

立法會
Legislative Council

LC Paper No. LS14/11-12

**Paper for the House Committee Meeting
on 9 December 2011**

**Legal Service Division Report on
Buildings Legislation (Amendment) Bill 2011**

I. SUMMARY

- 1. Objects of the Bill** To amend the Buildings Ordinance (Cap. 123) (BO) and the Buildings (Amendment) Ordinance 2011 (16 of 2011) (B(A)O) to include five new measures to further enhance building safety.

- 2. Comments** The Bill proposes to provide for -
 - (a) surcharge of not exceeding 20% on the cost incurred and recoverable by the Building Authority (BA) for building works carried out on behalf of building owners;
 - (b) an offence for refusal to pay the relevant share of the costs of works being undertaken by an owners' corporation in compliance with an order or a notice under BO;
 - (c) application to the Court for warrants authorizing entry into premises or upon land by BA;
 - (d) a statutory control system for signboards; and
 - (e) registered inspectors to notify BA of unauthorized building works carried out to the roofs or podia of a building, or the yards, slopes or streets contiguous to a building.

- 3. Public Consultation** No public consultation has been conducted but the proposals in the Bill are in line with the directions of the recommendations of District Councils which were presented to the Chief Executive at the 2010 Summit on District Administration in July 2010.

- 4. Consultation with LegCo Panel** On 13 January 2011, the Administration briefed the Subcommittee on Building Safety and Related Issues the five new measures to further enhance building safety. Subcommittee members expressed support in principle. On 11 February 2011, Members of the Bills Committee on Buildings (Amendment) Bill 2010 discussed the five new measures. While Member in general supported the principles of the proposed measures, they expressed divergent views over some of the measures referred to in 2(c) and (d) above.

- 5. Conclusion** Members may wish to form a Bills Committee to study the Bill in detail in view of Members' divergent views.

II. REPORT

Objects of the Bill

To amend the Buildings Ordinance (Cap. 123) (BO) and the Buildings (Amendment) Ordinance 2011 (16 of 2011) (B(A)O) to include the following measures to further enhance building safety -

- (a) surcharge on defaulted works;
- (b) penalty against persons who refuse to share cost of works by owners' corporation (OC) for compliance with statutory orders or notices;
- (c) warrant for entry into interior of individual premises;
- (d) signboard control system; and
- (e) registered inspectors to comprehensively report exterior unauthorized building works (UBWs) under the Mandatory Building Inspection Scheme (MBIS).

LegCo Brief Reference

2. DEVB(PL-B) 30/30/122 issued by the Development Bureau on 23 November 2011.

Date of First Reading

3. 7 December 2011.

Comments

Surcharge on defaulted works

4. Clause 4 of the Bill amends section 33(1) of BO to empower the Building Authority (BA) to impose a surcharge of not exceeding 20% on the cost incurred by BA to be recovered from an owner who has failed to comply with statutory orders or notices issued under BO. Such power has already existed for MBIS and Mandatory Window Inspection Scheme (MWIS) under B(A)O. Clauses 8(1) and (2) and 9 of the Bill amend the relevant sections of B(A)O as a result of clause 4.

Penalty for refusing to share cost of works by OC

5. Under B(A)O, it is an offence to refuse to pay the relevant share of the inspection and repair costs for the common parts for works being undertaken by OC in compliance with an MBIS/MWIS notice issued by BA. Clause 10 of the Bill amends section 39B(1) and (1A) to extend this offence to all works required by statutory orders in respect of common parts of the building that are required to be carried out by OCs in compliance with an order or a notice under BO.

Warrant for entry into interior of individual premises ("the warrant proposal")

6. Clause 3 of the Bill amends section 22 of BO to provide for application to the Court for warrants for entry into individual premises by BA. With the enactment of the Bill, the entry or breaking into the premises or upon land by BA in the presence of a police officer is restricted to emergency situations only. If there is no permitted entry, BA will have to apply to the Court for a warrant to enter the premises.

