

LEGISLATIVE COUNCIL BRIEF

Electricity Ordinance
(Chapter 406)

ELECTRICITY (AMENDMENT) BILL 1999 ELECTRICITY SUPPLY LINES (PROTECTION) REGULATION

INTRODUCTION

At the meeting of the Executive Council on 12 January 1999, the Council ADVISED and the Chief Executive ORDERED that -

- (a) the Electricity (Amendment) Bill 1999, as at Annex A, should be introduced into the Legislative Council; and
- (b) the Electricity Supply Lines (Protection) Regulation, as at Annex B, should be approved in principle, and referred back to the Executive Council to be made after the Bill has passed into law.

BACKGROUND AND ARGUMENT

2. The Electricity Ordinance ("The Ordinance") provides for, among other things, the safe supply of electricity, including the reporting to the Director of Electrical and Mechanical Services ("The Director") of electrical accidents and unintended interruptions to the electricity supply causing distress or inconvenience to the public. An "Electrical accident" is defined under the Ordinance as an incident involving electricity that causes fire or explosion or that causes death or injury to a person. The Ordinance also enables the Chief Executive in Council to make regulations for the purposes of the Ordinance.

3. Electricity supply lines, as underground cables or overhead lines, transmit and distribute electricity throughout Hong Kong. If a live electricity supply line is severed or damaged during works, there may be an explosion and site workers and others in the vicinity may be exposed to the danger of electric shocks or burns. In addition, the electricity supply might be interrupted, causing considerable inconvenience to the public. From January 1994 to November 1998, there were 3,141 incidents of damage to underground electricity cables and a further 299 incidents of damage to overhead electricity lines (an average of about 700 a year). These incidents resulted in four fatalities, 81 cases of personal injury

and 1,884 interruptions to the electricity supply. Careless use of an excavator, crane or hoist by works contractors is the primary cause of such incidents.

4. The Ordinance has no provisions to protect electricity supply lines from damage arising out of works. Prevention of such damage currently depends upon the works permit holder voluntarily seeking information on electricity supply lines in the vicinity, employing a cable locating firm where necessary and supervising the works. The main incentive for him to do so is that the owner of an electricity supply line, namely the power company concerned, may hold him liable for the costs of making good any damage through civil proceedings. The frequency with which electricity supply lines are damaged by works contractors, however, indicates that this is an inadequate deterrent on its own to ensure safety and the continuity of electricity supply. Moreover, the Ordinance has no provisions empowering the Director to enter a works site to assess a situation involving a damaged electricity supply line or to require that remedial measures be taken.

5. We therefore consider that, in the interests of safety and of ensuring the continuity of electricity supply -

- (a) the taking of measures to ensure that works performed in the vicinity of electricity supply lines owned by electricity suppliers do not cause electrical accidents or interrupt the electricity supply, including engaging the services of a person competent to ascertain the alignment and depth of an underground electricity cable, should be required by law;
- (b) the law should provide for criminal liability for failure to take such measures; and
- (c) the Director should be empowered under the law to inspect works in the vicinity of an electricity supply line and to require that remedial measures be taken as he considers necessary.

6. Accordingly, we propose that the Electricity Ordinance should be amended so as to -

- (a) include as one of the purposes of the Ordinance the provision of measures to ensure that activities performed in the vicinity of electricity supply lines owned by electricity suppliers do not prejudice safety or the continuity of the electricity supply; and
- (b) enable the making of regulations designed to ensure that activities performed in the vicinity of electricity supply lines owned by electricity suppliers are performed without the risk of causing electrical accidents or interruptions to electricity supply.

7. We also propose that the Electricity Supply Lines (Protection) Regulation ("The Regulation") should be made in due course to require that -

- (a) works shall not be carried out in the vicinity of an electricity supply line unless, before the works are begun, all reasonable steps have been taken to ascertain the existence, alignment and other relevant particulars of any such line;
- (b) works shall not be carried out in the vicinity of an electricity supply line without all reasonable measures having been taken to prevent the occurrence of an electrical accident or interruption to the electricity supply; and
- (c) such steps and measures shall include engaging the services of a person competent in ascertaining the existence, alignment and depth of an underground electricity cable (courses in such work are offered by the Construction Industry Training Authority).

