

**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**

**Administration's Response to Follow-up Issues
of the Meetings held on 5 and 7 December 2011**

This note sets out the Administration's response to the follow-up issues of the Subcommittee at the meetings on 5 and 7 December 2011 in relation to the various matters on Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS).

Assistance to owners

2. As we explained in the response to the Subcommittee issued on 2 December 2011 (LC paper CB(1)536/11-12(01)), the Government, together with the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA), will provide a comprehensive range of assistance to owners of buildings both with and without owners' corporations (OCs) during the various stages of building inspection and repair. We already set out the assistance to owners of buildings without any form of management in the aforesaid response. The ensuing paragraphs will highlight the assistance to owners of buildings with some form of management, including those with OCs.

3. We believe that, with the support and assistance available, most of the buildings with proper management will not face much difficulty in complying with the statutory notices under MBIS and MWIS. When notification letters on MBIS are issued to owners six months before the statutory notice is issued, each building will be assigned a single contact point, either from HKHS or URA, so that owners only need to get in touch with "one stop" for enquiries and assistance. In parallel with the public education and publicity programmes for the MBIS and MWIS, district briefing sessions will be organized for buildings owners to explain the details of the two Schemes and the assistance package available.

4. The HKHS and URA will provide a full range of technical assistance to OCs and owners in need to guide them in carrying out inspection and repair works. Practical advice covers details concerning

the tendering process, selection of inspectors and contractors as well as monitoring of the progress of works. The two organizations will draw building owners' special attention to anti-corruption and anti-tender-rigging procedures. Information kit, which contains basic information of the MBIS/MWIS as well as the assistance schemes, guidelines/ standard templates/ checklists for tendering procedures, and objective points to consider their evaluation of tender submissions for the use of building owners, will be distributed to OCs/owners. Such documents will guide OCs/owners in requiring potential bidders to submit the essential information to help owners evaluate the bids and manage their agents. OCs/owners may obtain further information from their contact point of HKHS or URA on matters concerning the MBIS and MWIS and other building maintenance issues. Building owners may seek advice from the HKHS/URA through their Property Management Advisory Centres / resource centres if in doubt. While the Home Affairs Department (HAD) will not directly participate in the MBIS and MWIS, it will, as in the past, continue to provide advice to OCs/owners on other general building management issues outside the scope of these two schemes. On the other hand, the concerned bureaux and departments will continue to make a concerted effort in providing assistance to the OCs/owners in respect of issues related to building safety and building management.

5. As the MBIS covers common areas which OCs/co-owners are responsible for, financial assistance for the cost of first inspection will be provided to OCs/co-owners, which will be similar to the practice for the subsidy and loan schemes currently available for building maintenance.

Eligibility criteria for financial assistance

6. As explained in our response to the Subcommittee issued on 5 December 2011, eligible owners who need to carry out prescribed repair works could obtain financial and technical assistance from the Government, HKHS and URA through the existing assistance schemes for maintenance works, including the Integrated Building Maintenance Assistance Scheme (IBMAS), Building Maintenance Grant Scheme for Elderly Owners (BMGSEO), and Comprehensive Building Safety Improvement Loan Scheme.

7. Under the IBMAS, if the proposed maintenance works items have previously been subsidized and were completed within the past 5 years, they will not be eligible for the subsidy under IBMAS unless the

items concerned have become defective or dangerous again. As regards BMGSEO, an applicant could obtain the maximum subsidy of \$40,000 within five years. We believe this arrangement is appropriate, as it is quite unlikely that major defects will be found during prescribed inspection under MBIS if maintenance works were completed shortly before then.

Publicity materials

8. We appreciate Members' suggestion to use larger font size in publicity materials for MBIS and MWIS. We will advise Buildings Department and its partner organizations to adopt this suggestion in the publicity materials to be published for the two schemes, so as to make these materials easier to read, particularly for elderly building owners.

Technical representatives and specialists

9. Being the building professional appointed to carry out prescribed inspection and to supervise prescribed repair, registered inspector (RI) is personally responsible for the inspection/ repair, even if the RI is allowed under the legislation to engage other practitioners during the process. Under section 24 of the Building (Inspection and Repair) Regulation (the Regulation), an RI may appoint a technical representative to perform on his/her behalf the duty in supervising prescribed repair. Notwithstanding such appointment, according to section 24(5), the RI is held personally responsible for the supervision of the prescribed repair and assumes full responsibility for his completion report. In this connection, the RI is bound to supervise the work of his representatives. Under section 21 of the Regulation, an RI is exempted from the statutory duty to personally carry out the inspection in case a specialist is engaged to carry out a detailed investigation. However, the RI is duty bound to supervise the specialist under the same section. Moreover, under section 35(3) of the Regulation, the RI assumes all responsibilities for the carrying out of prescribed inspection/ supervision of prescribed repair under the Buildings Ordinance (Cap. 123) (BO) regarding the inspection reports he has signed and submitted, which include results of the detailed investigation. In light of the above, the RI has the duty to supervise and monitor the performance of the technical representatives and specialists engaged in his inspection / repair works.

