

立法會
Legislative Council

LC Paper No. CB(1)998/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Nineteenth meeting on
Monday, 28 March 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Hon KAM Nai-wai, MH
Dr Hon Priscilla LEUNG Mei-fun
Hon Tanya CHAN

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Deputy Chairman)
Dr Hon Margaret NG
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP

Public officers : Mr Tommy YUEN Man-chung, JP
Attending Deputy Secretary for Development (Planning and Lands) 2

Mr Edward TO Wing-hang
Principal Assistant Secretary for
Development (Planning and Lands)3

Mr Daniel FONG Siu-wai
Assistant Secretary for Development (Buildings)1

Mr LAM Siu-tong
Deputy Director of Buildings

Mr Alex CHOW Kim-ping
Assistant Director / Support
Buildings Department

Ms Rayne CHAI Chih-hui
Senior Government Counsel
Department of Justice

Mr Manuel NG Man-chun
Government Counsel
Department of Justice

Clerk in Attendance : Ms Annette LAM
Chief Council Secretary (1)7

Staff in Attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Daniel SIN
Senior Council Secretary (1)7

I Meeting with the Administration

Discussion of outstanding issues

(LC Paper No. CB(1)1584/10-11(02) -- Administration's response to
issues raised at the meeting on
1 March 2011

LC Paper No. CB(1)1706/10-11(03) -- List of follow-up actions arising
from the discussion at the

meeting on 16 March 2011

LC Paper No. CB(1)1706/10-11(04) -- Administration's response to issues raised at the meetings on 11 February 2011 and 16 March 2011)

Other relevant papers previously issued

(LC Paper No. CB(3)389/09-10 -- The Bill

LC Paper No. CB(1)1168/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division

File Ref: DEVB(PL-CR) 2-15/08 -- Legislative Council Brief
(issued by the Development Bureau on 21.1.2010)

LC Paper No. LS42/09-10 -- Legal Service Division Report

LC Paper No. CB(1)1423/10-11(01) -- Updated paper on proposed major Committee Stage amendments prepared by the Administration

LC Paper No. CB(1)1423/10-11(03) -- List of follow-up actions arising from the discussion at the meeting on 11 February 2011

LC Paper No. CB(1)1935/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 6 May 2010)

The Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

2. The Administration was requested to:-

- (a) provide a list of legal provisions of various ordinances which empower public officers to enter into private premises for inspection or law enforcement purposes, and explain the operational mechanism and the modus operandi;
- (b) request the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) to provide professional advice on tender prices of building repair works and other forms of services to building owners and owners' corporations similar to those under the Operation Building Bright at a fee, and to set out the scope of services of HKHS and URA in this respect;
- (c) consider developing a database, in conjunction with the HKHS and the URA, providing information of building inspection and repair works, the cost involved and the average share of individual owners etc;
- (d) update proposed Committee Stage amendments, taking into account members' views and suggestions in relation to the proposed new section 22 (Powers of Building Authority) and capping the surcharge for defaulted works at 20%; and
- (e) make consequential amendment to the Buildings (Amendment) Bill 2010 (e.g. clause 44. Effect of certificate of exemption) taking into account the recent enactment of amendments to Buildings Ordinance.

(Post-meeting note: The Administration's response was issued to members vide paper CB(1) 1706/10-11(04).)

II Any other business

- 3. There being no other business, the meeting ended at 6:30 pm.