7. Before the issuance of warrant, a magistrate must be satisfied by information on oath that -

- (a) there are reasonable grounds for suspecting any of the following matters specified in proposed section 22(1B)(a) -
 - (i) building works have been or are being carried out to the premises or land in contravention of any provision of BO;
 - (ii) the use of the premises or land has contravened any provision of BO;
 - (iii) the premises have been, or the land has been, rendered dangerous, or the premises are, or the land is, liable to become dangerous;
 - (iv) the drains or sewers of the premises or land are in a defective or insanitary condition; or
 - (v) a notice or order served under BO has not been complied with;
- (b) BA has made attempted entry on at least two different days; and
- (c) a notice of intention to apply for a warrant has been served on the owner or occupier of the premises.

Signboard control system

8. Clauses 5 and 6 of the Bill amend sections 38(1) and 39C of BO respectively with a view to introducing a statutory dedicated control system for signboards. Under section 39C, demolition orders or notices will not be made to certain unauthorized building or building works prescribed in the Building (Minor Works) Regulation (Cap.123 sub. leg. N) (B(MW)R) if they are completed or carried out before 31 December 2010 and the requirements in section 39C(2), (3) and (4)¹ have been complied with. The proposed amendment extends the application of section 39C to further types of unauthorized building or building works to be prescribed in B(MW)R, and provide for a periodic compliance with the above-mentioned requirements for certain prescribed building or building works.

9. According to paragraph 10 of the LegCo Brief, the proposed signboard control system would allow the continued use of certain existing unauthorized signboards after safety checks by registered building professionals or registered contractors to be conducted once every five years, and the details of such system will be set out in subsidiary legislation in due course. It seems likely that this will be in the form of further amendments to B(MW)R.

Registered inspectors to comprehensively report exterior unauthorized building works

10. Clause 8(3) amends the new section 30D(5) of B(A)O so that RI is required to notify BA of UBWs not only 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 inspection under MBIS, but also of UBWs on any roof and podium of the building (other than the common parts), any yard or slope adjoining the building and any street on which the building fronts or abuts.

Public Consultation

11. No public consultation has been conducted. According to paragraph 17 of the LegCo Brief, the proposals in the Bill are in line with the directions of the recommendations of District Councils which were presented to the Chief Executive at the 2010 Summit on District Administration in July 2010.

¹ Section 39C(2) provides that "[a]n authorized person, a registered structural engineer, a registered general building contractor, a registered specialist contractor or a registered minor works contractor as required by the regulations is to be appointed to inspect the prescribed building or building works.". Section 39C(3) provides that "[t]he person appointed under subsection (2) is to submit or deliver to the Building Authority or other persons prescribed plans, certificates, notices and other documents as required by the regulations.". Section 39C(4) provides that "[w]here the person appointed under subsection (2) considers that for the safety of the prescribed building or building works, it is necessary to carry out minor works to alter, rectify or reinforce the prescribed building or building works, such works are to be carried out by a prescribed registered contractor under the simplified requirements."

Consultation with LegCo

12. The Administration briefed the Subcommittee on Building Safety and Related Issues (established under the Panel on Development) on 13 January 2011 the legislative proposals to further enhance building safety. Subcommittee members noted the Administration's plan to incorporate proposals into the Buildings (Amendment) Bill 2010 which was then under scrutiny by a Bills Committee. Subcommittee members expressed support for the legislative proposals in principle.

13. At the meeting of the Bills Committee on Buildings (Amendment) Bill 2010 held on 11 February 2011, the Administration briefed the Bills Committee on the five new measures proposed to be incorporated in the Buildings (Amendment) Bill 2010 by way of Committee Stage amendments to further enhance building safety². Members of the Bills Committee in general supported the principles of the proposed new building safety initiatives but expressed divergent views over the "warrant proposal". While some members appreciated the practical enforcement problems encountered by the Buildings Department (BD) and considered the "warrant proposal" useful in enhancing BD's efficiency and effectiveness in tackling problems such as building works associated with sub-divided units, some members were concerned that the "warrant proposal" might give BA too wide a power and might infringe private property rights of individual owners. These members were of the view that the new initiatives, particularly the "warrant proposal", should be considered separately following proper consultation by the Administration. As regards the proposed signboard control scheme, some members held the view that consent of the owners/OCs concerned should be obtained prior to the erection and validation of signboards in the common parts of the buildings to help ensure safety of the works and better protect the interests of owners.

Conclusion

14. Members may wish to form a Bills Committee to study the Bill in detail in view of Members' divergent views.

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² It was subsequently agreed that the new measures should be introduced by a separate bill.