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A BILL

To

Amend the Buildings Ordinance to provide for matters relating to the regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe; and to make related, consequential and other minor amendments.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Buildings (Amendment) Ordinance 2010.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

PART 2

AMENDMENTS TO BUILDINGS ORDINANCE

3. Long title amended

The long title to the Buildings Ordinance (Cap. 123) is amended by adding “to make provision for regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe;” after “land;”.

4. Interpretation

(1) Section 2(1) is amended, in the definition of “contraventions of the provisions of this Ordinance”, in paragraph (a), by adding “, notice served” before “or any”.

(2) Section 2(1) is amended, in the definition of “prescribed building professional”, by repealing “or a registered geotechnical engineer” and substituting “, a registered geotechnical engineer or a registered inspector”.

(3) Section 2(1) is amended, in the definition of “Registration Committee”, by repealing “Committee or” and substituting “Committee, an Inspectors Registration Committee or”.

(4) Section 2(1) is amended, in the English text, in the definition of “scheduled areas”, by repealing “the Fifth Schedule” and substituting “Schedule 5”.

(5) Section 2(1) is amended, in the Chinese text, by repealing the definition of “指明文件” and substituting—

““指明文件” (specified document) 指——

- (a) 根據本條例或為施行本條例而擬備、發出或給予的文件，或向建築事務監督呈交或由建築事務監督批准的圖則，或根據《1935年建築物條例》(1935年第18號)或為施行該條例而擬備、發出或給予的文件，或向建築事務監督呈交或由建築事務監督批准的圖則；或
- (b) 該文件或圖則的任何部分；”。

(6) Section 2(1) is amended by adding—

““common parts” (公用部分) has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);

“external wall” (外牆) means the whole, or any part, of an outer wall of a building even though adjoining a wall of another building and includes a party wall;

“prescribed inspection” (訂明檢驗) means an examination or assessment of a building as prescribed in the regulations;

“prescribed repair” (訂明修葺) means a repair or testing of a building as prescribed in the regulations;

“qualified person” (合資格人士) means a person whose name is for the time being on any of the following registers—

- (a) authorized persons’ register kept under section 3(1);
- (b) structural engineers’ register kept under section 3(3);
- (c) inspectors’ register kept under section 3(3B);
- (d) register of general building contractors kept under section 8A;

(e) register or provisional register of minor works contractors, under the class, type and item of minor works in respect of windows, kept under section 8A, and who is not subject to any disciplinary order under section 7(2)(bb) or (d) or 13(4)(d) or (e);
“registered inspector” (註冊檢驗人員) means a person whose name is for the time being on the inspectors’ register kept under section 3(3B);”.

(7) Section 2(2) is amended, in the English text, by repealing “the Fourth Schedule” and substituting “Schedule 4”.

(8) Section 2(3) is amended, in the English text, by repealing “the Fourth or Fifth Schedule” and substituting “Schedule 4 or 5”.

5. Part heading amended

The heading of Part I is amended by adding “, REGISTERED INSPECTORS” before “AND”.

6. Registers of authorized persons, structural engineers and geotechnical engineers

(1) The heading of section 3 is amended by repealing “**and geotechnical engineers**” and substituting “, **geotechnical engineers and inspectors**”.

(2) Section 3 is amended by adding—

“(3B) The Building Authority must keep a register (the “inspectors’ register”) of all persons who are qualified to perform the duties and functions of inspectors in accordance with this Ordinance.

(3C) The inspectors’ register contains—

- (a) a list of architects;
- (b) a list of engineers; and
- (c) a list of surveyors.”.

(3) Section 3(4) is amended—

- (a) in paragraph (b), by repealing “and”;
- (b) in paragraph (c), by repealing the full stop and substituting “; and”;
- (c) by adding—

“(d) the persons included in each of the lists in the inspectors’ register.”.

(4) Section 3(5) is amended by repealing “3” and substituting “4”.

(5) Section 3(5) is amended by repealing “and Geotechnical Engineers Registration Committees” and substituting “, Geotechnical Engineers Registration Committees and Inspectors Registration Committees”.

(6) Section 3 is amended by adding—

“(5CB) An Inspectors Registration Committee consists of—

- (a) 1 registered inspector nominated by the Architects Registration Board from the list of architects in the inspectors’ register;
- (b) 1 registered inspector nominated by the Engineers Registration Board from the list of engineers in the inspectors’ register;
- (c) 1 registered inspector nominated by the Surveyors Registration Board from the list of surveyors in the inspectors’ register;
- (d) 1 person nominated by the Building Authority as the Building Authority’s representative; and
- (e) 1 person selected by the Building Authority from among the persons nominated in accordance with subsection (5E).”.

(7) Section 3(5E) is amended by repealing “and (5CA)” and substituting “, (5CA) and (5CB)”.

(8) Section 3(5F) is amended by adding “(other than an Inspectors Registration Committee)” after “Committee”.

(9) Section 3 is amended by adding—

“(5FA) A person appointed to be a member of the Registered Inspectors’ Disciplinary Board Panel under section 5A must not be a member of an Inspectors Registration Committee.”.

(10) Section 3(5G) is amended by repealing “Committee)” and substituting “Committee or an Inspectors Registration Committee)”.

(11) Section 3 is amended by adding—

“(5GB) The quorum for a meeting of an Inspectors Registration Committee is—

- (a) the Chairman of the committee;
- (b) the Building Authority’s representative under subsection (5CB)(d); and
- (c) 1 other member.”.

(12) Section 3(5H) is amended by adding “(other than an Inspectors Registration Committee)” after “of the Registration Committee”.

(13) Section 3(6) is amended by repealing “or the geotechnical engineers’ register” and substituting “, the geotechnical engineers’ register or the inspectors’ register”.

(14) Section 3(7)(b) is amended by adding “subject to subsection (7AA),” before “he”.

(15) Section 3 is amended by adding immediately before subsection (7A)—

“(7AA) A person may be included in the inspectors’ register without recommendation by an Inspectors Registration Committee if the person is—

(a) an authorized person or a registered structural engineer with relevant experience as prescribed in the regulations; or

(b) within the period of 12 months beginning on the commencement of section 6 of the Buildings (Amendment) Ordinance 2010 (of 2010)—

(i) a registered architect nominated by the Architects Registration Board with not less than 5 years of experience in building design, construction, repair and maintenance before the nomination;

(ii) a registered professional engineer nominated by the Engineers Registration Board with not less than 5 years of experience in building design, construction, repair and maintenance before the nomination; or

(iii) a registered professional surveyor nominated by the Surveyors Registration Board with not less than 5 years of experience in building design, construction, repair and maintenance before the nomination.”.

(16) Section 3(7D) is repealed and the following substituted—

“(7D) In subsections (7), (7A), (7B) and (7C), “register” (名冊) means the authorized persons’ register kept under subsection (1), the structural engineers’ register kept under subsection (3), the geotechnical engineers’ register kept under subsection (3A) or the inspectors’ register kept under subsection (3B), as the case requires.”.

(17) Section 3(8) is amended—

(a) in paragraph (b), by repealing “and”;

(b) in paragraph (c), by repealing the comma and substituting “; and”;

(c) by adding—

“(d) the inspectors’ register.”;

(d) by repealing “register.” and substituting “register or the inspectors’ register.”.

(18) Section 3(9) is amended by repealing “or in the geotechnical engineers’ register” and substituting “, in the geotechnical engineers’ register or in any list in the inspectors’ register (except for an application made by a person mentioned in subsection (7AA))”.