Bills Committee on Buildings (Amendment) Bill 2010

**Proceedings of the Nineteenth meeting
on Monday, 28 March 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000618 – 000736	Chairman	Opening remarks	
000737 – 000849	Ms Miriam LAU Chairman	(a) Ms LAU thanked the Administration for the response to her earlier enquiry regarding a signboard removal case in Tuen Mun. (b) The Chairman asked the Administration to be more responsive in handling public complaints.	
000850 – 001235	Administration	Briefing by the Administration in response to issues raised at the meeting on 1 March 2011 (LC Paper No. CB(1)1584/10-11(02))	
001236 – 001910	Chairman Administration	Briefing by the Administration in response to issues raised at the meeting on 11 February 2011 and 16 March 2011 (LC Paper No. CB(1)1706/10-11(04)). In particular, an alternative approach was proposed for Members' consideration to take out the "warrant" proposal from the proposed Committee Stage amendments (CSAs) in the current exercise. Instead, a separate amendment bill would be introduced to pursue this proposal.	
001911 – 002124	Chairman Mr WONG Kwok-hing	Mr WONG's comment that it was more proper and fairer for the Buildings Department (BD) to apply for a warrant from the court for entry into private premises to conduct investigation and inspection.	
002132 – 002940	Ms Miriam LAU Administration	(a) Ms LAU's enquiry about: (i) what specific amendment the Administration would propose to specify that entry into	

Time Marker	Speaker	Subject(s)	Action Required
		<p>private premises by BD staff required a warrant from the court; and</p> <p>(ii) whether the Administration would initiate a civil proceeding to require an owner to rectify unauthorized building works associated with subdivision of flats rather than seeking a court warrant to enter into a private premises to carry out enforcement actions.</p> <p>(b) The Administration's response that:</p> <p>(i) the amendment was specified in clause 16(a) of the draft CSA, which would amend section 22 of the Buildings Ordinance, Cap.123 (BO); and</p> <p>(ii) the proposed amendment was intended to limit the Building Authority's (BA) power to enter into private premises for inspection and investigation.</p> <p>(c) Ms LAU doubted if the Administration's proposal would be effective in tackling the problems of unauthorized building works associated with subdivision of flats.</p>	
002952 – 004334	Ms Audrey EU Administration Chairman	<p>(a) Ms EU's comment that the Administration needed not avoid seeking power for BA staff to enter into a private premises altogether. There were provisions in many deeds of mutual covenant that permitted estate managers to break into an individual unit for prevention of damages to buildings.</p> <p>(b) Ms EU's enquiry about why the Administration sought to limit BA's</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>power at this stage.</p> <p>(c) The Administration's explanation that the proposed amendment formed part of the multi-pronged measures to enhance building safety. The warrant proposal would address the situations where an owner of a premises failed to comply with an order issued by BA, or refused to allow entry of BD staff into the premises for carrying out investigation or inspection or works which the BA was authorized to carry out under the Buildings Ordinance. The proposed wordings of the amendment reflected the Administration's enforcement policy under BO. Even if the relevant CSAs had to be taken out under the alternative approach, the Administration would still pursue the proposal in the near future.</p>	
004322 – 004955	Mr LEE Wing-tat Administration	<p>(a) Mr LEE's concern about the possible legislative delay in resolving the problem of subdivision of flats if the relevant provisions to amend section 22 of BO were to be taken out from the proposed CSAs and introduced as a separate bill in the next session.</p> <p>(b) The Administration's response that the Development Bureau would try its best to bid a slot to introduce these provisions early in the 2011-12 legislative session.</p>	
004958 – 005533	Ms Starry LEE Chairman Administration	<p>(a) Ms LEE's enquiry about:</p> <p>(i) whether a power to enter into a private premises was necessary for the implementation of the Mandatory Window Inspection Scheme (MWIS); and</p> <p>(ii) whether statistics were</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>available regarding enforcement actions that could not be carried out due to refusal of entry into private premises by the occupants.</p> <p>(b) The Administration's response that:</p> <ul style="list-style-type: none"> (i) the power to enter into a private premises would be the last resort to allow BD's staff to carry out inspection or works which the BA was authorized to carry out under the BO; (ii) the power to enter into a private premises might be relevant to MWIS if the owner did not comply with BA's notice and BD needed to enter the premises to assess the situation or to undertake inspection and repair defaulted by the owners; (iii) the Administration did not have ready data on the number of incidents where inspections and enforcement actions could not be carried out due to refusal of entry by the owner or occupant of a premises; and (iv) the proposed amendment was modelled on the provisions under which the Food and Environmental Hygiene Department (FEHD) staff entered into a premises for investigation of water seepage complaints. 	
005535 – 010106	Ms Miriam LAU Administration	(a) Ms LAU noted that the Bill was not designed to tackle subdivision of flats. She agreed that a separate and more	

