codes of practice (whether prepared by him or not) as in his opinion are suitable for that purpose; and
- (b) approve such codes of practice issued or proposed to be issued otherwise than by him as in his opinion are suitable for that purpose.

(2) Where a code of practice is approved under subsection (1), the Director shall -

- (a) publish a copy of the code in the Gazette; and
- (b) by notice in the Gazette, specify for which of the requirements under this Regulation the code is so approved and the date on which the approval is to take effect.

(3) The Director may -

- (a) from time to time revise the whole or any part of any code of practice prepared by him in pursuance of this section; and
- (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

and the provisions of subsection (2) shall, with necessary modifications, apply in relation to any revision approved under this subsection as they apply in relation to a code of practice approved under subsection (1).

(4) The Director may at any time withdraw his approval from any code of practice approved under this section.

(5) Where under subsection (4) the Director withdraws his approval from a code of practice approved under this section, he shall, by notice in the Gazette, identify the code concerned and specify the date on which his approval of it is to cease to have effect.

(6) References in this Regulation to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(7) The power of the Director under subsection (1)(b) to approve a code of practice issued or proposed to be issued otherwise than by him shall include power to approve part of such a code and, accordingly, in this Regulation "code of practice" may be read as including part of such a code.

**16. Use of approved code of practice
in criminal proceedings**

(1) Where in any criminal proceedings before a magistrate or court a party is alleged to have committed an offence by reason of a contravention of a requirement under this Regulation, being a requirement for which there was an approved code of practice at the time of the alleged contravention, then -

- (a) any provision of the code of practice which appears to the magistrate or court to be relevant to the requirement alleged to have been contravened shall be admissible in evidence in the proceedings; and
- (b) subject to subsection (2), if it is proved that there was at any material time a failure to observe

any provision of the code which appears to the magistrate or court to be relevant to any matter which it is necessary for the prosecution to prove in order to establish a contravention of such requirement, then such failure may be relied upon by the prosecution as tending to establish that matter.

(2) Subsection (1)(b) shall not have effect if the magistrate or court is satisfied that the requirement alleged to have been contravened was, as regards the matter which it is necessary for the prosecution to prove, complied with otherwise than by way of observance of the code of practice.

(3) In any criminal proceedings, a code of practice which appears to a magistrate or court to be the subject of a notice under section 15(2) shall be taken to be the subject of such notice unless the contrary is proved.

(4) For the avoidance of doubt, it is hereby declared that a failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings.

Offences

17. Offences and penalties

(1) A person who contravenes any requirement of section 8(2) commits an offence and is liable to a fine at level 3.

(2) A person who contravenes any requirement of section 9 commits an offence and is liable to a fine at level 1.

(3) A person who contravenes any requirement of section 10(1)(a) or (b) commits an offence and is liable to a fine at level 4 and to imprisonment for 6 months.

(4) A person who contravenes any requirement of section 10(2)(a) or (b) commits an offence and is liable -

(a) if the contravention results in an electrical accident or an interruption to the supply of electricity, to a fine of \$200,000 and to imprisonment for 12 months; or

(b) in any other case, to a fine at level 4 and to imprisonment for 6 months,

and, in the case of a continuing offence, to an additional fine of \$10,000 for each day on which the offence continues.

(5) A person who, without reasonable excuse, fails to comply with any direction specified in a remedial notice issued under section 11 commits an offence and is liable to a fine at level 3.

(6) A person who contravenes any requirement of section 12(3)(a) commits an offence and is liable to a fine at level 4 and, in the case of a continuing offence, to an additional fine of \$10,000 for each day on which the offence continues.

(7) A person who contravenes any requirement of section 12(3)(b) commits an offence and is liable to a fine at level 3.

(8) No person shall advertise or otherwise hold himself out as -

(a) a competent person if he is not such person as approved under this Regulation; or

(b) a competent person approved to do works which he is not approved to do pursuant to the terms of his approval under this Regulation,

and a person who contravenes this provision commits an offence and is liable to a fine at level 4.

18. Defence

It shall be a defence to a charge under section 17(4) alleging a contravention of section 10(2) for the person charged to show that -

- (a) before the works began, all reasonable steps had been taken for the purposes of section 10(1); and
- (b) any failure in the taking of all reasonable measures for the purposes of section 10(2) was due to reliance on information contained in a report prepared by a competent person or on information provided by the electricity supplier who is the owner of the electricity supply line concerned.

SCHEDULE [ss. 3(2), 4(1)& 5(2)]

FEEES

Item	Particular	Fee \$
1.	Application for approval as a competent person under section 3	436
2.	Application for variation of conditions of approval as a competent person under section 4	436
3.	Application for renewal of approval as a competent person under section 5	423

4. Application for replacement copy of certificate of approval 322

Clerk to the Executive Council

COUNCIL CHAMBER

1999

Explanatory Note

The purpose of this Regulation, which is made under section 59 of the Electricity Ordinance (Cap. 406) (the "principal Ordinance") as amended by the Electricity (Amendment) Ordinance 1999 (69 of 1999), 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.

2. Sections 1 and 2 are preliminary provisions. Section 1 provides for the commencement of the Regulation, while section 2 defines certain terms used in the Regulation.

3. Sections 3 to 9 deal with the approval of a person as a competent person for the purpose of carrying out cable locating work under the Regulation. Section 3 provides for applications to

the Director of Electrical and Mechanical Services (the "Director") for approval as a competent person and for the grant or refusal of such applications. Section 4 provides for variation of the conditions subject to which an approval has been granted, while section 5 provides for the renewal of an approval. Sections 6 and 7 specify the grounds and procedures for the suspension or revocation of an approval. Sections 8 and 9 deal with administrative matters.

4. Section 10 contains the 2 principal requirements which give effect to the purpose mentioned in paragraph 1 above. First, it prohibits the carrying out of certain works in the vicinity of an underground electricity cable or overhead electricity line unless all reasonable steps have been taken to ascertain the existence of the cable or line together with certain information relating to it (section 10(1)). In the case of an underground electricity cable, those reasonable steps must include a competent person ascertaining those matters (section 10(3)). Secondly, it requires that in the carrying out of the works all reasonable measures shall be taken to ensure that the works do not occasion an electrical accident or an interruption to the supply of electricity (section 10(2)).

5. Sections 11 to 13 provide for the issue of remedial notices by the Director, and for measures designed to effect compliance with such notices. Section 11 enables the Director to serve on a person whom he believes to be contravening the Regulation a remedial notice directing the person to remedy the contravention within a period specified in the notice. Section 12 enables the Director, in the interests of safety, to intervene where there is a failure to comply with a remedial notice by prohibiting further

works on the site or by remedying the contravention himself if necessary. In the latter case, expenses reasonably incurred by the Director are recoverable summarily as a civil debt from the person on whom the remedial notice was served (section 12(4)). Section 13 contains provisions relevant to appeals under Part IX of the principal Ordinance against decisions or actions of the Director in relation to remedial notices.

6. Section 14 confers on the Director powers of entry, search and seizure in relation to the monitoring and enforcement of obligations under the Regulation.

7. Section 15 enables the Director to approve and issue codes of practice providing practical guidance in respect of any requirement under the Regulation, and section 16 provides for the use of such codes in criminal proceedings instituted under the Regulation.

8. Sections 17 and 18 deal with offences under the Regulation. Section 17 creates a number of offences for non-compliance with the Regulation and stipulates penalties for those offences. Section 18 provides for a defence to a charge under section 17(4).

9. The Schedule prescribes the fees to be charged under the Regulation.