

## LEGISLATIVE COUNCIL BRIEF

### Buildings Energy Efficiency Ordinance (Cap. 610)

### **Buildings Energy Efficiency (Fees) Regulation** **Buildings Energy Efficiency (Registered Energy Assessors) Regulation**

## INTRODUCTION

By virtue of section 42 of the Buildings Energy Efficiency Ordinance (“the Ordinance”), the Secretary for the Environment (“the Secretary”) has made the Buildings Energy Efficiency (Fees) Regulation (“**the Fees Regulation**”) and the Buildings Energy Efficiency (Registered Energy Assessors) Regulation (“**the REA Regulation**”) (at **Annex**) on 18 January 2011.

Annex

## JUSTIFICATIONS

2. The Ordinance was enacted on 24 November 2010 and would come into operation in two phases<sup>1</sup>. It seeks to mandate the compliance with codes of practice (“COPs”) promulgated by the Electrical and Mechanical Services Department (“EMSD”) concerning the energy efficiency of four types of building services installations and energy audits. Those installations are air-conditioning, electrical, lift and escalator and lighting installations.

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<sup>1</sup> The Ordinance will commence operation in two phases. A commencement notice has been published in the Gazette to commence operation of the Ordinance (except Parts 2 to 6) on 21 February 2011. This would contain essential provisions for the Secretary for the Environment to make subsidiary legislation and provide for other procedural matters. After the commencement of the REA Regulation, an 18-month period will be allowed for eligible persons to be registered as REAs. Another commencement notice will be published in the Gazette to commence operation of Parts 2 to 6, which contain the regulatory regime of the Ordinance, after that 18-month period.

3. The Ordinance specifies that certain duties must be performed by Registered Energy Assessors (“REAs”). Upon the full implementation of the Ordinance, REAs are required –

- (a) to certify the declarations by building developers before submission to the Director of Electrical and Mechanical Services (“DEMS”) that suitable design provisions have been incorporated into the planning and design of the buildings in accordance with the COPs;
- (b) to inspect the relevant building services installations involved in major retrofitting works and, if satisfied that the installations comply with the COPs, issue Forms of Compliance to responsible persons or owners of the premises concerned; and
- (c) to carry out energy audits for owners of commercial buildings and commercial portion of composite buildings in respect of the central building service installations once every ten years.

4. The REA Regulation contains the detailed provisions concerning the registration and regulation of, and disciplinary matters in respect of, REAs. A Register of REAs (“the Register”) will be made available to the public for inspection for free.

5. Both the Ordinance and the REA Regulation specify that fees should be payable under certain circumstances, including when developers submit stage two declarations to DEMS or eligible persons apply for registration as an REA. The Fees Regulation is made to specify the relevant fees.

## **THE REGULATIONS**

6. The major provisions of the **Fees Regulation** are outlined below –

- (a) **Sections 1 to 3** are preliminary provisions which provide for, among other things, the commencement of the Fees Regulation; and

- (b) **Part 1 of the Schedule** stipulates the fees payable under the Buildings Energy Efficiency Ordinance, while **Part 2 of the Schedule** stipulates the fees payable under the REA Regulation.
7. The major provisions of the **REA Regulation** are outlined below –
- (a) **Part 1 contains** preliminary provisions which provide for the commencement of the REA Regulation and the definition of words and expressions under the Regulation;
  - (b) **Section 3** sets out the information that must be contained in the Register for the purposes of section 31(2) of the Ordinance;
  - (c) **Sections 4 to 9** set out the procedures for the registration of REAs, the renewal of registration and the removal of names from the Register;
  - (d) **Section 10** provides for the issue of duplicate of certificate of registration. **Sections 11 to 12** provide for certain duties of registered energy assessors;
  - (e) **Section 13** provides for the commencement of disciplinary proceedings; and
  - (f) **Sections 14 to 19** provide for the procedures for conducting disciplinary proceedings and orders that may be made by the Director or the disciplinary board against an REA.

## **LEGISLATIVE TIMETABLE**

8. The legislative timetable for both regulations is as follows –
- |                                    |                 |
|------------------------------------|-----------------|
| Publication in the Gazette         | 21 January 2011 |
| Tabling at the Legislative Council | 26 January 2011 |
| Commencement                       | 21 March 2011   |

## **IMPLICATIONS OF THE PROPOSAL**

9. The two Regulations have no economic, productivity, environmental or sustainability implications. They do not affect the binding effect of the Ordinance. They are also in conformity with the Basic Law, including the provisions concerning human rights.

