

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2699/09-10  
(These minutes have been seen  
by the administration)

Ref : CB1/BC/2/09/2

**Bills Committee on Buildings Energy Efficiency Bill**

**Minutes of twelfth meeting**  
**held on Wednesday, 7 July 2010, at 8:30 am**  
**in Conference Room B of the Legislative Council Building**

**Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon LEE Wing-tat  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon KAM Nai-wai, MH  
Hon Cyd HO Sau-lan  
Hon CHAN Hak-kan  
Hon IP Kwok-him, GBS, JP  
Hon Tanya CHAN

**Members absent** : Hon Vincent FANG Kang, SBS, JP

**Public officers attending** : Environment Bureau  
Miss Katharine CHOI  
Principal Assistant Secretary for the Environment  
(Energy)  
Mr Philip HAR  
Assistant Secretary for the Environment (Energy)  
Electrical and Mechanical Services Department  
Mr LI Kwok-keung  
Acting Assistant Director/Electricity and Energy  
Efficiency

Mr MAK Ka-chun  
Chief Engineer/Energy Efficiency B

Department of Justice

Mr Gilbert MO  
Deputy Law Draftsman  
(Bilingual Drafting & Administration)

Miss Mandy NG  
Government Counsel

**Clerk in attendance** : Miss Becky YU  
Chief Council Secretary (1)1

**Staff in attendance** : Miss Kitty CHENG  
Assistant Legal Adviser 5

Mr Franco KWONG  
Council Secretary (1)1

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**I. Confirmation of minutes**

(LC Paper No. CB(1) 2442/09-10 — Minutes of the meeting held on  
4 June 2010)

The minutes of the meeting held on 4 June 2010 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(1) 2245/09-10(03) — Assistant Legal Adviser's letter  
dated 10 June 2010 to the  
Administration

LC Paper No. CB(1) 2444/09-10(01) — Administration's response to  
CB(1) 2245/09-10(03)

LC Paper No. CB(1) 2444/09-10(02) — List of follow-up actions arising  
from the discussion at the  
meeting on 15 June 2010

LC Paper No. CB(1) 2444/09-10(03) — Administration's response to  
CB(1) 2444/09-10(02))

Relevant papers

(LC Paper No. CB(3) 233/09-10 — The Bill

Ref: ENB 24/26/22 — The Legislative Council Brief  
(issued by Environment Bureau on  
2 December 2009)

LC Paper No. CB(1) 1353/09-10(03) — Assistant Legal Adviser's letter  
(issued for meeting on dated 2 March 2010 to the  
11 March 2010) Administration  
LC Paper No. CB(1) 1364/09-10(01) — Administration's response to  
CB(1) 1353/09-10(03)  
LC Paper No. CB(1) 1492/09-10(03) — Assistant Legal Adviser's letter  
dated 19 March 2010 to the  
Administration  
LC Paper No. CB(1) 1511/09-10(01) — Administration's response to  
CB(1) 1492/09-10(03) (clauses 2  
to 15 only)  
LC Paper No. CB(1) 1799/09-10(01) — Administration's response to  
CB(1) 1492/09-10(03)  
(paragraphs 25 to 49 only)  
LC Paper No. CB(1) 1799/09-10(02) — Assistant Legal Adviser's letter  
dated 3 May 2010 to the  
Administration  
LC Paper No. CB(1) 2048/09-10(02) — Administration's response to  
CB(1) 1799/09-10(02))

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).
3. The Administration was requested to -
  - (a) re-consider including the element of "reasonable suspicion" before authorized officers might exercise the powers under clause 29(1);
  - (b) review the term "residential unit" in clause 29(1)(a) and consider replacing the phrase with "a unit in a residential building". To also advise whether the powers under clause 29(1)(a) applied to old composite buildings, Harmony House and street sleeper shelters;
  - (c) review clause 29(1)(c) since a responsible person might have difficulty in providing the requisite documents;
  - (d) include in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate on the Bill that when appointing members to the Buildings Energy Efficiency Appeal Board Panel, the Administration would observe the "6-6 Policy" and the gender mainstreaming as far as practicable;
  - (e) state it clear in the proposed Committee Stage amendments to clause 35 that the appeal being heard should not continue if more than two "original" members of an Appeal Board had resigned or their

membership were terminated;

