

Buildings Energy Efficiency Bill

The Administration's response to Action Items at the Bills Committee meeting on 5 May 2010

Adoption of the definition of “common parts” provided in the Building Management Ordinance (Cap. 344) (BMO) for the Bill and the operation of section 16 of BMO regarding the role of owners' corporations

Definition of “common area”

The Administration has considered the views of the Bills Committee regarding adopting the definition of “common parts” in the Building Management Ordinance (“BMO”) (Cap. 344) for the Buildings Energy Efficiency Bill (“the Bill”). As explained in our earlier paper CB(1) 1799/09-10(05), the approach taken in the BMO is different from that in the Bill. In the BMO, paragraph (b) of the definition of “common parts” is definitive and not for illustration purpose. Together with Schedule 1 to the BMO, the provisions set out a list of places falling within the definition. Any addition will have to be effected by a legislative amendment.

2. The above provision in the BMO is different from our case. As a matter of legislative intent, paragraph (b) of the definition of “common area” of the Bill serves to give examples of any area of a prescribed building where building services installations exist and thus would normally be covered under the Buildings Energy Efficiency Ordinance (“the Ordinance”) when enacted. The examples so given are not meant to be exhaustive.

3. We consider that the approach taken in the BMO does not suit our case very well since the focus of the BMO (for building management) and the Bill (for mandatory implementation of a set of prescribed building energy efficiency standards) is different. Hence, the items enlisted under paragraph (b) of the definition of “common area” of the Bill are different from those under Schedule 1 to the BMO. For example, Schedule 1 to the BMO contains “external walls” which is not within the ambit of the Bill, while the definition of “common area” of the Bill contains “car parks” which is not covered under Schedule 1 to the BMO.

4. This notwithstanding, we agreed that the current presentation of the definition of “common area” in the Bill has room for improvement. We will propose amendments by replacing the opening phrase of paragraph (b) from “without limiting paragraph (a), includes” by “includes, unless so specified.”. We have made reference to paragraph (b) of the definition of “common parts” in the BMO in drawing up this amendment.

Role of owners’ corporations

5. At the meeting on 5 May 2010, Members raised questions about the liability of owners’ corporations over the common area of a prescribed building. The definition of “owner” in the Bill, which has the same meaning as in the Buildings Ordinance (Cap. 123), does not explicitly include owners’ corporations. However, section 16 of the BMO reads,

“When the owners of a building have been incorporated under section 8, the rights, powers, privileges and duties of the owners in relation to the common parts of the building shall be exercised and performed by, and the liabilities of the owners in relation to the common parts of the building shall, subject to the provisions of this Ordinance, be enforceable against, the corporation to the exclusion of the owners, and accordingly-

- (a) any notice, order or other document which relates to any of the common parts of the building may be served upon the corporation at its registered office; and*
- (b) any proceedings in the tribunal in respect of any of the common parts of the building may be brought and pursued by or against the corporation.”.*

By virtue of the above provision, notices issued under the Bill in relation to common parts of a prescribed building would be served upon the owners’ corporations. This arrangement is not uncommon. Currently, when an order under the Buildings Ordinance is to be served upon the “owner” of a building, the order will be served upon the owners’ corporation (if it is formed in accordance with the BMO) if the case concerns common parts of a building.

6. Specifically, if a notice is to be served upon an “owner of a common area” of a prescribed building under the Ordinance in future, interpretation of “common area” should be made in accordance with the Ordinance. Depending on the facts of particular cases, the owners of that prescribed building may or may not be incorporated. It is only when the owners are incorporated then section 16 of the BMO come into place in relation to those parts of the building which fall under the definitions of “common part” of the BMO and “common area” of the Bill, and the notice has to be served upon the owners’ corporation. For those parts of the building which fall under the definition of “common area” of the Bill but not “common part” in the BMO (e.g. car park), notice will be served upon the owners of such part of the building but not the owners’ corporation. With this arrangement, we consider it not necessary to add an express provision in the Bill to specify the role of owners’ corporations.

