

Bills Committee on Buildings Legislation (Amendment) Bill 2011

**Administration's Response to Follow-up Issues
regarding Proposed Committee Stage Amendments
of the Meeting held on 21 May 2012**

This note sets out the Administration's response to the follow-up issues regarding the Committee Stage Amendments proposed by the Administration arising from the meeting of the Bills Committee on 21 May 2012 (the last meeting).

Proposed Committee Stage Amendments (CSAs)

Commencement Date

2. In our last response to the Bills Committee setting out the proposed CSAs (Paper No. CB(2)2048/11-12(01)) (the last response), we proposed that all provisions in the Bill commence upon gazettal except for those provisions related to the signboard control system (SCS), given its details would be prescribed under the Building (Minor Works) Regulation (the Regulation). Specifically, it was proposed in Clause 1(3) of the Bill that sections 5 and 6 of the enacted Ordinance come into operation on a day to be appointed by the Secretary by notice published in the Gazette. As explained at the last meeting, we would like to propose a further amendment by providing that same as sections 5 and 6, sections 2A, 6A, 6B and 6C, which are also related to the SCS, come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

The proposed section 22(1B)(a)(i)(C)

3. In our last response, we proposed that a CSA be introduced to amend the proposed section 22(1B)(a) relating to the grounds on which the Building Authority or an authorized officer could apply for a warrant from the Court. Amongst the provisions in the proposed section 22(1B)(a)(i) with respect to building works that have been or are being carried out to the premises or land, the new section 22(1B)(a)(i)(C) provides that there are reasonable grounds for suspecting that "they are

not in compliance with the standard of structural stability, public health or fire safety established by regulations”. The corresponding Chinese text reads “該工程不符合由規例訂立的結構穩定性、公眾衛生或消防安全標準”。 At the last meeting, the Assistant Legal Adviser of the Legislative Council (LegCo) asked whether the word “訂立” in the Chinese text was consistent with the word “established” in the English text. Members may wish to note that the proposed provision was drafted with reference to the existing sections 17(1) and 42(4) of the Buildings Ordinance (BO), in which such terms are used in the Chinese and English texts respectively. We therefore propose to maintain the present drafting of the new section 22(1B)(a)(i)(C) for the sake of consistency with the existing provisions in the BO.

The proposed section 38(1)(ke)(ic)

4. In our last response, we proposed that a CSA be introduced to add a schedule to the BO, namely, Schedule 8, to prescribe the list of items that is subject to the validation scheme, so that expansion of this list would have to go through a positive vetting procedure in LegCo, while the details of the items are to be prescribed in the Regulation. In this connection, it was provided under the proposed section 38(1)(ke)(ic) that the Secretary may by regulation provide for “the prescription of the details in relation to any prescribed building or building works specified in Schedule 8”. The corresponding Chinese text reads “就附表 8 所指明的訂明建築物或建築工程訂明詳情”。 At the last meeting, the Assistant Legal Adviser of LegCo suggested the Administration to consider adding the word “任何” in the Chinese text of the proposed provision to tally with the word “any” in the English text to ensure consistency with the drafting of the proposed section 38(1)(ke)(ia) and (ib). We agree with the suggestion and have incorporated this textual amendment in the revised version of the proposed CSAs.

The proposed Schedule 8

5. In our last response, we proposed that a CSA be introduced to specify in the description of the proposed Schedule 8 “signboard of a kind prescribed under section 38(1)(ke)(ic)”. At the last meeting, the

Assistant Legal Adviser of LegCo raised a question as to whether the words “of a kind” in the description was necessary. Members may wish to note that the term “signboard” is already defined in section 2(1) of the BO to mean “a hoarding, framework, scaffolding or other structure erected solely for the purpose of displaying any advertisement, making any announcement or notification, or displaying any visual image or other information”. The term “signboard” in its defined meaning (signboard as defined) is referred to in various provisions of the BO. In the proposed CSAs relating to Schedule 8, the policy intent is to include only the kind of signboard as defined the details of which are prescribed in the regulations for the purposes of the new section 39C(1A). We therefore consider it more appropriate to maintain the words “of a kind” in the description of “signboard” referred to in item 1 of the proposed Schedule 8. In fact, the expression “of a kind prescribed” is used in the Hong Kong legislation from time to time.

