

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

香港花園道美利大廈



Housing, Planning and Lands
Bureau

Murray Building,
Garden Road, Hong Kong

本局檔號 Our Ref. HPLB(B) 30/30/102 Pt. 28

Tel. No.: 2848 6297

來函檔號 Your Ref.

Fax No.: 2899 2916

14 April 2004

[Fax : 2869 6794]

Clerk to Bills Committee
(Attn : Ms Odelia Leung)
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Leung,

**Bills Committee on
Buildings (Amendment) Bill 2003**

At the Bills Committee meeting on 22 March 2004, Members raised a number of questions and requested for some information. In response, we have vide our letter of 30 March provided examples of provisions where certain important things are set out in subsidiary legislation by notice published in the Gazette as well as draft lists of minor works and specified exempted works. Further to our earlier letter, I provide below our response to the other questions.

Some Members considered that the list of different categories of minor works should be provided in a schedule to the Buildings Ordinance (BO) for easy reference.

Our proposal is to publish the list of minor works in the gazette, with the gazette notice being a piece of subsidiary legislation and subject to negative vetting by the LegCo. In the light of Members' comments, we have given the matter some careful thoughts. At present, rules and requirements of a technical nature are set out in the regulations as subsidiary legislation. There are a total of 11 regulations made under

the BO such as the Building (Construction) Regulations and the Building (Planning) Regulations. These regulations form an important part of the BO which relevant persons and building professionals often refer to. In the light of the existing structure of the BO, we consider that it would be appropriate to follow the original proposal to set out the list of minor works in a piece of subsidiary legislation. We believe this would reserve the power of LegCo to examine the list of minor works and any subsequent changes made to it, and still make the information easily accessible.

Members requested the Administration to review whether it was appropriate to delete the offence for contravention of section 4(3)(b) and the proposed section 4(3A)(b). (Note : detailed provisions set out at Annex.) Members had different views on the issue.

We have previously set out our proposal in LC Paper No. CB(1)1054/03-04(02) to retain the offence provision under section 40(2AA) for contravention of sections 4(3)(b), 4(3A)(b), 9(5)(b), 9(6)(b) and 9(6A)(b). We also proposed to delete the imprisonment term and to retain the fine of \$250,000. We have advised Members in the said paper that the offence provision under section 40(2AA) would serve to ensure that the authorized person, registered structural engineer and registered contractor would carry out their duties of notifying the Building Authority of any contraventions. It may also act as a deterrent for not supervising the carrying out of works properly. As the gravity of such offence does not deserve a penalty of imprisonment, we have proposed to delete such penalty and consider that the existing level of fine of \$250,000 is adequate for building works in general. With regard to the penalty for this offence in relation to minor works, a fine of \$50,000 without imprisonment term is proposed. We understand that both HKIE and HKIA had written to the Bills Committee supporting the above proposals. Having considered Members' different views expressed at the meeting on 22 March 2004, and the professional institutes' support of the proposal, we consider that the above proposal of maintaining the offence but deleting the penalty of imprisonment is reasonable and, therefore, recommend Members to endorse the proposal.

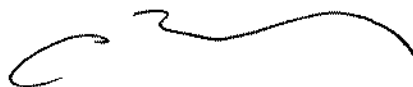
Members also requested the Administration to confirm whether "regulations" referred to in section 4(3A)(b) included Code of Practice.

Under the Buildings Ordinance, the design and construction standards of buildings and building works are set out in the regulations, e.g. Building (Construction) Regulations and Building (Planning) Regulations. Some of these standards are specified in the form of prescriptive standards while others are in the form of performance requirements. On this basis, guidelines have been issued in the form of codes of practice to set out in detail the technical means to meet the standards or achieve the performance requirement specified in the regulations. In general, the Building Authority would take into account whether the guidelines in the codes of practice have not been followed in considering whether the relevant regulations are contravened.

Members asked for a review of the drafting of sections 4(3)(b) and 4(3A)(b) to ensure consistency between the Chinese versions of the two provisions. We note the discrepancy between the Chinese versions of the two provisions. The version in section 4(3A)(b) is more readable and is an improvement on the existing section 4(3)(b). Therefore, we will propose committee stage amendments to amend the Chinese version of section 4(3)(b) to follow the drafting style of section 4(3A)(b).

I would be grateful if you will convey the above information to the Bills Committee Members.

Yours sincerely,



(Rick Chan)

for Secretary for Housing, Planning and Lands

c.c.	DB	(Attn : Mr C K Au)	[Fax : 2840 0451]
	D of J	(Attn : Mr K F Cheng/ Ms Selina Lau)	[Fax : 2845 2215]

Relevant Detailed Provisions

Section	Provision
4(3)(b)	Any authorized person, any registered structural engineer and any registered geotechnical engineer appointed or nominated under subsection (1) or (2) shall notify the Building Authority of any contravention of the regulations which would result from the carrying out of any work shown in any plan approved by the Building Authority in respect of the building works or street works.
4(3A)(b)	Where the building works are category I minor works of which the prescribed plans and other prescribed documents have been submitted to the Building Authority as required under section 14(1)(b), subsection (3) shall not apply and in such a case, any authorized person, any registered structural engineer and any registered geotechnical engineer appointed or nominated under subsection (1) or (2) shall notify the Building Authority of any contravention of the regulations which would result from the carrying out of any works shown in those plans.