10. Auditing of the submitted inspection and completion report or during the course of the repair work will serve as another means for monitoring their performance. Despite the technical representatives and the specialists are under the supervision of the RI, they are still personally

liable if there is evidence proving that they have committed an offence under the provisions of the BO such as section 40(2D), under which the representatives or specialists may be liable for knowingly misrepresenting a material fact in any report submitted to the Building Authority (BA).

Time limit for prescribed inspections and repairs

11. It is stipulated in the new section 30B(3), (4) and (5) and 30C(3) and (4) of the BO (to be amended by the Buildings (Amendment) Ordinance 2011 (16 of 2011) (B(A)O 2011)) that the BA may require in statutory notices to be issued under MBIS and MWIS the prescribed inspection and, if necessary, prescribed repair to be carried out within a specified time. The proposed time limits for different stages of prescribed inspection and repair have been set out in the flowchart as attached in our response to the Subcommittee issued on 5 December 2011.

12. RIs and qualified persons (QPs) are required under new sections 30D(5),(6) and 30E(7) of the BO (to be amended by the B(A)O 2011) respectively to notify the BA of any case of emergency in relation to safety of buildings/windows as revealed during the course of prescribed inspection or supervision of prescribed repair works. The BD will handle the emergency cases in accordance with the relevant provisions of the BO, which is independent of the compliance of the statutory notices under MBIS and MWIS.

Subdivision of flats

13. As requested by Members at the Bills Committee on Buildings (Amendment) Bill 2010, we will advise RIs in the Code of Practice for MBIS/MWIS (CoP) to report to the BA signs of suspected subdivision of flats, such as presence of many flat door openings, door bells or drain pipe connections during the course of inspection. Such advice is already set out in the draft CoP which has been released for consultation.

Definition of “fire safety provisions”

14. Under the BO, matters such as planning, design and construction that are in relation to “buildings” are under its purview. Accordingly, any *fire safety provisions* regulated by the Regulation are only those that are related to the *planning, design or construction of a building*. On the other hand, matters that are related to the *installation, repair, maintenance or inspection of fire service installations or equipment* are under the purview of the Fire Service Ordinance (Cap. 95) (FSO). According to the long title of the FSO, the FSO is to provide for, among others, “the control of the sale, supply, installation, repair,

maintenance and inspection of fire service installations or equipment...” The two Ordinances actually deal with *different* aspects, that is, the “building” itself as opposed to the “installations and equipment” in the building, for the purpose of fire safety, and there is no overlapping area of purview between them.

15. In fact, there is no provision in the BO (including its regulations) that provided for the design standards or requirements on fire service installation or equipment which is subject to the control under the FSO, the Fire Safety (Commercial Premises) Ordinance (Cap. 502) or the Fire Safety (Buildings) Ordinance (Cap. 572). Therefore, the use of the term “fire safety provisions” in paragraph 2 of Schedule 1 of the Regulation, which is a subsidiary legislation under the BO, cannot be construed to cover fire service installation or equipment in the common parts of buildings, which is outside the purview of the BO. The exclusion of fire service installations from the scope for inspection has been specifically stipulated in the draft CoP. In addition, the word “including” in item 2 of Schedule 1 is used consistently in all the items in the same schedule. It is indeed the policy intent to make the list non-exhaustive to cover any item which should be within the purview of the BO but which is not specifically mentioned or is unintentionally omitted.

Liability and penalties of non-compliance with the Regulation

16. There is no offence provision in the Regulation. Any breach of the provisions in the Regulation by the RI or QP may render him/her subject to disciplinary proceedings. Nevertheless, during the course of prescribed inspection and prescribed repair, certain acts of the RI or QP may be subject to prosecution under the offence provisions in the BO. Examples are set out in **Annex A**.