10. The fees prescribed in the Fees Regulation are to be levied on a cost recovery basis and the revenue is estimated to be about \$0.8 million for 2011-12, \$1 million for 2012-13 and \$0.75 million per annum thereafter. The implementation of the two Regulations is part and parcel of that for the Ordinance. Additional manpower has been provided to EMSD to prepare for the mandatory implementation of Building Energy Codes. If required, EMSD would seek additional resources for enforcement of the Regulations in accordance with the established resources allocation mechanism.

## **PUBLIC CONSULTATION**

11. The Ordinance was thoroughly scrutinized by the Bills Committee, which raised no objections to section 42 of the Ordinance under which the Secretary is empowered to make regulations. The Bills Committee also noted that, after the enactment of the Ordinance, the Administration would proceed with the following –

- (a) to submit the subsidiary legislation on the prescribed fees of the Ordinance and registration of REAs to the Legislative Council for negative vetting; and
- (b) after the enactment of the subsidiary legislation, to allow a 18-month period for registration by REAs, before the relevant requirements under the Ordinance come into effect.

## **PUBLICITY**

12. A spokesman will be made available to answer enquiries.

## **ENQUIRY**

13. For any enquiries relating to this Brief, please contact Miss Katharine Choi, Principal Assistant Secretary for the Environment (Energy) at 2594 6728.

**Environment Bureau**  
**19 January 2011**

## Buildings Energy Efficiency (Fees) Regulation

(Made by the Secretary for the Environment under section 42 of the Buildings Energy Efficiency Ordinance (18 of 2010))

### 1. Commencement

This Regulation comes into operation on 21 March 2011.

### 2. Interpretation

In this Regulation—

*Registered Energy Assessors Regulation* (《註冊能源效益評核人規例》) means any regulation that may be made from time to time under section 42 of the Ordinance providing for, amongst other things, the registration and regulation of, and disciplinary matters in respect of, registered energy assessors.

### 3. Prescribed fees

The fee to be paid in respect of a matter set out in column 2 of the Schedule is the fee specified in column 3 of the Schedule opposite the matter.

## Schedule

[s. 3]

### Table of Fees

#### Part 1

#### Fees payable under Buildings Energy Efficiency Ordinance

Item	Matter	Fee
1.	Submission of a stage two declaration under section 9 of the Ordinance	\$760
2.	Application for the renewal of a Certificate of Compliance Registration under section 13 of the Ordinance	\$760
3.	Application for a duplicate of a Certificate of Compliance Registration under section 14 of the Ordinance	\$155
4.	Application for a duplicate of a copy of a Form of Compliance under section 19 of the Ordinance	\$155
5.	Application for a duplicate of a copy of an Energy Audit Form under section 24 of the Ordinance	\$155

#### Part 2

#### Fees payable under Registered Energy Assessors Regulation

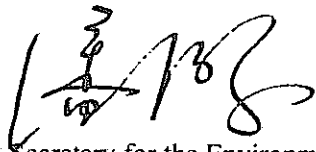
Item	Matter	Fee
1.	Application for registration as a registered energy assessor under the Registered Energy Assessors Regulation	\$2,100

Buildings Energy Efficiency (Fees) Regulation

Schedule  
Part 2

3

Item	Matter	Fee
2.	Application for the renewal of the registration of a registered energy assessor under the Registered Energy Assessors Regulation	\$1,100
3.	Application for a duplicate of the certificate of registration for a registered energy assessor under the Registered Energy Assessors Regulation	\$155

  
Acting Secretary for the Environment

18 Jan. 2011

Buildings Energy Efficiency (Fees) Regulation

Explanatory Note  
Paragraph 1

4

**Explanatory Note**

The object of this Regulation is to prescribe the fees payable under the Buildings Energy Efficiency Ordinance (18 of 2010) (*Ordinance*) and regulations made under section 42 of the Ordinance.

**Buildings Energy Efficiency (Registered Energy Assessors) Regulation**

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## Buildings Energy Efficiency (Registered Energy Assessors) Regulation

(Made by the Secretary for the Environment under section 42 of the Buildings Energy Efficiency Ordinance (18 of 2010))

### Part 1

#### Preliminary

1. **Commencement**

This Regulation comes into operation on 21 March 2011.

