

**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 Meeting held on 2 December 2011**

This note sets out the Administration's response to the follow-up issues of the Subcommittee at the meeting on 2 December 2011 in relation to the various matters on Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS).

Specified forms for different stages

2. Flowcharts illustrating the major steps for compliance with the statutory notices under MBIS and MWIS were attached in the Administration's response to the Subcommittee issued on 5 December 2011 (LC Paper CB(1)536/11-12(01)). Apart from other documents and plans, registered inspectors (RIs) and qualified persons (QPs) are required to submit specified forms during different stages of prescribed inspection and repair. Such forms include -

- (a) for RIs -
 - (i) notifications of appointment for prescribed inspection and prescribed repair;
 - (ii) certificate of completion of prescribed inspection; and
 - (iii) certificate of completion of prescribed repair;
- (b) for QPs -
 - (i) notifications for appointment for prescribed inspection and repair; and
 - (ii) certificate of completion of prescribed inspection and repair.

The draft specified forms are at **Annex** for Members' reference. While bilingual version of the form will be issued when MBIS and MWIS come into operation, only English version is available at this stage. It should be noted that the forms are subject to further amendment.

Non-compliance with prescribed time limits under statutory notices

3. As the Administration explained at the meeting on 5 December 2011, the Building Authority (BA) will impose time limits on the statutory notices of MBIS / MWIS for the completion of different stages of prescribed inspection and repair. The proposed time limits have been set out in the flowchart as mentioned above.

4. In the event of non-compliance with the statutory notices for MBIS and MWIS, the Buildings Department (BD) will take necessary follow-up and enforcement actions, which are also shown in the flowchart. In gist, upon the expiry of the stipulated time limit, the BD would issue warning letter to the owners/ owners' corporation (OC) concerned. If non-compliance continues without reasonable excuse, the BD would consider instigating prosecution against the owners/OC under MBIS. For MWIS, the BD would serve a penalty notice requiring payment of a fixed penalty of \$1,500 to the owners/OC concerned. Further penalty notices may be served on or prosecution may be instigated against the owner/OC of the premises if non-compliance persists without reasonable excuse.

5. The BD would also consider arranging for the carrying out of the prescribed inspection/repair works in default of the owners/OC and the cost of the inspection/repair works together with a surcharge of not exceeding 20% of such cost may also be imposed and be recovered from the owners/OC.

Standard of window inspection

6. As regards prescribed inspection, the policy intent is that the duty of an RI/QP is primarily to ensure the safety of buildings/windows. This intent is reflected in section 5(1) of the Building (Inspection and Repair) Regulation (the Regulation), which sets out that a prescribed inspection aims to, among others, "ascertain whether a building is safe or liable to become dangerous, or has been rendered dangerous".

7. Apart from ensuring the safety of the windows under inspection, a QP is required under the Buildings Ordinance (Cap. 123) (BO) (to be amended by the Buildings (Amendment) Ordinance 2011 (16 of 2011)) to notify the BA of any case of emergency in relation to window safety as revealed during the course of prescribed inspection or supervision of window repair works. The BD will handle the emergency cases in accordance with the relevant provisions of the BO (see section 30E(7) of the BO). Nevertheless, it is not a statutory requirement for a QP to report any unauthorized building works (UBWs) in relation to windows

to the BA, unless such windows constitute a case of emergency during the course of prescribed inspection or repair.

8. In contrast, an RI appointed for carrying out prescribed inspection in respect of a building under MBIS has the duty under the section 30D(5)(b) of the BO to notify the BA of any UBWs in the common parts and external wall of a building. In this connection, the RI must report the existence of any unauthorized window on the external wall of a building found during the course of the prescribed inspection.

9. Taking into account Members' views raised at the meeting on 2 December 2011, the BD will add a note to the compliance letter of the MWIS notice, reminding building owners that the compliance with the notice does not have the effect of conferring a "legalized" status on a window that is not constructed according to the approved plans.

Definition of "windows"

10. It is commonly known that "window" refers to an opening on the wall of a building with a frame and glass panes on it that lets in air or light. It is a generic term well understood by the public and the industry. As such, we do not consider it necessary to provide a definition for it in the relevant regulations.

11. The components of windows to be inspected and repaired have been given in the draft Code of Practice for MBIS and MWIS for the guidance of the industry and the public such as rivets and screws; hinges; sliding tracks, shoes and window stays; glass panes; sealant and putty; and frames.