Disclosure of potential conflict of interest

17. The proposed section 5A has been modeled on the existing section 5 of the Building (Administration) Regulation (Cap. 123 Sub. Leg. A) which is applicable to registered building professionals including the authorized persons (APs), registered structural engineers (RSEs) and registered geotechnical engineers. Having similar professional background and status as the aforesaid building professionals, the RI should be subject to similar restriction in disclosing to their clients, in case the RI deals in building materials or receive any payment, commission, advantage or benefit of any kind, whether directly or indirectly, from any contractor, sub-contractor or supplier of building materials or other goods.

18. Whether the proposed section 5A would be applicable to contractors or suppliers who are relatives of RIs depends on the circumstances of each case, including matters such as the pecuniary interest between the RI and the contractors or suppliers. In any case, we will advise RIs to disclose all relevant fact, in writing, to his client where in doubt.

19. It is possible that the improper dealing between the RI and the contractor or supplier may result in other criminal offences such as offences under the Prevention of Bribery Ordinance. As far as the BO is concerned, any breach of this section may result in the BA taking disciplinary proceedings against the RI and the maximum penalty is removal from the register of the RI permanently. The professional institute to which the RI belongs to may also take disciplinary actions against the RI.

Gender-neutral drafting in the Building (Minor Works) (Amendment) Regulation 2011 (Minor Works Regulation)

The rationale behind gender-neutral drafting

20. Historically, legislation tended to be drafted using words of the masculine gender only. Although it is still legally effective to do so, in terms of gender equality and socially inclusive language, it is generally accepted that gender-neutral drafting is more appropriate. Some common law jurisdictions (e.g. Australia, Canada, New Zealand, Ireland) have pursued a gender-neutral drafting policy for several years now. Other jurisdictions (e.g. England, Scotland, Wales) are now increasingly practising gender-neutral drafting. The Law Drafting Division of the Department of Justice has also adopted a policy of gender-neutral drafting. Currently, gender-neutral language is used in all new principal Bills and subsidiary legislation; gender-neutral language is also used in amending legislation. A policy of gender-neutral drafting would also be in tune with the gender mainstreaming policies of the Government.

Gender-neutral drafting in the Minor Works Regulation

21. References of masculine gender are found in various provisions of the Building (Minor Works) Regulation (Cap. 123 Sub. Leg. N), but amendments to achieve gender-neutrality are only made to those provisions to which other amendments are also required to reflect policy changes under the current legislative exercise. This follows the current drafting practice which has been adopted in a number of other legislation. Generally speaking, there are different techniques to achieve gender-neutrality in amending an existing provision, and what

Department of Justice would adopt is the technique that would have the minimum effect on brevity and intelligibility in the particular context. Department of Justice considers the technique (by adding references to the female gender) adopted in the Minor Works Regulation has achieved this purpose and is therefore appropriate.

Conclusion

22. Taking into account the trend in other common law jurisdictions, and indeed our own policy, of gender-neutral drafting, Department of Justice considers it appropriate to adhere to the existing wording in the Minor Works Regulation.

Repair of column and shear wall

23. Minor repair works (mainly patch repair) to columns and shear walls may be carried out in general repair and maintenance of buildings. Such repair work is currently designated as Class I, the carrying out of which requires the appointment of an AP or RI (subject to the approval by the LegCo of the Minor Works Regulation now being scrutinized by this Subcommittee), RSE and registered general building contractor (RGBC) or registered minor work contractor (RMWC). After consultation with the industry, to facilitate building owners to carry out such works without the need to appoint an AP (or RI) and RSE, it is proposed to amend the existing designation for “repair work to column and shear wall” from Class I to Class II, the carrying out of which requires only the appointment of RGBC or RMWC registered for Class II minor work.

24. The proposed amendment is considered appropriate since such repair works normally involve small scale patch up works carried out in accordance with the original design of the buildings, and the registered contractors have adequate competence to check and understand the building records (mainly plans approved by the BA) as the basis of carrying out such repairs. The building industry generally welcomes this proposal.

25. The current edition of the Technical Guidelines on Minor Works Control System (Technical Guidelines) contains recommended design and details for Class II repair work which has already shown that the works under this item are patch repairs (see **Annex B**). We are planning to issue an update edition of the Technical Guidelines in 2012 to provide guidelines showing clearer distinction between such repair works from large scale reconstruction or recasting which building professionals should be engaged. For the purpose of MBIS, an RI is however required

to be appointed to supervise all prescribed repair works. Thus, repair works so carried out to columns and shear walls of buildings are still under the supervision of RIs despite that the repair work is proposed to be designated as Class II minor work.