2. **Interpretation**

In this Regulation—

*correspondence address* (通訊地址), in relation to a registered energy assessor, means the address provided in the latest of the following—

- (a) an application form submitted under section 4 for the registration of the assessor;
- (b) an application form submitted under section 6 for the renewal of the registration of the assessor;
- (c) an application form submitted under section 8 for the registration of the assessor;
- (d) a notice given by the assessor under section 11;

*disciplinary board* (紀律委員會) means a disciplinary board appointed under section 16;

*submitted qualification* (已呈報資格), in relation to a registered energy assessor registered by virtue of section 5(2), means the qualification provided in the latest of the following—

- (a) an application form submitted under section 4 for the registration of the assessor;
- (b) an application form submitted under section 6 for the renewal of the registration of the assessor.

## Part 2

### Registration

#### 3. Register of Registered Energy Assessors

The Register of Registered Energy Assessors must contain in respect of every registered energy assessor—

- (a) the name of the assessor;
- (b) the registration number of the assessor;
- (c) the expiry date of the registration of the assessor; and
- (d) any other details as the Director thinks fit.

#### 4. Application for registration

- (1) A person who wishes to be registered as a registered energy assessor may make an application to the Director.
- (2) The application must—
  - (a) be in the specified form; and
  - (b) be accompanied by the prescribed fee and the documents specified in the form.
- (3) The Director may require the applicant to furnish any further information, or produce any additional document, that the Director considers reasonably necessary for the purposes of determining the application.

#### 5. Determination of application

- (1) The Director may allow an application under section 4 if the Director is satisfied that—
  - (a) the applicant—
    - (i) is a registered professional engineer within the meaning of section 2(1) of the Engineers Registration Ordinance (Cap. 409) and is registered

- in the electrical, mechanical, environmental or building services discipline under that Ordinance;
    - (ii) has had at least 2 years practical experience in engineering works relating to energy efficiency in buildings acquired while being so registered;
    - (iii) has the knowledge required for the performance of the duties and functions of a registered energy assessor under the Ordinance; and
    - (iv) is a fit and proper person to be registered; or
  - (b) the applicant—
    - (i) is a corporate member of the Hong Kong Institution of Engineers in the electrical, mechanical, environmental or building services discipline, or has an equivalent qualification recognized by the Institution as being of a standard not lower than that of a corporate member of the Institution in any of those disciplines;
    - (ii) has had at least 3 years practical experience in engineering works relating to energy efficiency in buildings acquired while being such a member;
    - (iii) has the knowledge required for the performance of the duties and functions of a registered energy assessor under the Ordinance; and
    - (iv) is a fit and proper person to be registered.
- (2) The Director may also allow the application if the Director is satisfied that—
  - (a) the applicant's knowledge, qualification, education, experience and training, if considered as a whole—
    - (i) are comparable to those matters set out in subsection (1)(a) or (b); and

- (ii) enable the applicant to perform the duties and functions of a registered energy assessor under the Ordinance; and
  - (b) the applicant is a fit and proper person to be registered.
- (3) In determining whether the applicant is a fit and proper person to be registered for the purposes of subsection (1)(a)(iv) or (b)(iv) or (2)(b), the Director may take into account—
  - (a) whether the applicant has been—
    - (i) convicted in Hong Kong or elsewhere of any offence which, if committed by a registered energy assessor, may bring the profession of registered energy assessor into disrepute; and
    - (ii) sentenced to imprisonment, whether suspended or not; and
  - (b) whether the applicant has committed any misconduct or neglect in a professional respect.
- (4) If the Director allows the application, the Director must register the applicant under section 30 of the Ordinance by—
  - (a) entering in the Register of Registered Energy Assessors the details specified in section 3 in respect of the applicant; and
  - (b) issuing a certificate of registration to the applicant.
- (5) Subject to section 9, the registration is valid for a period of 10 years beginning on the date on which the certificate of registration is issued.
- (6) If the Director refuses the application, the Director must notify the applicant in writing of the refusal and give reasons for the decision.

#### 6. Renewal of registration

- (1) A registered energy assessor may make an application to the Director for the renewal of the registration of the assessor.