(19) Section 3 is amended by adding immediately before subsection (9A)—

“(9AA) For an application made by a person mentioned in subsection (7AA) for inclusion in any list in the inspectors’ register, the Building Authority must within 1 month after the date of receiving the application—

(a) on payment by the applicant of the prescribed fees mentioned in subsection (6A)(b)(ii), publish in the Gazette and enter in the appropriate list the name of that applicant; or

(b) refuse the application.”.

(20) Section 3(9B)(a) is amended by repealing “or the geotechnical engineers’ register” and substituting “, the geotechnical engineers’ register or the inspectors’ register”.

(21) Section 3(9D) is amended by repealing “or a registered geotechnical engineer” and substituting “, a registered geotechnical engineer or a registered inspector”.

(22) Section 3(9E) is amended by repealing “or geotechnical engineer” and substituting “, geotechnical engineer or inspector”.

(23) Section 3(11) is amended by repealing “or the geotechnical engineers’ register” and substituting “, the geotechnical engineers’ register or the inspectors’ register”.

(24) Section 3(11A) is amended by repealing “or the geotechnical engineers’ register” and substituting “, the geotechnical engineers’ register or the inspectors’ register”.

(25) Section 3(11B) is amended by repealing “or the geotechnical engineers’ register” and substituting “, the geotechnical engineers’ register or the inspectors’ register”.

(26) Section 3(11B) is amended by repealing “or a registered geotechnical engineer” and substituting “, a registered geotechnical engineer or a registered inspector”.

(27) Section 3(13)(c) is amended by repealing the full stop and substituting “; and”.

(28) Section 3(13A) is amended by repealing “or a registered geotechnical engineer” and substituting “, a registered geotechnical engineer or a registered inspector”.

7. Appointment and powers of disciplinary board

(1) Section 5(2) is amended by repealing “such board shall consist” and substituting “disciplinary board to conduct a hearing of disciplinary proceedings against an authorized person, a registered structural engineer or a registered geotechnical engineer consists”.

- (2) Section 5 is amended by adding immediately before subsection (2A)—
- “(2AA) Every disciplinary board to conduct a hearing of disciplinary proceedings against a registered inspector consists of—
- (a) 4 persons who are members of the Registered Inspectors’ Disciplinary Board Panel appointed under section 5A, of whom at least—
 - (i) 1 is a person mentioned in section 5A(2A)(a);
 - (ii) 1 is a person mentioned in section 5A(2A)(b);
 - (iii) 1 is a person mentioned in section 5A(2A)(c); and
 - (b) 1 person selected from among the persons nominated in accordance with subsection (3A).”.

(3) Section 5(2B) is amended by repealing “or a registered geotechnical engineer” and substituting “, a registered geotechnical engineer or a registered inspector”.

(4) Section 5(3A) is amended by repealing “subsection (2)(b)” and substituting “subsections (2)(b) and (2AA)(b)”.

8. Authorized Persons’, Registered Structural Engineers’ and Registered Geotechnical Engineers’ Disciplinary Board Panel

(1) The heading of section 5A is amended by adding “**and Registered Inspectors’ Disciplinary Board Panel**” after “**Panel**”.

(2) Section 5A(1) is amended by repealing “Panel,” and substituting “Panel and a Registered Inspectors’ Disciplinary Board Panel, both of”.

- (3) Section 5A is amended by adding—
- “(2A) The Registered Inspectors’ Disciplinary Board Panel consists of not more than 15 members, of whom not less than 1 and not more than—
- (a) 5 are registered inspectors in the list of architects;
 - (b) 5 are registered inspectors in the list of engineers; and
 - (c) 5 are registered inspectors in the list of surveyors.

(2B) For the purpose of subsections (2) and (2A), each member of the relevant Panel may only take up one seat of membership in the Panel even if the member’s name is included in more than one of the lists or registers mentioned in those subsections.”.

(4) Section 5A(3) is amended by adding “or (2A)” after “subsection (2)”.

9. Secretary to the disciplinary board

(1) Section 5AA(1) is amended, in the English text, by repealing “Secretary” and substituting “secretary”.

(2) Section 5AA(2) is amended, in the English text, by repealing “Secretary to” and substituting “secretary to”.

(3) Section 5AA(2)(a) is amended by repealing “for Development”.

10. Disciplinary proceedings for authorized person, registered structural engineer or registered geotechnical engineer

(1) The heading of section 7 is amended by repealing “or registered geotechnical engineer” and substituting “, registered geotechnical engineer or registered inspector”.

(2) Section 7(1) is amended by repealing “or a registered geotechnical engineer” and substituting “, a registered geotechnical engineer or a registered inspector”.

(3) Section 7(1) (as amended by section 9 of the Buildings (Amendment) Ordinance 2008 (20 of 2008) (referred to as the “amending Ordinance” in the following provisions)) is amended—

(a) in paragraph (bb), by repealing “or” at the end;

(b) by adding—

“(bc) render the person unfit for certifying any prescribed inspection, or certifying or supervising any prescribed repair;

(bd) make further certification of any prescribed inspection, or certification or supervision of any prescribed repair, by that person prejudicial to the due administration of this Ordinance;

(be) render the person deserving of suspension from certifying any prescribed inspection, or certifying or supervising any prescribed repair; or”;

(c) in paragraph (c)—

(i) by repealing “authorized person, registered structural engineer or registered geotechnical engineer” and substituting “person”;

(ii) by adding “relevant” before “register”.

(4) Section 7(1A) (as amended by section 9 of the amending Ordinance) is amended—

- (a) in paragraph (i), by repealing “or”;
- (b) in paragraph (j), by repealing the full stop and substituting a semicolon;
- (c) by adding—
 - “(k) has failed to discharge the duties, or abide by the requirements, imposed on a registered inspector under this Ordinance; or
 - (l) has failed to discharge the duties, or abide by the requirements, imposed on a qualified person under this Ordinance.”.

(5) Section 7(2) (as amended by section 9 of the amending Ordinance) is amended by repealing “or the registered geotechnical engineer” and substituting “, the registered geotechnical engineer or the registered inspector”.

(6) Section 7(2) (as amended by section 9 of the amending Ordinance) is amended by repealing “requirements,” and substituting “requirements, or has failed to discharge the duties or abide by the requirements mentioned in subsection (1A)(k) or (l),”.

(7) Section 7(2)(a) is amended by repealing “or” at the end.

(8) Section 7(2) (as amended by section 9 of the amending Ordinance) is amended by adding—

- “(aa) order that the name of the person be removed from the inspectors’ register, either permanently or for any period that the board thinks fit;”.

(9) Section 7(2)(ba) (as amended by section 9 of the amending Ordinance) is amended by repealing “authorized person, registered structural engineer or registered geotechnical engineer” and substituting “person”.

(10) Section 7(2)(ba)(i) (as amended by section 9 of the amending Ordinance) is amended by adding “a prescribed inspection (other than a prescribed inspection in respect of a window in a building) or” before “building”.

(11) Section 7(2)(ba)(ii) (as amended by section 9 of the amending Ordinance) is amended—

- (a) by adding “a prescribed inspection in respect of a window in a building or” before “minor”;
- (b) by repealing “or” at the end.

(12) Section 7(2)(bb) (as amended by section 9 of the amending Ordinance) is amended—

- (a) by repealing “authorized person, registered structural engineer or registered geotechnical engineer” and substituting “person”;
- (b) by repealing the full stop and substituting “; or”.

(13) Section 7(2) (as amended by section 9 of the amending Ordinance) is amended by adding—

- “(d) order that the person be prohibited from certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building, either permanently or for any period that the disciplinary board thinks fit.”.

(14) Section 7(3) is amended by repealing “or registered geotechnical engineer” and substituting “, registered geotechnical engineer or registered inspector”.

