

**For discussion on
16 February 2015**

Bills Committee on District Cooling Services Bill

**The Administration's response to follow-up issues arising from
discussion at previous meeting on 9 February 2015**

Purpose

This paper sets out the Administration's response to the major concerns raised by Members at the meeting of 9 February 2015.

- (a) In the light of the powers which are provided under clause 30 for an appeal board to determine an appeal made pursuant to clause 22 and given that clause 22 does not seem to specify that, in order to render a decision or direction to be appealable under clause 22, such decision or direction must be premised upon or be made as a result of an approved consumer's action or inaction, provide the legal justifications of excluding a decision to suspend or terminate district cooling services to a building under clause 7(1)(d), (e) or (f) and excluding a decision not to resume the services to a building under clause 8(2) where the services were suspended under clause 7(1)(d), (e) or (f) from clause 22(1).**

2. Under clause 22(1) of the District Cooling Services Bill ("the Bill"), a person who is aggrieved by any of the decisions and direction specified in the clause made in respect of the person may appeal to an appeal board against the decision or direction.

3. We note some Members have suggested that the decisions or direction rendered appealable in clause 22 are related to the behaviour or installations of an approved consumer. To facilitate Members' consideration of the clause, we set out the Administration's considerations when determining whether a decision relating to a suspension or termination under clause 7(1)(d), (e) or (f) should be rendered appealable below.

4. A decision to suspend or terminate district cooling services (or a decision to refuse to resume district cooling services) in the circumstances specified in clause 7(1)(d), (e) or (f) is not appealable under clause 22(1). This is because in these circumstances, works would be necessitated either by the need to ensure that the District Cooling System will operate smoothly and safely and is well maintained according to the professional standards of the industry, or by an emergency situation which requires immediate action.

5. In view of the above, the facts establishing the decisions made under clause 7(1)(d), (e) or (f), which may include technical issues relating to the operation and / or maintenance of the District Cooling System, should be simple and straightforward, and would therefore unlikely require an examination of the facts and / or merits of the case. In this regard, it would not be necessary to render such decisions appealable to the appeal board when they are already amenable to judicial review.

(b) Given that under clause 24(4) of the Bill, a member of the appeal board panel is to be appointed for a term of three years and may be reappointed where each reappointment is for a term of three years, clarify whether a statutory limit in respect of the number of times of reappointment is intended to be imposed and if so, consider revising the drafting of the clause to this effect.

6. As provided in clause 24(4) of the Bill, a member of the appeal board panel is to be appointed for a term of three years, and may be reappointed where each reappointment is for a term of three years.

7. In general, non-official members appointed to any advisory or statutory bodies in the public sector should not serve on the same body for more than six years in any one capacity. This “six-year rule” is a general guideline for making appointments to advisory or statutory bodies. As pointed out by some Members at the meeting, apart from the “six-year rule”, we should ensure that the most suitable individuals are appointed taking into account specific circumstances such as the need to preserve continuity of the panel’s or an appeal board’s operation, though such exceptions would have to be justified. That being the case, the Administration does not intend to impose a statutory limit on the number of times of reappointments in the Bill.

(c) Advise whether the Administration will stagger the appointments of members to an appeal board panel so as to avoid the expiry of appointments of all members at the same time and to ensure continuity of the panel's operation.

8. The purpose of appointing members to an appeal board panel is to appoint appeal boards to hear appeals on an as needed basis. Unlike advisory boards or committees which meet regularly to discuss ongoing issues, an appeal board will handle a specific appeal case. Hence, from an operational point of view, the need for a staggering arrangement for appointing appeal board panel members might not be strong.

9. Nevertheless, in the process of appointing members to the appeal board panel, the Administration would assess and consider if it is necessary and advisable to stagger the appointments of members to the appeal board panel so as to ensure continuity of the panel's operation, having regard to the actual circumstances.

(d) Consider revising clause 25(2)(b) of the Bill to reflect the intent that there must be at least one member appointed from each of the categories that are specified in clause 24(1)(b), (c) and (d).

10. According to clause 25(2) of the Bill, an appeal board is to consist of five members – (a) one of whom is the Chairperson of the board, who must be appointed from the category of members specified in clause 24(1)(a); and (b) the remaining four members must be appointed from the three categories of members specified in clause 24(1)(b), (c) and (d).

11. It is the Administration's intent to appoint at least one member from each of the three categories specified in clause 24(1)(b), (c) and (d). The Administration will be guided by this principle in the process of appointing members to an appeal board.

- (e) **Explain how clause 29 which empowers an appeal board to authorize inspection of installation can fit into the proceedings of an appeal board.**

12. Under clause 29(1) of the Bill, if an appeal board reasonably believes that an installation or facility is relevant to the determination of an appeal, the board may, by an authorization signed by the Chairperson of the board – (a) authorize a person to inspect the installation or facility; and (b) authorize the person to enter a building, except a part of the building that is for residential use, for the purposes of the inspection.

13. Clause 29(1) is necessary for handling appeals against decisions made under clause 22(1)(a), (b), (c), (d), (f) or (g). On-site inspections are essential to accomplishing the collection of facts, which would facilitate the appeal board's assessment of whether the approved consumer has carried out installations which have led to the decisions made under the respective clauses. In particular, inspection can help the appeal board ascertain the following while considering appeals –

- (i) applicants or approved consumers' compliance or otherwise with the undertaking prescribed in clause 4(3)(b), which is relevant to the appeals made under clause 22(1)(a), (b), (c) or (d);
- (ii) matters relating to the issue of and compliance with an improvement notice issued by the Director of Electrical and Mechanical Services under clause 18, which are relevant to the appeals made under clause 22(1)(c), (d), (f) or (g); and
- (iii) whether the behaviour of, or an installation of the building by, the approved consumer is jeopardizing or will jeopardize the operation or reliability of district cooling services, which is relevant to the appeals made under clause 22(1)(c) or (d).

14. During any stage of the proceedings, having regard to the circumstances of each appeal case, an appeal board would assess and consider if it is necessary and advisable to authorize inspection of

installation or facility of the building in question so as to facilitate the processing and consideration of the appeal case concerned.

Advice Sought

15. Members are invited to note the content of this paper.

**Environment Bureau
February 2015**