

Comments by HKIS on Building (Amendment) Bill 2007
26 January 2008

Legislative Council Brief

The purpose and justification “to rationalize the building control system in respect of minor works” is well presented and is fully endorsed. We appreciate the good efforts taken by the Buildings Department to amicably accommodate the interests of most stake holders.

Building (Amendment) Bill 2007

The draft is very confusing and reflects a total lack of consistency with the existing building control system. The notion of “minor works” and “prescribed requirement minor works” is inconsistent with the LegCo Brief. It creates anomalies in both enforcement of and compliance with the new regime. The HKIS therefore has grave reservation to the draft amendments.

Existing Building Control System

All General Building Works are subject to full scrutiny by the BA (a) approval of plans and consent before commencement (b) works to be supervised by authorized persons (AP) (and RSE and RGE for specialized works as appropriate) (c) works to be carried out by registered contractors (RC) (d) certification upon completion for occupation (OP)	Exempted Works by virtue of section 41 (a) no approval (b) no AP (c) no RC (d) no OP
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Building Control System with the New Minor Works Regime set out in the Brief

General Building Works 一般工程 Approval + AP + RC + OP 基本(監管審批)程序	Minor Works 小型工程 (comprising class I, class II and class III minor works) (a) no approval (but notice to commence); (b) no AP (except for class I minor works); (c) works to be carried out by registered minor works contractors (RMWC) (d) no OP (but certificate of completion) 簡易(自我審查)程序	Exempted Works 豁免工程 (subject to certain new criteria) no approval no AP no RC no OP
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System created by the Bill – confusing the issue!

General Building Works 一般工程 [= General Building Works as they always are]	Minor Works 小型工程 [no difference from General Building Works]	Prescribed Requirement Minor Works 訂明規定小型工程 [= Minor Works in the new regime]	Exempted Works [as in the new regime] and Designated Exempted Works
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“Major” (?) Works

Minor Works

The new regime does not differentiate the magnitude or value of works. "Minor" does not refer to scale per se but to the degree of BA scrutiny required. Only in prescribed situations that the BA relieves his scrutiny and allows self-certification. Works that may have such privileges are inevitably minor in scale, but not all minor scale works can be self-certified. Those works even though minor in nature but have geotechnical implications and involving OP should still be subject to full scrutiny and therefore should not be classified as "Minor Works". Notwithstanding, the new regime is still optional in that building owners carrying out Minor Works may still choose to put the works through full scrutiny as for General Building Works.

The provisions relating to "minor works" and "prescribed requirement minor works" in the Bill should be revised to reflect what the Brief has set out and as manifested in the Building (Minor Works) Regulation. It is noted that the term "prescribed requirement minor works" does not appear in the draft Building (Minor Works) Regulation.

綜合意見

立法會文件編號 DEVB(PL-B)30/30/120 立論清晰明白，香港測量師學會全力支持以簡易程序處理小型建築工程，自我審查模式有利於促進業界自律，助長有關業主守法。可惜《二零零七年建築物（修訂）條例草案》繁複難明，並不能簡單地表達新增措施，使讀者摸不着頭腦，無所適從。皆因此草案對小型工程有不必要的過份分類，使簡單的概念複雜化，與原有建築監管機制並不協調，也不符合立法會文件所載內容。加上定義混亂，條文累贅，內容含糊，在未有相關的規例的詳細解釋前，實難以完全掌握草案要義。

本會要求立法會仔細檢視草案條文，糾正錯誤，（詳細的分析及意見附錄在後），並要求發展局及屋宇署繼續與業界磋商，務求使將出爐的相關規例完善化。茲複述本會數年前對《二零零三年建築物（修訂）條例草案》的意見如下：

「最後，本會希望這個「精簡建築監管制度」的草案，能夠名乎其實，用精簡的文字，立精簡的法例，讓這個「還政於民，自我審查」的機制得以貫徹執行，杜絕違例建築，保障樓宇安全。若法例過於繁複或含糊，市民在不了解的情況下必定依然故我，違例建築如舊。而認可人士等也會望之而卻步，寧願沿用舊有辦法。一九九零年增加原法例第 24B 條，本擬提供一個快速辦法，使建築事務監督可優先拆卸有逼切性及不良影響的違例建築，但條文繁複不便引用，至今只有寥寥幾個個案，法例形同虛設，希望政府引以為鑑。」

Detailed Observations

Clause 7 (new section 4A(2))

The appointment of persons to handle minor works should resemble that for general building works (in section 4), that is, authorized persons to co-ordinate the works, and registered structural and geotechnical engineers in respect of structural and geotechnical elements where required. This has in fact been spelt out in the draft regulation. There is no need for repeating it in the Ordinance.

For safety reasons, all works that have geotechnical implications must necessitate BA's scrutiny and therefore works involving geotechnical elements should not be classified as minor works. The appointment of RGE for minor works is henceforth not necessary.

