

立法會
Legislative Council

LC Paper No. CB(1)1508/07-08
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/07

Bills Committee on Buildings (Amendment) Bill 2007

**Minutes of ninth meeting on
Tuesday, 22 April 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon KWONG Chi-kin (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
(Deputy Chairman)
Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon LI Kwok-ying, MH, JP
Hon CHEUNG Hok-ming, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP
Hon Daniel LAM Wai-keung, SBS, JP
- Public Officers attending** : Development Bureau
Mr Tommy YUEN Man-chung, JP
Deputy Secretary for Development (Planning and Lands)²
Mr Edward TO Wing-hang
Principal Assistant Secretary (Planning and Lands)³
Mr Jerry CHEUNG Chun-yu
Assistant Secretary (Buildings)¹

Buildings Department

Mr CHEUNG Hau-wai, JP
Director of Buildings

Mr LAM Siu-tong
Assistant Director (Support)

Department of Justice

Mr Allen LAI Kai-pang
Senior Government Counsel

Ms Carmen CHU Ying-hung
Senior Government Counsel

Miss Selina LAU Suet-ching
Senior Government Counsel

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Guy YIP
Senior Council Secretary (1)5

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1293/07-08 -- Minutes of meeting on 27 March 2008)

The minutes of the meeting held on 27 March 2008 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1295/07-08(01) -- Administration's response to issues raised at the Bills Committee meeting on 7 April 2008

LC Paper No. CB(3)173/07-08 -- The Bill

- LC Paper No. CB(1)473/07-08(01) -- Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)1043/07-08(01) -- Draft Revisions to the Bill – Clause 3
- LC Paper No. CB(1)1146/07-08(01) -- Draft Revisions to the Bill – Clauses 6, 7, 9, 13, 15, 18, 21, 22, 24, 26, 27, 28 and 42

Other relevant papers

- Ref: DEVB(PL-B) 30/30/120 -- The Legislative Council Brief on "Buildings (Amendment) Bill 2007" issued by the Development Bureau
- LC Paper No. CB(1)927/07-08(02) -- Preliminary draft of Building (Minor Works and Related Matters) Regulation and Schedule of Minor Works provided by the Administration)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

The Administration's response to issues raised at the meeting held on 7 April 2008 and clause-by-clause examination of the Bill

Admin 3. The Administration was requested to provide written information on whether the time when the appointment of registered professionals/registered minor works contractors (RMWCs) was made or the minor works actually commenced should be regarded as the material time in proving that "a person for whom minor works are carried out" had knowingly contravened the proposed section 40(1AB).

Admin 4. The Administration undertook to :

(a) consider spelling out more clearly in the Bill the legislative intent that when an agent, on behalf of a building owner/tenant, directly appointed registered professionals and/or RMWCs to undertake a minor works project, the agent would be regarded as "the person for whom minor works are to be carried out" as stated in proposed sections 4A and 9AA;

(b) further consider how the criminal liabilities against non-compliance with the proposed minor works control regime by building professionals, contractors and building owners/tenants should be defined; and

- (c) move a Committee Stage amendment to amend the Chinese version of new section 14AA in clause 16 as "如小型工程在沒有根據第 14(1)條獲建築事務監督批准及同意下展開或進行, 而第 4A(1)及 9AA(1)條已就該工程而獲符合, 則第 14(1)條並不就該工程而適用。".

Date of next meeting

5. The Chairman reminded members that the tenth meeting of the Bills Committee would be held on Tuesday, 29 April 2008 at 2:30 pm. Pending further information from the Administration in response to members' views on the proposed section 40(1AB) in clause 27, members agreed to discuss the clause later and to continue clause-by-clause examination of the Bill at the next meeting starting from clause 28.

