

# 立法會 *Legislative Council*

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## **Bills Committee on Buildings (Amendment) Bill 2010**

### **Background brief**

#### **Purpose**

This paper provides background information on the Buildings (Amendment) Bill 2010 (the Bill) and a summary of the views and concerns expressed by Members during relevant deliberations of the former Panel on Planning, Lands and Works and the Panel on Development<sup>1</sup>.

#### **Background**

2. Building neglect has been a long-standing problem in Hong Kong. The presence of aging buildings lacking proper care and maintenance poses potential threats to residents and the public at large. Defects such as structural deterioration and concrete spalling pose safety hazards not only to the building occupants, but also to other building users and pedestrians nearby. The lack of proper maintenance and improper use of windows also pose a serious threat to public safety.
3. The number of aged buildings in Hong Kong has been increasing. According to the Administration, there are over 17 000 buildings aged 30 years or above, of which some 4 000 are aged 50 years or above. It is anticipated that the number of buildings aged 30 years or above will increase to 28 000 in 10 years.
4. Under the existing Buildings Ordinance (Cap. 123) (BO), it is only when a building becomes dangerous or is liable to become dangerous or there is defect or dilapidation in a building that the Building Authority (BA) may order the owner to carry out repair and rectification works. BO does not empower BA to require the owner to carry out periodic inspections and conduct necessary preventive repair works for the regular maintenance of the building.

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<sup>1</sup> The Panel on Planning, Lands and Works was renamed as Panel on Development in the 2007-2008 legislative session.

5. The Administration conducted a two-stage public consultation in 2003 and 2005, and sought views of the community and various key stakeholders on how best to tackle the long-term building neglect problem in Hong Kong. Specific implementation details, including the age threshold of target buildings, length of inspection cycle, inspection items, qualification of building inspectors, law enforcement requirements, dispute resolution mechanism, etc., were covered in the consultation. Through the consultation, the Administration noted a community consensus that mandatory inspection schemes should be pursued. The Administration thus announced in mid-2007 its plan to introduce the mandatory inspection schemes for buildings and windows through legislation. The Administration considers it necessary to ensure that building owners will take up the responsibility for keeping their buildings in good repair, including shouldering the financial commitment.

### **The Bill and the proposed mandatory inspection schemes**

6. The Administration introduced the Bill into the Legislative Council (LegCo) on 3 February 2010 for the implementation of a mandatory building inspection scheme (MBIS) and a mandatory window inspection scheme (MWIS). The key features of the two schemes are detailed in the LegCo Brief on the Bill issued by the Development Bureau on 21 January 2010, and are outlined in paragraphs 7 to 10 below. Those key features are largely the same as those presented to the former Panel on Planning, Lands and Works and the Panel on Development at their meetings held between May 2007 and February 2009.

#### Mandatory Building Inspection Scheme

7. The proposed MBIS covers private buildings aged 30 years or above, except domestic buildings not exceeding three storeys in height. Owners are required to carry out inspection and repair works in relation to the common parts, external walls and projections of buildings. The Administration intends to select around 2 000 target buildings for inspection each year, and each selected building, after the first inspection, will have to be inspected again once every ten years. The Bill introduces a new class of service providers, namely, registered inspectors (RIs), to perform building inspection services. Registered architects, engineers or surveyors of relevant disciplines possessing relevant work experience may be registered as RIs for carrying out inspections for the MBIS. The RIs will be subject to a separate system of registration, duties and functions, as well as disciplinary actions for non-compliance of duties in respect of the buildings under MBIS. The Administration anticipates that the number of RIs can reach some 6 500.

## Mandatory Window Inspection Scheme

8. The proposed MWIS covers private buildings aged ten years or above, except domestic buildings not exceeding three storeys in height. The Administration intends to select around 5 800 private buildings (involving approximately 200 000 households) for inspection each year. Owners are required to carry out inspection and repair works in relation to windows in common parts as well as individual premises of the buildings. The window inspection and repair cycle is repeated at five-year intervals.

9. Similar to MBIS, the Bill introduces a new class of service providers, namely, qualified persons (QPs), to carry out window inspections. Authorized persons (APs), registered structural engineers (RSEs), RIs, registered general building contractors (RGBCs), and registered minor works contractors (RMWCs) of the appropriate class and type are deemed to be QPs under the Bill. The Administration anticipates that the number of QPs can reach some 30 000. Owners may appoint any registered contractors or RMWCs of the appropriate class and type to carry out window repair works under the supervision of QPs. The QPs may also act as contractor for the repair works, provided that the QP is also an RGBC or RMWC. Target buildings selected for MBIS will, at the same time, be selected for MWIS as far as possible.