Clause 7 (new section 4B(2)(d), (e) & (f))

Authorized persons are the only persons competent to discharge the duties to ensure compliance with fire service requirements and town planning restrictions. Engineering consultants should not be made equally liable.

Clause 7 (new section 4B(2)(a))

The duty of the appointed person to supervise minor works should not involve supervision plans as they are not relevant.

Clause 7 (new section 4B(2)(c) and Clause 13 (new section 9AA(5)(b))

The plans required to be submitted with the notice to carry out minor works are not "approved plans" and therefore cannot be made the basis for assessing compliance or contravention of regulations.

Clause 18 (new section 21(6)(da) and (db))

Approval of plans and occupation permits are the fundamental elements of building control of general building works. Works that will result in a new building (which involves OP based on approved plans) should not be classified as minor works. The new provisions should be deleted.

Clause 22 (new section 24AA(1)(b) and (c))

Where minor works have been carried in contravention of the Ordinance, they should be subject to the same enforcement action applicable to all general building works under the extant section 24. If it is desirable to action against building works for contraventions of draft plans or master lay-out plans under the Town Planning Ordinance in addition to contravention of the Buildings Ordinance, these new provisions should be introduced in the existing section 24(1) instead.

Clause 24 (amendment to section 38(1))

It is agreed that the regulation should provide for the specific framework for the simplified procedure to be adopted for minor works as against the basic framework for general building works in the principal Ordinance. It is considered desirable only to set out the principles for the categorization and classification of minor works in the regulation while the many minor works items should be incorporated in a Code of Practice for regular updating. We feel that this is a learning process for the new regime to mature and it is undesirable to pre-empt future speedy updating. We also request that the industry be consulted before any draft regulation is made by the Secretary.

Clause 25 (amendment to section 39A(1)(b))

This is not relevant as RMWC are not involved with supervision plans.

Clause 26 (new section 39C(1))

The validation is too wide open and could lead to abuse. It should be more specific in line with paragraph 19 of the Brief to refer to existing unauthorized "supporting frames for air conditioners, drying racks and small canopies". This is in fact a transitional arrangement to regularize existing minor structures that have already been constructed. Once the new regime is in place, this transitional arrangement will in time be no longer necessary. There is really no need to explode the problem in such a scale to demand such complicated legislation involving yet another new term "prescribed buildings or prescribed building works" as if it is an ongoing process (in new section 38(1)(kd) and section 39, and Part 7 and Schedule 6 in the draft Building (Minor Works) Regulation.

Clause 26 (new section 39C(4))

To require the appointed person to carry out "alteration, rectification or reinforcement works" is improper and unfair. It must be the owner of the works who should be liable to rectify any deficiency in safety.

Clause 27(9) (new section 40(2A)(ba))

As stated earlier, the plans submitted with the notice to carry out minor works are not definitive and do not constitute BA's sanction. There is therefore no basis to assess deviation or divergence, as amendment plans and record plans are always available. This provision should be deleted.

Clause 27(11) and (12) (amendment to section 40(2AB) and (2AC))

The extant section 17(1) involves conditions to be imposed with approval or consent. As it does not apply to minor works and RMWC cannot carry out any building works requiring approval and consent, these provisions should be deleted.

Clause 28(1) (amendment to section 41(3))

The new criteria that building works that do not "bear any imposed load or dead load other than that due to their own weight" may be exempt needs clarification. Many very small scale building works, maybe DIY works, do bear some imposed load albeit to a limited extent, for example, the installation of hanging cabinets in kitchens or hanger rails in bathrooms, or the fixing of garden benches in roof gardens or sky gardens, or the assembly of shelving partitions in offices, etc.

Clause 28 (new section 41(3B))

The draft Schedule 5 of the Building (Minor Works) Regulation only designates those items of minor works that are comparatively too small in scale to be categorized as "Minor Works" in the new regime. The amended section 41(3) has already set out the criteria for exempted works. There may be a need to "designate" other works that do not meet the criteria for exemption in section 41(3) but are considered to be worthy of exemption, such as those illustrated in the aforesaid paragraph.

Part 3 – Amendments to Building (Administration) Regulations

The new regime provides a simplified process for minor works. Administrative procedures should also be streamlined and many general provisions in the extant Building (Administration) Regulations should not be imposed on RMWC with the same force, particularly as the nature of works and procedure are different. This part should be reviewed vis-à-vis the draft Building (Minor Works) Regulation.

Clause 39 and 40 (amendment to B(A)R 36 and 40)

As minor works do not involve approved plans, the supply of approved plans to RMWC and their keeping them on site are not relevant. The amendments should be deleted.

Clause 42 (new B(A)R 48)

This is where the confusion lies. Where the Building (Administration) Regulations do not apply to "prescribed requirement minor works" which actually means "Minor Works", all preceding provisions in this Part will be unnecessary.