6. We attach at **Annex A** the revised version of the proposed CSAs incorporating the above amendments relating to commencement date and the proposed section 38(1)(ke)(ic) for Members’ easy reference. A marked-up copy of the Bill showing these CSAs is at **Annex B**.

Development Bureau
Buildings Department
May 2012

Buildings Legislation (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Development

<u>Clause</u>	<u>Amendment Proposed</u>
1	By deleting subclause (2) and substituting— “(2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.”.
1	By deleting subclause (3) and substituting— “(3) Sections 2A, 5, 6, 6A, 6B and 6C come into operation on a day to be appointed by the Secretary by notice published in the Gazette.”.
1	By adding— “(4) In subsection (3)— <i>Secretary</i> (局長) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123).”.
2	By deleting “sections 3 to 6” and substituting “sections 2A to 6A”.
New	By adding— “ 2A. Section 2 amended (interpretation) Section 2(3)— Repeal “Schedule 4 or 5”

Substitute

“Schedule 4, 5 or 8”.”.

- 3(3) In the proposed section 22(1B)(a), in the English text, by deleting “that”.
- 3(3) By deleting the proposed section 22(1B)(a)(i) and substituting—
- “(i) with respect to building works that have been or are being carried out to the premises or land—
 - (A) that they are in contravention of section 14(1);
 - (B) that there is a material divergence or deviation from any plan approved by the Building Authority under this Ordinance or required to be submitted to the Building Authority under the simplified requirements; or
 - (C) that they are not in compliance with the standard of structural stability, public health or fire safety established by regulations;”.
- 3(3) By deleting the proposed section 22(1B)(a)(ii) and substituting—
- “(ii) that the use of the premises has been changed in contravention of section 25(1) or (2);”.
- 3(3) In the proposed section 22(1B)(a)(iii), in the English text, by adding “that” before “the premises have”.
- 3(3) In the proposed section 22(1B)(a)(iv), in the English text, by adding “that” before “the drains”.
- 3(3) In the proposed section 22(1B)(a)(v), in the English text, by adding “that” before “a notice”.
- 5 By adding—

“(ic) the prescription of the details in relation to any prescribed building or building works specified in Schedule 8;”.

6 By deleting subclauses (8) and (9) and substituting—

“(8) Section 39C(6)—

Repeal paragraph (b)

Substitute

“(b) *prescribed building or building works* (訂明建築物或建築工程)—

- (i) in relation to subsection (1), means a building or building works prescribed in the Minor Works Regulation as prescribed building or building works;
- (ii) in relation to subsection (1A), means a building or building works specified in Schedule 8; and
- (iii) in relation to subsection (2) or (4), means a building or building works falling within subparagraph (i) or (ii).”.

New By adding immediately after clause 6—

“6A. Schedule 8 added

At the end of the Ordinance—

Add

“Schedule 8 [ss. 2, 38
& 39C]

Prescribed Building or Building Works

Item	Description
1.	Signboard of a kind prescribed under section 38(1)(ke)(ic).”.

New By adding—

“Part 2A

**Amendment to Building (Minor Works)
Regulation**

6B. Building (Minor Works) Regulation amended

The Building (Minor Works) Regulation (Cap. 123 sub. leg. N) is amended as set out in section 6C.

6C. Section 62 amended (provisions relating to section 39C of Ordinance)

Section 62(1)—

Repeal

“in section 39C(6)(b)”

Substitute

“given by section 39C(6)(b)(i) of the Ordinance in relation to section 39C(1)”.’.