8. To ensure that these requirements are implemented and administered effectively, it will be necessary for the Director to have certain powers. We propose that the Regulation should provide that the Director may -

- (a) approve suitably qualified and/or experienced persons to be competent persons for the purposes of cable locating work;
- (b) enter and inspect premises in which works are being undertaken in the vicinity of an underground electricity cable or overhead electricity line, to inspect the works and direct, through a remedial notice, that any contravention of the Regulation be remedied within a period specified in the notice;
- (c) after giving notice of his intention, prohibit the carrying out of works or enter the site himself to remedy the matter (with the cost being borne by the person failing to comply) where there is a failure to comply with a remedial notice;
- (d) enter and examine any place or premises in which works are being undertaken in the vicinity of an underground electricity cable or overhead electricity line to verify observance of the Regulation, to obtain evidence of an offence against the Regulation and seize that evidence, or to remedy a contravention of the Regulation (provided that in relation to any domestic premises, the powers of entry and search should be exercised only pursuant to a warrant issued by a magistrate or where delay in obtaining a warrant would likely result in an electrical accident); and

- (e) approve codes of practice for the construction industry and other relevant organisations to follow before and during any site activities in order that works in the vicinity of an underground electricity cable or overhead electricity line proceed safely and without the risk of interrupting the electricity supply.

9. We propose that the Regulation should provide for offences and maximum penalties, the most important of which are as follows -

Offence	Maximum penalty
Failure to take reasonable measures to prevent the occurrence of an electrical accident or interruption to the electricity supply	Resulting in an electrical accident or interruption to the electricity supply : fine of \$200,000 and imprisonment for 12 months [in any other case : fine at level 4 (currently \$25,000) and imprisonment for six months] and daily penalty of \$10,000 for a continuing offence (i.e. the new maximum penalty proposed in clause 4 of the Bill)
Failure to take reasonable steps to ascertain the alignment or other relevant particulars of an electricity supply line	Fine at level 4 and imprisonment for 6 months

10. Failure to take all reasonable steps to ascertain the alignment or other relevant particulars of an electricity supply line may include failure to engage a competent person, which is one of the central elements of the proposals. We would regard such failure as being particularly serious and consider that the maximum penalty for this particular offence should include liability to imprisonment.

11. Lastly, we propose that the Regulation should contain provisions whereby -

- (a) any relevant provision of a code of practice approved under the Regulation shall be admissible in evidence in criminal proceedings relating to contravention of the Regulation;
- (b) it is a defence to a charge of failure to take reasonable steps to ascertain the alignment or other relevant particulars of an electricity supply line, or of failure to take reasonable measures to prevent the occurrence of an electrical accident or interruption to the electricity supply, for a person to show that he has complied with the relevant provisions of the code of practice concerned;

- (c) the appeal board for an appeal against the direction by the Director contained in remedial notices, shall comprise a public officer and five other members, all of whom are to be appointed by the Secretary for Economic Services; the five members are to be chosen from members of an appeal board panel drawn from the electrical discipline of the register of registered professional engineers, a tertiary educational institution, the electricity supply industry and the construction industry (two members); and
- (d) a fee, at full cost, will be charged in respect of an application for approval as a competent person for the purposes of the Regulation, for variation of conditions of approval, for renewal of approval and for issue of a replacement copy of a certificate of approval.

THE BILL

12. The principal clauses of the Bill are as follows -

- (a) **Clause 2** amends the long title of the Ordinance so that the Ordinance may provide for measures designed to ensure that activities carried out in the vicinity of electricity supply lines owned by electricity suppliers do not prejudice safety or the continuity of the electricity supply.
- (b) **Clause 3** defines an "Electricity supply line" and amends the existing definition of "Supply" in relation to electrical products so as to avoid possible confusion.
- (c) **Clause 4** extends the power of the Chief Executive in Council to make regulations on measures designed to ensure that activities performed in the vicinity of electricity supply lines owned by electricity suppliers are performed without the risk of causing electrical accidents or interruptions to electricity supply. It provides that such regulations may confer on the Director the powers proposed in paragraph 8 above. It further provides that such regulations may -
 - (i) modify appeal provisions in the principal Ordinance for the specific purposes of the Regulation;
 - (ii) provide that codes of practice approved by the Director may be used in criminal proceedings; and
 - (iii) specify a penalty of a fine not exceeding \$200,000 or a term of imprisonment not exceeding 12 months or both such fine and

imprisonment and, in the case of a continuing offence, a daily penalty not exceeding \$10,000.

