

Bills Committee on Buildings Legislation (Amendment) Bill 2011

**Administration's Response to Follow-up Issues
of the Meeting held on 14 May 2012 and
Proposed Committee Stage Amendments**

This note sets out the Administration's response to the follow-up issues arising from the meeting of the Bills Committee on 14 May 2012 (the last meeting) and provides an account of the Committee Stage Amendments proposed by the Administration.

Measures to guard against unnecessary visits causing inconvenience to owners/occupants

2. In our previous response to the Bills Committee (Paper No. CB(2)1802/11-12(01)), we explained the Buildings Department (BD)'s procedures for handling reports/complaints on unauthorized building works (UBWs) and building safety issues. Some Members are concerned about the possible nuisance that BD or its outsourced consultants may cause in their inspection work should the reports/complaints turn out to be unsubstantiated.

3. BD receives a large number of reports/complaints on UBWs and other building safety related matters every year. In 2011, BD received about 53,000 such reports/complaints. It is therefore impossible for BD to carry out inspection for all the reports/complaints. As explained in the above-mentioned response, BD will not carry out site inspection for non-specific or block reports covering numerous buildings without specific details. BD has also issued an office manual to illustrate some criteria that may be useful to its staff in making a decision as to whether an inspection should be conducted. Such criteria include:

(a) Substance of a report

The content of a report may reveal important or relevant information such as works-in-progress, allegation of danger, insanitary condition, serious pollution, previous complaints or matters of public concern and public interest. For cases where

the informant/complainant can be contacted, more detailed information or clarification of the subject of the report or complaint will be obtained as necessary.

(b) BD records

Relevant records kept by BD will be assessed, including files and building plans which provide information on the state of repair and general conditions of the building, approved alteration works, minor works completed, previous complaints or reports, investigation reports and decisions, etc.

(c) Knowledge of staff

Staff who has knowledge of the building or the area will help screen out some unfounded reports/complaints.

(d) Obvious “non-actionable” items under Enforcement Policy

Reports/complaints concerning UBWs that are clearly “non-actionable” under the prevailing enforcement policy of BD and have no safety concern will usually not warrant a site inspection.

4. Members may wish to note that all reports/complaints received by BD will undergo the above screening process to ensure that the resources are used in the most effective and useful manner. These screening criteria will enable BD to form an opinion on the seriousness of the issue and whether the report/complaint warrants investigation. No inspection will be carried out for cases that are considered unfounded and not worthy of investigation to minimize the disturbance that may be caused to the owners/occupants concerned.

Proposed Committee Stage Amendments (CSAs)

Validation Scheme

5. At the last meeting, a Member suggested that if the policy intention was to apply the validation scheme only to signboards but not other building features, it was preferable to provide for it explicitly in the principal legislation to avoid possible disputes in future that the validation

scheme could also apply to other items.

6. While unauthorized signboard is the first upcoming item that we intend to include in the validation scheme (i.e. signboard control system (SCS)), we need to cater for possible extension of the validation scheme to items other than signboards in future. In fact, BD is considering including a number of green and minor amenity features in the validation scheme in the near future. Members may also wish to note that the validation scheme is in fact part of the Minor Works Control System (MWCS), and any addition or changes of minor work items under MWCS can be effected by amendments to the relevant subsidiary legislation, i.e. the Building (Minor Works) Regulation (the Regulation), through negative vetting. Therefore, the proposed amendment to section 39C seeks to rationalize the arrangement by prescribing the building or building works under the validation scheme in the Regulation. However, in the light of the Member's view, we propose that a CSA be introduced to add a schedule to the Buildings Ordinance (BO) to prescribe the list of items that is subject to the validation scheme, so that expansion of this list would have to go through a positive vetting procedure in LegCo, while the details of the items are to be prescribed in the Regulation. In this way, the list of items would have to be put to vote in the full Council of LegCo and only subject to it can it take effect. Subject to the passage of the Bill, we would table an amendment regulation at LegCo in due course to prescribe in the Regulation the technical details of unauthorized signboards that could fall within the SCS.