Section 14(1)(a) of Regulation

12. Section 14(1)(a) of the Regulation requires a QP appointed under section 30E(1)(a) of the BO to certify, among others, that the QP has carried out a prescribed inspection in respect of a window in accordance with the Ordinance. By virtue of Interpretation and General Clauses Ordinance (Cap. 1), the term "the Ordinance" used in the Regulation means the BO and any subsidiary legislation (including the Regulation) made under the BO.

13. The duty to carry out a prescribed inspection is in fact provided in the primary legislation i.e. BO. The duty is fulfilled only if the requirements (including the details of a prescribed inspection as

prescribed in the subsidiary legislation) stipulated in the BO are complied with. The appointment and duties of a QP in relation to a prescribed inspection or prescribed repair are basically provided in section 30E of the BO, with the details of the duties prescribed in the Regulation. Under section 30E(3) of the BO, a QP must (a) carry out a prescribed inspection personally, and (b) comply generally with the BO. On (a), the Regulation does not specify the requirement of a “personal” inspection by a QP. If “the Ordinance” in section 14(1)(a) is replaced with “the Regulation” as suggested by Members at the meeting on 2 December 2011, it may leave a possible area of doubt on whether the certificate made under section 14(1) only confines to the Regulation. On (b), when carrying out a prescribed inspection, a QP is required to also comply with the provisions in the BO and its regulations that are relevant to a prescribed inspection. For example, the Building (Minor Works) (Amendment) Regulation 2011 made under the BO which is under scrutiny by this Subcommittee deals with items of minor works that maybe relevant to a prescribed inspection and prescribed repair. The requirement of fulfillment of these duties will be compromised if the certificate only confines to the Regulation.

14. Furthermore, the expression “to carry out a prescribed inspection/prescribed repair in accordance with the Ordinance” is extensively and consistently used in the Regulation. The expression indeed duly reflects the legislative intent.

15. The effect of a certificate given under section 14(1)(a) is not confined to that section. It states the fact of compliance with the BO pursuant to section 30E of the BO. The certificate not only certifies that a prescribed inspection has been carried out in accordance with the Ordinance, but also certifies that the QP has carried out the prescribed inspection in accordance with the Ordinance. Therefore, the Administration is of the view that it is not appropriate to replace “the Ordinance” with “the Regulation” in section 14(1)(a) of the Regulation.

Detailed investigation

16. The BD would check all detailed investigation (DI) proposals submitted by RIs under section 18(1)(b) of the Regulation. The BD would scrutinize all the information in the DI proposal before deciding whether it should be endorsed under section 19(2) of the Regulation

within 28 days after receiving a notification and proposal for DI.

Revised proposal and sample contract for prescribed repair

17. If there is evidence showing that apparent defects/deficiencies have not been identified by the RI in carrying out the prescribed inspection, the RI might have a misconduct or negligence in discharging his duties under the Regulation and therefore could be subject to disciplinary actions. The owners/OC may also lodge civil action against the RI for the damages arising from the delay in identifying the apparent defects not found in the original inspection.

18. To facilitate owners' monitoring of the repair works, section 30 of the Regulation stipulates that RI/QP is required to deliver copies of all documents submitted to the BA to the person for whom the prescribed inspection/repair is carried out. Such documents include inspection report and repair proposal under section 12(2), and (if any) revised repair proposal under section 22(2). It should also be noted that as MBIS would only require repair works that are adequate to render the building safe, we have set out in the draft Code of Practice that any additional works that the owners may wish to carry out together with the inspection and repair works under the MBIS should be distinguished from the basic repair works in the relevant documents. There are adequate sanction and disciplinary provisions under the BO against the malpractices of RIs in carrying out prescribed inspections and supervision of prescribed repairs. The BD will look into suspected irregularities in this regard during audit checks and upon complaint.

19. We are mindful that many building owners may not have prior experience in conducting large-scale building maintenance and repair works, and may not be conversant with tendering procedures and, in particular, analyzing the tender prices submitted. Building owners may seek advice from Hong Kong Housing Society (HKHS) or Urban Renewal Authority (URA) on the procedures if in doubt. To facilitate the work of the owners in this regard, HKHS has developed a Building Maintenance Tool kit in consultation with the Independent Commission Against Corruption which contains guidelines/ standard templates/ checklists for tendering procedures for the use of building owners. Owners may also make reference to the maintenance guidelines issued by HKHS, URA and Hong Kong Institute of Surveyors (HKIS) containing

objective points to consider their evaluation of tender submissions. Such documents will guide OCs/owners in requiring potential bidders to submit the essential information, including the resources of their companies, the number of hours they can allocate to the inspection and repair works of the building, etc. to help owners consider the bids and manage their agents. The HKIS published a set of “Standard Form of Contract for Decoration, Repair and Maintenance Works” with the essential terms and conditions for building owners so that they can adequately protect their interests and may make claims should the RIs/contractors fail to deliver their services satisfactorily in accordance with the contracts (such as conducting works without prior endorsement of owners).