The existing provisions which are being amended are at Annex C.

The Regulation

13. The main provisions of the proposed Regulation are as follows -
- (a) **Section 3** enables the Director to approve a person as a competent person for the purposes of cable locating work under the regulation.
 - (b) **Section 6** enables the Director to suspend for up to 12 months or revoke a person's approval as a competent person in specified circumstances.
 - (c) **Section 7** provides that the Director shall notify the competent person concerned of his intention to suspend or revoke a person's approval as a competent person, specifying the grounds and advising him that he may request a hearing or submit a representation within four weeks.
 - (d) **Section 8** enables the Director to issue to a competent person a certificate confirming approval of the person as a competent person.
 - (e) **Section 10** prohibits the carrying out of works below ground level in the vicinity of an underground electricity cable or works of any kind in the vicinity of an overhead electricity line unless all reasonable steps have been taken, before the works begin, to ascertain the existence within the works site or its vicinity of any underground electricity cable and its alignment and depth or of any overhead electricity line and its alignment, distance from the ground and voltage, as the case may be. Such reasonable steps should include the engaging of a competent person to ascertain the existence, alignment and depth of any underground electricity cable within the proposed works site or its vicinity. It further provides that a person who carries out, or permits to be carried out, such works shall take all reasonable measures to ensure that the works do not occasion any electrical accident or interrupt the electricity supply.
 - (f) **Section 11** enables the Director to serve on a person whom he believes is contravening the Regulation a remedial notice directing the person concerned to remedy that contravention within the period specified in the notice.
 - (g) **Section 12** enables the Director to intervene when 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 shall be recoverable summarily as a civil debt from the person on whom the remedial notice was served.

- (h) **Section 13** modifies the application of the appeals provisions of the principal Ordinance to appeals in relation to remedial notices issued under the Regulation.
- (i) **Section 14** enables the Director to -
 - (i) enter and examine any place or premises in which works are being undertaken in the vicinity of an underground electricity cable or overhead electricity line, to enquire as to observance of the Regulation, provided that unnecessary obstruction to the works is avoided; and
 - (ii) enter and search any place or premises, forcibly if necessary, to obtain evidence of an offence against the Regulation, and to seize that evidence, or to remedy a contravention of the Regulation, except that, in relation to any domestic premises, these powers may be exercised only pursuant to a warrant issued by a magistrate or where the delay in obtaining a warrant would likely result in an electrical accident.
- (j) **Section 15** enables the Director to approve and issue codes of practice providing practical guidance in respect of any requirement under the Regulation and requires such codes to be published in the Gazette.
- (k) **Section 16** provides for the use of an approved code of practice in criminal proceedings instituted under the Regulation.
- (l) **Section 17** stipulates penalties for offences, including those set out in paragraph 9 above.
- (m) **Section 18** provides defences to -
 - (i) a charge of not taking all reasonable steps before the works begin to ascertain the existence of any underground electricity cable within the proposed works site or its vicinity and its alignment or the alignment, distance from the ground and voltage of any overhead electricity line; and
 - (ii) a charge of not ensuring that all reasonable measures are taken during the works to prevent the occurrence of an electrical accident or an interruption to the electricity supply;

and provides that, for these purposes, a person shall be deemed to have complied with the requirements of the Regulation if he shows that he has complied with the relevant code of practice.

- (n) The **Schedule** states the fees to be charged for applications for approval as a competent person, for variation of conditions of approval, for renewal of approval and for issue of a replacement copy of a certificate of approval.