## Offence and penalties

10. The Bill also provides for offences and penalties against non-compliance with inspections and repairs as prescribed by BA, and against an owner who obstructs an owners' corporation (OC) in carrying out or refuses to contribute to the costs of inspection or repair works under both schemes. BA may issue a fixed penalty notice to anyone who fails to comply with a notice of prescribed inspection and repair under MWIS.

## **Deliberations of the Panel on Development**

11. The Administration presented the outcome of the consultation exercise and its intention to put in place the proposed MBIS and MWIS by way of legislation to the then Panel on Planning, Lands and Works (renamed as Panel on Development since the 2007-2008 session) on 22 May 2007. Further discussion was held on 24 July 2007, and at the Panel meeting held on 24 June 2008, the Administration consulted the Panel on three operational aspects of the schemes: criteria and mechanism for selecting target buildings, items to be inspected and operational procedures. The Administration briefed the Panel on the proposed arrangements for the regulation of service providers on 16 February 2009. Members were generally supportive of the policy direction of the two proposed schemes. The major concerns and views expressed by members are summarized in the ensuing paragraphs.

### Financial and technical assistance

12. Panel members held the views that the requirement to conduct periodic inspections and repairs should not cause undue hassle to property owners. Some members were concerned that property owners, particularly elderly owners of old buildings, might not have the financial means and technical know-how to organize regular maintenance when the two mandatory inspection schemes take effect.

13. Members noted that various financial assistance schemes were available, including the Building Maintenance Grant Scheme for Elderly Owners operated by Hong Kong Housing Society (HKHS) and the Building Safety Loan Scheme by Buildings Department (BD). Owners, including elderly owners, carrying out building maintenance under MBIS may apply for such grants or loans. Members suggested that one-stop financial and technical assistance should be provided. The Administration should co-ordinate with various parties concerned in implementing MBIS.

14. The Administration advised that elderly owners having difficulties to repay the loan could apply for extension of the repayment period, or be allowed to offset the loan with the sales proceeds of their properties when sold. Owners need to repay the loan with interests, but those with genuine financial hardship may apply for interest-free loans. Further discussion would be held with HKHS on how its technical support could be strengthened to meet the needs of owners from 2 000 target buildings each year under MBIS.

15. Some members suggested that the Administration should consider bearing the first-time inspection costs for all affected owners, and that interest-free loans should be extended to more owners concerned. The Administration advised that under MBIS, HKHS would bear the first-time inspection costs for certain eligible owners, but extending these arrangements to cover more owners would require careful consideration.

16. Members were concerned whether HKHS had the resources to cope with massive requests for assistance upon the implementation of MBIS and suggested that there should be a formal agreement between the Administration and HKHS. The Administration responded that an agreement with HKHS would be reached for the latter to provide assistance in implementing the two schemes. The Administration would co-ordinate the efforts of the Urban Renewal Authority (URA), BD and HKHS, and solicit support from other sources as well.

17. Although HKHS had set up 10 Property Management Advisory Centres (PMACs) in various districts to help owners, residents, OCs and Mutual Aid Committees solve problems with building management, repair and maintenance, members expressed concern whether the support was sufficient to enable owners to appoint the right service providers. Furthermore, some OCs were not

effective and some even took advantage of owners when carrying out building inspection and repair works. Members suggested that the Administration should ensure that clear information and comprehensive assistance were available to the owners concerned.

18. The Administration responded that the pool of service providers would expand so that about 6 500 RIs would be able to provide professional services. The Administration would design a convenient information dissemination system which would include details of, among other matters, inspection and repair items, benchmark fee levels and lists of service providers. Such information might be disseminated electronically or through the HKHS's PMACs. The Hong Kong Institute of Surveyors and HKHS would prepare benchmark fee levels for various works items so that owners could assess whether the fees offered by service providers were reasonable.

#### Supply of service providers and standard of their services

19. Some members were concerned about the supply of RIs to meet the demand for building inspections. They were worried that with too small a pool of professionals, it would be difficult to achieve a given number of inspections and repairs within a specific timeframe, and the fees for professional services would be high. The Administration advised that under the present proposals, in addition to APs and RSEs, other registered professionals in the relevant fields with related experience could register as RIs. As there were about 5 000 qualified professionals, the Administration estimated that even if only half of these professionals registered as RIs, there would be around 2 500 to 3 000 qualified professionals to meet the annual target of inspecting and repairing 2 000 old buildings. Such supply would allow sufficient competition so that the professional fees would remain at a reasonable level.

