

立法會
Legislative Council

LC Paper No. CB(1)2229/08-09
(These minutes have been seen by
the Administration)

Ref : CB1/SS/7/08

Subcommittee on Building (Minor Works) Regulation

**Minutes of the sixth meeting on
Thursday, 7 May 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Tanya CHAN
Hon IP Kwok-him, GBS, JP

**Non-Subcommittee
Member attending** : Hon James TO Kun-sun

Members absent : Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Hon IP Wai-ming, MH

**Public officers
attending** : Mr Edward TO Wing-hang
Acting Deputy Secretary for Development (Planning and
Lands)²

Mr Daniel FONG Siu-wai
Assistant Secretary for Development (Buildings)¹

Mr LAM Siu-tong
Deputy Director of Buildings

Mr HUI Siu-wai
Assistant Director of Buildings (Support)

Miss Selina LAU Suet-ching
Senior Government Counsel
Department of Justice

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

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Annette LAM
Senior Council Secretary (1)3

Action

- I. Meeting with the Administration**
(LC Paper No. CB(1)1506/08-09(01) -- List of follow-up actions arising from the discussion at the meeting on 30 April 2009
- LC Paper No. CB(1)1506/08-09(02) -- List of follow-up actions arising from the discussion at the meeting on 4 May 2009
- LC Paper No. CB(1)1506/08-09(03) -- List of follow-up actions arising from the discussion at the meeting on 5 May 2009
- LC Paper No. CB(1)1528/08-09(01) -- Administration's response to issues raised at meetings on 30 April, 4 May and 5 May 2009
- L.N. 51 of 2009 -- Building (Minor Works) Regulation)

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

2. At the request of the Subcommittee, the Administration undertook to:
- (a) consider shortening the time limit from 4 months to 3 months for the Review Committee, on receiving the request, to meet to review unsuccessful applications under revised section 26(4);

- (b) provide the draft practice note to the Subcommittee members for reference once available. The details of the factors (such as the nature, seriousness and the timing of the offence/misconduct, etc) in respect of relevant offences that the Building Authority would take into account in considering an application for registered minor works contractor (RMWC) should be stipulated therein;
- (c) consider requiring RMWCs to indicate in the specified form(s) the location of the construction waste disposed of upon completion of the minor works; and
- (d) provide an undertaking that the Administration would make a remark in the specified form(s) reminding the person who arranged for the minor works of the need to seek the building owners'/co-owners' prior consent before carrying out minor works as well as the responsibilities of such owners, including civil liabilities under the deeds of mutual covenant, and to confirm whether the Secretary for Development would make an undertaking in this regard in her speech when moving the proposed resolution.

(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(1)1600/08-09(01) on 15 May 2009.)

Legislative timetable

3. The Subcommittee supported in principle the proposed amendments to the Building (Minor Works) Regulation (the Regulation) to stipulate the modus operandi of the minor works control system (MWCS), and the moving of a resolution to give effect to the amended Regulation at the Legislative Council meeting on 20 May 2009.

4. As the Subcommittee completed its scrutiny work, the Chairman said that he would give an oral report on the Subcommittee's deliberation at the meeting of the House Committee on 8 May 2009.