LEGISLATIVE TIMETABLE

14. The legislative timetable for the Bill will be -

Publication in the Gazette	15 January 1999
First Reading and commencement of the Second Reading debate	27 January 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

15. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

16. The Electricity Ordinance does not bind the State by express provision. The proposed legislation does not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

17. The Director of Electrical and Mechanical Services will require an additional Electrical Inspector to conduct site inspections, provide advice to contractors, conduct investigations and assist in prosecutions, at a recurrent cost of \$620,000 per annum. Funds have been earmarked to meet this requirement. The proposed fees as stated in the Schedule range from \$322 to \$436 per application, and are expected to generate a revenue of \$220,000 in the first year of implementation of the Regulation.

ECONOMIC IMPLICATIONS

18. There are no significant economic implications. Nonetheless, the proposals will benefit the economy to the extent that they reduce disruptions to activity on construction sites and interruptions to the supply of electricity.

PUBLIC CONSULTATION

19. The power companies and the construction industry have been consulted on the proposals. The power companies support the proposals. The construction industry has no objection in principle to the proposals, but suggested that possible imprisonment, in addition to a fine, was too heavy a penalty for an offence of failure to take all reasonable steps to ascertain the alignment of an underground electricity cable or the alignment, distance from the ground and voltage of an overhead electricity line.

PUBLICITY

20. A press release will be issued. A spokesman will handle media and public enquiries.

ENQUIRIES

21. Subject officer : Mr Eric Johnson, Principal Assistant Secretary for Economic Services, telephone 2810 2128, fax 2868 4679.

Economic Services Bureau
15 January 1999

**Electricity Ordinance
(Chapter 406)**

**ELECTRICITY (AMENDMENT) BILL 1999
ELECTRICITY SUPPLY LINES (PROTECTION) REGULATION**

ANNEXES

Annex A - Electricity (Amendment) Bill 1999

Annex B - Electricity Supply Lines (Protection) Regulation

Annex C - Extract of the relevant sections of the existing Electricity Ordinance (Cap. 406) being amended

A BILL

To

Amend the Electricity Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Electricity (Amendment) Ordinance 1999.

2. Long title amended

The long title to the Electricity Ordinance (Cap. 406) is amended -

- (a) by repealing “and” after “products,”;
- (b) by repealing the full stop and substituting -

“, and to provide for measures designed to ensure that activities carried out in the vicinity of electricity supply lines owned by electricity suppliers do not prejudice safety or the continuity of the electricity supply.”.

3. Interpretation

Section 2 is amended -

- (a) by repealing the definition of “supply” and substituting -

“ “supply” (供應) in relation to the supply of an electrical product, means -

- (a) to sell or hire out the electrical product;

- (b) to offer, keep or exhibit the electrical product for sale or for hiring out;
- (c) to exchange or dispose of the electrical product for any consideration;
- (d) to transmit, convey or deliver the electrical product in pursuance of -
 - (i) a sale;
 - (ii) a hiring out; or
 - (iii) an exchange or disposal for any consideration; or
- (e) for commercial purposes, to give the electrical product as a prize or to make a gift of such a product;”;

(b) by adding -

“ “electricity supply line” (供電電纜) means -

- (a) a conductor used for the purpose of conveying, transmitting or distributing electricity and any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting such conductor, or any part of it;

(b) any apparatus connected with such conductor or other thing mentioned in paragraph (a) for the purpose of conveying, transmitting or distributing electricity;

(c) any cable used in conjunction with such conductor mentioned in paragraph (a) or apparatus mentioned in paragraph (b) for the purpose of transmitting control signals,

and in paragraph (a), reference to a conductor used for the purpose of conveying, transmitting or distributing electricity includes reference to a wire or wires or other means used for that purpose;”.