- (f) provide examples of existing legislation, under both the Environment Bureau and other bureaux, where the procedures of the proceedings of appeal board were/were not set out in of subsidiary legislation;
- (g) advise the coverage of "costs of the appeal proceedings" in clause 39(2)(a) (e.g. costs or expenses for the use of the venue, witnesses/parties' expenses or loss of income). To also advise whether "costs" in clause 39 referred to only legal costs;
- (h) consider expressly providing in clause 40(4) the need for consultation with the two Task Forces before the code of practice was made or revised;
- (i) advise whether appeals under Part 8 of the Bill fell within the meaning of "legal proceedings" under clause 41;
- (j) provide examples of existing legislation where codes of practice were admissible in evidence in legal proceedings as provided in clause 41;
- (k) review clause 41(2) to allow greater flexibility to enable admissibility of the soft copy of the code of practice in evidence; and
- (l) review the propriety of using the negative vetting procedures for amendments to Schedules under clause 43.

### **III. Any other business**

4. There being no other business, the meeting ended at 10:30 am.

**Bills Committee on  
Buildings Energy Efficiency Bill**

**Proceedings of the twelfth meeting  
on Wednesday, 7 July 2010, at 8:30 am  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000001 - 000220	Chairman	The minutes of the meeting held on 4 June 2010 (LC Paper No. CB(1) 2442/09-10) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000221 - 005130	Chairman Administration Ir Dr Raymond HO Mr IP Kwok-him Miss Tanya CHAN Prof Patrick LAU	<p>Administration's explanation on its response to members' concerns raised at the meeting on 15 June 2010 (LC Paper No. CB(1) 2444/09-10(03)).</p> <p>Chairman, Ir Dr Raymond HO and Prof Patrick LAU's concerns about the excessive power of authorized officers, and the circumstances under which authorized officers would exercise their power under clause 29.</p> <p>Administration's response -</p> <p>(a) clause 29 only empowered authorized officers to enter a non-residential unit for the purpose of ascertaining whether the Ordinance, if enacted, had been or was being complied with;</p> <p>(b) inspections would be conducted on a random basis or upon receipt of complaints/reports, given that it would be difficult to gather evidence of non-compliance with the relevant provisions merely by making observation outside the premises or making simple enquiries;</p> <p>(c) similar empowering provisions were also found in the Energy Efficiency (Labelling of Products) Ordinance</p>	<p>The Administration to -</p> <p>(a) re-consider including the element of "reasonable suspicion" before authorized officers might exercise the powers under clause 29(1); and</p> <p>(b) review clause 29(1)(c) since a responsible person might have difficulty in providing the requisite documents.</p>

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		<p>(Cap. 598) (EELPO);</p> <p>(d) to ensure reasonableness in exercising the power under clause 29, amendment to clause 29 would be made so that authorized officers would only enter any part of a prescribed building that was not a residential unit during reasonable hours; and</p> <p>(e) a "notice system" modeling on the Electricity Ordinance (Cap. 406) would also be incorporated into clause 29 such that a two-week notice would be given before the owner or responsible person of a unit would be obliged to let an authorized officer enter into the premises for inspection.</p> <p>Miss Tanya CHAN and Prof Patrick LAU's views/enquiries -</p> <p>(a) the need for random inspections when Registered Energy Assessors (REAs) were required to certify the declaration for Certificate of Compliance Registration, and to issue the Form of Compliance for major retrofitting works;</p> <p>(b) other means, such as regular inspection, should be taken to replace random inspections which should only be carried out when there was a sudden surge in electricity consumption of buildings; and</p> <p>(c) whether a responsible person could apply for extending the two-week notice period for reasons such as out of town.</p> <p>Administration's response -</p> <p>(a) there might be circumstances where REAs were not engaged for major retrofitting works. Hence, random</p>	