- (2) The application must—
  - (a) be in the specified form; and
  - (b) be accompanied by the prescribed fee and the documents specified in the form.
- (3) The application must be submitted—
  - (a) at any time before the expiry of the current registration; or
  - (b) within the period of 28 days from the expiry of the current registration.
- (4) The Director may require the applicant to furnish any further information, or produce any additional document, that the Director considers reasonably necessary for the purposes of determining the application.
- (5) The Director may renew the registration of the applicant only if—
  - (a) where the registration sought to be renewed was granted by virtue of section 5(1)(a), the Director is satisfied that the applicant meets the criteria set out in that section;
  - (b) where the registration sought to be renewed was granted by virtue of section 5(1)(b), the Director is satisfied that the applicant meets the criteria set out in that section; or
  - (c) where the registration sought to be renewed was granted by virtue of section 5(2), the Director is satisfied that the applicant meets the criteria set out in that section.
- (6) If the Director allows the application, the Director must—
  - (a) amend the Register of Registered Energy Assessors to reflect the renewal; and
  - (b) issue a new certificate of registration to the applicant.
- (7) If the Director refuses the application, the Director must notify the applicant in writing of the refusal and give reasons for the decision.

**7. Validity of renewed registration**

- (1) Subject to section 9, a registration renewed under section 6 is valid—
  - (a) if the application for the renewal was submitted within the period of 4 months immediately before the expiry of the current registration, for the period beginning on the date on which a certificate under section 6(6)(b) is issued in respect of the application and ending on the 10<sup>th</sup> anniversary of the expiry date of the current registration;
  - (b) if the application for the renewal was submitted more than 4 months before the expiry of the current registration, for a period of 10 years beginning on the date on which a certificate under section 6(6)(b) is issued in respect of the application; or
  - (c) if the application for the renewal was submitted within the period specified in section 6(3)(b), for the period beginning on the date on which a certificate under section 6(6)(b) is issued in respect of the application and ending on the 10<sup>th</sup> anniversary of the expiry date of the current registration.
- (2) In this section—  
*current registration* (現有註冊), in relation to an application for the renewal of a registration under section 6, means the registration sought to be renewed.

**8. Registration of public officers**

- (1) A public officer may make an application to the Director for registration as a registered energy assessor under this section.
- (2) The application must be in the specified form.
- (3) The Director may require the public officer to furnish any further information, or produce any additional document, that the Director considers reasonably necessary for the purposes of determining the application.

- (4) The Director may allow the application only if the Director is satisfied that—
  - (a) the public officer is applying in the capacity of a public officer;
  - (b) the official duties of the public officer require the officer to perform the duties and functions of a registered energy assessor under the Ordinance; and
  - (c) the public officer is a fit and proper person to be registered.
- (5) In determining whether the public officer is a fit and proper person to be registered for the purposes of subsection (4)(c), the Director may take into account—
  - (a) whether the officer has been—
    - (i) convicted in Hong Kong or elsewhere of any offence which, if committed by a registered energy assessor, may bring the profession of registered energy assessor into disrepute; and
    - (ii) sentenced to imprisonment, whether suspended or not; and
  - (b) whether the officer has committed any misconduct or neglect in a professional respect.
- (6) If the Director allows the application, the Director must register the public officer under section 30 of the Ordinance by—
  - (a) entering in the Register of Registered Energy Assessors the details specified in section 3 in respect of the officer; and
  - (b) notifying the officer in writing of the registration.
- (7) The registration is valid for the period beginning on the date on which the notification under subsection (6)(b) is issued and ending on the date on which the public officer's name is

removed from the Register of Registered Energy Assessors under section 9.

- (8) If the Director refuses the application, the Director must notify the public officer in writing of the refusal and give reasons for the decision.

### 9. Removal from Register of Registered Energy Assessors

- (1) The Director may remove from the Register of Registered Energy Assessors the name of any person if—
- (a) the person has died;
  - (b) the person has requested to discontinue the person's registration;
  - (c) where the person is registered by virtue of section 5(1)(a), the person does not meet or no longer meets the criterion set out in section 5(1)(a)(i);
  - (d) where the person is registered by virtue of section 5(1)(b), the person does not meet or no longer meets the criterion set out in section 5(1)(b)(i);
  - (e) where the person is registered by virtue of section 5(2), the person does not hold or no longer holds a submitted qualification;
  - (f) where the person is registered under section 8, the person is no longer a public officer, or the official duties of the person no longer require the person to perform the duties and functions of a registered energy assessor under the Ordinance;
  - (g) the registration of the person has expired; or
  - (h) the disciplinary board has made an order under section 19(1)(a) for the removal of the person's name from the Register of Registered Energy Assessors.
- (2) If the Director intends to remove the name of any person under subsection (1)(b), (c), (d), (e), (f), (g) or (h), the Director must—