4. Regulations

Section 59 is amended -

(a) in subsection (1), by adding -

“(ia) measures designed to ensure that activities performed in the vicinity of electricity supply lines owned by electricity suppliers are performed without risk of electrical accident or interruption to the supply of electricity;”;

(b) in subsection (4), by repealing “subsection (5)” and substituting “subsections (5) and (8)”;

(c) by adding -

“(8) Regulations made for the purposes of subsection

(1) (ia) -

- (a) may provide for the approval by the Director of a person as competent to ascertain the position of electricity supply lines which are not above ground or readily visible;
- (b) may empower the Director to direct a person to remedy a contravention of such a regulation, and may provide for measures designed to enforce such a direction or otherwise to give effect to it or to prevent a continuation or repetition of the contravention;
- (c) may vary, modify or limit Part IX (“APPEALS”) in its application to a decision or action of the Director made or performed under those regulations and, in particular, may shorten the period within which an appeal against such a

decision or action may be brought or may provide that an appeal board appointed for the purpose of hearing such an appeal shall be of a composition different to that otherwise provided for under Part IX;

- (d) may confer on the Director the power to enter and inspect any place or premises for the purpose of giving effect to the object specified in that subsection;
- (e) may provide for the establishment by the Director of codes of practice for the purpose of providing practical guidance in respect of any of the requirements under such a regulation, and for the use of such codes in criminal proceedings;
- (f) if a contravention of such a Regulation is declared to constitute an offence, may in respect of such contravention specify a penalty of a fine not exceeding \$200,000 or a term of

imprisonment not exceeding 12 months or both such fine and imprisonment and, in the case of a continuing offence, a daily penalty not exceeding \$10,000.”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Electricity Ordinance (Cap. 406) (“the Ordinance”) to make provision for measures designed to ensure that persons performing activities in the vicinity of electricity supply lines owned by electricity suppliers do so without prejudice to safety or to the continuity of the electricity supply.

2. The opportunity is taken to clarify the definition of “supply” in section 2 of the Ordinance as applying to the supply of an electrical product only.

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ELECTRICITY SUPPLY LINES (PROTECTION) REGULATION

(Made by the Chief Executive in Council under section 59(1)
of the Electricity Ordinance (Cap. 406))

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 owned by an electricity supplier and 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 owned by an electricity supplier and 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, footpath, tunnel, airport runway, canal, reservoir, pipeline, railway or tramway;
 - (iii) trench works, including 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 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 or 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) he 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, given 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 a competent person

(1) The Director may, on 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; or
- (b) has failed to perform his work as a competent person in good faith and with all due diligence.

(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 carrying out 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 THE VICINITY OF ELECTRICITY SUPPLY LINES

10. Requirements relating to works in the 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 or 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 been engaged to ascertain the existence within the proposed works site or its vicinity of any underground electricity cable and its alignment and depth and has provided a written report as to his findings.

(4) A competent person who is engaged by another person to ascertain the existence, alignment or depth of an underground electricity cable -

- (a) shall do so in a manner that does not cause damage to, or impair the operation of, the underground electricity cable; and
- (b) shall provide the other person with a written report as to his findings in relation to those matters.

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 that contravention or, as the case may be, the matter occasioning it within such period as is specified in that 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.

12. Failure to comply with a 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 issues a prohibition 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 at 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 underground electricity cable or overhead electricity 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 underground electricity cable or overhead electricity 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 issued 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.

CODES OF PRACTICE

15. Approval of code of practice by Director

(1) For the purposes of providing practical guidance in respect of any requirements 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 modification, 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) Except as provided in this section, 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 interruption to the electricity supply, 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 a daily penalty of \$10,000.

(5) A person who, without reasonable excuse, fails to comply with any direction or instruction 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 a daily penalty of \$10,000.

(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 work 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. Defences

(1) Where a code of practice is approved for the requirements of section 10(1) (a) or (b), it shall be a defence to a charge under section 17(3) alleging a contravention of that paragraph for the person charged to show that he has complied with the provisions of that code.

(2) 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 were taken for the purposes of section 10(1); and
- (b) having regard to information so obtained, all reasonable measures were taken for the purposes of section 10(2),

and where a code of practice is approved for the requirements of section 10(1) or (2) as that subsection applies to the particular case, compliance with the provisions of that code shall be deemed to constitute the taking of all reasonable steps for the purposes of paragraph (a) or the taking of all reasonable measures for the purposes of paragraph (b), as the case may be.

SCHEDULE

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

FEES

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(1) of the Electricity Ordinance (Cap. 406) (“the principal Ordinance”) as amended by the Electricity (Amendment) Ordinance 1999 (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 electricity supply.