Commencement Date

7. The Bill amends the BO and the Buildings (Amendment) Ordinance 2011 (B(A)O)¹. It is proposed under Clause 1 of the Bill that amendments to the B(A)O come into operation on the gazettal of the enacted Ordinance and amendments to the BO commence on a day to be appointed by the Secretary by notice published in the Gazette. We now propose that all provisions in the Bill commence upon gazettal except for those provisions related to the SCS given the details of the first upcoming item, i.e. unauthorized signboard, would be prescribed under the

¹ The Buildings (Amendment) Ordinance 2011 provides for the legislative framework of the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme.

Regulation.

Warrant proposal

8. At the last meeting, some Members continued to express concern over the grounds on which the BD could apply to the Court for a warrant. Specifically, there were concerns that the coverage of two of the proposed grounds under the new section 22(1B)(a)(i) and (ii) was too wide, namely, there are reasonable grounds for suspecting that “building works have been or are being carried out to the premises or land in contravention of any provision of this [Buildings] Ordinance” (section 22(1B)(a)(i)) and that “the use of the premises or land has contravened any provision of this [Buildings] Ordinance” (section 22(1B)(a)(ii)).

9. In our last response to the Bills Committee (Paper No. CB(2)1964/11-12(01)), we have explained that the expressions “contravention of any provision of this Ordinance” and “contravene any provision of this Ordinance” under the proposed provisions should be construed according to the definition of “contraventions of the provisions of this Ordinance” in the existing section 2(1) of the BO².

10. While we must emphasize that the proposal under the Bill aims to rationalize rather than expand the existing power of the Building Authority (BA), and it seeks to strike a balance between the need to preserve the integrity of the building control regime and protection of private property rights, in view of the concern raised by some Members that the scope of application of warrants under the new section 22(1B)(a)(i) and (ii) might still be too wide, we have reconsidered the provisions and propose to revise the new section 22(1B)(a)(i) and (ii) as

² Under section 2(1) of the BO, “contraventions of the provisions of this Ordinance” includes:-

- (a) failure to comply with any order given, notice served or any condition imposed by the Building Authority under this [the Buildings] Ordinance;
- (b) in the case of building works (other than minor works commenced under the simplified requirements), material divergence or deviation from any plan approved by the Building Authority under this [the Buildings] Ordinance;
- (c) in the case of minor works commenced under the simplified requirements, material divergence or deviation from any plan required to be submitted to the Building Authority under the simplified requirements; and
- (d) in the case of minor works commenced under the simplified requirements, failure to submit to the Building Authority any certificate required to be submitted under the simplified requirements.

follows:

(1B) A magistrate may issue a warrant authorizing the Building Authority or an authorized officer to enter and, if necessary, break into any premises or enter upon any land for any of the purposes mentioned in subsection (1) if the magistrate is satisfied by information on oath that—

- (a) there are reasonable grounds for suspecting—
 - (i) with respect to building works that have been or are being carried out to the premises or land —
 - (A) that they are in contravention of section 14(1);
 - (B) that there is a material divergence or deviation from any plan approved by the Building Authority under this Ordinance or required to be submitted to the Building Authority under the simplified requirements; or
 - (C) that they are not in compliance with the standard of structural stability, public health or fire safety established by regulations;
 - (ii) that the use of the premises has been changed in contravention of section 25(1) or (2);
 - (iii) that the premises have been, or the land has been, rendered dangerous, or the premises are, or the land is, liable to become dangerous;
 - (iv) that the drains or sewers of the premises or land are in a defective or insanitary condition; or
 - (v) that a notice or order served under this Ordinance has not been complied with.

11. Under the revised version, section 22(1B)(a)(i)(A) will cater for the situation where no plans have been submitted in respect of works requiring approval and consent under BO; and section 22(1B)(a)(i)(B) will cater for (i) building works that require approval and consent and the works have material divergence or deviation from the plan approved; and (ii) minor works that require submission of plans (i.e. classes I and II) and

the works have material divergence or deviation from the plan submitted.