Buildings Legislation (Amendment) Bill 2011

Contents

Clause Page

Part 1

Preliminary

1. Short title and commencement..... 1

Part 2

Amendments to Buildings Ordinance

2. Buildings Ordinance amended..... 3

2A. Section 2 amended (interpretation)..... 3

3. Section 22 amended (powers of Building Authority) 3

4. Section 33 amended (recovery of costs of works by Building Authority) 6

5. Section 38 amended (regulations)..... 7

6. Section 39C amended (Building Authority shall not serve order under section 24 or notice under section 24C) 7

6A. Schedule 8 added 10

Schedule 8 Prescribed Building or Building Works 10

Part 2A

Amendment to Building (Minor Works) Regulation

6B. Building (Minor Works) Regulation amended..... 11

Clause	Page
6C. Section 62 amended (provisions relating to section 39C of Ordinance)	11

Part 3

Amendments to Buildings (Amendment) Ordinance 2011

7. Buildings (Amendment) Ordinance 2011 amended.....	12
8. Section 20 amended (Part IIA added)	12
9. Section 21 amended (recovery of costs of works by Building Authority)	13
10. Section 26 amended (obstruction of owners' corporation)	13

A BILL To

Amend the Buildings Ordinance and the Buildings (Amendment) Ordinance 2011 to provide for matters relating to the issue of warrants authorizing entry into premises or upon land; to require registered inspectors to notify the Building Authority of certain unauthorized building works; to provide for surcharges on costs recoverable by the Building Authority under the Buildings Ordinance; to extend the application of sections 39B and 39C of that Ordinance; and to make minor amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Buildings Legislation (Amendment) Ordinance 2011.

(2) ~~This Part and Part 3 come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.~~ Subject to subsection (3), this Ordinance comes into operation on the day on which this Ordinance is published in the Gazette.

~~(3) Part 2 comes into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.~~

~~(3) Sections 2A, 5, 6, 6A, 6B and 6C come into operation on a day to be appointed by the Secretary by notice published in the Gazette.~~

~~(4) In subsection (3)—~~

Secretary (局長) has the meaning given by section 2(1) of the **Buildings Ordinance (Cap. 123)**.

Part 2

Amendments to Buildings Ordinance

2. Buildings Ordinance amended

The Buildings Ordinance (Cap. 123) is amended as set out in ~~sections 3 to 6~~sections 2A to 6A.

2A. Section 2 amended (interpretation)

Section 2(3)—

Repeal

“Schedule 4 or 5”

Substitute

“Schedule 4, 5 or 8”.

3. Section 22 amended (powers of Building Authority)

(1) Section 22(1)—

Repeal

“The Building Authority or any public officer authorized in writing by him in that behalf”

Substitute

“Subject to subsection (1A), the Building Authority or an authorized officer”.

(2) Section 22(1)(b)—

Repeal

“or drainage system”

Substitute

“, drainage system, sewerage works or sewerage system”.

(3) After section 22(1)—

Add

- “(1A) Except in case of emergency, neither the Building Authority nor an authorized officer may enter or break into the premises, or enter upon the land under subsection (1) unless—
- (a) the entry is permitted by the owner, occupier, or person who appears to have control or management of the premises or land; or
 - (b) a warrant is obtained under subsection (1B).
- (1B) A magistrate may issue a warrant authorizing the Building Authority or an authorized officer to enter and, if necessary, break into any premises or enter upon any land for any of the purposes mentioned in subsection (1) if the magistrate is satisfied by information on oath that—
- (a) there are reasonable grounds for suspecting ~~that~~—
 - (i) with respect to building works that have been or are being carried out to the premises or land ~~in contravention of any provision of this Ordinance—~~
 - (A) that they are in contravention of section 14(1);
 - (B) that there is a material divergence or deviation from any plan approved by the Building Authority under this Ordinance or required to be submitted to the Building Authority under the simplified requirements; or
 - (C) that they are not in compliance with the standard of structural stability, public health or fire safety established by regulations;
 - (ii) that the use of the premises ~~or land~~ has been changed in contravention of section 25(1) or