(15) Section 7(4)(a) is amended by repealing “or registered geotechnical engineer” and substituting “, registered geotechnical engineer or registered inspector”.

(16) Section 7(4)(a) is amended by adding “within 28 days of the order of the disciplinary board” after “Instance”.

(17) Section 7(4)(c) is repealed.

11. Appeals from Registration Committees

(1) Section 9A(1) is amended by adding “within 28 days of the notification of the decision of the Registration Committee by the Building Authority to the person” after “Instance”.

(2) Section 9A(2) is amended by repealing “order” and substituting “decision”.

(3) Section 9A(4) is repealed.

12. Secretary to the disciplinary board

(1) Section 11AA(1) is amended, in the English text, by repealing “Secretary” and substituting “secretary”.

(2) Section 11AA(2) is amended, in the English text, by repealing “Secretary to” and substituting “secretary to”.

(3) Section 11AA(2)(a) is amended by repealing “for Development”.

13. Disciplinary proceedings for contractors

(1) Section 13(1) (as amended by section 15 of the amending Ordinance) is amended—

- (a) in paragraph (e), by repealing “or” at the end;
- (b) in paragraph (f), by repealing the full stop and substituting a semicolon;
- (c) by adding—
 - “(g) render the contractor unfit for certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building;
 - (h) make further certification of any prescribed inspection, or certification or supervision of any prescribed repair, in respect of a window in a building by that contractor prejudicial to the due administration of this Ordinance; or
 - (i) render the contractor deserving of suspension from certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building.”.

(2) Section 13(2) (as amended by section 15 of the amending Ordinance) is amended—

- (a) in paragraph (i), by repealing “or”;
- (b) in paragraph (j), by repealing the full stop and substituting “; or”;
- (c) by adding—
 - “(k) has failed to discharge the duties, or abide by the requirements, imposed on a qualified person, registered general building contractor or registered minor works contractor under this Ordinance in respect of a prescribed inspection or prescribed repair.”.

(3) Section 13(4) (as amended by section 15 of the amending Ordinance) is amended by repealing “(j)” and substituting “(j) or failed to discharge the duties or abide by the requirements mentioned in subsection (2)(k)”.

(4) Section 13(4)(b)(ii) (as amended by section 15 of the amending Ordinance) is amended by adding “a prescribed inspection in respect of a window in a building or” before “minor”.

(5) Section 13(4) (as amended by section 15 of the amending Ordinance) is amended—

- (a) in paragraph (c), by repealing “or” at the end;
- (b) in paragraph (d), by repealing the full stop and substituting “; or”;
- (c) by adding—

“(e) in the case of a registered contractor who is a registered general building contractor or registered minor works contractor, order that the contractor be prohibited from certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building, either permanently or for any period that the disciplinary board thinks fit.”.

(6) Section 13(7) is amended by adding “within 28 days of the order of the disciplinary board” after “Instance”.

(7) Section 13(10) is repealed.

14. Appeal against Building Authority’s decision

(1) Section 13A(1) is amended by adding “within 28 days of the notification of the decision of the Building Authority by the Building Authority to the applicant” after “Instance”.

(2) Section 13A(4) is repealed.

15. Conditions may be imposed in certain cases

Section 17(1) is amended, in the Chinese text, in Column B, in item 1(b), by adding a full stop at the end.

16. Authority to erect shoring in certain cases

Section 18(6)(c) is amended, in the English text, by repealing “the Third Schedule” and substituting “Schedule 3”.

17. Building works, etc. to cease on order of Building Authority

(1) Section 23(1)(b)(i) is amended by repealing “, or” at the end and substituting a semicolon.

(2) Section 23(1)(b)(ii) is amended by repealing “, or” at the end and substituting “; or”.

18. Magistrate’s warrant

Section 28C(1) is amended, in the English text, by repealing “the Sixth Schedule” and substituting “Schedule 6”.

19. Part IIA added

The following is added—

“PART IIA**INSPECTION AND REPAIR OF BUILDING****30A. Interpretation and application**

(1) In this Part, “projection” (伸出物) means a projection from a building as prescribed in the regulations.

(2) This Part does not apply to a domestic building not exceeding 3 storeys in height.

30B. Obligation on owners to carry out prescribed inspection and prescribed repair in respect of buildings

(1) This section applies to any building aged 30 years or above.

(2) The age of a building mentioned in subsection (1) is to be determined by the Building Authority—

(a) if an occupation permit in respect of the building is issued by the Building Authority under section 21(2), according to the date the occupation permit is issued; and

(b) in any other case, according to the evidence available to the Building Authority.

(3) The Building Authority may by notice in writing served on any owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of the common parts of the building to be carried out within a specified time.

(4) If an external wall of a building is not in the common parts of the building, the Building Authority may by notice in writing served on the owner of the external wall require a prescribed inspection and, if necessary, prescribed repair in respect of the external wall to be carried out within a specified time.

(5) Without limiting subsections (3) and (4), the Building Authority may by notice in writing served on an owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of any projection (other than a signboard) that is connected to that owner’s premises in the building and is occupied or used by that owner or any occupier of that premises to be carried out within a specified time.

(6) Without limiting subsections (3) and (4), if a signboard is erected on a building, the Building Authority may by notice in writing served on—

- (a) the person for whom the signboard is erected;
- (b) if that person cannot be found, the person who would receive any rent or other money consideration if the signboard were hired out or the person who is receiving such rent or money consideration; or
- (c) if the persons referred to in paragraphs (a) and (b) cannot be found, the owner of the premises in the building on which the signboard is erected,

require a prescribed inspection and, if necessary, prescribed repair in respect of the signboard to be carried out within a specified time.

(7) In a notice served under subsection (3), (4), (5) or (6), the Building Authority may specify for a relevant part of a building—

- (a) the date by which a registered inspector must be appointed to carry out a prescribed inspection in respect of that part of the building;
- (b) the date by which a prescribed inspection in respect of that part of the building is required to be completed; and
- (c) the date by which a prescribed repair in respect of that part of the building, as may be required under subsection (8), is required to be completed.

(8) If a prescribed inspection in respect of a relevant part of a building shows that that part of the building has been rendered dangerous, or is liable to become dangerous, the owner on whom the notice is served must carry out a prescribed repair in respect of that part of the building, in accordance with this Ordinance, to render that part of the building safe.

(9) The Building Authority may cause a notice served under subsection (3), (4), (5) or (6) to be registered by memorial in the Land Registry against the building to which the notice relates.

(10) If a notice served under subsection (3), (4), (5) or (6) is not complied with, the Building Authority may, without further notification, carry out or cause to be carried out—

- (a) any inspection in respect of the common parts, external wall, projection or signboard of the building that the Building Authority considers necessary for the purpose of that notice; and
- (b) any repair works that the Building Authority considers necessary or expedient to render the building safe, having had regard to the findings of an inspection in respect of the building, whether the inspection is carried out or caused

to be carried out by the Building Authority under paragraph (a), or by a registered inspector appointed under section 30D(1)(a).

(11) The cost of the inspection and repair works that the Building Authority has carried out or has caused to be carried out under subsection (10), together with a surcharge of 20% on the cost that the Building Authority may impose, is recoverable as a debt due to the Government from—

- (a) if the notice served under subsection (3), (4), (5) or (6) has not been registered with the Land Registry under subsection (9), the person on whom the notice is served; or
- (b) if the notice served under subsection (3), (4), (5) or (6) has been registered with the Land Registry under subsection (9), the person who is the owner of the relevant part of the building—
 - (i) as at the date of completion of the inspection if the Building Authority has carried out or has caused to be carried out the inspection mentioned in subsection (10)(a) only; or
 - (ii) as at the date of completion of the repair works mentioned in subsection (10)(b) if the Building Authority has carried out or has caused to be carried out the repair works, whether or not the Building Authority has also carried out or has also caused to be carried out the inspection mentioned in subsection (10)(a).