Feasibility of setting different time frames under clause 9(1)(b) and the circumstances under which extension would be granted under clause 9(5)

7. Having regard to the views of the Bills Committee at its meeting on 5 May 2010, we have reviewed clause 9(1)(b) of the Bill. We consider such time frame reasonable taking into account views from the trade. As a mechanism has been proposed for seeking extension, we do not consider it necessary to set out different time frames for different types of buildings. In fact, major central building services installations of a new building are normally provided and completed at the building occupation stage. Hence, in general, the 4-month time frame should be adequate for the purpose under clause 9(1)(b).

8. The Director of Electrical and Mechanical Services (“DEMS”) may, under clause 9(5) of the Bill, extend the four-month period specified in clause 9(1)(b). As required under clause 9(6), DEMS must not exercise the power to extend the period unless the developer satisfies him that there is a reasonable ground for the extension. Generally speaking, DEMS will consider if there is a reasonable technical or operational ground such as suspension of works due to site accidents or damage of building services installations due to fire, flooding or theft etc. after the issuance of occupation permit. As the unexpected situation varies from one case to another, we do not consider it appropriate to set out more detailed criteria in the legislation.

Inclusion in clause 10 a time frame within which the Director should issue or refuse to issue a Certificate of Compliance Registration (“COCR”) and revision of the use of “at all reasonable times” in the Bill

9. Having regard to the views of the Bills Committee at its meeting on 5 May 2010, we have reviewed clause 10 regarding setting a time frame within which DEMS should issue or refuse to issue a COCR. Given the fact that complexity of each case varies from one to another, we do not consider it appropriate to set a time frame in the legislation. Instead, upon the enactment of the Ordinance, the Electrical and Mechanical Services Department (“EMSD”) would list out the relevant target response time in relation to the types of service required under the Ordinance in the form of performance pledge, which is a useful indicator for members of the public to evaluate the services of the Administration.

10. We also do not consider it necessary to set out definite time frames under clauses 11(3) and 31(3) for members of the public to inspect the register of COCR and register of Registered Energy Assessors (“REAs”), respectively. The phrase “at all reasonable times” in this context in effect means the normal office hours of EMSD, which might vary in future. Similar arrangement also appears at sections 14(4) and (5) of the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) where members of the public may inspect a record of listed models of prescribed products under that Ordinance “at all reasonable times”.

Requirement for the Director to make available the register of COCR on the internet for access by the public under clause 11

11. In light of the views of the Bills Committee on 5 May 2010, we will revise clauses 11 and 31 of the Bill so that DEMS is legally required to make available the register of COCR and register of REAs, respectively, on the internet for access by members of the public.

Proposed Committee Stage Amendments

12. A list of proposed Committee Stage Amendments is at [Annex](#).

**Environment Bureau
Electrical and Mechanical Services Department
May 2010**

BUILDINGS ENERGY EFFICIENCY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	In paragraph (b) of the definition of “common area”, by deleting “without limiting paragraph (a), includes” and substituting “includes, unless so specified,”.
2	In the definition of “composite building”, by adding “, having regard to the definitions of “commercial building”, “industrial building” and “residential building”,” after “means”.
8(3)	By adding “and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues” before the fullstop.
9(11)	By adding “and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues” before the fullstop.

- 11(3) By deleting everything after “the Director” and substituting –
- “must –
- (a) make a copy of the register kept under subsection (1) available for members of the public to inspect free of charge at all reasonable times; and
 - (b) make the content of the register available for inspection free of charge through the internet.”.
- 12 By adding before subclause (1) –
- “(1A) This section applies in relation to a building in respect of which a Certificate of Compliance Registration has been issued.”.
- 18(10) By adding “without reasonable excuse” after “who”.
- 31(3) By deleting everything after “the Director” and substituting –
- “must –
- (a) make a copy of the Register of Registered Energy Assessors available for members of the public to inspect free of charge at all reasonable times; and
 - (b) make the content of the Register available for inspection free of charge through the internet.”.

- Schedule 1 By deleting “predominately” and substituting “principally”.
item 7
- Schedule 1 By deleting “predominantly” and substituting “principally”.
item 8
- Schedule 1 By deleting “predominantly” and substituting “principally”.
item 9
- Schedule 1 By deleting “predominantly” and substituting “principally”.
item 10
- Schedule 1 By deleting “predominantly” and substituting “principally”.
item 11
- Schedule 3 In Note (1)(a) by deleting “carpark” and substituting “car park”.