- ~~(2) contravened any provision of this Ordinance;~~
- (iii) that the premises have been, or the land has been, rendered dangerous, or the premises are, or the land is, liable to become dangerous;
 - (iv) that the drains or sewers of the premises or land are in a defective or insanitary condition; or
 - (v) that a notice or order served under this Ordinance has not been complied with;
- (b) the entry into the premises or upon the land by the Building Authority or an authorized officer—
- (i) was refused; or
 - (ii) could not be gained despite a visit made to the premises or land on at least 2 different days; and
- (c) notice of the intention to apply for a warrant has been served on the owner or occupier of the premises or land.
- (1C) A warrant issued under subsection (1B) must specify—
- (a) the premises or land to be entered;
 - (b) the purpose of the entry;
 - (c) the name and capacity of the person authorized to enter the premises or land; and
 - (d) the date of the issue of the warrant.
- (1D) If the Building Authority or an authorized officer enters or breaks into any premises, or enters upon any land, under a warrant issued under subsection (1B), the Building Authority or authorized officer must produce to the owner, occupier, or person who appears to have

control or management of the premises or land the warrant for inspection.

- (1E) When entering any premises or land under this section, the Building Authority or an authorized officer may be accompanied by any person that the Building Authority or authorized officer considers necessary for the purpose of the entry.
- (1F) On leaving any unoccupied premises or land entered under this section, the Building Authority or an authorized officer must leave the premises or land as effectually secured against trespassers as the premises or land was found at the time of entry.
- (1G) A warrant issued under subsection (1B) continues in force until the purpose for which entry is necessary has been fulfilled.”.

- (4) Section 22(2)(b)—

Repeal

“a public officer authorized under this section may take such steps as he may deem”

Substitute

“an authorized officer may take any steps that he or she considers”.

- (5) After section 22(4)—

Add

“(5) In this section—

authorized officer (獲授權人員) means a public officer authorized in writing by the Building Authority for any of the purposes mentioned in subsection (1).”.

4. Section 33 amended (recovery of costs of works by Building Authority)

Section 33(1)—

Repeal

“he may”

Substitute

“the Building Authority may impose a surcharge of not exceeding 20% on the cost due and may”.

5. Section 38 amended (regulations)

After section 38(1)(ke)(i)—

Add

(ia) the prescription of a date in relation to any prescribed building or building works for the purposes of section 39C(1A)(a);

(ib) the prescription of the requirement for periodic compliance with the requirements in section 39C(2), (3) and (4) in respect of any prescribed building or building works for the purposes of section 39C(1A)(c);

(ic) the prescription of the details in relation to any prescribed building or building works specified in Schedule 8;”.

6. Section 39C amended (Building Authority shall not serve order under section 24 or notice under section 24C)

(1) Section 39C, English text, heading—

Repeal

“shall”

Substitute

“must”.

(2) Section 39C—

Repeal subsection (1)

Substitute

- “(1) Despite sections 24 and 24C, the Building Authority must not serve an order under section 24 or a notice under section 24C in respect of a prescribed building or building works on the ground that the building or building works have been completed or carried out in contravention of section 14(1), if—
- (a) the building or building works were completed or carried out before 31 December 2010; and
 - (b) with respect to the building or building works, the requirements in subsections (2), (3) and (4) have been complied with.
- (1A) Despite sections 24 and 24C, the Building Authority must not serve an order under section 24 or a notice under section 24C in respect of a prescribed building or building works on the ground that the building or building works have been completed or carried out in contravention of section 14(1) or not in compliance with the simplified requirements, if—
- (a) the building or building works were completed or carried out before a date prescribed in the Minor Works Regulation in relation to the prescribed building or building works;
 - (b) with respect to the building or building works, the requirements in subsections (2), (3) and (4) have been complied with; and
 - (c) with respect to the building or building works, if periodic compliance with those requirements is required by the Minor Works Regulation, those requirements are complied with in accordance with the Minor Works Regulation.”.

(3) Section 39C(2)—

Repeal
“regulations”

Substitute

“Minor Works Regulation”.

- (4) Section 39C(3)—

Repeal

“regulations”

Substitute

“Minor Works Regulation”.

