

立法會
Legislative Council

LC Paper No. CB(1)284/10-11(03)

Ref. : CB1/SS/1/10

**Subcommittee on Three Commencement Notices made under the
Buildings (Amendment) Ordinance 2008,
Building (Minor Works) Regulation and
Building (Administration) (Amendment) Regulation 2009**

Meeting on 2 November 2010

Background brief

Purpose

This paper provides background information on the three Commencement Notices (L.N. 118, L.N. 119 and L.N. 120 of 2010) made under the Buildings (Amendment) Ordinance 2008 (20 of 2008), Building (Minor Works) Regulation (B(MW)R) (L.N. 51 of 2009) and Building (Administration) (Amendment) Regulation 2009 (L.N. 180 of 2009) which will contribute to the full implementation of the Minor Works Control System (MWCS) on 31 December 2010. The paper also summarizes previous discussions on the subject.

Minor Works Control System

2. In order to simplify the building control system so as to provide a lawful, safe and convenient means for building owners to carry out minor works. MWCS was introduced through the enactment of the Buildings (Amendment) Ordinance 2008 (the Amendment Ordinance) on 18 June 2008.

3. Prior to the Amendment Ordinance, the carrying out of large-scale building works or works of a very simple nature were governed by the same set of controls, including the requirements to obtain prior approval and consent from the Building Authority (BA) (i.e. the Director of Buildings) before commencement of works and to appoint Authorized Persons (i.e. architects, engineers or surveyors registered under the Buildings Ordinance (Cap. 123)) (BO), and registered professionals to design and supervise the works as well as registered contractors to carry out the works. The requirements of the system

were too stringent for minor works which were of a smaller scale and posed a lower level of risk. This not only created difficulties in control and enforcement, but also resulted in many unauthorized building works.

4. In view of the above, the Administration decided to amend BO in June 2008 by introducing MWCS, facilitating members of the public to carry out minor works in private buildings lawfully through simplified procedures without compromising the building safety in Hong Kong. The B(MW)R which provides for the modus operandi of the system, was gazetted on 27 March 2009 and tabled in the Legislative Council (LegCo) on 1 April 2009 for negative vetting.

5. MWCS introduces a new category of building works i.e. "minor works". Under the new system, a total of 118 items of building works have been designated as minor works. The size, location and respective criteria for each item of minor works are set out in Schedule 1 to the Building (Minor Works) Regulation. These minor works are classified into the following three classes according to their nature, scale, complexity and risk to safety --

- (a) Class I (a total of 40 items) includes those relatively more complicated minor works;
- (b) Class II (a total of 40 items) comprises those of comparatively lower complexity and risk to safety; and
- (c) Class III (a total of 38 items) mainly includes common household Minor Works.

The three Amendment Notices and the relevant ordinance/regulations

Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2010 (L.N. 118 of 2010)

6. The Buildings (Amendment) Ordinance 2008 (the Amendment Ordinance) was enacted by LegCo on 18 June 2008. Certain provisions of the Amendment Ordinance have already come into operation on 15 December 2008 and 30 December 2009. The provisions that have come into operation on 15 December 2008 relate to definitions of new terms added to section 2(1) of BO, the power of the Secretary for Development (SDEV) to make regulations providing for matters relating to minor works as well as some miscellaneous amendment to BO. Those provisions that have come into operation on 30 December 2009 provide for the establishment of a register or provisional register of minor works contractors and the composition of the disciplinary board appointed to hear and determine any proceedings against a registered minor works contractor.

7. By L.N. 118, the remaining provisions of the Ordinance will come into operation on 31 December 2010. These provisions include --

- (a) appointment of prescribed building professionals: minor works commenced or carried out without approval and consent;
- (b) duties of prescribed building professional appointed or nominated in respect of minor works commenced under simplified requirements;
- (c) disciplinary proceedings, appointment and duties of prescribed registered minor works contractors (RMWCs);
- (d) order for demolition, removal or alteration of minor works commenced under simplified requirements; and
- (e) offences, exemptions, etc.