12. Section 22(1B)(a)(i)(C) mainly seeks to cater for exempted works (where no plans are required to be submitted) and minor works commenced under the simplified requirements. In relation to minor works, although plans are required to be submitted for classes I and II minor works items, the plans are not required to be approved by BD and henceforth it is the responsibility of the prescribed building professionals and the prescribed registered contractor to ensure that the minor works meet the prevailing building standards as prescribed by the various regulations under the BO. Even if the minor works are carried out in strict accordance with the plan submitted to BA, BD will still need to carry out audit check to ensure compliance with the BO. In view of the concern of some Members that the grounds for applying for warrants in relation to minor works items should be confined as far as possible, we have narrowed the scope for BD to apply for warrant to cases where there is reasonable suspicion that the works, including both minor works and exempted works, are not in compliance with the standard of structural stability, public health or fire safety established by regulations. We consider that they are the essential standards that BD would need to enforce regardless of the nature and complexity of the works.

13. Furthermore, we have also limited the scope of section 22(1B)(a)(ii) by setting out clearly that BD could apply for warrant only if it has reasonable suspicion “that the use of the premises has been changed in contravention of section 25(1) or (2)” as section 25(1) and (2) is the major provision under which the BD enforces against the unauthorized change in use of premises.

14. A marked-up copy of the Bill showing the proposed CSAs is at the [Annex](#) for Members’ easy reference.

Development Bureau
Buildings Department
May 2012

**Marked-up copy of the
Buildings Legislation (Amendment) Bill 2011
showing the Committee Stage Amendments
proposed by the Administration**

(as at 18 May 2012)

Buildings Legislation (Amendment) Bill 2011

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Part 3

Amendments to Buildings (Amendment) Ordinance 2011

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A BILL

To

Amend the Buildings Ordinance and the Buildings (Amendment) Ordinance 2011 to provide for matters relating to the issue of warrants authorizing entry into premises or upon land; to require registered inspectors to notify the Building Authority of certain unauthorized building works; to provide for surcharges on costs recoverable by the Building Authority under the Buildings Ordinance; to extend the application of sections 39B and 39C of that Ordinance; and to make minor amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Buildings Legislation (Amendment) Ordinance 2011.

(2) ~~This Part and Part 3 come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.~~ Subject to subsection (3), this Ordinance comes into operation on the day on which this Ordinance is published in the Gazette.

~~(3) Part 2 comes into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.~~

~~(3) Sections 5 and 6 come into operation on a day to be appointed by the Secretary by notice published in the Gazette.~~

~~(4) In subsection (3)—~~

Secretary (局長) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123).

Part 2

Amendments to Buildings Ordinance

2. Buildings Ordinance amended

The Buildings Ordinance (Cap. 123) is amended as set out in ~~sections 3 to 6~~sections 2A to 6A.

2A. Section 2 amended (interpretation)

Section 2(3)—

Repeal

“Schedule 4 or 5”

Substitute

“Schedule 4, 5 or 8”.

3. Section 22 amended (powers of Building Authority)

(1) Section 22(1)—

Repeal

“The Building Authority or any public officer authorized in writing by him in that behalf”

Substitute

“Subject to subsection (1A), the Building Authority or an authorized officer”.

(2) Section 22(1)(b)—

Repeal

“or drainage system”

Substitute

“, drainage system, sewerage works or sewerage system”.

(3) After section 22(1)—

Add

- “(1A) Except in case of emergency, neither the Building Authority nor an authorized officer may enter or break into the premises, or enter upon the land under subsection (1) unless—
- (a) the entry is permitted by the owner, occupier, or person who appears to have control or management of the premises or land; or
 - (b) a warrant is obtained under subsection (1B).
- (1B) A magistrate may issue a warrant authorizing the Building Authority or an authorized officer to enter and, if necessary, break into any premises or enter upon any land for any of the purposes mentioned in subsection (1) if the magistrate is satisfied by information on oath that—
- (a) there are reasonable grounds for suspecting ~~that~~—
 - (i) with respect to building works that have been or are being carried out to the premises or land ~~in contravention of any provision of this Ordinance—~~
 - (A) that they are in contravention of section 14(1);
 - (B) that there is a material divergence or deviation from any plan approved by the Building Authority under this Ordinance or required to be submitted to the Building Authority under the simplified requirements; or
 - (C) that they are not in compliance with the standard of structural stability, public health or fire safety established by regulations;
 - (ii) that the use of the premises ~~or land~~ has been changed in contravention of section 25(1) or