(12) After a notice under subsection (3), (4), (5) or (6) (the “preceding notice”) has been complied with, a fresh notice in respect of the same part of the building must not be served under that subsection before the expiry of 10 years after the date of the preceding notice.

(13) In this section, a reference to an inspection or repair of any part of a building does not include an inspection or repair of the windows in the building.

30C. Obligation on owners to carry out prescribed inspection and prescribed repair in respect of windows

- (1) This section applies to any building aged 10 years or above.
- (2) The age of a building mentioned in subsection (1) is to be determined by the Building Authority—

- (a) if an occupation permit in respect of the building is issued by the Building Authority under section 21(2), according to the date the occupation permit is issued; and
- (b) in any other case, according to the evidence available to the Building Authority.

(3) Subject to subsection (4), the Building Authority may by notice in writing served on any owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of the windows in the building to be carried out within a specified time.

(4) If any window in a building is exclusively used by an owner of the building or any occupier of that owner's premises, the Building Authority may by notice in writing served only on that owner require a prescribed inspection and, if necessary, prescribed repair in respect of the window to be carried out within a specified time.

(5) In a notice served under subsection (3) or (4), the Building Authority may specify for a window in a building—

- (a) the date by which a qualified person must be appointed to carry out a prescribed inspection in respect of that window;
- (b) the date by which a prescribed inspection in respect of that window is required to be completed; and
- (c) the date by which a prescribed repair in respect of that window, as may be required under subsection (6), is required to be completed.

(6) If a prescribed inspection in respect of a window in a building shows that the window has been rendered dangerous, or is liable to become dangerous, the owner on whom the notice is served must carry out a prescribed repair in respect of the window, in accordance with this Ordinance, to render the window safe.

(7) The Building Authority may cause a notice served under subsection (3) or (4) to be registered by memorial in the Land Registry against the building to which the notice relates.

(8) If a notice served under subsection (3) or (4) is not complied with, the Building Authority may, without further notification, carry out or cause to be carried out—

- (a) any inspection in respect of the window concerned that the Building Authority considers necessary for the purpose of that notice; and
- (b) any repair works that the Building Authority considers necessary or expedient to render the window safe, having had regard to the findings of an inspection in respect of the window, whether the inspection is carried out or caused to be carried out by the Building Authority under paragraph (a), or by a qualified person appointed under section 30E(1).

(9) The cost of the inspection and repair works that the Building Authority has carried out or has caused to be carried out under subsection (8), together with a surcharge of 20% on the cost that the Building Authority may impose, is recoverable as a debt due to the Government from—

- (a) if the notice served under subsection (3) or (4) has not been registered with the Land Registry under subsection (7), the person on whom the notice is served; or
- (b) if the notice served under subsection (3) or (4) has been registered with the Land Registry under subsection (7), the person who is the owner of the relevant part of the building—
 - (i) as at the date of completion of the inspection if the Building Authority has carried out or has caused to be carried out the inspection mentioned in subsection (8)(a) only; or
 - (ii) as at the date of completion of the repair works mentioned in subsection (8)(b) if the Building Authority has carried out or has caused to be carried out the repair works, whether or not the Building Authority has also carried out or has also caused to be carried out the inspection mentioned in subsection (8)(a).

(10) After a notice under subsection (3) or (4) (the “preceding notice”) has been complied with, a fresh notice in respect of the same window must not be served under that subsection before the expiry of 5 years after the date of the preceding notice.

30D. Appointment and duties of registered inspectors

(1) Any person for whom a prescribed inspection or prescribed repair in respect of a building is to be carried out must appoint—

- (a) a registered inspector to carry out the prescribed inspection; and
- (b) a registered inspector to supervise the prescribed repair.

(2) The registered inspector appointed under subsection (1)(b) may be the same registered inspector appointed under subsection (1)(a).

(3) A registered inspector appointed under subsection (1)(a) must—

- (a) carry out the prescribed inspection personally unless otherwise exempted by the regulations; and
- (b) comply generally with this Ordinance.

- (4) A registered inspector appointed under subsection (1)(b) must—
- (a) provide proper supervision of the carrying out of the prescribed repair;
 - (b) ensure the repair materials to be used—
 - (i) are not defective and comply with this Ordinance; and
 - (ii) have been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under this Ordinance;
 - (c) ensure the building, for which the registered inspector is appointed to supervise the prescribed repair, is safe or has been rendered safe; and
 - (d) comply generally with this Ordinance.
- (5) A registered inspector appointed under subsection (1)(a) to carry out a prescribed inspection must notify the Building Authority of—
- (a) any case of emergency that is revealed during the course of the prescribed inspection;
 - (b) any building works that have been or are being carried out in contravention of any provision of this Ordinance in the common parts, or to an external wall that is not in the common parts, of the building, that are identified during the course of the prescribed inspection.
- (6) A registered inspector appointed under subsection (1)(b) to supervise a prescribed repair must notify the Building Authority of any case of emergency that is revealed during the course of supervision of the prescribed repair.
- (7) A registered inspector appointed under subsection (1)(a) or (b) must not act, at the same time, as a contractor to carry out the prescribed repair for the same part of the building.
- (8) If a registered inspector appointed under subsection (1)(a) or (b) becomes unwilling to act or unable, whether by reason of termination of appointment or for any other reason, to act, the person for whom the prescribed inspection or prescribed repair is to be, or is being, carried out must appoint another registered inspector to act instead of the original registered inspector.
- (9) A registered inspector appointed under subsection (1)(a) is not allowed to nominate another registered inspector to act in his or her stead even though he or she is temporarily unable to act by reason of illness or absence from Hong Kong.
- (10) If a registered inspector appointed under subsection (1)(b) is temporarily unable to act by reason of illness or absence from Hong Kong, he or she may nominate another registered inspector to temporarily act in his or her stead for the period of illness or absence.

(11) In this section, a reference to an inspection or repair of a building does not include an inspection or repair of the windows in the building.

30E. Appointment and duties of qualified persons

(1) Any person for whom a prescribed inspection or prescribed repair in respect of a window in a building is to be carried out must appoint a qualified person to carry out the prescribed inspection and, if a prescribed repair of the window is required, appoint the same qualified person to supervise the prescribed repair.

(2) If a qualified person appointed under subsection (1) is a natural person, the qualified person must carry out the prescribed inspection personally.

(3) If a qualified person appointed under subsection (1) is not a natural person, a representative of the qualified person as prescribed in the regulations must carry out the prescribed inspection personally.

(4) A qualified person appointed under subsection (1) must—

- (a) provide proper supervision of the carrying out of the prescribed repair;
- (b) ensure the repair materials to be used—
 - (i) are not defective and comply with this Ordinance; and
 - (ii) have been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under this Ordinance;
- (c) ensure the window, for which the qualified person is appointed to supervise the prescribed repair, is safe or has been rendered safe; and
- (d) comply generally with this Ordinance.

(5) If a qualified person appointed under subsection (1) is a registered general building contractor or registered minor works contractor, the qualified person may also act as a contractor to carry out the prescribed repair.

(6) A qualified person appointed under subsection (1) must notify the Building Authority of any case of emergency that is revealed during the course of the prescribed inspection or supervision of the prescribed repair.

(7) If a qualified person appointed under subsection (1) becomes unwilling to act or unable, whether by reason of termination of appointment or for any other reason, to act, the person for whom the prescribed inspection or prescribed repair is to be, or is being, carried out must appoint another qualified person to act instead of the original qualified person.

