

立法會
Legislative Council

LC Paper No. CB(1) 1464/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/SS/3/11/1

**Subcommittee on Building (Inspection and Repair) Regulation,
Building (Administration) (Amendment) Regulation 2011,
Building (Minor Works) (Amendment) Regulation 2011, and
Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011**

**Minutes of the fourth meeting
held on Friday, 2 December 2011, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king, JP
Hon IP Kwok-him, GBS, JP
- Members absent** : Hon James TO Kun-sun
Hon CHEUNG Hok-ming, GBS, JP
Hon Cyd HO Sau-lan
Hon Tanya CHAN
- Public officers attending** : **For item I**
- Mr Ryan CHIU
Principal Assistant Secretary for Development
(Planning and Lands)³
- Mr Daniel FONG
Assistant Secretary for Development (Buildings)¹
- Mr TSE Kin-leung
Assistant Director/Mandatory Building Inspection
Buildings Department

Mr Thomas LEUNG
Chief Building Surveyor/Legal Services
Buildings Department

Mr Humphrey HO
Chief Structural Engineer/Mandatory Building
Inspection 2
Buildings Department

Ms Rayne CHAI
Senior Government Counsel
Department of Justice

Mr Henry CHAN
Government Counsel
Department of Justice

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mrs Mary TANG
Senior Council Secretary (1)1

The Chairman informed members that Ms Cyd HO had withdrawn from the membership of the Subcommittee.

I. Meeting with the Administration

Background information on the Regulations and Commencement Notice

Building (Inspection and Repair) Regulation (L.N. 146), Building (Administration) (Amendment) Regulation 2011 (L.N. 147), Building (Minor Works) (Amendment) Regulation 2011 (L.N. 148), and Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011 (L.N. 149)

Ref: DEVB (PL-CR) 2/15-08 — The Legislative Council Brief
(*issued by Development Bureau in October 2011*)

LC Paper No. LS3/11-12
(issued on 2 November 2011)

— Legal Service Division Report

LC Paper No. CB(1) 359/11-12(01)
(issued for the meeting
17 November 2011)

— Marked-up copy of the
Building (Administration)
(Amendment)
Regulation 2011, and Building
(Minor Works) (Amendment)
Regulation 2011 (Restricted to
Members)

2. The Subcommittee deliberated (Index of proceedings attached in **Annex**).
3. The Administration was requested to -
 - (a) include in the flowchart showing the different stages of Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) the specified forms to be applied. To also provide the draft specified forms for members' reference;
 - (b) advise the consequences of the parties concerned in the event of non-compliance with the different prescribed time limits in the Regulation;
 - (c) consider providing a definition for "window" in the Regulation or Code of Practice to facilitate public understanding on the coverage of MWIS;
 - (d) advise the requirements for and responsibilities of qualified persons appointed to inspect windows. To make it clear that the policy intent of MWIS was on the safety rather than legality of windows, the latter of which should be considered under MBIS. To also consider replacing the phrase "the Ordinance" in proposed section 14(1)(a) with "the Regulation" to confine the scope of inspection to safety of windows;
 - (e) advise whether the Building Authority (BA) or his representatives would check the proposals received under proposed section 18 before endorsing these proposals;
 - (f) advise the parties to be held liable in the event of omission of latent defects in a proposal which later turned out to have significant financial impacts beyond the affordability of building owners;

- (g) give an undertaking that the Administration would work out a sample contract setting out clearly that owners would not be liable to pay the registered inspectors (RI) who failed to obtain prior endorsement of BA before conducting a detailed investigation on their building; and
- (h) confirm whether the duty of RI to deliver copy of each document to "the person for whom the prescribed inspection is carried out" under proposed section 30(1)(a) referred to individual owners of the building. If not, whether and how owners could have access to and obtain these documents from the Buildings Department. To also advise whether the public could have access to inspection reports.