20. Some members were worried if the fees were set on the low side, RIs might not have the incentive to perform a comprehensive inspection and be able to reveal all hidden or potential problems expected for MBIS. The Administration responded that RIs' fees were determined by the market rather than fixed administratively. RIs were expected to abide by the guidelines and practice notes drawn up by the Administration and perform according to professional standards expected of their trade. Any complaints from owners on professional misconduct or negligence would be handled by the Administration and professional organizations accordingly.

21. Some Panel members also expressed concern about the training of personnel for undertaking works required under MBIS and MWIS. They asked whether programmes could be developed through which an experienced worker without formal education could attain QP status for the purpose of MWIS, the works of which should be simpler in nature. Such an approach could help increase the supply of registered service providers for MWIS, facilitate the

Administration in meeting its target, while keeping the costs down through increased competition.

22. The Administration advised that any Class III RMWCs under the minor works registration system (MWCS) should be capable of carrying out inspection and repair works under MWIS. As there were about 5 000 of these eligible contractors or companies, the Administration considered that the availability of qualified personnel for MWIS was adequate. Registration as MWCS would be open to persons with sufficient relevant experience and interested applicants without formal education could take top-up courses and become RMWCs. The Administration would work with the Construction Industry Council Training Academy and the Hong Kong Institute of Vocational Education to provide courses for those interested in joining the trade.

23. Some members considered that the Administration should not rely solely on RIs or QPs' reports to determine whether buildings or windows were adequately maintained. They suggested that the Administration should play a role in certifying the work of the service providers (such as through periodic checks), and allow owners to require these providers to rectify any deficiencies at no additional costs. The Administration responded that BD would audit the inspections and maintenance works, and would also step up audit inspections during the initial stages of the two schemes. BD would perform audit checks, including site audits, on 30% of the reports submitted by service providers under MBIS.

#### Problems relating to unauthorized building works

24. Some members considered it unsatisfactory that unauthorized building works (UBWs) found in target buildings under MBIS were handled according to the list of priority removal items based on safety considerations, because UBWs might hinder maintenance, and OCs would find it difficult to clear UBWs on their own. Some OCs might also encounter difficulties in securing co-operation from owners to demolish their UBWs. Even if BD issued removal orders for some UBWs, the deadlines for demolition might not tie in with the building's maintenance schedule under MBIS.

25. The Administration advised that clearance of UBWs might attract objections and the residents displaced might require rehousing. To dovetail the clearance of UBWs with MBIS might also create delays. Under MBIS, RIs would be required to report details of UBWs identified during the inspection to BA, and the relevant departments would provide technical support to owners for early handling of UBWs that affect the structural safety of the buildings. Where practicable, BD would try to complement OCs in synchronizing the issuance of removal orders for UBWs with the maintenance schedule of the buildings to reduce the total costs required.

### Co-ordination issues

26. Panel members generally considered that BD should co-ordinate with URA to avoid duplication of efforts when a building selected for MBIS would soon be redeveloped by URA. The Administration assured members that it would continue to co-ordinate with URA to avoid selecting buildings that were already included in URA's planned redevelopment projects for inclusion under MBIS.

27. Some members were concerned whether buildings which had just undergone repair works would be included in MBIS. They asked how MBIS and the "Voluntary Building Classification Scheme" would dovetail with each other to avoid duplication of efforts. The Administration explained that HKHS would launch the voluntary scheme about one year before implementing MBIS. The scope of the voluntary scheme would be wider than MBIS and would include other aspects such as building management, fire services, lift safety and environmental protection. BD would co-ordinate with HKHS and buildings accredited under the voluntary scheme would be exempt from the requirements of MBIS during the valid exemption period.

### Penalty arrangement

28. Panel members considered that penalties should not create undue hardship to owners or OCs that were not able to meet all the requirements of MBIS and MWIS. The Administration advised that the penalties would target at unco-operative owners, such as those who deliberately obstruct the required inspection or repair works without reasonable excuses.

### Dispute resolution mechanism

29. Some members suggested that a simple mechanism should be established to settle disputes involving building management and maintenance matters. Such procedure should dispense with the need for legal representation to save cost and time. The Administration explained that denying a disputed party's rights to legal representation might give rise to constitutional and human rights issues. A separate dispute resolution mechanism might overlap with the roles and functions of existing judicial courts and tribunals. The Administration would examine the feasibility of the proposal, but advised that the Judiciary was considering expanding the scope of the Lands Tribunal to include more use of case management. The feasibility of introducing voluntary mediation would also be considered to facilitate a more efficient and expeditious disposal of building management and maintenance cases.