(8) A qualified person appointed under subsection (1) is not allowed to nominate another qualified person to act in his or her stead even though he or she is temporarily unable to act by reason of illness or absence from Hong Kong.

30F. Duties of registered general building contractors and registered minor works contractors

A registered general building contractor or registered minor works contractor appointed to carry out a prescribed repair must ensure the part of the building for which the contractor is appointed to carry out the prescribed repair has been rendered safe.”.

20. Recovery of costs of works by Building Authority

(1) The heading of section 33 is amended by repealing “**of works**” and substituting “**and surcharge**”.

(2) Section 33(1) is amended by adding “any inspection, investigation or” before “works”.

(3) Section 33(1) is amended by adding “or to recover any surcharge” after “made by him”.

(4) Section 33(1) is amended by adding “and surcharge” before “due”.

(5) Section 33(1) is amended by adding “and surcharge” before “among”.

(6) Section 33(2)(a) is amended by adding “inspection, investigation or” before “works”.

(7) Section 33(4) is amended by adding “or surcharge” after “cost”.

(8) Section 33(5) is amended by adding “or surcharge” after “cost”.

(9) Section 33(6) is amended by adding “or surcharge” after “cost”.

(10) Section 33(8) is amended by adding “or surcharge” after “cost”.

(11) Section 33(9) is amended by adding “or surcharge” after “costs”.

(12) Section 33(9) is amended by adding “or surcharge” after “cost” where it twice appears.

21. Service of notices and orders

(1) Section 35 is amended by renumbering it as section 35(1).

(2) Section 35 is amended by adding—

“(2) A certificate purporting to be signed by a person who states in that certificate that the person has effected service under subsection (1) is evidence of the facts stated in the certificate relating to that service.”.

22. Limitation of public liability

Section 37(1) is amended by repealing “and notices” and substituting “, forms, reports, notices and other documents”.

23. Regulations

(1) Section 38(1)(a) is amended by adding—
“(iib) registered inspectors;”.

(2) Section 38(1)(ib)(ii) is amended, in the Chinese text, by repealing “(i)” and substituting “(i)”.

(3) Section 38(1) is amended by adding—

“(kg) matters relating to a prescribed inspection or prescribed repair in respect of a building including—

- (i) the scope, standard and requirements of a prescribed inspection or prescribed repair in respect of a building;
- (ii) the scope, standard and requirements of a prescribed inspection or prescribed repair in respect of a window in a building;
- (iii) the requirements of the appointment of registered inspectors, qualified persons, registered general building contractors and registered minor works contractors for a prescribed inspection or prescribed repair;
- (iv) the duties of registered inspectors, qualified persons, registered general building contractors and registered minor works contractors in relation to a prescribed inspection or prescribed repair;
- (v) the prescription of any exemption for the purposes of section 30D(3)(a); and
- (vi) the prescription of representatives of qualified persons for the purposes of section 30E(3);”.

24. Technical memorandum

(1) Section 39A(1)(f) (as amended by section 26 of the amending Ordinance) is amended by adding “registered inspector,” after “geotechnical engineer,”.

(2) Section 39A(2) is amended, in the Chinese text, by repealing “發展局”.

(3) Section 39A(2) is amended, in the Chinese text, by repealing “該局” and substituting “立法會”.

(4) Section 39A(3) is amended, in the Chinese text, by repealing “發展局”.

(5) Section 39A(6) is amended, in the Chinese text, by repealing “發展局”.

(6) Section 39A(9) is amended, in the Chinese text, by repealing “發展局”.

(7) Section 39A(10) is amended, in the Chinese text, by repealing “發展局”.

25. Obstruction of owners' corporation

(1) Section 39B(1) is amended by adding “, or a notice has been served on the owners' corporation under section 30B(3), (5) or (6) or 30C(3),” after “(5)”.

(2) Section 39B(1)(a) is amended by repealing “order; or” and substituting “order or notice;”.

(3) Section 39B(1)(b) is amended by repealing “order.” and substituting “order or notice; or”.

(4) Section 39B(1) is amended by adding—

“(c) refuse to contribute to the cost of the inspection or repair works that is required for the purpose of complying with the notice served under section 30B(3), (5) or (6) or 30C(3).”.

(5) Section 39B(2) is repealed and the following substituted—

“(2) In this section, “owners' corporation” (業主立案法團) means a corporation registered under section 8 of the Building Management Ordinance (Cap. 344).”.

26. Building Authority shall not serve order under section 24 or notice under section 24C

Section 39C(2) (as amended by section 27 of the amending Ordinance) is amended by adding “a registered inspector,” after “engineer,”.

27. Offences

(1) Section 40 (as amended by section 28 of the amending Ordinance) is amended by adding—

“(1BC) Any person who, without reasonable excuse, fails to comply with a notice served on the person under section 30B(3), (4), (5) or (6) commits an offence and is liable on conviction—

- (a) to a fine at level 5 and to imprisonment for 1 year; and
- (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

(1BD) Any person who, without reasonable excuse, fails to comply with a notice served on the person under section 30C(3) or (4) commits an offence and is, subject to subsection (1BE), liable on conviction—

- (a) to a fine at level 4 and to imprisonment for 3 months; and
- (b) to a fine of \$2,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

(1BE) Before taking court proceedings against a person for an offence under subsection (1BD), the Building Authority must serve on the person a penalty notice described in Schedule 7.

(1BF) Schedule 7 has effect in relation to a penalty notice.

(1BG) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 7.”.

(2) Section 40(2A) (as amended by section 28 of the amending Ordinance) is amended by repealing everything after “whom any” and before “works who” and substituting “prescribed inspection or building works or street works are being carried out and any authorized person, registered structural engineer, registered geotechnical engineer, registered inspector, qualified person, registered general building contractor, registered specialist contractor or registered minor works contractor directly concerned with any such inspection or”.

(3) Section 40(2A)(a) is amended by adding “inspection or” before “works”.

(4) Section 40(2A)(c) is amended by repealing “or notice” and substituting “, report, notice or other document”.

(5) Section 40(2A)(d) (as amended by section 28 of the amending Ordinance) is amended by adding “a prescribed inspection (other than a prescribed inspection in respect of a window in a building) or” before “building”.

(6) Section 40(2A)(e) (as amended by section 28 of the amending Ordinance) is amended by adding “a prescribed inspection in respect of a window in a building or” before “minor”.

(7) Section 40(2AAAC) (as amended by section 28 of the amending Ordinance) is amended by repealing “or 13(4)(d)” and substituting “, 7(2)(d), 13(4)(d) or 13(4)(e)”.

(8) Section 40 is amended by adding—

“(2AD) Any registered inspector who contravenes section 30D(3)(a), or any qualified person who contravenes section 30E(2), or any representative of a qualified person who contravenes section 30E(3), commits an offence and is liable on conviction to a fine of \$250,000.

(2AE) Any registered inspector who contravenes section 30D(4)(a), or any qualified person who contravenes section 30E(4)(a), commits an offence and is liable on conviction—

(a) in the case of supervision of a prescribed repair (other than minor works), to a fine of \$250,000; or

(b) in the case of supervision of a prescribed repair that is minor works, to a fine of \$150,000.

(2AF) Any registered inspector, qualified person, registered general building contractor or registered minor works contractor who contravenes section 30D(4)(c), 30E(4)(c) or 30F, as the case may be, commits an offence and is liable on conviction—

(a) in the case of a prescribed repair (other than minor works), to a fine of \$1,000,000 and to imprisonment for 3 years; or

(b) in the case of a prescribed repair that is minor works, to a fine of \$500,000 and to imprisonment for 18 months.”.

(9) Section 40(2B) (as amended by section 28 of the amending Ordinance) is amended by adding “a registered inspector, a qualified person,” after “geotechnical engineer,”.