- (a) notify the person in writing of the intention and the ground for the removal by registered post addressed to the correspondence address of the person; and
  - (b) specify in the notice the date on which the name will be removed, which date must not be earlier than 28 days after the date of posting the notice.
- (3) If the Director gives notice to the person, the person (other than a person mentioned in subsection (1)(b) or (h)) may make representation to the Director before the date specified in the notice to show cause why the person's name should not be removed.
- (4) If, after considering the representation (if any), the Director is satisfied that—
- (a) in the case of a removal under subsection (1)(c), the person meets the criterion set out in section 5(1)(a)(i);
  - (b) in the case of a removal under subsection (1)(d), the person meets the criterion set out in section 5(1)(b)(i);
  - (c) in the case of a removal under subsection (1)(e), the person holds the submitted qualification concerned;
  - (d) in the case of a removal under subsection (1)(f), the person is still a public officer, and the official duties of the person still require the person to perform the duties and functions of a registered energy assessor under the Ordinance; or
  - (e) in the case of a removal under subsection (1)(g), the registration of the person has not expired,
- the Director must not remove the name of the person on the ground set out in the notice.
- (5) On the removal of the name of the person, the registration of the person ceases to be valid.

**10. Duplicate of certificate of registration**

- (1) The Director may, on an application by a registered energy assessor, issue to the assessor a duplicate of the assessor's certificate of registration.
- (2) The application must—
  - (a) be in the specified form; and
  - (b) be accompanied by the prescribed fee and the documents specified in the form.

**11. Change in particulars**

- (1) A registered energy assessor must notify the Director of any change in the assessor's name or correspondence address—
  - (a) within 28 days of the change; and
  - (b) in the specified form and accompanied by the documents specified in the form.
- (2) The Director may, on receiving the notice, amend the Register of Registered Energy Assessors to reflect the change.
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.

**12. Registered energy assessors cease to hold qualification**

- (1) If a registered energy assessor registered by virtue of section 5 ceases to hold a qualification specified in subsection (2), the assessor must notify the Director of the fact—
  - (a) within 28 days—
    - (i) from the cessation; or
    - (ii) from the date on which the assessor is informed of the cessation,
 whichever is the later; and

- (b) in the specified form and accompanied by the documents specified in the form.
- (2) The qualification is—
  - (a) for a registered energy assessor registered by virtue of section 5(1)(a) or (b), the qualification mentioned in section 5(1)(a)(i) or (b)(i), as the case may be;
  - (b) for a registered energy assessor registered by virtue of section 5(2), a submitted qualification.
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

**Part 3****Disciplinary Proceedings****13. Commencement of disciplinary proceedings**

- (1) The Director may institute disciplinary proceedings against a registered energy assessor if the Director considers there is evidence that the assessor—
  - (a) has failed to comply with the Ordinance; or
  - (b) has been convicted in Hong Kong or elsewhere of any offence, or has been negligent or misconducted himself or herself in a professional respect, and the conviction, negligence or misconduct—
    - (i) renders the assessor unfit to be a registered energy assessor;
    - (ii) makes the inclusion in the Register of Registered Energy Assessors of the assessor prejudicial to the due administration of the Ordinance; or
    - (iii) renders the assessor deserving of censure.
- (2) If the Director decides to institute disciplinary proceedings against a registered energy assessor, the Director may, after considering the nature and the seriousness of the matter concerned—
  - (a) subject to subsection (3), determine the case under section 14; or
  - (b) refer the case to the Secretary by notice in writing.
- (3) The Director must refer a case of prospective disciplinary proceedings to the Secretary if—
  - (a) the case falls within subsection (1)(b)(i) or (ii); or

- (b) at any time before the Director determines the case under section 14(3), the registered energy assessor has requested the case to be heard by a disciplinary board.