### Sub-contracting of works

30. As regards the concern about the legal liability arising from sub-contracting of works under the MBIS and MWIS, the Administration explained that under BO, a registered contractor, where he was also the main contractor, was ultimately liable even for sub-contracted works. Professionals had to conduct, personally, on-site inspections and inspections at critical stages of the repair works under MBIS. While noting the concern about the legal liability of sub-contracting of works, the Administration remarked that the problem with sub-contracting was a historical issue that could not be resolved quickly.

### Inspection cycle under the Mandatory Window Inspection Scheme

31. A member considered that for windows that were installed properly and well-maintained, the proposed inspection cycle of five years under MWIS might be too short, and the Administration should reconsider the need for specifying such inspection cycle in the legislation. The Administration responded that the service life of aluminium windows would depend on how the windows were used and maintained. If they were not properly used or not properly maintained, problems could develop in well less than five years. It was noted that the quality of many aluminium windows was not satisfactory and, in some cases, the conditions deteriorated rapidly within two to three years. As this would endanger public safety, an inspection cycle of five years was proposed for MWIS.

### **Relevant papers**

32. A list of relevant papers with their hyperlinks is in the **Appendix**.



## Buildings (Amendment) Bill 2010

## List of relevant papers

Council/ Committee	Date of meeting	Paper
Planning, Lands and Works (PLW) Panel	27 January 2004	<p>Information paper on "Safety of Aluminium Windows of Building" provided by the Administration (LC Paper No. CB(1)830/03-04(01))  <a href="http://www.legco.gov.hk/yr03-04/english/panels/plw/papers/plw0127cb1-830-1e.pdf">http://www.legco.gov.hk/yr03-04/english/panels/plw/papers/plw0127cb1-830-1e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1313/03-04)  <a href="http://www.legco.gov.hk/yr03-04/english/panels/plw/minutes/pl040127.pdf">http://www.legco.gov.hk/yr03-04/english/panels/plw/minutes/pl040127.pdf</a></p>
PLW Panel	22 May 2007	<p>Information paper on "Public Consultation on Mandatory Building Inspection" provided by the Administration (LC Paper No. CB(1)1643/06-07(03))  <a href="http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0522cb1-1643-3-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0522cb1-1643-3-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)2122/06-07)  <a href="http://www.legco.gov.hk/yr06-07/english/panels/plw/minutes/pl070522.pdf">http://www.legco.gov.hk/yr06-07/english/panels/plw/minutes/pl070522.pdf</a></p>
PLW Panel	24 July 2007	<p>Information paper on "Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme" provided by the Administration (LC Paper No. CB(1) 2148/06-07 (01))  <a href="http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0724cb1-2148-1-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0724cb1-2148-1-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)2404/06-07)  <a href="http://www.legco.gov.hk/yr06-07/english/panels/plw/minutes/pl070724.pdf">http://www.legco.gov.hk/yr06-07/english/panels/plw/minutes/pl070724.pdf</a></p>

Council/ Committee	Date of meeting	Paper
		<p>Letter dated 24 August 2007 from the Administration on to the Panel (LC Paper No. CB(1)2299/06-07(01))  <a href="http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0724cb1-2299-1-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0724cb1-2299-1-e.pdf</a></p>
Development Panel	24 June 2008	<p>Administration's paper on Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme - Target buildings, inspection items and operational procedures (LC Paper No. CB(1)1602/07-08(05))  <a href="http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/dev0624cb1-1602-5-e.pdf">http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/dev0624cb1-1602-5-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)2322/07-08)  <a href="http://www.legco.gov.hk/yr07-08/english/panels/plw/minutes/de080624.pdf">http://www.legco.gov.hk/yr07-08/english/panels/plw/minutes/de080624.pdf</a></p>
Development Panel	16 February 2009	<p>Administration's paper on Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme - regulation of service providers (LC Paper No. CB(1)570/08-09(06))  <a href="http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0120cb1-570-6-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0120cb1-570-6-e.pdf</a></p> <p>Paper on Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme prepared by the Legislative Council Secretariat (Background brief) (LC Paper No. CB(1)570/08-09(07))  <a href="http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0120cb1-570-7-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0120cb1-570-7-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1374/08-09)  <a href="http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090216.pdf">http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090216.pdf</a></p>