(10) Section 40(2B) (as amended by section 28 of the amending Ordinance) is amended by adding “prescribed inspection,” after “concerned with any”.

(11) Section 40(2B)(a) is amended by adding “inspection or” before “works” where it twice appears.

(12) Section 40(2B)(b) is amended by adding “inspection or” before “works” where it twice appears.

(13) Section 40(2B)(c) (as amended by section 28 of the amending Ordinance) is amended by adding “a prescribed inspection (other than a prescribed inspection in respect of a window in a building), or” before “site”.

(14) Section 40(2B)(d) (as amended by section 28 of the amending Ordinance) is amended by adding “a prescribed inspection in respect of a window in a building, or” before “site”.

(15) Section 40 (as amended by section 28 of the amending Ordinance) is amended by adding—

“(2H) Any person other than a registered inspector who, without reasonable excuse, certifies a prescribed inspection (other than a prescribed inspection in respect of a window in a building), or certifies or supervises a prescribed repair (other than a prescribed repair in respect of a window in a building), in respect of a building commits an offence and is liable on conviction—

(a) to a fine at level 6 and to imprisonment for 6 months; and

(b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

(2I) Any person other than a qualified person who, without reasonable excuse, certifies a prescribed inspection or certifies or supervises a prescribed repair, in respect of a window in a building commits an offence and is liable on conviction—

(a) to a fine at level 6 and to imprisonment for 6 months; and

(b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.”.

28. Secretary to the Appeal Tribunal

Section 46(2)(a) is amended by repealing “for Development”.

29. Saving

Section 54 is amended, in the English text, by repealing “the Second Schedule” and substituting “Schedule 2”.

30. Validation

Section 55(3) is amended, in the English text, by repealing “the Fourth Schedule” and substituting “Schedule 4”.

**31. Provisions of Buildings Ordinance 1935
to continue in operation**

The Second Schedule is amended, in the English text, by repealing “SECOND SCHEDULE” and substituting “SCHEDULE 2”.

32. Form of warrant

The Third Schedule is amended, in the English text, by repealing “THIRD SCHEDULE” and substituting “SCHEDULE 3”.

33. Departments

The Fourth Schedule is amended, in the English text, by repealing “FOURTH SCHEDULE” and substituting “SCHEDULE 4”.

34. Scheduled areas

The Fifth Schedule is amended, in the English text, by repealing “FIFTH SCHEDULE” and substituting “SCHEDULE 5”.

35. Form of warrant

The Sixth Schedule is amended, in the English text, by repealing “SIXTH SCHEDULE” and substituting “SCHEDULE 6”.

36. Schedule 7 added

The following is added—

“SCHEDULE 7 [ss. 40(1BE), (1BF)
& (1BG)]

PENALTY NOTICE

1. A penalty notice under section 40(1BE) must be made in writing stating—

- (a) that the person served with the penalty notice is required to pay a fixed penalty of \$1,500 within 21 days after the date of the penalty notice;
- (b) if the person wishes to dispute liability for the offence under section 40(1BD), that the person must notify the Building Authority in writing within 21 days after the date of the penalty notice;

- (c) that the person is required to comply with the notice served under section 30C(3) or (4), and if the person's failure to comply with the notice continues, the Building Authority may—
 - (i) serve on the person a further penalty notice after the expiry of the penalty notice that is being served; or
 - (ii) proceed to take court proceedings for the person's failure to comply with the notice served under section 30C(3) or (4), and the person would be liable to the fine and imprisonment mentioned in section 40(1BD); and
 - (d) any other related matters, including payment instructions for payment of the fixed penalty.
- 2. Section 35 applies to the service of a penalty notice under section 40(1BE).
- 3. If any person on whom a penalty notice has been served has failed to pay the fixed penalty of \$1,500, and has not notified the Building Authority that the person wishes to dispute liability, within 21 days after the date of the penalty notice, a magistrate may, on an application being made in the manner mentioned in section 4 of this Schedule, order the person to pay the fixed penalty of \$1,500, together with a sum of \$300 by way of costs, within 21 days after the date of service of notice of the order.
- 4. An application under section 3 of this Schedule—
 - (a) may be made in the absence of the person on whom the penalty notice has been served; and
 - (b) must be made in the name of the Secretary for Justice, who may appoint any person or class of persons to make the application.
- 5. Despite the Magistrate Ordinance (Cap. 227), in an application under section 3 of this Schedule, a magistrate may make an order under that section on production by the applicant to the magistrate of—
 - (a) a copy of the penalty notice served under section 40(1BE); and
 - (b) a certificate of service under section 35(2).
- 6. In an application under section 3 of this Schedule, a certificate stating—
 - (a) that payment of the fixed penalty of \$1,500 had not been made before the date specified in the certificate; and

- (b) that the person specified in it had not, before the date specified in the certificate, notified the Building Authority that the person wished to dispute liability for the offence under section 40(1BD),

and purporting to be signed by or for the Building Authority is to be admitted in evidence without further proof on its production to the magistrate and, unless there is evidence to the contrary, it is presumed that the certificate is so signed and the certificate is evidence of the facts stated in it.

7. If an order is made under section 3 of this Schedule—

- (a) the magistrate must cause notice of the order to be served on the person to whom it relates; and
- (b) the sending of the notice to the person by post at the person's address mentioned in the penalty notice constitutes good service.

8. If any person against whom an order under section 3 of this Schedule has been made fails to pay the fixed penalty and costs, the person is taken, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), to have failed to pay the sum adjudged to be paid by a conviction and is liable to be imprisoned under that section.

9. If there is evidence to show that a penalty notice served under section 40(1BE) has not come to the notice of the person to whom it relates before the date of the order made under section 3 of this Schedule, the magistrate may, on an application of which reasonable notice has been given to the Building Authority, rescind the order and—

- (a) if the person wishes to dispute liability for the offence under section 40(1BD), give leave to that effect; or
- (b) if that person does not wish to dispute liability, order that person to pay the fixed penalty of \$1,500 within 21 days after the date of the order.

10. An application for rescission of an order under section 9 of this Schedule may be made in person or by counsel or solicitor on behalf of the applicant and the magistrate, for the purpose of securing the attendance of witnesses and generally for conducting the proceedings, has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).

11. An application for rescission of an order under section 9 of this Schedule must be made within 21 days after the date of service of notice of the order made under section 3 of this Schedule, but the magistrate may extend the period if he or she considers it appropriate to do so in the circumstances.

12. If a magistrate gives leave under section 9(a) of this Schedule, proceedings may be taken, despite section 26 of the Magistrates Ordinance (Cap. 227), within 6 months after the date on which the magistrate gives the leave.

13. A magistrate may for good cause, on an application by the Building Authority at any time, rescind any order for the payment of a fixed penalty and costs and any other order made in the same proceedings.

14. If any person against whom an order under section 9(b) of this Schedule has been made fails to pay the fixed penalty, the person is taken, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), to have failed to pay the sum adjudged to be paid by a conviction and is liable to be imprisoned under that section.

15. If any person on whom a penalty notice under section 40(1BE) has been served notifies the Building Authority that the person wishes to dispute liability or the person is given leave under section 9(a) of this Schedule, proceedings may be taken against that person, and a summons issued in those proceedings may be served on that person in accordance with section 8 of the Magistrates Ordinance (Cap. 227).

16. In proceedings under section 15 of this Schedule, if the court determines that the person is guilty of the offence of failing to comply with the notice served on the person under section 30C(3) or (4) without reasonable excuse, the person is liable to the fine and imprisonment under section 40(1BD).

