

立法會 *Legislative Council*

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Panel on Welfare Services

Background brief prepared by the Legislative Council Secretariat for the meeting on 13 December 2010

Barrier free access for persons with disabilities

Purpose

This paper summarizes the major concerns raised by Members on the review and enhancement of the design requirements governing the provision of barrier free access and facilities for persons with disabilities ("PWDs").

Background

2. Under section 84 of the Disability Discrimination Ordinance (Cap. 487) ("DDO"), newly constructed or substantially altered private buildings are required by the Building (Planning) Regulations and related legislation under the Buildings Ordinance (Cap. 123) ("BO") to provide access and facilities for PWDs. The obligatory and recommended design requirements for provision of the access and facilities are set out in the latest version of the Design Manual - Barrier Free Access issued by the Building Authority in 2007 and came into effect in 2008 ("DM2008"). All newly constructed government buildings should also comply with the design requirements stipulated in the Design Manual.

3. In the 2001 Policy Address, the Government proposed the conduct of a review of the Design Manual - Barrier Free Access 1997 ("DM1997") with a view to enhancing the design requirements taking into account changes in building technology and expectation of the community. The design requirements would also be enhanced to ensure the health and safety of the elderly.

4. The Administration commissioned a consultancy study to review DM 1997, and issued the draft of the revised DM1997 in January 2006 for a six-month public consultation. After taking into account views received during the consultation, the Administration finalized the draft revised DM and issued a new version of Design Manual (issued as DM2008) in November 2007. Since the design requirements in the Third Schedule to the Building (Planning) Regulations (Cap. 123 sub. leg. F) were based on DM1997 and the design requirements had been revised, the Administration introduced the Building (Planning) (Amendment) Regulation 2008 in May 2008 to amend the Third Schedule to the principal Regulations to provide for the relevant revised design requirements. A subcommittee was formed to study the Amendment Regulation which was passed at the Council meeting of 12 July 2008. The Amendment Regulation came into operation on 1 December 2008.

Members' major deliberations and concerns

Review of DM 1997

5. The Panel on Welfare Services ("the Panel") held two meetings on 9 January and 12 June 2006 to discuss the draft revised DM. Some members held the view that the obligatory design requirements set out in DM1997 were the minimum standards which building owners must comply with. To implement fully the Government's policy to develop a barrier-free physical environment for PWDs to live independently and participate actively in the community, the Administration should make the recommended design requirements in DM1997 obligatory.

6. Some members considered that the Administration should not exempt owners of pre-1997 private buildings from complying with the design requirements set out in DM1997 and the draft revised DM. They also urged the Administration to speed up the work of improving the access and facilities of government buildings and public rental housing in accordance with the standards of DM1997 pending the completion of the review of DM1997.

7. In response to members, the Administration advised that obligatory design requirements must be complied with, unless building owners could prove that any of these requirements would impose unjustified hardship on them. On the other hand, the recommended design requirements were for the reference of building owners and professionals who intended to provide access and/or special facilities for use by PWDs, the elderly and people

with other forms of physical infirmities or limitations, such as pregnant women and families with young children. The recommended design requirements had not been made obligatory because there was a need to strike a right balance between meeting the special needs of PWDs, the elderly and people with other forms of physical infirmities or limitations, and the affordability of developers and building owners.

8. In considering whether it should be made mandatory for about 34 000 pre-1997 buildings to provide access and facilities for PWDs in compliance with the standards of DM1997, the Administration advised that it had to take into account a number of factors, including the needs of PWDs, technical feasibility, and the impact on the general public. All buildings which had undergone major alteration after 1997 were required to provide access and facilities in compliance with the standards of DM1997.

Outcome of the public consultation on the revised DM

9. Upon completion of the six-month public consultation, the Administration briefed the Panel at the meeting on 13 November 2006 its initial responses to the major views and comments received. The Administration proposed to further amend the draft revised DM in the light of these comments.

10. The Administration advised that when a consensus on the further revised DM was reached amongst the various parties, it would proceed to amend the related regulatory mechanism and introduce the legislative proposal into the Legislative Council to implement the finalized DM.