Building (Minor Works) Regulation (Commencement) Notice 2010 (L.N. 119 of 2010)

8. The provisions with regard to the establishment of Minor Works Contractors Registration Committee, operational procedures for registration of a RMWC and the classification of minor works have already been brought into operation on 30 December 2009.

9. L.N. 119 specifies 31 December 2010 as the day for the remaining provisions of B(MW)R that have not come into operation to come into operation, including --

- (a) classification of minor works and details of minor works items;
- (b) simplified requirements for carrying out minor works;
- (c) registration of "RMWCs;
- (d) provisional registration of RMWCs;
- (e) duties of building professionals and registered contractors in carrying out minor works;
- (f) household minor works validation scheme; and
- (g) designated exempted works.

Building (Administration) (Amendment) Regulation 2009 (Commencement) Notice (L.N. 120 of 2010)

10. The Building (Administration) (Amendment) Regulation 2009 amends the Building (Administration) Regulations (Cap. 123 sub. leg. A) to --

- (a) reduce the period within which an authorised person, registered structural engineer, registered geotechnical engineer, registered general building contractor, registered specialist contractor or RMWC is required to notify the BA of a change in the appointment of any technically competent person from 14 days to 7 days; and
- (b) require a RMWC to notify the BA of a change to business address.

11. L.N. 120 specifies 31 December 2010 as the day on which the Building (Administration) (Amendment) Regulation 2009 will come into operation.

Technical Memorandum for Supervision Plans 2009

12. The Technical Memorandum for Supervision Plans (Special Supplement No. 5) (the Memorandum) is made by the SDEV under section 39A of BO. The Memorandum replaces the 2005 edition of the Technical Memorandum and was gazetted on 9 October 2009 and tabled in LegCo on 14 October 2009.

13. The Memorandum supplements the provisions of BO governing the supervision of building works and street works. It is largely the same as the 2005 Memorandum. According to the LegCo Brief, the major updates in the Memorandum include --

- (a) section 11, which sets out that supervision plans are not required for certain minor building works; and
- (b) Table 1, which sets out the minimum supervision requirements for certain minor works.

14. The Memorandum also includes consequential updates in relation to, amongst other things, the implementation of MWCS. Under section 39A(7) of BO, the Memorandum is not subsidiary legislation, but it is subject to LegCo's scrutiny under a mechanism provided in section 39A of BO which is in substance the same as that provided in section 34 of Cap. 1. No amendment was made by LegCo within the scrutiny period as provided in section 39A (3) to (5). The Memorandum provides that SDEV may appoint a later date by notice in the Gazette for commencement of the Memorandum.

15. By virtue of the Technical Memorandum for Supervision Plans 2009 (Commencement) Notice (S.S. No. 5 on 8 October 2010), SDEV appoints 31 December 2010 as the day on which the Memorandum will come into operation. This is to synchronise the commencement dates of L.N. 118, L.N. 119 and L.N. 120 so as to bring MWCS into full operation.

16. The Memorandum has not been discussed by the Bills Committee on the Buildings (Amendment) Bill 2007 (the Bills Committee) or the Subcommittee on B(MW)R.

Major views and concerns expressed by Members

General views

17. When scrutinizing the Buildings (Amendment) Bill 2007, the Bills Committee generally supported the policy intent to bring in MWCS, as the new system would streamline the existing buildings control regime in respect of minor works, facilitate the general public to carry out minor works in a more convenient and economical manner, and enable more efficient use of Government resources.

18. At the meeting of the Panel on Development on 24 February 2009, the Administration briefed members on the major areas that would be covered by the B(MW)R to be made by SDEV. Panel members in general supported the Administration's proposal and urged the Administration to implement the MWCS as soon as possible. Some members considered that in enhancing public safety, the implementation of the MWCS should not be too strict and complicated, and should not cause too much disturbance to the public.