17. After proceedings have been instituted but not less than 2 days (excluding any public holiday) before the day specified in the summons for the person's appearance, the person may pay the fixed penalty of \$1,500 and a sum of \$500 by way of costs with the production of the summons at any magistracy to terminate the proceedings.

18. If a person's failure to comply with the notice served on the person under section 30C(3) or (4) continues without reasonable excuse despite a penalty notice served under section 40(1BE), the Building Authority may—

- (a) serve on the person a further penalty notice after the expiry of the penalty notice that is being served; or
- (b) proceed to take court proceedings against the person under section 40(1BD).

19. The decision of the Building Authority to serve a penalty notice under section 18 of this Schedule is not subject to appeal under section 44.”.

PART 3

RELATED AMENDMENTS

Building (Administration) Regulations**37. Fees**

(1) Regulation 42 of the Building (Administration) Regulations (Cap. 123 sub. leg. A) is amended, in the Table of Fees, by adding—

| | | | |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------|
| “1A. (a) | (i) For each application for inclusion of name in each list of the inspectors’ register by a person referred to in section 3(7AA). | Person applying for inclusion in register. | \$900 |
| | (ii) For each application for inclusion of name in each list of the inspectors’ register other than that referred to in subparagraph (i). | Person applying for inclusion in register. | \$3,850 |
| | (iii) For each inclusion of name in each list of the inspectors’ register. | Successful applicant seeking inclusion in register. | \$1,360 for inclusion for a period of 5 years. |
| (b) | For each application for retention of name in each list of the inspectors’ register. | Registered inspector seeking retention in register. | \$1,180 for retention for a period of 5 years. |
| (c) | For each application for restoration of name in each list of the inspectors’ register. | Person seeking restoration to register. | \$1,370 for restoration for a period of 5 years.”. |

(2) Regulation 42 is amended, in the Table of Fees, in item 10(b), in the English text, by repealing “pursuant to 36G(3)” where it twice appears and substituting “pursuant to section 36G(3)”.

(3) Regulation 42 is amended, in the Table of Fees, in item 11(a), in the English text, by repealing “pursuant to 36G(3)” where it twice appears and substituting “pursuant to section 36G(3)”.

(4) Regulation 42 is amended, in the Table of Fees, in item 11(b), in the English text, by repealing “pursuant to 36G(3)” where it twice appears and substituting “pursuant to section 36G(3)”.

38. Duty of authorized person, registered structural engineer, registered geotechnical engineer, registered contractor, etc. to notify Building Authority of change of business address

(1) The heading of regulation 45 is amended by repealing “geotechnical engineer” and substituting “geotechnical engineer, registered inspector”.

(2) Regulation 45 is amended by repealing “geotechnical engineer” and substituting “geotechnical engineer, registered inspector”.

Building (Construction) Regulations

39. Interpretation

Regulation 2 of the Building (Construction) Regulations (Cap. 123 sub. leg. B) is amended by repealing the definition of “external wall”.

Building (Planning) Regulations

40. Interpretation

Regulation 2(1) of the Building (Planning) Regulations (Cap. 123 sub. leg. F) is amended, in the definition of “external wall”, by adding “the whole, or any part, of” before “an”.

Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations

41. Interpretation

Regulation 2 of the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123 sub. leg. H) is amended, in the definition of “external wall”, by adding “the whole, or any part, of” before “an”.

Building (Energy Efficiency) Regulation

42. Interpretation

Regulation 2 of the Building (Energy Efficiency) Regulation (Cap. 123 sub. leg. M) is amended, in the definition of “external wall”, by adding “the whole, or any part, of” before “an”.

Specification of Public Offices

43. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) is amended by adding—

“Secretary for Development Buildings Ordinance (Cap. 123).”.

PART 4

CONSEQUENTIAL AMENDMENTS

Buildings Ordinance (Application to the New Territories) Ordinance

44. Effect of certificate of exemption

Section 7(1)(a) of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) (as amended by section 47 of the amending Ordinance) is amended by repealing “and 30” and substituting “, 30, 30A, 30B, 30C, 30D, 30E and 30F”.

Prevention of Bribery Ordinance

45. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding—

“114. Inspectors’ Registration Committee.”.

Railways Ordinance

46. Interpretation

Section 2 of the Railways Ordinance (Cap. 519) is amended, in the English text, in the definition of “building works”, by repealing “the Fifth Schedule” and substituting “Schedule 5”.

Explanatory Memorandum

The object of this Bill is to amend the Buildings Ordinance (Cap. 123) (“the Ordinance”) and its subsidiary legislation to—

- (a) provide for matters relating to the regular inspections of buildings and the windows in buildings, and the associated repairs, to prevent the buildings and windows from becoming unsafe;
- (b) provide for matters relating to the appointment, control and duties of persons who are to deal with those inspections and repairs;
- (c) introduce two categories of persons, that is, registered inspectors and qualified persons, who are to deal with those inspections and repairs;
- (d) repeal certain existing provisions in the Ordinance that provide the decision of the Court of First Instance on appeal is final; and
- (e) make some related, consequential and other minor amendments.

2. The Bill is divided into 4 Parts.

Part 1 of the Bill

3. Clauses 1 and 2 provide for the short title and commencement.

Part 2 of the Bill

4. Clause 3 amends the long title of the Ordinance to widen the scope of the Ordinance to provide for the regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe.

5. Clause 4 adds new definitions to section 2(1) of the Ordinance as a result of the proposed amendments to the Ordinance. The new definitions include “common parts”, “external wall”, “prescribed inspection”, “prescribed repair”, “qualified person” and “registered inspector”.

6. Clause 5 amends the heading of Part I of the Ordinance to include “registered inspectors”.
7. Clause 6 amends section 3 of the Ordinance. In particular—
 - (a) it adds the new subsections (3B) and (3C) to introduce a new register to be kept by the Building Authority under the Ordinance, that is, the inspectors’ register of all persons who are qualified to perform the duties and functions of inspectors in accordance with the Ordinance;
 - (b) it adds the new subsection (5CB) to introduce an Inspectors Registration Committee to deal with the registration of inspectors, and the new subsection (5GB) to provide for the quorum of a meeting of an Inspectors Registration Committee; and
 - (c) it amends certain existing provisions in that section to provide for the matters relating to the inclusion, retention and restoration of persons in the inspectors’ register.
8. Clause 7 amends section 5 of the Ordinance to provide for the appointment of a disciplinary board to conduct hearing of disciplinary proceedings against registered inspectors.
9. Clause 8 amends section 5A of the Ordinance to provide for the appointment and membership of the Registered Inspectors’ Disciplinary Board Panel.
10. Clause 9 clarifies the use of the term “Secretary” in section 5AA in the English text of the Ordinance.
11. Clause 10 amends section 7 of the Ordinance. In particular—
 - (a) it amends subsections (1) and (1A) to include new grounds on which the Building Authority may refer the conduct of an authorized person, a registered structural engineer, a registered geotechnical engineer or a registered inspector in cases relating to prescribed inspections or prescribed repairs to the disciplinary board; and
 - (b) it amends subsection (2) to empower a disciplinary board to make orders including removing a person’s name from the inspectors’ register, and prohibiting a person from performing any duties in relation to a prescribed inspection or prescribed repair as a result of the person’s conducts referred to in subsection (1A).
12. Clause 11 amends section 9A of the Ordinance. In particular—

- (a) it amends subsection (1) to clarify the time period within which an aggrieved person may appeal to the Court of First Instance against a decision of a Registration Committee; and
- (b) it repeals subsection (4) which provides that the decision of a judge of the Court of First Instance is final.