- (5) Section 39C(5)—

Repeal

“(1)”

Substitute

“(1) or (1A)”.

- (6) Section 39C(6)—

Repeal paragraph (a).

- (7) Before section 39C(6)(b)—

Add

“(aa) *Minor Works Regulation* (《小型工程規例》) means the Building (Minor Works) Regulation (Cap. 123 sub. leg. N);”.

- (8) Section 39C(6)(~~b~~)—

Repeal paragraph (b)

~~“regulations”~~

Substitute

“(b) *prescribed building or building works* (訂明建築物或建築工程)—

(i) *in relation to subsection (1), means a building or building works prescribed in the Minor Works Regulation as prescribed building or building works;*

(ii) in relation to subsection (1A), means a building or building works specified in Schedule 8; and

(iii) in relation to subsection (2) or (4), means a building or building works falling within subparagraph (i) or (ii).”.

~~“Minor Works Regulation”.~~

~~(9) Section 39C(6)(b)—~~

Repeal

~~“definition”~~

Substitute

~~“definition in relation to this section or a provision of this section”.~~

6A. Schedule 8 added

At the end of the Ordinance—

Add

“Schedule 8

[ss. 2, 38 & 39C]

Prescribed Building or Building Works

Item

Description

1. Signboard of a kind prescribed under section 38(1)(ke)(ic).”.

Part 2A

Amendment to Building (Minor Works) Regulation

6B. Building (Minor Works) Regulation amended

The Building (Minor Works) Regulation (Cap. 123 sub. leg. N) is amended as set out in section 6C.

6C. Section 62 amended (provisions relating to section 39C of Ordinance)

Section 62(1) —

Repeal

“in section 39C(6)(b)”

Substitute

“given by section 39C(6)(b)(i) of the Ordinance in relation to section 39C(1)”.

Part 3

Amendments to Buildings (Amendment) Ordinance 2011

7. Buildings (Amendment) Ordinance 2011 amended

The Buildings (Amendment) Ordinance 2011 (16 of 2011) is amended as set out in sections 8 to 10.

8. Section 20 amended (Part IIA added)

- (1) Section 20, new section 30B(11)—

Repeal

“, together with a surcharge of not exceeding 20% on the cost that the Building Authority may impose,”.

- (2) Section 20, new section 30C(9)—

Repeal

“, together with a surcharge of not exceeding 20% on the cost that the Building Authority may impose,”.

- (3) Section 20, new section 30D(5)—

Repeal

everything after “must”

Substitute

“—

- (a) notify the Building Authority of any case of emergency that is revealed during the course of the prescribed inspection; and
- (b) if the prescribed inspection is carried out under section 30B(3), also notify the Building Authority of any building works—

- (i) that have been or are being carried out in contravention of any provision of this Ordinance to—
 - (A) the common parts of the building;
 - (B) any external wall, roof or podium of the building (other than the common parts);
 - (C) any yard or slope adjoining the building; or
 - (D) any street on which the building fronts or abuts; and
- (ii) that are identified during the course of the prescribed inspection.”.

9. Section 21 amended (recovery of costs of works by Building Authority)

Section 21—

Repeal subsection (3).

10. Section 26 amended (obstruction of owners’ corporation)

(1) Section 26(1)—

Repeal

everything after “order” and before “in relation”

Substitute

“or notice has been served on the owners’ corporation under any provision of this Ordinance”.

(2) Section 26(4), new section 39B(1A)—

Repeal

everything after “building that” and before “in relation”

Substitute

“an order or notice has been served on the owners’ corporation under any provision of this Ordinance”.

- (3) Section 26(4), new section 39B(1A)—

Repeal

“with the notice”

Substitute

“with the order or notice”.

Explanatory Memorandum

Note—

In this Explanatory Memorandum, the expression *the Ordinance* refers to the Buildings Ordinance (Cap. 123) with the amendments enacted by the Buildings (Amendment) Ordinance 2011 (16 of 2011) incorporated into it.