II. Any other business

5. There being no other business, the meeting ended at 6:05 pm.

**Proceedings of the sixth meeting of
the Subcommittee on Building (Minor Works) Regulation
on Thursday, 7 May 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000–000327	Chairman	Opening remarks by the Chairman	
000328-011705	Chairman Administration Assistant Legal Adviser (ALA) Mrs Sophie LEUNG Ms Miriam LAU Prof Patrick LAU Miss Tanya CHAN Mr IP Kwok-him	<p>The Administration's briefing on its response to the Subcommittee's concerns arising from discussions at meetings held on 30 April, 4 and 5 May 2009 (LC Paper No. CB(1)1528/08-09(01)).</p> <p><u>Prior consent of building owners/owners corporation (OCs) for minor works conducted in common areas</u></p> <p>Mr IP Kwok-him's request for a remark to be made in the specified form(s) reminding the person who arranged for the carrying out of the minor works of the need to seek the building owner's/OC's prior consent before carrying out minor works as well as the responsibilities of such owners, including civil liabilities under the deeds of mutual covenant.</p> <p><u>Timing for Building Authority (BA) to refer applications to a registration committee (RC) for consideration</u></p> <p>To address members' concern, section 12(3) would be amended to stipulate that the BA would make referrals to and convene a meeting of the RC within 3 months upon receipt of the applications. Similar provisions for sections 15, 19, 23 and 25 covering the applications for renewal, restoration of name to register, inclusion of additional class/type/item of minor works and inclusion of additional authorized signatory would also be amended.</p> <p><u>Timing for BA to determine renewal and restoration applications</u></p> <p>In response to members' concern, sections 15(2) and 19(2) would be amended to specify that the BA would determine renewal and restoration applications within 3 months from receiving an application or referring the application to a RC.</p> <p><u>Timing for informing applicants of reasons for rejection of applications</u></p> <p>The BA would, under sections 11(1), 12(2) or 12(3), inform the applicants of the application results together with the reasons for refusal within 3 months from receiving an application or referring</p>	The Administration to take action as stated in paragraph 2(d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>the application to a RC.</p> <p><u>Erection, alteration or repair of any metal gate at a fence wall or at an entrance to a building</u></p> <p>In response to Mr James TO's enquiry, the Administration explained that work involving the erection, alteration or repair of any metal gate at a fence wall or at an entrance to a building was classified into Classes I, II or III minor works in accordance with the weight and height of the metal gate in question. Works in respect of metal gate of individual unit in a building were designated exempted works.</p> <p><u>Specification of factors in respect of relevant criminal offences or disciplinary records that would be taken into account in considering an application</u></p> <p>The Administration advised that details of the factors of consideration (such as the nature, seriousness and the timing of the offence/misconduct, as well as the types or classes of minor works applied for) would be promulgated in the practice notes for the trade's reference to enhance transparency.</p> <p><u>Appeal channel for registration</u></p> <p>To address members' concern that small-scale minor works practitioners might not afford the cost of lodging an appeal to the Court of First Instance (CFI), and at members' request to explore alternative appeal channels (other than to the CFI), the Administration proposed to establish a separate RC under the revised section 26 to review unsuccessful applications upon request. An unsuccessful applicant might, within 28 days upon receipt of the BA's notification of the decision of the application and the reasons thereof, make a written application to the BA for a review. The applicant might supplement additional information if he so wished, and be interviewed by the RC.</p> <p>Members expressed concern about the time required for reviewing an application (A RC to meet within 4 months from receiving the request for review; and the BA to make a determination within 3 months from receiving the advice of the RC). To expedite the review process, the Administration was requested to consider shortening the time limit for the RC to meet to review unsuccessful applications from 4 months to 3 months.</p> <p>The Administration's explanation that while the BA would process the requests for review as soon as possible, more time was required to provide flexibility for appointing a separate RC and for the applicant to provide supplementary information, if any.</p>	<p>The Administration to take action as stated in paragraph 2(b) of the minutes.</p> <p>The Administration to take action as stated in paragraph 2(a) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>The revised section 26(8)(a) provided that the BA could decide not to adopt RC's decision and recommendation in respect of a review. In response to ALA's enquiry, the Administration explained that under normal circumstances, the BA would take the RC's recommendation and decision. Only in special cases, such as the applicant was subsequently convicted of criminal offence, would the BA, as the registration authority, for the purpose of safeguarding public safety, exercise the power. The applicant would be notified in writing of the advice of the RC, reasons for the advice as well as the decision of the BA and the respective reasons. Pending the BA's determination on the review, the initial decision of the BA and RC's recommendation would remain in force.</p> <p><u>Standard requirements of photographs for minor works</u></p> <p>The Administration confirmed that the BA would adopt a pragmatic approach and would only require practitioners to take photos from positions that were physically accessible and safe. Examples and illustrations with descriptions for different scenarios would be provided in practice notes to facilitate the industry's compliance.</p> <p><u>Counting of days in the Building (Minor Works) Regulation</u></p> <p>Following the usual practice adopted under the Buildings Ordinance (BO), the counting of days would be in calendar days, and intervening holidays would be counted. Such information would be promulgated through practice notes to the industry.</p> <p><u>Publicity and public education programme</u></p> <p>In addition to the promotional and publicity efforts proposed by the Administration to facilitate understanding of the MWCS, Prof Patrick LAU highlighted the importance of also targeting publicity at interior design professionals, renovation contractors and trade merchants.</p> <p><u>Disposal of construction waste</u></p> <p>While appreciating that the disposal of construction waste was outside the coverage of the BO, members urged the Administration to consider the feasibility of requiring RMWC to indicate in the specified form(s) the location of the construction waste and demolition materials disposed of upon completion of minor works.</p> <p><u>Acceptance of electronic submission</u></p>	<p>The Administration to take action as stated in paragraph 2(c) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's explanation that under the Electronic Transactions Ordinance (Cap.553)(ETO), to provide electronic submissions to the Government, the applicants had to possess electronic certificates for making electronic signatures. Multiple signatures were required in the submission of building plans. In the case of minor works, the signatures of at least the person who arranged for the carrying out of minor works (who in many cases would be the building owner) and RMWCs were required. As not many building owners and small-scale contractors possessed electronic certificates and signatures, it was highly unlikely that they would make submissions to the BA electronically. As such, the Administration did not intend to extend the coverage of the ETO to cover the BO (including the MWCS) at the present stage. The Administration agreed to consider the feasibility of electronic submissions in the long run.</p> <p><u>Illustrations and descriptions for minor works items</u></p> <p>Examples on minor works items concerning signboards, alteration and addition works, demolition, designated exempted works etc under Schedules I, II and III were provided at Annex B to LC Paper No. CB(1)1528/08-09(01)).</p>	
011706-013419	Chairman Administration	<p><u>Study of the mark-up version of the Regulation (Chinese version)</u></p> <p>The Administration's briefing on the proposed amendments under the revised sections 7, 8, 12, 14, 15, 17, 19, 23, 25 and 26.</p> <p>In response to members' and the ALA's enquiry, the Administration clarified the following:</p> <ul style="list-style-type: none"> - the revised section 26(2)(d) stipulated that a request for a review had to be submitted to the BA within 28 days from the date on which the reasons for BA's decision, or the reasons for BA's decision on RC's recommendation, were given to the applicant; - section 8(c) provided for the RC to interview the applicants. The RC, when examining a request for review, would normally interview the applicant concerned; and - the English version of the revised section 26(9) carried the same meaning as the Chinese version to the effect that the BA <u>must not</u> allow the application unless the RC so advised. <p>ALA confirmed that the legal and drafting aspects of the English version of the Regulation were in order.</p>	
013420-013607	Chairman Administration	<u>Legislative timetable</u>	

Council Business Division 1
Legislative Council Secretariat
15 July 2009