III. Any other business

6. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
14 May 2008

**Proceedings of ninth meeting of
Bills Committee on Buildings (Amendment) Bill 2007
on Tuesday, 22 April 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000030	Chairman	Confirmation of minutes of the meeting held on 27 March 2008 (LC Paper No. CB(1)1293/07-08)	
000031 – 012751	Chairman Administration Prof Patrick LAU Ms Miriam LAU Assistant Legal Adviser 4 (ALA) Ms LI Fung-ying Ir Dr Raymond HO Mr James TO	<p>The Administration's response to issues raised at the meeting on 7 April 2008 (LC Paper No. CB(1)1295/07-08(01))</p> <p><u>Possible measures to discharge duties of building owners for the appointment of qualified persons to commence or carry out minor works</u> (new sections 4A and 9AA)</p> <p>(a) Prof Patrick LAU suggested that RMWCs should be required to submit to the Building Authority (BA) notice of commencement of all classes of minor works for prior verification by the Buildings Department (BD). In this connection, Ms LI Fung-ying opined that a simple system, not requiring notification before commencement of works, should be adopted for the carrying out of Class III minor works so as to avoid causing unnecessary burden on RMWCs concerned, in particular self-employed practitioners. She reminded the Administration to conduct extensive publicity to enhance public awareness of their duties under the proposed minor works control regime. Ms Miriam LAU noted that according to the Administration, there would be pre-conditions to prove that an agent acting on behalf of a building owner/tenant in a minor works project would be regarded as "the person for whom minor works are to be carried out". However, if any of the pre-conditions could not be satisfied, the duty of the building owner/tenant concerned might not be entirely discharged under the Buildings Ordinance (Cap. 123) (BO). She noted with concern that there was no exemption of liability clause provided in the Bill to exclude or restrict a building owner/tenant's liability. ALA advised that as an agent might use the name of the relevant building owner/tenant to sign the specified form to be submitted to the BA for notification of commencement/completion of</p>	The Administration to take action as stated in paragraph 4(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>minor works without the latter's knowledge, one should not rely solely on the signatory of the form as proof of "the person for whom minor works are to be carried out". He was of the view that a provision of exemption of the building owner's/tenant's liability should be included in the Bill and "the person for whom minor works are to be carried out" should also be clearly defined. Ir Dr Raymond HO opined that rather than building owners/tenants, the liability for complying with the BO in the carrying out of minor works should be imposed on registered professionals and RMWCs.</p> <p>(b) The Administration's advice that compared with building owners/tenants, registered professionals and RMWCs were more duty-bound to comply with the proposed minor works control regime. Prior notification of BA would be required for the commencement of Classes I and II minor works but not for the Class III minor works. Registered professionals and RMWCs would be required to submit a specified form to the BA before commencement (Classes I and II minor works) or after completion (Classes I, II and III minor works) of a minor works project declaring their eligibility to undertake the minor works as recorded in the form. Where the appointment of registered professionals and RMWCs was made by an agent acting on behalf of a building owner/tenant, the agent's name would be recorded in the specified form as the one for whom minor works were to be carried out.</p> <p><u>Scenarios under which a building owner/tenant would not be deemed as knowingly contravening the BO</u> (new section 40(1AB))</p> <p>(a) The Administration advised that the Electricity Ordinance (Cap. 406), Lifts and Escalators (Safety) Ordinance (Cap. 327) and Gas Safety (Registration of Gas Installers and Gas Contractors) Regulations (Cap. 51D) contained similar provisions as in the new section 40(1AB). However, the Administration was not aware of recent prosecutions under the relevant provisions. To prosecute against an offence under the proposed section 40(1AB),</p>	<p>The Administration to take action as stated in paragraph 3 of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>the Prosecution must prove the <i>mens rea</i> (guilty mind in respect of appointment of unregistered persons) and <i>actus reus</i> (guilty act in respect of the appointment of unregistered persons for the carrying out of minor works) of the case. In other words, the Prosecution needed to prove beyond reasonable doubt that the person for whom minor works were carried out had the "knowledge" that the contractor was not qualified but still appointed such contractor to carry out minor works for him when the appointment was made.</p> <p>(b) Mr James TO held the view that as the legislative intent to introduce a minor works control system was to ensure building safety, the criminal sanction in relation to the proposed section 40(1AB) should only be imposed when an act possibly jeopardizing building safety, i.e. the commencement of minor works, had actually been done.</p> <p><u>Offence applicable to RMWCs for contravening the BO</u> (new section 40(2E))</p> <p>(a) Prof Patrick LAU opined that criminal sanction to be imposed on RMWCs for contravening the BO should be heavier than that applicable to building owners/tenants.</p> <p>(b) Citing the Security and Guarding Services Ordinance (Cap. 460) whereby service providers only but not users would be liable for offences specified in the Ordinance, Ms Miriam LAU considered that criminal liability under the proposed minor works control regime should only be imposed on the registered professionals/RMWCs.</p>	<p>The Administration to take action as stated in paragraph 4(b) of the minutes</p>
012752 – 013203	Chairman Administration	<p>Clause-by-clause examination of the Bill (LC Paper Nos. CB(1)473/07-08(01) and CB(1)1146/07-08(01))</p> <p><u>Clause 16 – New section 14AA (approval and consent not required for minor works)</u></p> <p>For the Chinese version of the Bill, the new section 14AA would be amended as "如小型工程在沒有根據第14(1)條獲建築事務監督批准及同意下展開</p>	<p>The Administration to take action as stated in paragraph 4(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		或進行，而第4A(1)及9AA(1)條已就該工程而獲符合，則第14(1)條並不就該工程而適用。".	
013204 – 013632	Chairman Administration	<p><u>Clause 22 – New section 24AA (order for demolition, removal, or alteration of prescribed requirement minor works)</u></p> <p>The Administration advised and explained that the current drafting could not be simplified.</p>	
013633 – 015250	Chairman Ms LI Fung-ying Ms Miriam LAU Administration ALA	<p><u>Clause 26 – New section 39C (Building Authority shall not serve order under section 24 or notice under section 24C)</u></p> <p>(a) Ms LI Fung-ying noted that only three specific types of unauthorized building works (UBWs), namely supporting frames for air conditioners, drying racks and small canopies, would be covered by the Validation Scheme. For properties with other types of UBWs, she asked if demolition orders might still be served requiring the building owners concerned to demolish the UBWs even if the Validation Scheme had been duly completed.</p> <p>(b) The Administration advised that to rationalize three specific types of UBWs and enable owners to retain them for continued use, it was proposed to introduce a Validation Scheme as part of the minor works control system. Subject to the inspection and certification by a building professional or registered contractor and submission of relevant records to the BA to confirm their safety, no enforcement action would be taken against these three types of UBWs unless their safety conditions changed. Moreover, no time limit would be imposed for completing the validation. For UBWs not covered by the Validation Scheme, they should be demolished for the sake of building safety and Buildings Department would take enforcement actions according to the established policy. Building owners might follow the simplified procedures of the proposed minor works control system to re-construct building works which were designated as minor works under the system.</p>	

Time marker	Speaker	Subject(s)	Action required
015251 – 015350	Chairman Administration	Date of next meeting.	

Council Business Division 1
Legislative Council Secretariat
14 May 2008