- ~~(2) contravened any provision of this Ordinance;~~
- (iii) that the premises have been, or the land has been, rendered dangerous, or the premises are, or the land is, liable to become dangerous;
 - (iv) that the drains or sewers of the premises or land are in a defective or insanitary condition; or
 - (v) that a notice or order served under this Ordinance has not been complied with;
- (b) the entry into the premises or upon the land by the Building Authority or an authorized officer—
- (i) was refused; or
 - (ii) could not be gained despite a visit made to the premises or land on at least 2 different days; and
- (c) notice of the intention to apply for a warrant has been served on the owner or occupier of the premises or land.
- (1C) A warrant issued under subsection (1B) must specify—
- (a) the premises or land to be entered;
 - (b) the purpose of the entry;
 - (c) the name and capacity of the person authorized to enter the premises or land; and
 - (d) the date of the issue of the warrant.
- (1D) If the Building Authority or an authorized officer enters or breaks into any premises, or enters upon any land, under a warrant issued under subsection (1B), the Building Authority or authorized officer must produce to the owner, occupier, or person who appears to have

control or management of the premises or land the warrant for inspection.

- (1E) When entering any premises or land under this section, the Building Authority or an authorized officer may be accompanied by any person that the Building Authority or authorized officer considers necessary for the purpose of the entry.
- (1F) On leaving any unoccupied premises or land entered under this section, the Building Authority or an authorized officer must leave the premises or land as effectually secured against trespassers as the premises or land was found at the time of entry.
- (1G) A warrant issued under subsection (1B) continues in force until the purpose for which entry is necessary has been fulfilled.”.

- (4) Section 22(2)(b)—

Repeal

“a public officer authorized under this section may take such steps as he may deem”

Substitute

“an authorized officer may take any steps that he or she considers”.

- (5) After section 22(4)—

Add

“(5) In this section—

authorized officer (獲授權人員) means a public officer authorized in writing by the Building Authority for any of the purposes mentioned in subsection (1).”.

4. Section 33 amended (recovery of costs of works by Building Authority)

- Section 33(1)—

Repeal

“he may”

Substitute

“the Building Authority may impose a surcharge of not exceeding 20% on the cost due and may”.

5. Section 38 amended (regulations)

After section 38(1)(ke)(i)—

Add

- “(ia) the prescription of a date in relation to any prescribed building or building works for the purposes of section 39C(1A)(a);
- (ib) the prescription of the requirement for periodic compliance with the requirements in section 39C(2), (3) and (4) in respect of any prescribed building or building works for the purposes of section 39C(1A)(c);
- (ic) the prescription of the details in relation to any prescribed building or building works specified in Schedule 8;”.

6. Section 39C amended (Building Authority shall not serve order under section 24 or notice under section 24C)

- (1) Section 39C, English text, heading—

Repeal

“shall”

Substitute

“must”.

- (2) Section 39C—

Repeal subsection (1)**Substitute**

- “(1) Despite sections 24 and 24C, the Building Authority must not serve an order under section 24 or a notice under section 24C in respect of a prescribed building or building works on the ground that the building or building works have been completed or carried out in contravention of section 14(1), if—
- (a) the building or building works were completed or carried out before 31 December 2010; and
 - (b) with respect to the building or building works, the requirements in subsections (2), (3) and (4) have been complied with.
- (1A) Despite sections 24 and 24C, the Building Authority must not serve an order under section 24 or a notice under section 24C in respect of a prescribed building or building works on the ground that the building or building works have been completed or carried out in contravention of section 14(1) or not in compliance with the simplified requirements, if—
- (a) the building or building works were completed or carried out before a date prescribed in the Minor Works Regulation in relation to the prescribed building or building works;
 - (b) with respect to the building or building works, the requirements in subsections (2), (3) and (4) have been complied with; and
 - (c) with respect to the building or building works, if periodic compliance with those requirements is required by the Minor Works Regulation, those requirements are complied with in accordance with the Minor Works Regulation.”.