**14. Determination of Director**

- (1) If the Director decides under section 13(2)(a) to determine a case under this section, the Director must give a notice to the registered energy assessor concerned—
  - (a) specifying the ground for instituting disciplinary proceedings against the assessor;
  - (b) advising the assessor that the assessor is entitled to make a written submission to the Director in respect of the case.
- (2) The written submission must be delivered to the Director within 28 days after the date of the notice under subsection (1).
- (3) The Director may determine the case—
  - (a) at any time after considering the written submission made in respect of the case; or
  - (b) if no written submission is made in respect of the case within the period mentioned in subsection (2), at any time after the end of that period.
- (4) If the Director is satisfied that the matter mentioned in section 13(1)(a) or (b)(iii) is established in respect of the registered energy assessor, the Director may—
  - (a) order that the assessor be reprimanded; and
  - (b) publish the order in the Gazette.
- (5) The Director must notify the registered energy assessor of—
  - (a) the determination; and
  - (b) if the Director makes an order under subsection (4), the reasons for the order.

**15. Disciplinary board panel**

- (1) The Secretary is to appoint the members of a disciplinary board panel which is to consist of—
  - (a) not more than 10 members who are corporate members of the Hong Kong Institution of Engineers and are in the electrical discipline;
  - (b) not more than 10 members who are corporate members of the Hong Kong Institution of Engineers and are in the mechanical discipline;
  - (c) not more than 10 members who are corporate members of the Hong Kong Institution of Engineers and are in the building services discipline;
  - (d) not more than 10 members who are corporate members of the Hong Kong Institution of Engineers and are in the environmental discipline; and
  - (e) not more than 10 members who are members of the Engineers Registration Board established under the Engineers Registration Ordinance (Cap. 409).
- (2) A person who is in 2 or more of the 5 disciplines mentioned in paragraphs (a), (b), (c), (d) and (e) of subsection (1) is, for the purpose of subsections (1) and (7)(d), regarded as being in only one of those disciplines designated by the Secretary at the time of the person's appointment.
- (3) A person is eligible for appointment under subsection (1) only if the person—
  - (a) is not a public officer; and
  - (b) has practised in the engineering profession in Hong Kong for at least 10 years.
- (4) A member of the disciplinary board panel is to be appointed for a term of 3 years and may be reappointed on the expiry of a term.

- (5) The Secretary must give notice in the Gazette of any appointment or reappointment under this section.
- (6) A member of the disciplinary board panel may, at any time, resign by issuing a notice in writing to the Secretary.
- (7) The Secretary may terminate the office of a member of the disciplinary board panel if the Secretary is satisfied that the member—
  - (a) has become a public officer;
  - (b) has become bankrupt or has entered into a voluntary arrangement within the meaning of section 2 of the Bankruptcy Ordinance (Cap. 6) with his or her creditors;
  - (c) is incapacitated by physical or mental illness;
  - (d) has ceased to be of the capacity by virtue of which the person was appointed; or
  - (e) is otherwise unable or unfit to perform the functions of a member.
- (8) The Secretary must give notice in the Gazette of any termination of office under this section.

**16. Disciplinary board**

- (1) Within 21 days after receiving a notice under section 13(2)(b), the Secretary must appoint from among the members of the disciplinary board panel a disciplinary board to hear the case concerned.
- (2) A disciplinary board is to consist of 5 members appointed from all 5 categories of members specified in section 15(1).
- (3) Subject to section 17(5), if a vacancy occurs in a disciplinary board, the Secretary must, as soon as practicable, make appointment from among the members of the disciplinary board panel to fill the vacancy.
- (4) The members of the disciplinary board must elect a Chairperson from among themselves to preside at the hearing.



- (5) The members of a disciplinary board may be paid out of the general revenue any remuneration that the Financial Secretary determines.

### 17. Proceedings of disciplinary board

- (1) The quorum for a hearing of a disciplinary board is 3 members.
- (2) Any question before a disciplinary board must be determined by a majority of the members present.
- (3) If there is an equality of votes in respect of any question to be determined at the hearing, the Chairperson of a disciplinary board has a casting vote in addition to his or her original vote.
- (4) A disciplinary board may perform any of its functions, and its proceedings are valid, despite—
- subject to subsection (5), a vacancy in the board; or
  - a defect in the appointment or qualification of a person purporting to be a member of the board.
- (5) If—
- any vacancy occurs in the office of an original member of a disciplinary board; and
  - as a result fewer than 3 original members of the board remain in office,
- the board must be dissolved and the Secretary is deemed to have received a notice delivered under section 13(2)(b) in relation to the case for which the original disciplinary board was appointed.
- (6) In the performance of their functions under this Ordinance, the members of a disciplinary board have the same privileges and immunities as a judge of the Court of First Instance has in civil proceedings in that court.
- (7) A person appearing at a hearing before a disciplinary board as a witness, a party to the hearing or a representative of a party

to the hearing is entitled to the same privileges and immunities as the person would have in civil proceedings in the Court of First Instance.