13. Clause 12 clarifies the use of the term “Secretary” in section 11AA in the English text of the Ordinance.

14. Clause 13 amends section 13 of the Ordinance. In particular—

- (a) it amends subsections (1) and (2) to include new grounds on which the Building Authority may refer the conduct of a contractor in cases relating to prescribed inspections or prescribed repairs to the disciplinary board;
- (b) it amends subsection (4) to empower a disciplinary board to make orders including prohibiting a contractor from performing any duties in relation to a prescribed inspection or prescribed repair as a result of the contractor’s conduct referred to in subsection (2);
- (c) it amends subsection (7) to clarify the time period within which an aggrieved person may appeal to the Court of First Instance against an order of the disciplinary board; and
- (d) it repeals subsection (10) which provides that the decision of a judge of the Court of First Instance is final.

15. Clause 14 amends section 13A of the Ordinance. In particular—

- (a) it amends subsection (1) to clarify the time period within which a person may appeal to the Court of First Instance against a decision of the Building Authority; and
- (b) it repeals subsection (4) which provides that the decision of a judge of the Court of First Instance is final.

16. Clauses 15 and 17 contain certain minor textual amendments to sections 17(1) and 23(1)(b) of the Ordinance.

17. Clauses 16 and 18 contain certain textual amendments to update the style of the Ordinance.

18. Clause 19 adds a new Part, that is, Part IIA, to the Ordinance to provide for the regular inspections and repairs of buildings. In particular—

- (a) a new section 30A is added to provide the definition of “projection” under that Part, and to make clear that that Part does not apply to a domestic building not exceeding 3 storeys in height;

- (b) a new section 30B is added in which—
- (i) subsections (3), (4), (5) and (6) empower the Building Authority to serve notice in writing on any owner of a building aged 30 years or above requiring a prescribed inspection (as defined in section 2(1) of the Ordinance) and, if necessary, a prescribed repair (as defined in section 2(1) of the Ordinance) of the common parts, external walls, projections and signboards of the building be carried out within a specified time;
 - (ii) subsection (7) sets out the matters to be specified in the notice;
 - (iii) subsection (8) provides for the obligation to carry out a prescribed repair by an owner;
 - (iv) subsections (10) and (11) empower the Building Authority to carry out an inspection and repair works and recover the cost incurred in case of an owner's failure to comply with the notice served under subsection (3), (4), (5) or (6);
 - (v) subsection (12) makes it clear that a notice under subsection (3), (4), (5) or (6) has been complied with, a fresh notice in respect of the same part of the building must not be served under that subsection before the expiry of 10 years after the date of the preceding notice;
 - (vi) subsection (13) makes it clear that an inspection or repair in relation to a building referred to in that section does not include an inspection or repair of the windows in the building;
- (c) a new section 30C is added in which—
- (i) subsections (3) and (4) empower the Building Authority to serve notice in writing on any owner of a building aged 10 years or above requiring a prescribed inspection (as defined in section 2(1) of the Ordinance) and, if necessary, a prescribed repair (as defined in section 2(1) of the Ordinance) of the windows in the building to be carried out within a specified time;
 - (ii) subsection (5) sets out the matters to be specified in the notice;
 - (iii) subsection (6) provides for the obligation to carry out a prescribed repair by an owner;
 - (iv) subsections (8) and (9) empower the Building Authority to carry out an inspection and repair works and recover the cost incurred in case of an owner's failure to comply with the notice served under subsection (3) or (4);

- (v) subsection (10) makes it clear that after a notice under subsection (3) or (4) has been complied with, a fresh notice in respect of the same window must not be served under that subsection before the expiry of 5 years after the date of the preceding notice;
- (d) a new section 30D is added to provide for the appointment and duties of registered inspectors in relation to the carrying out of a prescribed inspection and supervision of a prescribed repair in respect of a building, in which—
 - (i) subsection (2) provides that the registered inspector appointed to carry out a prescribed inspection may be appointed to supervise a prescribed repair that is required after the inspection;
 - (ii) subsection (7) provides that a registered inspector who carries out a prescribed inspection or supervise a prescribed repair must not also act as a contractor to carry out the prescribed repair for the same part of the building;
- (e) a new section 30E is added to provide for the appointment and duties of qualified persons in relation to the carrying out of a prescribed inspection and supervisions of a prescribed repair in respect of windows in a building, in which—
 - (i) subsection (1) provides that a qualified person appointed to carry out a prescribed inspection must also be the same person appointed to supervise a prescribed repair that is required after the inspection;
 - (ii) subsection (5) provides that a qualified person who carries out a prescribed inspection or supervises a prescribed repair may also act as a contractor to carry out the prescribed repair; and
- (f) a new section 30F is added to provide for the duties of registered general building contractors and registered minor works contractors in relation to the carrying out of a prescribed repair.

19. Clause 20 amends section 33 of the Ordinance to include recovery of the cost of inspection and investigation incurred by, and the surcharge due to, the Building Authority.

20. Clause 21 amends section 35 of the Ordinance to state the effect of a certificate of service.

21. Clause 22 amends section 37(1) of the Ordinance to include further types of documents the accuracy of which the Building Authority has no obligation to ascertain under that section.
22. Clause 23 amends section 38(1) of the Ordinance to enlarge the scope of the regulation making powers of the Secretary for Development to provide for matters relating to a prescribed inspection and prescribed repair.
23. Clause 24 makes certain textual amendments to section 39A in the Chinese text of the Ordinance.
24. Clause 25 amends section 39B of the Ordinance to provide for non-contribution of the cost for compliance of the new section 30B(3), (5) or (6) or 30C(3) by an owner as an obstruction to the owners' corporation.
25. Clause 26 amends section 39C(2) of the Ordinance to include registered inspectors among the groups of people who may submit or deliver prescribed plans, certificates, notices and other documents to the Building Authority in relation to a scheme under which demolition orders will not be made in respect of unauthorized building or building works.
26. Clause 27 amends section 40 of the Ordinance to provide for the penalties for the offences relating to non-compliance of the notices served under the new sections 30B and 30C, and the offences relating to the duties in relation to prescribed inspections and prescribed repairs under the new sections 30D, 30E and 30F.
27. Clause 28 contains a minor amendment to maintain internal consistency of the use of the term "Secretary" in section 46(2)(a) of the Ordinance.
28. Clauses 29 to 35 contain certain textual amendments to update the style of the Ordinance.
29. Clause 36 adds a new Schedule 7 to the Ordinance to include provisions relating to a penalty notice that is served under the new section 40(1BE) of the Ordinance in the case of an owner failing to comply with the new section 30C of the Ordinance.

Part 3 of the Bill

30. Clauses 37, 38, 39, 40, 41, 42 and 43 provide for certain related amendments. In particular—
 - (a) the Building (Administration) Regulations (Cap. 123 sub. leg. A) is amended to include the fees for inclusion, retention and restoration of a name in the inspectors' register and certain minor textual amendments (clause 37) and to impose a duty on the registered inspectors to notify the Building Authority of any change of business address (clause 38);

- (b) the Building (Construction) Regulations (Cap. 123 sub. leg. B), the Building (Planning) Regulations (Cap. 123 sub. leg. F), the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123 sub. leg. H) and the Building (Energy Efficiency) Regulation (Cap. 123 sub. leg. M) are amended in their definitions of “external wall” to correspond to the meaning of the term after the definition of “external wall” is added to the Ordinance (clauses 39, 40, 41 and 42); and
- (c) the Specification of Public Offices (Cap. 1 sub. leg. C) is amended to include Secretary for Development under the Buildings Ordinance in the Schedule (clause 43).

Part 4 of the Bill

31. Clauses 44, 45 and 46 contain certain consequential amendments to the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121), the Prevention of Bribery Ordinance (Cap. 201) and the Railways Ordinance (Cap. 519).