(3) Section 39C(2)—

Repeal
“regulations”

Substitute

“Minor Works Regulation”.

- (4) Section 39C(3)—

Repeal

“regulations”

Substitute

“Minor Works Regulation”.

- (5) Section 39C(5)—

Repeal

“(1)”

Substitute

“(1) or (1A)”.

- (6) Section 39C(6)—

Repeal paragraph (a).

- (7) Before section 39C(6)(b)—

Add

“(aa) *Minor Works Regulation* (《小型工程規例》) means the Building (Minor Works) Regulation (Cap. 123 sub. leg. N);”.

- (8) Section 39C(6)(b)—

Repeal paragraph (b)

~~“regulations”~~

Substitute

“(b) *prescribed building or building works* (訂明建築物或建築工程)—

(i) in relation to subsection (1), means a building or building works prescribed in the Minor Works Regulation as prescribed building or building works;

(ii) in relation to subsection (1A), means a building or building works specified in Schedule 8; and

(iii) in relation to subsection (2) or (4), means a building or building works falling within subparagraph (i) or (ii).”.

~~“Minor Works Regulation”.~~

~~(9) Section 39C(6)(b)—~~

Repeal

~~“definition”~~

Substitute

~~“definition in relation to this section or a provision of this section”.~~

6A. Schedule 8 added

At the end of the Ordinance—

Add

“Schedule 8

[ss. 2, 38 & 39C]

Prescribed Building or Building Works

Item

Description

1.

Signboard of a kind prescribed under section 38(1)(ke)(ic).”.

Part 2A

Amendment to Building (Minor Works) Regulation

6B. Building (Minor Works) Regulation amended

The Building (Minor Works) Regulation (Cap. 123 sub. leg. N) is amended as set out in section 6C.

6C. Section 62 amended (provisions relating to section 39C of Ordinance)

Section 62(1) —

Repeal

“in section 39C(6)(b)”

Substitute

“given by section 39C(6)(b)(i) of the Ordinance in relation to section 39C(1)”.

Part 3

Amendments to Buildings (Amendment) Ordinance 2011

7. Buildings (Amendment) Ordinance 2011 amended

The Buildings (Amendment) Ordinance 2011 (16 of 2011) is amended as set out in sections 8 to 10.

8. Section 20 amended (Part IIA added)

- (1) Section 20, new section 30B(11)—

Repeal

“, together with a surcharge of not exceeding 20% on the cost that the Building Authority may impose,”.

- (2) Section 20, new section 30C(9)—

Repeal

“, together with a surcharge of not exceeding 20% on the cost that the Building Authority may impose,”.

- (3) Section 20, new section 30D(5)—

Repeal

everything after “must”

Substitute

“—

- (a) notify the Building Authority of any case of emergency that is revealed during the course of the prescribed inspection; and
- (b) if the prescribed inspection is carried out under section 30B(3), also notify the Building Authority of any building works—

- (i) that have been or are being carried out in contravention of any provision of this Ordinance to—
 - (A) the common parts of the building;
 - (B) any external wall, roof or podium of the building (other than the common parts);
 - (C) any yard or slope adjoining the building; or
 - (D) any street on which the building fronts or abuts; and
- (ii) that are identified during the course of the prescribed inspection.”.

9. Section 21 amended (recovery of costs of works by Building Authority)

Section 21—

Repeal subsection (3).

10. Section 26 amended (obstruction of owners’ corporation)

(1) Section 26(1)—

Repeal

everything after “order” and before “in relation”

Substitute

“or notice has been served on the owners’ corporation under any provision of this Ordinance”.

(2) Section 26(4), new section 39B(1A)—

Repeal

everything after “building that” and before “in relation”

Substitute

“an order or notice has been served on the owners’ corporation under any provision of this Ordinance”.

- (3) Section 26(4), new section 39B(1A)—

Repeal

“with the notice”

Substitute

“with the order or notice”.

Explanatory Memorandum

Note—

In this Explanatory Memorandum, the expression *the Ordinance* refers to the Buildings Ordinance (Cap. 123) with the amendments enacted by the Buildings (Amendment) Ordinance 2011 (16 of 2011) incorporated into it.