The registration system

19. The Bills Committee considered that the registration system should be kept simple, and that the Administration should devise measures to help eligible practitioners to understand the registration system and apply for registration according to their need and preference. Consideration should be given to streamlining the registration system to facilitate RMWCs' operation. The Bills Committee was concerned that applying for multi-task registration would increase RMWCs' operation cost. It took note of the proposed registration and renewal fees for minor works contractors (Annex C to LC Paper No. CB(1)609/07-08(01)).

20. The Subcommittee on B(MW)R noted that there would be a registration system for qualified RMWCs. Minor works practitioners, upon payment of relevant fees, may apply for registration as RMWCs for the relevant classes, types or items of minor works as appropriate according to their qualifications and

experience. A transitional period and provisional registration arrangement would be put in place to allow adequate time for the existing non-natural-person minor works practitioners to prepare for registration. The contractors who apply for registration as RMWCs may be body corporates, partnerships, sole proprietorships or individuals (Class III only), and they have to satisfy the BA that their personnel possess the necessary technical qualifications and work experience before they can be registered under the Ordinance. Appropriate top-up courses will be provided to apprise RMWCs of the statutory procedures and basic safety requirements relating to the carrying out of minor works. A RMWC's registration will be valid for three years. In general, RMWCs will not be required to attend top-up courses for the purpose of renewal of registration.

21. At the meeting of the Panel on Development on 24 February 2009, members noted that minor works practitioners, upon payment of relevant fees, could apply for registration as RMWCs for the relevant classes, types or items of minor works as appropriate according to their qualifications and experience. Panel members also noted that there would be arrangements for provisional registration.

Fees

22. When scrutinizing the B(MW)R gazetted on 27 March 2009, the Subcommittee on B(MW)R noted that subject to the passage of the Regulation, another regulation for registration-related fees would be prepared and introduced into the LegCo for Members' consideration.

Appeal system

23. In response to the Subcommittee on B(MW)R that the Administration should explore alternative channels for an applicant to lodge an appeal before bringing a case to the Court of First Instance, the Administration agreed to provide a review mechanism to re-consider unsuccessful application cases upon the applicants' request. Accordingly, the B(MW)R was subsequently amended by a LegCo resolution (L.N. 113 of 2009) passed at the Council meeting on 20 May 2009. The amendments were related to the time limits for BA to make application referral and consider renewal and restoration; and the establishment of a review mechanism.

24. The appeal channel for registration was further looked at by the Subcommittee on Building (Minor Works) (Fees) Regulation formed by the House Committee on 16 October 2009.

Other views and concerns

25. While scrutinizing Building (Minor Works) (Fees) Regulation gazetted on 9 October 2009, members of the Subcommittee on Building (Minor Works)

(Fees) Regulation raised concerns about the composition of the Registration Committee, determination of applications for registration, renewal and restoration, timing for the Building Authority to refer applications to a Registration Committee, criminal record of offence relating to carrying out of building works, notification for carrying out minor works, standard requirements of photographs for minor works, and also the publicity work for the commencement of MWCS.

Latest position

26. At the House Committee meeting on 15 October 2010, Members agreed that a Subcommittee should be formed to scrutinize these Commencement Notices. The first meeting of the Subcommittee is scheduled for 2 November 2010.

Relevant papers

27. A list of relevant papers and other reference materials is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
1 November 2010

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Building (Administration) (Amendment) Regulation 2009**