**Development Bureau
Buildings Department
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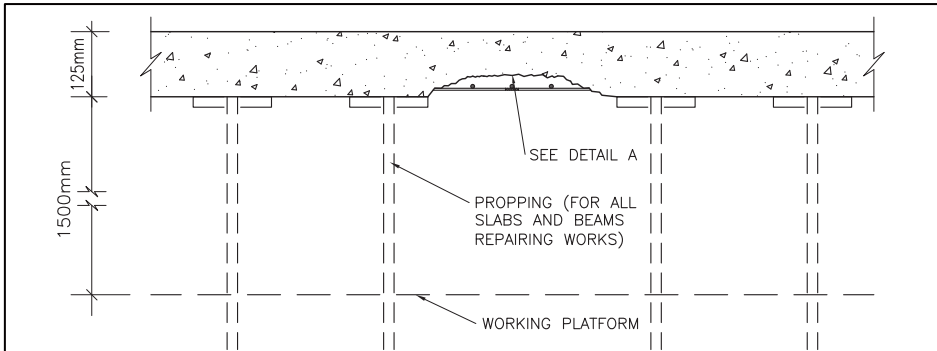
Annex A

Examples of Criminal Offence in relation to Operation of MBIS/MWIS

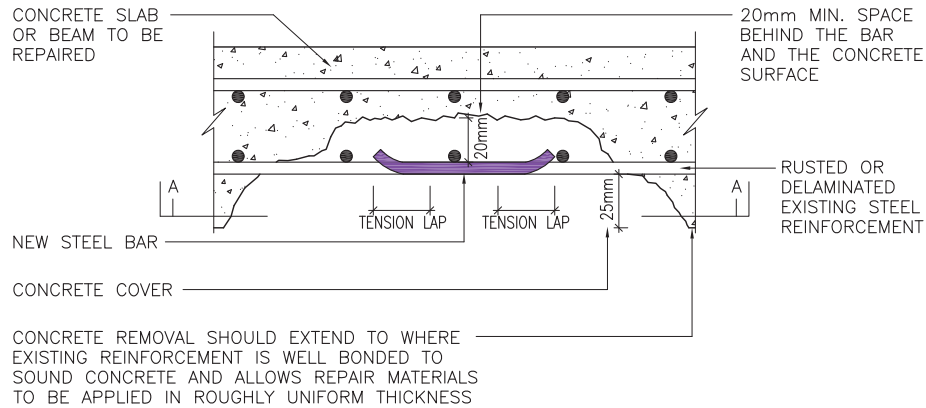
No	Section and Description of Offence	Possible liable parties and penalty levels	Relevant sections in Buildings Ordinance (BO) or Building (Inspection and Repair) Regulation (“Regulation”)
1	<u>new BO section 40(2AD)</u> fails to carry out prescribed inspection personally	(RI, QP or QP’s representative) ■ \$250,000	BO: 30D(3)(a), 30E(3)(a) and (4)(a) Regulation: 12(2)(b)(i), 14(1)(a), 14(2)(a) and 14(4)(b)(i)
2	<u>new BO section 40(2AE)</u> fails to provide proper supervision of the carrying out of a prescribed repair	(RI or QP) minor works: ■ \$150,000 other works: ■ \$250,000	BO: 30D(4)(a) and 30E(5)(a) Regulation: s13(2)(b)(i), 14(2)(c) and 14(5)(a)
3	<u>new BO section 40(2AF)</u> fails to ensure the building for which he is appointed is safe or has been rendered safe	(RI, QP and registered contractors) minor works: ■ \$500,000 ■ 18 month imprisonment other works: ■ \$1,000,000 ■ 3 year imprisonment	BO: 30D(4)(c), 30E(5)(c) and 30F Regulation: 12(2)(b)(ii)(A), 13(2)(b)(iii), 14(1)(b), 14(2)(d) and 14(5)(c)