11. Deputations giving views to the Panel highlighted the difficulties encountered by PWDs in gaining access to buildings and facilities for PWDs. They strongly requested further improvements to the further revised DM, including raising the minimum illumination level in common areas, provision of tactile guide paths in buildings, enlarging the internal clear space inside toilets for PWDs, installation of proper signage leading to entrances accessible to PWDs and automatic doors at major entrances, taking enforcement actions against improper use of facilities for PWDs, and allowing PWDs to use passenger lifts.

12. Members expressed support for the deputations' views. They expressed dissatisfaction at the slow progress of the consultancy study which had taken over five years and the Administration's reluctance to accede to the requests of the Panel and deputations for further improvements to the Manual.

13. At the meeting on 13 November 2006, Dr Hon Fernando CHEUNG moved a motion urging the Administration to include further improvement measures in the finalized DM and expedite its implementation. Seven members present at the meeting voted for the motion and Hon Tommy CHEUNG abstained from voting. No member voted against the motion.

14. On 12 March 2007, the Panel was briefed the Administration's responses to the motion. Members were advised that the Administration would include further improvement measures in the revised DM after taking into account members' views. The Administration stressed that it had struck a proper balance between the needs of PWDs and the interest of parties concerned when implementing the revised DM. The Administration would consider whether further revisions to the revised DM were necessary taking into account the suggestions made by members and deputations. Members expressed general support for the proposed improvement measures to the Manual.

15. Some members considered that to provide a barrier free environment for PWDs and to set a good example for property developers, the Government should ensure that the access and facilities of all new Government buildings would meet the standards stipulated in the Best Practice Section of the Manual. Members also urged the Administration to expedite the improvement programmes on the access and facilities of pre-1997 buildings.

16. Given that the review of DM had taken over five years, members strongly urged the Administration to expedite the introduction of the legislative amendments and to hold briefing sessions on the finalized revised DM to explain the proposed requirements to PWDs groups and parties concerned. The Administration provided the finalized version of the revised Manual to the Panel on 30 November 2007, which was issued to members vide LC Paper No. CB(2)496/07-08(01). According to the Administration, the finalized version had incorporated all the views received during the public consultation and agreed with groups of PWDs and the Panel. The Buildings Department had also consulted the Building Subcommittee under the Land and Building Advisory Committee and Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers Committee, and incorporated their suggestions as appropriate.

Extent of application of the design requirements to the Government

17. In the course of the deliberations of the Subcommittee formed to study the Building (Planning) (Amendment) Regulation 2008, concerns were raised about the extent of the application of the Amendment Regulation to the Government and public buildings. Members noted that buildings belonging to the Government or certain public authorities were exempt from the provisions of BO. Most members took the view that the requirements for the provision of facilities for access to and the use of buildings by PWDs should also be applicable to the Government and public buildings.

18. The Administration explained that section 41 of BO provided that buildings belonging to the Government or certain public authorities were exempt from the provisions of BO. Notwithstanding this, the Administration pointed out that by virtue of section 84 of DDO, a public authority should not approve building plans unless the public authority was satisfied that reasonable access to the building would be provided for PWDs. Public authority as defined under the section includes the Director of Lands, Building Authority, the Housing Authority and the Director of Architectural Services.

19. Members expressed concern over whether or not the existence of section 84 of DDO alone provided sufficient safeguards that buildings to be built by Government departments or public authorities would also comply with the requirements set out in the Amendment Regulation. The Subcommittee noted that an amendment would have to be made to section 41 of BO before the provisions of BO could apply to buildings belonging to the Government. As this was beyond the scope of the Amendment Regulation, most members strongly urged the Administration to formulate a concrete plan for amending BO with a view to extending its application to government buildings, as well as set a good example and observe also the standards stipulated in the Best Practice Section of DM 2008 in government buildings and expedite the improvement programmes on the access and facilities of pre-1997 buildings.