Time Marker	Speaker	Subject(s)	Action Required
		<p>comprehensive legislation was necessary. She urged the Administration to expedite formulation of the legislation for members' consideration.</p> <p>(b) The Administration's response that there were provisions under the BO for BA to tackle building safety issues and registered inspectors (RI) would be required to report to BA if they identified signs of structural safety risks in common areas. It was, however, the general consensus of the Bills Committee that the RI should not be imposed with the responsibility to carry out inspection inside individual units.</p>	
010107 – 011038	Ms Audrey EU Administration Chairman	<p>(a) Ms EU's comment that, under the existing legislation, BA had the power to break into a private premises in the presence of a police officer pursuant to section 22 of BO. The Administration had earlier proposed to introduce CSA to enable BA to apply to the court for warrant for entry into private premises but was now withdrawing this proposal due to objection from some members. Ms EU's enquiry of whether BA would then continue to rely on the existing section 22 of BO to gain access to a premises. She preferred the Administration's proposal of seeking warrant for BD staff to enter into a private premises for inspection purposes.</p> <p>(b) Ms EU's enquiry of whether officers of FEHD needed to obtain a court warrant to enter into a private premises for investigation into complaints of water seepage.</p> <p>(c) The Administration's confirmation of</p>	

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		<p>Ms EU's understanding.</p> <p>(d) The Administration's response that under the alternative approach, a separate bill would be introduced to implement the proposed arrangement of authorizing BD staff to enter into a private premises through a court warrant in order not to cause delay to the implementation of MBIS and MWIS.</p> <p>(e) The Chairman asked members to give further thought to the proposal of whether to include in the Bill the provision of applying to the court for warrant to authorize BD staff to enter into a private premises for inspection or enforcement action. He suggested that members should indicate their position at the next meeting.</p> <p>(f) The Administration undertook to make an effort to bid for a slot to introduce the proposed amendments together with other legislative proposals for building safety initiatives in a separate bill early in the next legislative session.</p>	
011039 – 011340	Ms Starry LEE Administration Chairman	<p>(a) Ms LEE's enquiry about whether there were other legislation, apart from the Public Health and Municipal Services Ordinance, Cap. 132, which empowered public officers to enter into private premises for inspection or enforcement purposes.</p> <p>(b) The Administration's response that similar provisions were also provided in the Waterworks Ordinance, Cap. 102, Shipping and Port Control Ordinance, Cap. 313, and Fire Safety (Buildings) Ordinance, Cap. 572.</p> <p>(c) The Administration was requested to</p>	Administration

Time Marker	Speaker	Subject(s)	Action Required
		<p>provide a list of legal provisions of various ordinances which empowered public officers to enter into private premises for inspection or law enforcement purposes, and explain the operational mechanism and the modus operandi.</p>	<p>to take action as required in paragraph 2 of the minutes</p>
<p>011233 – 011820</p>	<p>Chairman Administration</p>	<p>The Administration's briefing in response to issues raised at the meeting on 11 February 2011 and 16 March 2011 (LC Paper No. CB(1)1706/10-11(04)).</p>	
<p>011826 – 013147</p>	<p>Ms Starry LEE Administration Chairman</p>	<p>(a) Ms LEE's comment that the Administration's proposed arrangement for RIs / Qualified Persons (QPs) and Registered Contractors (RCs) to make a declaration on integrity and anti-tender-rigging upon tender submission might not prevent the problem. She advised the Administration to model on the practice of vetting tender prices by the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) under the Operation Building Bright (OBB).</p> <p>(b) The Administration's response that assistance would be offered to those target buildings without owners corporations (OCs). The Administration would explore with the professional institutes to provide guidelines and a list of contractors / consultants and indicative prices of works for owners' reference taking into account the experience of OBB.</p> <p>(c) Ms LEE's concern that the lists of prices provided would turn out to be the minimum price. She urged the Administration to provide advisory service on tendering, even at a fee, to OCs or property owners.</p>	