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 (“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 (subsection (1)). In the case of an underground electricity cable, those reasonable steps include the engaging of a competent person to ascertain those matters (subsection (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 electricity supply (subsection (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 that 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. Section 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 a defence to charges alleging a contravention of section 10(1) or (2) where the defendant can show that he has complied with the relevant code of practice.

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

An Ordinance to repeal and replace the Electricity Supply Ordinance, to provide for the registration of electrical workers, contractors and generating facilities, to provide safety requirements for electricity supply, electrical wiring and products, and to provide powers for electricity suppliers and the Government respecting electrical accidents and enforcement of this Ordinance.

(Enacted 1990)

[Sections 2, 4 to 7, 9 to 13, 14(1) and (2), 15(1), 16, 17, 18, 20, 30, 42, 43, 44(1)(a), (b), (c), (f) and (g), (2) and (3), 45 to 52, 55(1), (3), (4), (5), and (6) and 56 to 62	}	2 November 1990 (L.N. 342 of 1990)
Section 33		:16 November 1991 (L.N. 410 of 1991)
Sections 3, 8, 14(3) & (4), 15(2), 19, 31, 32, 34, 35, 44(1)(d) and (e), 53, 54, and 55(2)	}	:1 June 1992 (L.N. 98 of 1992)
Sections 21 to 23 and 36 to 41		:8 January 1993 (L.N. 392 of 1992)
Sections 24 to 28 and 29(1)(a), (2) and (3)	}	:23 March 1995] (L.N. 103 of 1995) (Originally 16 of 1990)

In this Ordinance, unless the context otherwise requires-

“accessory” (附件) means a device, other than current-using equipment, associated with current-using equipment or with the wiring of an electrical installation;

“current-using equipment” (用電器具) means electrical equipment that, during normal use, converts electrical energy into another form of energy such as light, heat, sound or motive power;

“Director” (署長) means the Director of Electrical and Mechanical Services;

“electrical accident” (電力意外) means an incident involving electricity that causes a fire or explosion or that causes death or injury to a person;

“electrical equipment” (電力器具) means machines, transformers, apparatus, appliances, measuring instruments, protective devices, wiring material, accessories, fittings and similar things, used for generation, conversion, transmission, distribution, control, measurement or utilization of electrical energy;

“electrical installation” (電力裝置) means an assembly of associated electrical equipment;

“electrical product” (電氣產品) means any current-using equipment, lighting fitting or accessory, that

- uses low voltage or high voltage electricity;
- “electrical work” (電力工程) (電力工作) means work in relation to the installation, commissioning, inspection, testing, maintenance, modification or repair of a low voltage or high voltage fixed electrical installation and includes the supervision and certification of that work and the certification of design of that installation;
- “electricity supplier” (供電商) means a person who generates, supplies and sells electricity at low or high voltage for use in an electrical installation;
- “energized part” (帶電部分) means that part of an electrical installation that is energized at low voltage or high voltage;
- “extra low voltage” (特低壓) means voltage normally not exceeding-
- (a) 50V root mean square alternating current; or
 - (b) 120V direct current, between conductors or between a conductor and earth;
- “fixed electrical installation” (固定電力裝置) means a low or high voltage electrical installation that is fixed to premises but does not include any electrical equipment that is supplied with electricity after passing through a socket of the installation at which the supply can be disconnected without the use of a tool;
- “generating facility” (發電設施) means an electrical installation used to produce electricity at low voltage or high voltage;
- “high voltage” (高壓) means voltage normally exceeding low voltage;
- “low voltage” (低壓) means voltage normally exceeding extra low voltage but normally not exceeding-
- (a) between conductors, 1000V root mean square alternating current or 1500V direct current; or
 - (b) between a conductor and earth, 600V root mean square alternating current or 900V direct current;
- “owner” (擁有人) of an electrical installation or generating facility includes-
- (a) a person who is in possession or control of an electrical installation; and
 - (b) a person who holds premises in which an electrical installation is located, whether the premises are held under lease, licence or otherwise and includes an agent of that person and a tenant or occupier of premises;
- “registered electrical contractor” (註冊電業承辦商) means an electrical contractor registered under section 33;
- “registered electrical worker” (註冊電業工程人員) means an electrical worker registered under section 30;
- “supply” (供應) means-
- (a) to sell or hire out;
 - (b) to offer, keep, or exhibit for sale or for hiring out;
 - (c) to exchange or dispose of for any consideration;
 - (d) to transmit, convey or deliver in pursuance of-
 - (i) a sale;
 - (ii) a hiring out; or
 - (iii) an exchange or disposal for any consideration; or
 - (e) for commercial purposes, to give an electrical product as a prize or to make a gift of such a product; (Added 12 of 1997 s. 2)
- “wiring installation” (線路裝置) means that part of a fixed electrical installation that is used for the distribution and control of electricity, including fittings, accessories, devices and switches but excluding current-using equipment.