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		<p>inspections were required to ascertain compliance with the Ordinance, if enacted; and</p> <p>(b) consideration would be given to including an extension mechanism under the proposed “notice system”.</p> <p>Chairman's view that there was a need to review clause 29(1)(c) since a responsible person might have difficulty in providing the requisite documents.</p>	
005131 - 010845	<p>Chairman ALA5 Administration Miss Tanya CHAN Ms Cyd HO</p>	<p>Discussion on the definitions of "residential use/building/unit" (LC Paper No. CB(1)2444/09-10(01)).</p> <p>Miss Tanya CHAN, Ms Cyd HO and ALA5's views/concerns on the term “residential unit” in clause 29(1)(a) -</p> <p>(a) "residential unit" was not defined while "residential building" was specifically defined in clause 2; and</p> <p>(b) whether "residential unit" covered student hostels, staff quarters, hotels/guesthouses, old composite buildings, Harmony House and street sleeper shelters, and whether they would be subject to the powers of entry and inspection under clause 29.</p> <p>Administration's response -</p> <p>(a) "residential unit" referred to a unit in a prescribed building which was used for residential purpose. There was a wealth of judicial precedents on the meaning of cognate expressions such as "resides", "residence" and "resident" that offered assistance to the Court. Besides, the term "unit" was already defined in clause 2. As such, it was not necessary to specifically define "residential unit";</p>	<p>The Administration to -</p> <p>(a) review the term "residential unit" in clause 29(1)(a) and consider replacing the phrase with "a unit in a residential building"; and</p> <p>(b) advise whether the powers under clause 29(1)(a) applied to old composite buildings, Harmony House and street sleeper shelters.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(b) as the policy intent was to protect individual's privacy, student hostels and staff quarters would be regarded as "residential unit" while hotels/guesthouses would not; and</p> <p>(c) Harmony House and street sleeper shelters should not be regarded as hotel and guesthouses as normally they should not be registered under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349).</p>	
010846 - 011835	<p>Chairman Administration Prof Patrick LAU ALA5 Ms Cyd HO</p>	<p>Discussions on the composition and proceedings of appeal board.</p> <p>Chairman, Prof Patrick LAU and Ms Cyd HO's views/enquiries -</p> <p>(a) efforts should be made to increase the number of female members in the appeal board panel in line with the gender mainstreaming;</p> <p>(b) should make it clear in clause 35 that the appeal being heard should not continue if more than two "original" members of an appeal board had resigned or their membership were terminated; and</p> <p>(c) whether the procedures of the proceedings of appeal board would be set out in subsidiary legislation.</p> <p>Administration's response -</p> <p>(a) there might be difficulty in appointing sufficient number of female members to the appeal board panel given the limited female engineers in the field; and</p> <p>(b) the procedures of the proceedings of appeal board had been set out in the Bill similar to EELPO so that subsidiary legislation was not required.</p>	<p>The Administration to -</p> <p>(a) include in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate on the Bill that when appointing members to the Buildings Energy Efficiency Appeal Board Panel, the Administration would observe the "6-6 Policy" and the gender mainstreaming as far as practicable;</p> <p>(b) state it clear in the proposed Committee Stage amendments to clause 35 that the appeal being heard should not continue if more than two "original" members of an Appeal Board had resigned or their membership were</p>