4. Members agreed to continue discussion at the next meeting scheduled for Monday, 5 December 2011, at 10:45 am.

II. Any other business

5. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
2 April 2012

**Subcommittee on Building (Inspection and Repair) Regulation,
Building (Administration) (Amendment) Regulation 2011,
Building (Minor Works) (Amendment) Regulation 2011, and
Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011**

**Proceedings of the fourth meeting
held on Friday, 2 December 2011, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
001430 - 001529	Chairman	Members' acknowledgment of the withdrawal of Ms Cyd HO from the membership of the Subcommittee.	
001530 - 003232	Administration Ms Starry LEE Chairman Assistant Legal Adviser 1 (ALA1)	<p>Continuation of clause-by-clause examination of the Building (Inspection and Repair) Regulation</p> <p>Clause 14 - Documents to be submitted on completion of prescribed inspection and prescribed repair in respect of windows</p> <p>Ms Starry LEE's enquiries -</p> <p>(a) apart from owners' corporation (OC), whether the registered inspector (RI)/qualified person (QP) appointed to carry out prescribed inspection/repair under the Mandatory Buildings Inspection Scheme (MBIS) and Mandatory Windows Inspection Scheme (MWIS) was required to submit the relevant documents for reference by individual owners;</p> <p>(b) if not, whether individual owners could have access to the documents submitted by RI/QP to the Building Authority (BA) regarding the prescribed inspection/repair under MBIS and MWIS; and</p> <p>(c) whether specific time limits were imposed for RIs/QPs to submit various documents under MBIS and MWIS and the penalties for non-compliance.</p> <p>Chairman's view that the requirement under proposed section 30(1)(a) for RIs and QPs to deliver copies of inspection reports to "the</p>	<p>The Administration to -</p> <p>(a) advise the consequences of the parties concerned in the event of non-compliance with the different prescribed time limits in the Regulation; and</p> <p>(b) confirm whether the duty of RI to deliver copy of each document to "the person for whom the prescribed inspection is carried out" under proposed section 30(1)(a) referred to individual owners of the building. If not, whether and how owners could have access to and obtain these documents from the Buildings Department. To also advise whether the public could</p>

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		<p>person for whom the prescribed inspection is carried out" might include all owners.</p> <p>Administration's response -</p> <p>(a) templates of specified forms would be made available on the website of the Buildings Department (BD);</p> <p>(b) RIs/QPs were required to provide OCs and/or the person for whom the prescribed inspection was carried out with a copy of the documents submitted to BA; and</p> <p>(c) there were time limits for submission of various documents under MBIS and MWIS specified in the Regulation, failing which BA might consider instigating disciplinary proceedings against RIs/QPs. As for failure to comply with the statutory notices before the expiry of the time specified therein, warning letters would be issued and prosecution actions taken as appropriate against the owners concerned. BD might also arrange to have the defaulted inspections and repair works carried out and recover from the owners the cost together with a surcharge of not exceeding 20% of the total cost.</p>	<p>have access to inspection reports.</p>
<p>003233 - 004035</p>	<p>Mr IP Kwok-him Chairman Mr KAM Nai-kai Administration</p>	<p>Discussion on the right of access to inspection reports submitted by RIs/QPs to BA.</p> <p>Mr IP Kwok-him's views a RI might have difficulty in providing each and every owner with a copy of the inspection report submitted to BA. However, individual owners should be able to have access to and obtain a copy of the inspection report from OC.</p> <p>Mr KAM Nai-wai's views that owners should have right of access to inspection reports, particularly for those who might not be in good terms with OCs.</p> <p>Ms Starry LEE's request that individual owners should be able to obtain copies of</p>	