- (8) Subject to this Regulation, a disciplinary board may determine its own procedure.

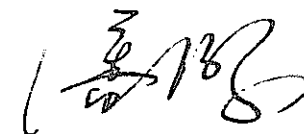
### 18. Hearing

- (1) At a hearing before a disciplinary board in respect of a registered energy assessor, the Director and the assessor are parties to the hearing.
- (2) The Chairperson of a disciplinary board must notify the parties of the date, time and place of the hearing at least 14 days before the hearing.
- (3) At a hearing before a disciplinary board—
- the registered energy assessor may be represented by a barrister or solicitor; and
  - the Director may be represented by—
    - a barrister or solicitor; or
    - a public officer.
- (4) A disciplinary board may engage any barrister or solicitor to attend a hearing of the board to advise it on any matter relating to the hearing.
- (5) The hearing must be open to the public unless the disciplinary board determines that there is a good reason for it to be held in camera.
- (6) A disciplinary board may, by a notice signed by the Chairperson and issued to a person—
- direct the person to attend before the board and to give evidence; or
  - direct the person to produce documents.

- (7) A person who fails to comply with a direction under subsection (6) commits an offence and is liable on conviction to a fine at level 5.
- (8) Despite subsection (6), no person to whom a direction is given under that subsection is required to give any evidence or produce any document which tends to incriminate himself or herself.

**19. Determination of disciplinary board**

- (1) If, after a hearing conducted under this Part, a disciplinary board is satisfied that the matter mentioned in section 13(1) is established in respect of a registered energy assessor, the board may make any or all of the following orders—
  - (a) an order that the name of the assessor be removed from the Register of Registered Energy Assessors;
  - (b) an order that the assessor be reprimanded;
  - (c) (if an order is made under paragraph (a)) an order that the Director must not allow an application from the assessor for registration as a registered energy assessor within a period directed by the board;
  - (d) an order that a fine of not more than \$25,000 be imposed on the assessor;
  - (e) an order that its findings and any order made under this subsection be published in the Gazette.
- (2) The disciplinary board may make any order that it thinks fit with regard to the payment of—
  - (a) costs or expenses of the hearing; or
  - (b) costs or expenses of the Director or any other person in the proceedings.
- (3) A fine imposed under subsection (1) and costs and expenses ordered to be paid under subsection (2) are recoverable as a civil debt.



Acting Secretary for the Environment

18 Jan. 2011

**Explanatory Note**

The purpose of this Regulation is to provide for the information to be contained in the Register of Registered Energy Assessors (*Register*), and to provide for the registration and regulation of, and disciplinary matters in respect of, registered energy assessors.

2. The Regulation is divided into 3 Parts.

**Part 1**

3. Part 1 contains preliminary provisions. Section 1 provides for the commencement. Section 2 contains the definitions of words and expressions used in this Regulation.

**Part 2**

4. Part 2 contains provisions relating to the registration of registered energy assessors.
5. Section 3 sets out the information that must be contained in the Register for the purposes of section 31(2) of the Buildings Energy Efficiency Ordinance (18 of 2010) (*Ordinance*).
6. Sections 4 to 9 set out the procedures for the registration of registered energy assessors, the renewal of registration and the removal of names from the Register. In particular, sections 5 and 8 set out the criteria for registration as registered energy assessors for the purposes of section 30 of the Ordinance.
7. Section 10 provides for the issue of a duplicate of a certificate of registration. Sections 11 and 12 provide for certain duties of registered energy assessors.

**Part 3**

8. Part 3 contains provisions relating to disciplinary matters in respect of registered energy assessors.

9. Section 13 provides for the commencement of disciplinary proceedings. Sections 14 to 19 provide for the procedures for conducting disciplinary proceedings. A case of disciplinary proceedings may be determined by the Director of Electrical and Mechanical Services (*Director*) or a disciplinary board. Sections 14 and 19 provide for the orders that may be made by the Director or the disciplinary board against a registered energy assessor.