20. In response to the Subcommittee's request, the Equal Opportunities Commission ("EOC") advised that the new design requirements under the Amendment Regulation would become enforceable legal requirements under regulation 72(1) of the principal Regulations which are applicable to private buildings. Should members consider the need for similar enforceable legal requirements for Government and public buildings, consideration might be given to amending section 41 of BO. EOC

pointed out that given the Government's long history of experience in complying with the mandatory requirements in DM1997 and its clear indication that Government departments and public authorities would also make reference to the Amendment Regulation in the design and construction of government and public buildings, EOC saw no difficulties for the Government and public authorities concerned to comply with the new requirements in the Amendment Regulation.

21. The Administration stressed that the Government fully observed the requirements in DM1997, and would continue to comply with the standards stipulated in Amendment Regulation and make reference to the Best Practice Section of DM2008 as far as practicable in the design and construction of new government buildings and refurbishment of existing government buildings.

Recent developments

22. In June 2010, EOC published the Formal Investigation Report: Accessibility in Publicly Accessible Premises¹. EOC suggested a wide range of policy, operational and technical recommendations to the Government, owners and managers of premises. The Report is available at: http://www.eoc.org.hk/EOC/Upload/UserFiles/File/FI_Ass_e.pdf.

23. The Administration will provide the Government's response and proposed follow-up action to EOC's Report at the Panel meeting on 13 December 2010.

Relevant papers

24. A list of relevant papers and documents is in the **Appendix** for members' reference. The papers and documents are available on the LegCo website at <http://www.legco.gov.hk/>.

Council Business Division 2
Legislative Council Secretariat
7 December 2010

¹ The investigation encompasses an access audit to examine the physical barriers and compliance levels with DM1997 and DM2008, operational barriers and attitudinal barriers; eliciting information from owners and managers; focus group discussions; views from stakeholders; and a review of relevant literature.

Appendix

Relevant Papers/Documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers</u>
Panel on Welfare Services	9 January 2006	Administration's paper LC Paper No. CB(2)771/05-06(03) http://www.legco.gov.hk/yr05-06/english/panels/ws/papers/ws0109cb2-771-3e.pdf Minutes of meeting LC Paper No. CB(2)1028/05-06 http://www.legco.gov.hk/yr05-06/english/panels/ws/minutes/ws060109.pdf
	12 June 2006	Administration's paper LC Paper No. CB(2)1438/05-06(01) http://www.legco.gov.hk/yr05-06/english/panels/ws/papers/ws0109cb2-1438-1e.pdf Administration's paper LC Paper No. CB(2)2265/05-06(03) http://www.legco.gov.hk/yr05-06/english/panels/ws/papers/ws0612cb2-2265-3e.pdf Minutes of meeting LC Paper No. CB(2)2769/05-06 http://www.legco.gov.hk/yr05-06/english/panels/ws/minutes/ws060612.pdf

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers</u>
	13 November 2006	<p>Administration's paper LC Paper No. CB(2)263/06-07(03) http://www.legco.gov.hk/yr06-07/english/panels/ws/papers/ws1113cb2-63-3-e.pdf</p> <p>Minutes of meeting LC Paper No. CB(2)553/06-07 http://www.legco.gov.hk/yr06-07/english/panels/ws/minutes/ws061113.pdf</p>
	12 March 2007	<p>Administration's paper LC Paper No. CB(2)1190/06-07(05) http://www.legco.gov.hk/yr06-07/english/panels/ws/papers/ws0312cb2-1190-5-e.pdf</p> <p>Administration's paper LC Paper No. CB(2)496/07-08(01) http://www.legco.gov.hk/yr06-07/english/panels/ws/papers/ws0312cb2-496-1-e.pdf</p> <p>Minutes of meeting LC Paper No. CB(2)1469/06-07 http://www.legco.gov.hk/yr06-07/english/panels/ws/minutes/ws070312.pdf</p>
Subcommittee on Building (Planning) (Amendment) Regulation 2008	30 May 2008 6 June 2008 10 June 2008 12 June 2008 16 June 2008 19 June 2008	<p>Legislative Council Brief http://www.legco.gov.hk/yr07-08/english/subleg/brief/124_brf.pdf</p> <p>Report of the Subcommittee LC Paper No. CB(2)2403/07-08 http://www.legco.gov.hk/yr07-08/english/hc/papers/hc0627cb2-2403-e.pdf</p>

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