No	Section and Description of Offence	Possible liable parties and penalty levels	Relevant sections in Buildings Ordinance (BO) or Building (Inspection and Repair) Regulation (“Regulation”)
4	<p><u>BO section 40(2A)</u></p> <p>(a) permits or authorizes to be incorporated in or used in the carrying out of any such inspection or works any materials which are defective or do not comply with the provisions of the BO or have not been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under the BO</p> <p>(b) knowingly misrepresents a material fact in any plan, certificate, form, report, notice or other document given to the BA under the BO</p>	<p>(RI, QP and registered contractors)</p> <p>prescribed inspection of window or minor works:</p> <ul style="list-style-type: none"> ■ \$500,000 ■ 18 month imprisonment <p>other inspection or works:</p> <ul style="list-style-type: none"> ■ \$1,000,000 ■ 3 year imprisonment 	<p><i>For (a):</i> Regulation: 13(2)(b)(i), 14(2)(c) and 14(5)(a)</p> <p><i>For (b):</i> Regulation: 12, 13, 14 and 35</p>
5	<p><u>BO section 40(2B)</u></p> <p>carries out or has carried out such inspection or works, or authorizes or permits or has authorized or permitted such inspection or works to be carried out in such manner that it causes injury to any person or damage to any property or likely to cause a risk of injury to any person or damage to any property</p>	<p>(Any person including RI, QP, specialist, technical representative and registered contractors)</p> <p>prescribed inspection of window or minor works:</p> <ul style="list-style-type: none"> ■ \$500,000 ■ 18 month 	<p>Regulation: 12, 13, 14 and 35</p>

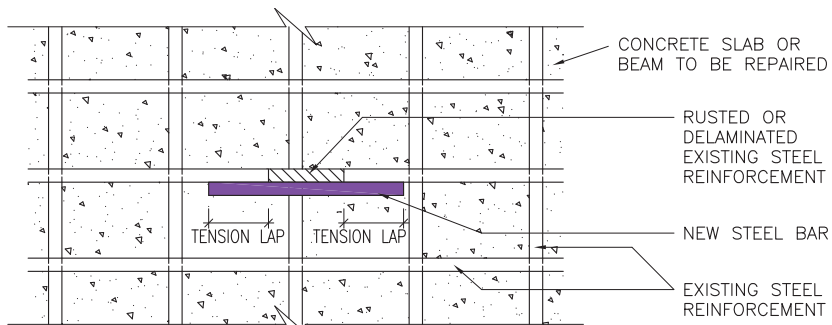
No	Section and Description of Offence	Possible liable parties and penalty levels	Relevant sections in Buildings Ordinance (BO) or Building (Inspection and Repair) Regulation (“Regulation”)
		imprisonment other inspection or works: ■ \$1,000,000 ■ 3 year imprisonment	



REPAIR OF A SLAB OR BEAM



DETAIL A – CONCRETE SLAB OR BEAM TO BE REPAIRED



SECTION A-A

GENERAL NOTES :

1. The works carried out shall comply with the Buildings Ordinance and the provisions of other enactment. (Reference can be made to the examples listed in Sections 3 and 10 of the Guidelines.)
2. All works shall comply with the following CoP/ standards:
 - Building (Construction) Regulations
 - Code of Practice for Structural Use of Concrete 2004 (2nd Edition)
 - Code of Practice for Fire Resisting Construction 1996
 - Concrete shall comply with CS1: 1990
 - BS 5975 Code of Practice for Falsework

PREPARATION WORKS :

1. Obtain the existing design drawings/ information for reference of FRP, concrete cover, concrete strength, steel bar dimension & etc. prior to the commencement of works.
2. Carry out condition survey of the parent structure/ existing condition prior to the commencement of works.
3. All props should be adequately supported. Points of contact between props and underlying structural slabs/ beams should comprise of base plates resting on distributing members to ensure not exceeding their design capacities.

SAFETY AND PRECAUTIONARY MEASURES :

1. Fence-off the working area from the public. Diversion arrangement shall be taken if necessary.
2. Erect propping system according to the supplier's instruction to the beam/ slab to be repaired.
3. Working platform details shall refer to the drawing no. GN-2.

WORKING PROCEDURES :

1. Hack off finishes/ concrete at the repair area by hand held mechanical tools to expose the steel bar and sound concrete substrate.
2. Remove rust on steel bar and apply primer to steel bar. If the corroded steel bar is found substantially less than its original size after derusting, replacement of the steel bar with the same size is required. The lap length for the existing/ new steel bar shall be dependent on the type of repair mortar adopted and shall be in accordance with supplier's instructions.
3. Apply proprietary repair mortar system according to the manufacturer's instructions.
4. Formworks may be used where necessary.
5. Remove the formworks after the period specified by the supplier of repair mortar.
6. Remove the proppings and working platform and clean the site.

MINOR WORKS ITEM 2.17

REPAIR OF SLAB OR BEAM (OTHER THAN A FLAT SLAB, CANTILEVERED BEAM, RIBBED SLAB, WAFFLE SLAB, PRE-STRESSED BEAM, POST-TENSIONED BEAM, CANTILEVERED BEAM, TRANSFER PLATE OR TRANSFER BEAM) IN ACCORDANCE WITH THE ORIGINAL DESIGN