The object of this Bill is to amend the Buildings Ordinance (Cap. 123) and the Buildings (Amendment) Ordinance 2011 (16 of 2011) in the following 5 aspects for the rendering safe of dangerous buildings and land or for preventing buildings from becoming unsafe, that is to say, to—

- (a) provide for the issue of a magistrate's warrant authorizing entry into any premises or upon any land by the Building Authority or any public officer authorized by the Building Authority;
- (b) extend the scope of the duty of a registered inspector under section 30D(5)(b) of the Ordinance (being a duty to notify the Building Authority of any unauthorized building works that are identified during the course of a prescribed inspection) to include any unauthorized building works carried out to the roof or podium of a building, or any yard, slope or street contiguous to a building for notification;
- (c) enable the Building Authority to impose a surcharge on the cost recoverable by the Building Authority under the Ordinance for any inspection, investigation or works carried out, services provided, or abortive visit made, by the Building Authority;
- (d) extend the obligations under section 39B of the Ordinance (namely, not to obstruct, and not to refuse to contribute to the cost of, any inspection, investigation, works or other action carried out by the owners' corporation in relation to any common parts of the building for the compliance with certain orders or notices served under the Ordinance) to the effect that

such obligations apply not only in relation to certain orders or notices but in relation to any orders or notices served under the Ordinance;

- (e) extend the scheme under section 39C of the Ordinance (under which demolition orders or notices will not be made by the Building Authority in respect of certain unauthorized building or building works) to allow inclusion of further types of unauthorized building or building works.
2. Clause 1 sets out the short title and provides for commencement.
3. Clauses 3 to 6 set out the amendments to the Buildings Ordinance (Cap. 123) (*the principal Ordinance*).
4. Clause 3 amends section 22 of the principal Ordinance to provide for the issue, when certain conditions are satisfied, of a magistrate's warrant authorizing entry into any premises or upon any land by the Building Authority or any public officer authorized by the Building Authority. It also makes a minor amendment to subsection (1)(b) of that section.
5. Clause 4 amends section 33(1) of the principal Ordinance to extend the power of the Building Authority to impose a surcharge of not exceeding 20% on the cost incurred and recoverable by the Building Authority under any provision of the Ordinance.
6. Clause 5 amends section 38(1) of the principal Ordinance to provide for regulation making powers concerning the prescription of a date for the purposes of section 39C(1A)(a) of the Ordinance, and prescription of the requirement for periodic compliance for the purposes of section 39C(1A)(c) of the Ordinance.
7. Clause 6 amends section 39C of the principal Ordinance to allow inclusion of further types of unauthorized building or building works to be regulated by the scheme under that section under which demolition orders or notices will not be made by the Building Authority.

8. Clauses 8 to 10 set out the amendments to the Buildings (Amendment) Ordinance 2011 (16 of 2011) (*the Amending Ordinance*).
9. Clause 8(1) and (2) amends section 20 of the Amending Ordinance (in relation to the new sections 30B(11) and 30C(9) of the Ordinance) to repeal the power of the Building Authority to impose a surcharge of not exceeding 20% on the cost incurred and recoverable by the Building Authority under sections 30B(11) and 30C(9) of the Ordinance only.
10. Clause 8(3) amends section 20 of the Amending Ordinance (in relation to the new section 30D(5) of the Ordinance) to the effect that the scope of notification to the Building Authority of any unauthorized building works identified by a registered inspector during the course of a prescribed inspection be extended to cover any unauthorized building works carried out to any roof or podium of a building (other than the common parts), or any yard or slope adjoining a building, or any street on which a building fronts or abuts.
11. Clause 9 amends section 21 of the Amending Ordinance to repeal the amendment made under section 21(3) in relation to section 33(1) of the Ordinance.
12. Clause 10 amends section 26 of the Amending Ordinance (in relation to section 39B(1) and the new section 39B(1A) of the Ordinance) to the effect that a person must not obstruct, or refuse to contribute to the cost of, any inspection, investigation, works or other action carried out in relation to any common parts of a building for compliance with any order or notice served on the owners' corporation of the building under the Ordinance.