List of relevant papers

Date	Meeting/Event	References
24 October 2008	House Committee considered the Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2008 (L.N. 225)	<p>Legal Service Division Report (LC Paper No. LS6/08-09) http://www.legco.gov.hk/yr08-09/english/hc/papers/hc1024ls-6-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(2)197/08-09) http://www.legco.gov.hk/yr08-09/english/hc/minutes/hc20081024.pdf</p>
24 February 2009	Panel on Development	<p>Information paper (LC Paper No. CB(1)816/08-09(07)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0224cb1-816-7-e.pdf</p> <p>Background brief (LC Paper No. CB(1)861/08-09(01)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0224cb1-861-1-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1633/08-09) http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090224.pdf</p>
October 2009	A LegCo brief prepared by the Administration	<p>Subsidiary Legislation and Technical Memorandum for Implementation of Minor Works Control System http://www.legco.gov.hk/yr09-10/english/subleg/brief/178-180_0941ss5_brf.pdf</p>

Date	Meeting/Event	References
17 April 2009	<p>A Subcommittee was formed at the meeting of the House Committee to study the Building (Minor Works) Regulation.</p> <p>The Subcommittee submitted its written report the House Committee on 13 May 2009.</p>	<p>Legislative Council Brief (File Ref.: DEVB(PL-B) 30/30/120) http://www.legco.gov.hk/yr08-09/english/subleg/brief/51_brf.pdf</p> <p>The Regulation http://www.legco.gov.hk/yr08-09/english/subleg/negative/ln051-09-e.pdf</p> <p>Legal Service Division Report (LC Paper No. LS51/08-09) http://www.legco.gov.hk/yr08-09/english/hc/papers/hc0417ls-51-e.pdf</p> <p>LC Paper No. CB(1)1468/08-09(01) http://www.legco.gov.hk/yr08-09/english/hc/sub_leg/sc07/papers/sc070430cb1-1468-1-e.pdf</p> <p>Subcommittee Report (LC Paper No. CB(1)1555/08-09) http://www.legco.gov.hk/yr08-09/english/hc/papers/hccb1-1555-e.pdf</p>
16 October 2009	<p>A Subcommittee was formed at the meeting of the House Committee to study the Building (Minor Works) (Fees) Regulation.</p> <p>The Subcommittee submitted its written report the House Committee on 20 November 2009.</p>	<p>Legislative Council Brief (File Ref.: DEVB(PL-B) 30/30/120) http://www.legco.gov.hk/yr09-10/english/subleg/brief/178-180_0941ss5_brf.pdf</p> <p>The Regulation http://www.legco.gov.hk/yr09-10/english/subleg/negative/ln178-09-e.pdf</p> <p>Legal Service Division Report (LC Paper No. LS1/09-10) http://www.legco.gov.hk/yr09-10/english/hc/papers/hc1016ls-1-e.pdf</p> <p>LC Paper No. CB(1)147/09-10 http://www.legco.gov.hk/yr09-10/english/hc/sub_leg/sc01/papers/sc011028cb1-147-1-e.pdf</p>

Date	Meeting/Event	References
		Subcommittee Report (LC Paper No. CB(1)407/09-10) http://www.legco.gov.hk/yr09-10/english/hc/papers/hc1120cb1-407-e.pdf
15 October 2010	A Subcommittee was formed at the meeting of the House Committee to study the Three Commencement Notices made under the Buildings (Amendment) Ordinance 2008, Building (Minor Works) Regulation and Building (Administration) (Amendment) Regulation 2009	The subsidiary legislation – Building (Amendment) Ordinance 2008 (Commencement) Notice 2010 (L.N.118) http://www.legco.gov.hk/yr10-11/english/subleg/negative/ln118-10-e.pdf Building (Minor Works) Regulation (Commencement) Notice 2010 (L.N.119) http://www.legco.gov.hk/yr10-11/english/subleg/negative/ln119-10-e.pdf Building (Administration) (Amendment) Regulation 2009 (Commencement) Notice (L.N.120) http://www.legco.gov.hk/yr10-11/english/subleg/negative/ln120-10-e.pdf Legal Service Division Report (LC Paper No. LS1/10-11) http://www.legco.gov.hk/yr10-11/english/hc/papers/hc1015ls-1-e.pdf
	Buildings Department	Website on MWCS http://www.bd.gov.hk/english/services/index_buildingAmendent.html