The object of this Bill is to amend the Buildings Ordinance (Cap. 123) and the Buildings (Amendment) Ordinance 2011 (16 of 2011) in the following 5 aspects for the rendering safe of dangerous buildings and land or for preventing buildings from becoming unsafe, that is to say, to—

- (a) provide for the issue of a magistrate’s warrant authorizing entry into any premises or upon any land by the Building Authority or any public officer authorized by the Building Authority;
- (b) extend the scope of the duty of a registered inspector under section 30D(5)(b) of the Ordinance (being a duty to notify the Building Authority of any unauthorized building works that are identified during the course of a prescribed inspection) to include any unauthorized building works carried out to the roof or podium of a building, or any yard, slope or street contiguous to a building for notification;
- (c) enable the Building Authority to impose a surcharge on the cost recoverable by the Building Authority under the Ordinance for any inspection, investigation or works carried out, services provided, or abortive visit made, by the Building Authority;
- (d) extend the obligations under section 39B of the Ordinance (namely, not to obstruct, and not to refuse to contribute to the cost of, any inspection, investigation, works or other action carried out by the owners’ corporation in relation to any common parts of the building for the compliance with certain orders or notices served under the Ordinance) to the effect that

such obligations apply not only in relation to certain orders or notices but in relation to any orders or notices served under the Ordinance;

- (e) extend the scheme under section 39C of the Ordinance (under which demolition orders or notices will not be made by the Building Authority in respect of certain unauthorized building or building works) to allow inclusion of further types of unauthorized building or building works.
2. Clause 1 sets out the short title and provides for commencement.
3. Clauses 3 to 6 set out the amendments to the Buildings Ordinance (Cap. 123) (*the principal Ordinance*).
4. Clause 3 amends section 22 of the principal Ordinance to provide for the issue, when certain conditions are satisfied, of a magistrate's warrant authorizing entry into any premises or upon any land by the Building Authority or any public officer authorized by the Building Authority. It also makes a minor amendment to subsection (1)(b) of that section.
5. Clause 4 amends section 33(1) of the principal Ordinance to extend the power of the Building Authority to impose a surcharge of not exceeding 20% on the cost incurred and recoverable by the Building Authority under any provision of the Ordinance.
6. Clause 5 amends section 38(1) of the principal Ordinance to provide for regulation making powers concerning the prescription of a date for the purposes of section 39C(1A)(a) of the Ordinance, and prescription of the requirement for periodic compliance for the purposes of section 39C(1A)(c) of the Ordinance.
7. Clause 6 amends section 39C of the principal Ordinance to allow inclusion of further types of unauthorized building or building works to be regulated by the scheme under that section under which demolition orders or notices will not be made by the Building Authority.

8. Clauses 8 to 10 set out the amendments to the Buildings (Amendment) Ordinance 2011 (16 of 2011) (*the Amending Ordinance*).
9. Clause 8(1) and (2) amends section 20 of the Amending Ordinance (in relation to the new sections 30B(11) and 30C(9) of the Ordinance) to repeal the power of the Building Authority to impose a surcharge of not exceeding 20% on the cost incurred and recoverable by the Building Authority under sections 30B(11) and 30C(9) of the Ordinance only.
10. Clause 8(3) amends section 20 of the Amending Ordinance (in relation to the new section 30D(5) of the Ordinance) to the effect that the scope of notification to the Building Authority of any unauthorized building works identified by a registered inspector during the course of a prescribed inspection be extended to cover any unauthorized building works carried out to any roof or podium of a building (other than the common parts), or any yard or slope adjoining a building, or any street on which a building fronts or abuts.
11. Clause 9 amends section 21 of the Amending Ordinance to repeal the amendment made under section 21(3) in relation to section 33(1) of the Ordinance.
12. Clause 10 amends section 26 of the Amending Ordinance (in relation to section 39B(1) and the new section 39B(1A) of the Ordinance) to the effect that a person must not obstruct, or refuse to contribute to the cost of, any inspection, investigation, works or other action carried out in relation to any common parts of a building for compliance with any order or notice served on the owners' corporation of the building under the Ordinance.