(Enacted 1990)

(1) The Governor in Council may make regulations for the general purposes of this Ordinance including regulations for all or any of the following matters-

- (a) the procedures, qualifications and requirements for registration and renewal of registration of electrical workers, electrical contractors and generating facilities;
- (b) the grading of electrical work for registration of electrical workers;
- (c) additional or alternative qualifications for registration of electrical workers for each grade or type of electrical work as may be specified, considered equivalent, set or approved by the Director;
- (d) regulating the voltage and frequency of alternating current supply and their limits of variation as supplied to the main incoming terminals of an owner's electrical installation;
- (e) requiring, in specified circumstances, fixed electrical installations to be tested and certified before being energized;
- (f) requiring specified types of fixed electrical installations in specified types of premises or fixed electrical installations used for specified purposes to be periodically tested and certified and authorizing the Director to require particular premises specified by him by notice in the Gazette to have their fixed electrical installations periodically tested and certified;
- (g) requirements for the design, construction, installation, wiring and protection of fixed electrical installations;
- (h) regulating an electricity supplier's installation and maintenance of its electric overhead lines and supports, cables, transformers, switchgear, control gear and other prescribed electrical equipment;
- (i) the methods by which an electricity supplier shall maintain a safe and efficient supply of electricity;
- (j) specifying additional circumstances in which or the type of fixed electrical installations in respect of which the Director may make an exemption order under section 9;
- (k) safety requirements for different classes of electrical products;
- (l) limiting the application of the regulations to specified classes of electrical products;
- (m) certification of safety compliance of electrical products;
- (n) requiring all or specified classes of electrical product sellers or seller's agents to notify purchasers about hazardous defects in the product and requiring those sellers or seller's agents to accept a return of the product and refund the purchase price of the product;
- (o) adoption by reference into the regulations of codes or standards as they may be amended from time to time relating to electrical installations or electrical products; and
- (p) the procedures to be followed with respect to proceedings of the disciplinary tribunal and the appeal board.

(2) The Governor in Council may make regulations under subsection (1)(d) to (i) for an area of Hong Kong that the Director of Housing may, by notice in the Gazette, designate as a special area for the purpose of this subsection.

(3) Where a code or standard is adopted by reference under subsection (1)(o) the Director shall publish a notice in the Gazette specifying where copies of the code or standard can be obtained.

(4) Subject to subsection (5), regulations under this section may provide for a penalty not exceeding those set out in section 56(9) for a contravention of a regulation. (Amended 12 of 1997 s. 11)

(5) Where a penalty is imposed for a contravention of the Electrical Products (Safety) Regulation

(Cap 406 sub. leg.), the penalty may not exceed those set out in section 56A. (Added 12 of 1997 s. 11)

(6) Subject to subsection (7), the Secretary for Economic Services may by order in the Gazette amend any provision contained in Schedules to regulations made under this Ordinance. (Added 12 of 1997 s. 11)

(7) The power to amend provisions contained in Schedules to regulations made under this Ordinance shall not include a power to impose a fee or charge nor a power to increase or decrease or otherwise vary or repeal any fee or charge specified or referred to in any provision contained in those Schedules. (Added 12 of 1997 s. 11)

(Enacted 1990)