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			<p>terminated; and</p> <p>(c) provide examples of existing legislation, under both the Environment Bureau and other bureaux, where the procedures of the proceedings of appeal board were/were not set out in of subsidiary legislation.</p>
011836 - 012120	Chairman ALA5 Administration	Discussion on the definitions of "industrial and commercial building/portion/use".	
012121 - 012238	Chairman Administration	<p>Continuation of clause-by-clause examination</p> <p>Clause 38 - Appeal board may authorize inspection of building services installation</p>	
012239 - 013200	Ms Cyd HO Chairman Administration Prof Patrick LAU ALA5	<p>Clause 39 - Determination of appeal (LC Paper No. CB(1) 1799/09-10(01))</p> <p>Chairman's enquiry on the coverage of "costs of the appeal proceedings" in clause 39(2)(a).</p> <p>Administration's response that the costs might include the legal cost in respect of the appeal.</p>	<p>The Administration to -</p> <p>(a) advise the coverage of "costs of the appeal proceedings" in clause 39(2)(a) e.g. costs or expenses for the use of the venue, witnesses/parties' expenses or loss of income; and</p> <p>(b) advise whether "costs" in clause 39 referred to only legal costs.</p>

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013201 - 013845	Chairman Administration Prof Patrick LAU ALA5	<p>Clause 40 - Code of practice</p> <p>Chairman and Prof Patrick LAU's view that consultation should be conducted before the code of practice was made or revised.</p> <p>Administration's response that the draft code of practice was prepared with reference to the Building Energy Code (2007 Edition) under the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings together with suitable modifications taking into account the views and suggestions from the Technical Task Force and Trade Task Force.</p> <p>Chairman and Prof Patrick LAU's view that there should be express provision in clause 40(4) requiring consultation with the two Task Forces before the code of practice was made or revised.</p>	<p>The Administration to consider expressly providing in clause 40(4) the need for consultation with the two Task Forces before the code of practice was made or revised.</p>
013846 - 015715	Chairman Administration Prof Patrick LAU Ms Cyd HO	<p>Clause 41 - Admissibility of code of practice in evidence</p> <p>Chairman, Professor Patrick LAU and Ms Cyd Ho's enquiries -</p> <p>(a) whether appeals under Part 8 of the Bill fell within the meaning of "legal proceedings". If so, there might be a need to include the appeal board in clause 41;</p> <p>(b) rationale for the code of practice to be admissible in evidence in legal proceedings;</p> <p>(c) the party which had the authority to interpret the code of practice; and</p> <p>(d) the requirement for a Government Printer's physical copy or hard copy of an issue of the Gazette would limit the admissibility of the soft copy of the code of practice in evidence.</p>	<p>The Administration to -</p> <p>(a) advise whether appeals under Part 8 of the Bill fell within the meaning of "legal proceedings" under clause 41;</p> <p>(b) provide examples of existing legislation where codes of practice were admissible in evidence in legal proceedings as provided in clause 41; and</p> <p>(c) review clause 41(2) to allow greater flexibility to enable admissibility of</p>

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		<p>Administration's response -</p> <p>(a) "legal proceedings" should cover the appeals before the appeal board;</p> <p>(b) clause 41 was modelled on the similar provision under EELPO; and</p> <p>(c) EMSD was responsible for issuing the code of practice, which only contained building energy efficiency standards and requirements for building services installations.</p>	<p>the soft copy of the code of practice in evidence.</p>
015716 - 015935	<p>Chairman Administration Prof Patrick LAU</p>	<p>Clause 42 - Secretary may make regulations</p> <p>The Bills Committee raised no objection to the use of negative vetting procedure for regulations to be made under clause 42.</p>	
015936 - 020140	<p>Chairman Administration Ms Cyd HO</p>	<p>Clause 43 - Secretary may amend schedule</p> <p>Chairman and Ms Cyd HO's concerns about the propriety of using the negative vetting procedures for amendments to Schedules.</p>	<p>The Administration to review the propriety of using the negative vetting procedures for amendments to Schedules under clause 43.</p>
020141 - 020200	<p>Chairman</p>	<p>Date of next meeting.</p>	