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		<p>inspection reports from BA.</p> <p>Administration's response that in case OC was the person for whom the prescribed inspection was to be carried out, the appointed RI was required under section 30(1)(a) to provide a copy of inspection reports to OC. As the individual owners were also involved in common parts of the buildings, BD would favourably consider releasing a copy to them upon request.</p>	
004036 - 005139	<p>Mr IP Kwok-him Ms Starry LEE Administration Chairman</p>	<p>Discussion on prescribed inspection of windows</p> <p>Mr IP Kwok-him's concern/enquiry -</p> <p>(a) there were cases where the installation of window-type air-conditioners in one unit had affected the opening of windows of the adjacent unit. However, BD was not forthcoming in dealing with these cases; and</p> <p>(b) whether such improper installations could be rectified under MWIS.</p> <p>Ms Starry LEE's enquiries -</p> <p>(a) whether actions would be taken against windows which were not installed in accordance with approved building plans; and</p> <p>(b) the standard requirements for windows.</p> <p>Administration's response -</p> <p>(a) the purpose of MWIS was to ensure safety of windows and the inspection of air-conditioners did not form part of MWIS;</p> <p>(b) air-conditioners installed in such a way that would contravene fire safety and building regulations would be subject to enforcement actions; and</p> <p>(c) approved plans were available in BD's website for public's viewing. Windows which were not installed in accordance</p>	

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		<p>with approved building plans would be dealt with under MBIS, as RIs were required to report the presence of unauthorized building structures (UBWs) at the common parts and external walls to BD.</p>	
005140 - 005809	Mr KAM Nai-wai Chairman Administration	<p>Mr KAM Nai-wai's enquiries -</p> <p>(a) the actions to be taken against windows which were UBWs constructed not in accordance with building plans;</p> <p>(b) whether the legality of windows would be included in the prescribed inspection.</p> <p>Administration's response -</p> <p>(a) RIs were expected to report on UBWs under MBIS while QPs were not required to do so under MWIS; and</p> <p>(b) QPs were required to inspect the safety rather than legality of existing windows.</p>	<p>The Administration to make it clear that the policy intent of MWIS was on the safety rather than legality of windows, the latter of which should be considered under MBIS.</p>
005810 - 005927	Ms Starry LEE	<p>Ms Starry LEE's concern/request -</p> <p>(a) owners might be under the impression that all their windows, including those unauthorized ones, would be legalized after their premises had undergone prescribed inspection and repair under MWIS; and</p> <p>(b) RIs should be required to set out the windows which were UBWs in their inspection reports.</p>	
005928 - 010104	Chairman Administration	<p>Chairman's request for the Administration to include in the flowchart showing the different stages of MBIS and MWIS the specified forms to be applied. Copies of the draft specified forms should also be provided for members' reference.</p>	<p>The Administration to -</p> <p>(a) include in the flowchart showing the different stages of MBIS and MWIS the specified forms to be applied; and</p> <p>(b) provide the draft specified forms</p>

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			for members' reference.
010105 - 011141	Prof Patrick LAU Chairman Administration	Prof Patrick LAU's concern about the reference to "the Ordinance" in proposed section 14(1)(a) as this would mean that the prescribed inspection for windows would need to be carried out in accordance with the broader scope under the Buildings Ordinance (Cap 123).	The Administration to consider replacing the phrase "the Ordinance" in proposed section 14(1)(a) with "the Regulation" to confine the scope of inspection to safety of windows.
011142 - 012151	Ms LI Fung-ying Ms Starry LEE Administration Chairman	<p>Ms LI Fung-ying's concern that the prescribed inspection for windows was only confined to safety and not legality.</p> <p>Ms Starry LEE's enquiry on whether QPs could be required to inspect the legality of windows by making reference to building plans.</p> <p>Administration's explanation -</p> <p>(a) though the qualifications of QPs were not as stringent as RIs, the former had to meet the prescribed requirements under the Regulation; and</p> <p>(b) unlike RIs who were required to report the presence of UBWs in the common parts and external walls during prescribed inspection under MBIS, QPs were not required to do so under MWIS.</p>	The Administration to advise the requirements for and responsibilities of QPs appointed to inspect windows.
012152 - 012612	Mr IP Kwok-him Chairman Administration	<p>Mr IP Kwok-him's views -</p> <p>(a) there were cost implications if the requirements on qualification of QP were more stringent for the inspection of windows under MWIS;</p> <p>(b) the focus of prescribed inspection for windows should be on safety given that a more thorough inspection would be carried out under MBIS by RIs every 10 years; and</p> <p>(c) supporting the replacement of the phrase "the Ordinance" in proposed section 14(1)(a) with "the Regulation" to confine the scope of inspection for</p>	