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		<p>(d) The Administration's explanation that HKHS and URA would be encouraged to provide professional advice and services on the above-mentioned areas.</p> <p>(e) The Chairman's enquiry on whether there would be a clear division of roles of HKHS and URA when owners sought advice.</p> <p>(f) The Administration's response that while HKHS and URA would continue to provide assistance and advice, property owners had the ultimate responsibility to decide which contractors or consultant they should engage. Property owners and OCs were encouraged to make thorough assessment and in-depth enquiries before granting the contract.</p> <p>(g) Ms LEE's comment that owners and OCs were often not knowledgeable enough to judge whether the cost stated in the tender was fair and reasonable, and that the Administration should:</p> <ul style="list-style-type: none"> (i) ask HKHS or URA to provide advice on vetting the tender price; and (ii) develop a database to provide cost information in respect of building inspection and repairs. <p>(h) The Administration undertook to:</p> <ul style="list-style-type: none"> (i) request HKHS and URA to provide professional advice on tender prices of building repair works and other forms of services to building owners and owners' corporations similar to 	<p>Administration to take action as required in paragraph 2 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>those under the OBB at a fee, and to set out the scope of services of HKHS and URA in this respect; and</p> <p>(ii) consider developing a database, in conjunction with the HKHS and the URA, providing information of building inspection and repair works, the cost involved and the average share of individual owners etc.</p>	<p>Administration to take action as required in paragraph 2 of the minutes</p>
<p>013151 – 013257</p>	<p>Mr KAM Nai-wai Administration</p>	<p>(a) Mr KAM's enquiry about whether the code of practice and the practice notes were legally enforceable. If not, he expressed that he would propose to move a CSA to this effect.</p> <p>(b) The Administration's response that the code of practice and the practice notes were advisory in nature but the industry would be duly consulted prior to promulgation therefore they would readily comply with the relevant requirements.</p>	
<p>013342 – 014844</p>	<p>Chairman Administration</p>	<p>Clause-by-clause examination of the marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)1168/09-10(01)).</p> <p>The Administration brought to members' attention that the list of draft CSAs to be discussed was prepared in February 2011. An updated one would be provided in due course.</p> <p><u>Section 2 (1) – Interpretation</u></p> <p>Part I Authorized persons, registered structural engineers, registered geotechnical engineers, registered inspectors and registered contractors</p> <p><u>Section 3 (9) – Registers of authorized</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>persons, structural engineers, geotechnical engineers and inspectors</u></p> <p><u>Section 7 (4a) – Disciplinary proceedings for authorized person, registered structural engineer, registered geotechnical engineer or registered inspector</u></p> <p><u>Section 8A (4c) – (Chinese version of the draft CSA)</u></p> <p><u>Section 9A (1) – Appeals from Registration Committees</u></p> <p><u>Section 13 (7) – Disciplinary proceedings for contractors</u></p> <p><u>Section 13A (1) – Authority to erect shoring in certain cases</u></p> <p><u>Section 22 – Powers of Building Authority</u></p> <p>Part IIA Inspection and repair of building</p> <p><u>Section 30A (1)– Application</u></p> <p><u>Section 30B (5) & (11) – Obligation on owners to carry out prescribed inspection and prescribed repair in respect of buildings</u></p> <p><u>Section 30C (8b) & (9) – Obligation on owners to carry out prescribed inspection and prescribed repair in respect of windows</u></p> <p><u>Section 30D (5b) – Appointment and duties of registered inspectors</u></p> <p><u>Section 30E – Appointment and duties of qualified persons</u></p> <p><u>Section 33 – Recovery of costs and surcharge by Building Authority</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Section 38 (1ka, kd, ke, kg) – Regulations</u></p> <p><u>Section 39B – Obstruction of owners' corporation</u></p> <p><u>Section 39C – Building Authority shall not serve order under section 24 or notice under section 24C</u></p> <p>Part IV Offences</p> <p><u>Section 40 (2E) & (4C)– Offences</u></p> <p><u>Section 46 Schedule 7 – Secretary to the Appeal Tribunal</u></p> <p>Members raised no question on the above-mentioned amendments clauses.</p> <p>The Administration undertook to prepare updated proposed CSAs, taking into account members' previous views and suggestions in relation to the proposed new section 22 (Powers of Building Authority) and capping the surcharge for defaulted works at 20%.</p>	<p>Administration to take action as required in paragraph 2 of the minutes</p>
<p>014849 – 015037</p>	<p>ALA7's Administration Law Draftsman</p>	<p>(a) ALA7's comment that certain provisions in the Bill were related to the minor works control system and those provisions had already come into effect. However, the latest CSAs had not totally reflected the change in circumstances. She asked if the Administration would include such amendment later.</p> <p>(b) Law Draftsman responded that the above-mentioned clause would be incorporated subsequently.</p> <p>(c) The Administration undertook to make consequential amendments to the Buildings (Amendment) Bill 2010 taking into account the recent</p>	<p>Administration to take action as required in paragraph 2 of</p>