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		windows to safety.	
012613 - 013365	Prof Patrick LAU Chairman Administration	<p>Prof Patrick LAU's enquiry/request -</p> <p>(a) whether windows not installed in accordance with approved building plans should be regarded as UBWs; and</p> <p>(b) need for clarity on the types of window alteration which were allowed.</p> <p>Administration's explanation -</p> <p>(a) before the implementation of the minor works control system, any window works carried out in a building without involving its structure was exempted building works, the construction of which did not require prior approval of plans and consent to commencement of works from BA; and</p> <p>(b) RIs generally should be able to assess the legality of window alterations on a case-by-case basis.</p>	.
013336 - 014143	Chairman Administration Mr KAM Nai-wai Mr IP Kwok-him	Discussion on what should be regarded as windows for the purpose of prescribed inspection under MWIS.	The Administration to consider providing a definition for "window" in the Regulation or Code of Practice to facilitate public understanding on the coverage of MWIS.
014144 - 014450	Chairman Administration	<p>Part 4</p> <p>Clause 15 - Application</p> <p>Clause 16 - Interpretation</p> <p>Clause 17 - Detailed investigation</p> <p>Clause 18 - Duty of registered inspector to obtain endorsement of proposal from Building Authority</p>	
014451 - 014835	Chairman Administration	<p>Clause 19 - Decision of Building Authority</p> <p>Chairman's enquiry on whether BA would ascertain the need for detailed investigation under proposed section 18.</p> <p>Administration's response that BD would</p>	The Administration to advise whether the BA or his representatives would check the proposals received under proposed section 18 before endorsing

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		examine and visit the building concerned where necessary before endorsing the proposals for detailed investigation.	these proposals.
014836 - 014835	Ms LI Fung-ying Administration	<p>Ms LI Fung-ying's concern about the omission of latent defects in a proposal which later turned out to have significant financial impacts beyond the affordability of building owners.</p> <p>Administration's explanation -</p> <p>(a) it would be difficult to make very accurate estimates on repair costs;</p> <p>(b) it might be useful to provide in the contract of repair works a schedule of rates of the typical repair items which would facilitate owners' understanding on the estimated cost of additional works;</p> <p>(c) BA would spot check repair works and conduct investigation upon receipt of complaints; and</p> <p>(d) owners would in any case benefit from repair works.</p>	The Administration to advise the parties to be held liable in the event of omission of latent defects in a proposal which later turned out to have significant financial impacts beyond the affordability of building owners.
015800 - 020635	Administration Mr IP Kwok-him Administration Chairman ALA1	<p>Clause 20 - Duty of registered inspector in arranging for detailed investigation</p> <p>Mr IP Kwok-him's enquiry on whether owners would still be liable to pay RIs who failed to obtain BA's prior endorsement before conducting a detailed investigation on their building.</p> <p>Administration's response that owners would be advised to set out in the contract a condition that RIs needed to obtain BA's endorsement before conducting a detailed investigation.</p>	The Administration to give an undertaking that it would work out a sample contract setting out clearly that owners would not be liable to pay RIs who failed to obtain prior endorsement of BA before conducting a detailed investigation on their building.
020636 - 020729	Administration Chairman	Clause 21 - Engagement of specialist	
020730 - 020740	Chairman	Members' agreement to continue discussion at the next meeting to be held on Monday, 5 December 2011, at 10:45 am.	