Time Marker	Speaker	Subject(s)	Action Required
		enactment of amendments to BO.	the minutes
015044 – 015123	Ms Starry LEE Administration	<p>(a) Ms LEE's enquiry on how the sanctions against uncooperative owners were to be enforced.</p> <p>(b) The Administration's response that BD was the enforcement agent who would prosecute any uncooperative owners for not contributing to the cost of prescribed inspection or repair. The court would determine the penalty on conviction of the offence.</p>	
015124 – 015415	Chairman Administration	<p>(a) The Chairman asked:</p> <ul style="list-style-type: none"> (i) the Administration to provide a final set of CSAs in the next meeting; (ii) members to propose CSAs, if any, for discussion in the next meeting; and (iii) whether the Administration would report at the next meeting whether it would include provision to seek a court warrant to enable BD staff to enter into a private premises to carry out inspection or enforcement actions. <p>(b) The Administration's response that it would come to a decision in the next meeting, having taken into consideration members' views.</p>	
015417 – 015615	Mr KAM Nai-wai Chairman Administration	<p>(a) In response to Mr KAM, the Chairman confirmed that members would have to submit any other CSAs before the next meeting.</p> <p>(b) Mr KAM's enquiry on whether the legislation would stipulate that inspection reports should also be</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>made available to the owners or OCs concerned.</p> <p>(c) The Administration's reply that such requirement would be specified in the regulations. In response to Mr KAM's request, the Administration undertook to revert to Mr KAM on the reason for not incorporating the requirement in the principal legislation.</p>	<p>Administration to take action as required in paragraph 2 of the minutes</p>
<p>015620 – 015833</p>	<p>Ms Starry LEE Administration Chairman</p>	<p>(a) Ms LEE noted that the Administration would issue removal orders against unauthorized signboards. She asked how BD would notify the owners of the demolition work.</p> <p>(b) The Administration's response that the removal order would first be issued to the person for whom the signboard was installed. If the person failed to be identified, the order would be served on the person that received rent in respect of the signboard. Failing that, the order would be served on the owner of the premises or external wall on which the signboard was erected.</p> <p>(c) The Administration undertook to provide to Ms LEE the references of the relevant papers on enforcement policies and procedure against unauthorized building works.</p>	<p>Administration to take action as required in paragraph 2 of the minutes</p>
<p>015833 – 015953</p>	<p>Mr KAM Nai-wai Administration</p>	<p>(a) Mr KAM's enquiry on whether BD would need OC or the owners' consent when RI submitting certificates in respect of the inspection and repair of existing signboards.</p> <p>(b) The Administration's response that such requirements would not be included in the BO.</p>	

Time Marker	Speaker	Subject(s)	Action Required
015954 – 020029	Chairman	The next meeting would be held on 20 April 2011.	

Council Business Division 1
Legislative Council Secretariat
3 February 2012