20. In anticipation of the implementation of MBIS/MWIS, we will invite HKHS, URA and the professional institutes to update the aforesaid documents accordingly. We will discuss with these organizations how best to advise owners to include a specific clause in their contracts to the effect that the owners/OC will not be liable to pay the RI who fails to obtain prior endorsement of BA before conducting a detailed investigation.

21. To better control the cost and prevent disputes on the works variations arising from the subsequent larger extent of repair work than anticipated, it is advisable to provide a schedule of unit rates in the contract on possible repair items. The total repair cost may then be worked out according to the actual work finished and as measured on site. We will also explore with HKHS, URA and the professional institutes whether a schedule of unit rates on possible repair items could be included in the standard tender document/ contract.

“The person for whom the prescribed inspection is carried out”

22. Under sections 30D(1)(a) of the BO, any “person for whom a prescribed inspection is to be carried out” must appoint an RI to carry out such prescribed inspection. Depending on the circumstances, the person for whom the prescribed inspection is to be carried out may be the owner (including individual owner, co-owners or OCs) or the management company acting as the agent of the owners, as the case may be.

23. In view of the above, the duty of the RI to deliver copy of inspection report under section 30(1)(a) of the Regulation is discharged when he has given such copy to the person who appoints him to carry out prescribed inspection. In other words, in case the OC or management company appoints the RI, he has no obligation thereunder to give copies of the inspection report to individual owners.

24. We agree that owners should generally have the right to have access to the documents in relation to the statutory notice of their buildings. This right is enshrined in section 36G of the BO, which allows individuals to apply to the BD to obtain a copy of the inspection report and repair proposal submitted by the RI. Since the requested documents contain third party information, the BD will have to exercise discretion for their application according to the merits of each case. As the individual building owners have direct interest and statutory involvement in the building inspection and repair proposal in respect of the common parts and external walls of the building, the BD would accede to the owners' request in general.

**Development Bureau
Buildings Department
December 2011**



BUILDINGS ORDINANCE (CAP. 123) Section 30D(1)(a)
BUILDING (INSPECTION AND REPAIR) REGULATION
Section 11

NOTICE OF APPOINTMENT OF REGISTERED INSPECTOR
(PRESCRIBED INSPECTION OF BUILDING)

[Please complete in BLOCK LETTERS and tick in the appropriate box(es)]

To the Building Authority

Building Authority's Notice No.

(as shown at the top of the Notice)

Address of *building / *premises
 (as shown in Building Authority's Notice)

Notes:

To comply with the Buildings Ordinance and Regulations, the following form(s) as listed below must be submitted to the Building Authority before commencement of repair works if necessary (for more details please visit BD's website www.bd.gov.hk) :-

- (i) Form MW01 for Class I or Class II Minor Works; and
- (ii) Form BA4 for building works requiring the Building Authority's prior approval of the related prescribed plans.

Part A Notice of appointment of registered inspector

(To be completed by the person for whom the prescribed inspection is to be carried out)

1. Particulars of the person for whom the prescribed inspection is to be carried out

Name in English (Surname first)

中文名稱 Name in Chinese (if any)

☐ Corporation No. ☐ Business Registration No. ☐ HKID No. ☐ Passport No.

Country of issue of passport (If applicable)

Correspondence Address

Flat/Room Floor Block Name of Building / Estate

Number and Name of Street / Road / Village

District ☐ Hong Kong ☐ Kowloon ☐ New Territories

Telephone Number : Fax Number :

Optional for effective communication

E-mail Address

2. Particulars of the appointed registered inspector (prescribed inspection)

In accordance with the provisions of section 30D (1) (a) of the Buildings Ordinance, I/we have appointed the registered inspector as below to carry out the prescribe inspection in respect of the above Building Authority's Notice.

Name in English (In accordance with the registration record)

中文姓名
Name in Chinese (In accordance with the registration record)

Telephone Number : _____ Fax Number : _____

Signature of the person for whom the prescribed inspection is to be carried out and affixed with company seal (if applicable) _____ day month year

Part B Confirmation of appointment by the registered inspector

(To be completed by the registered inspector appointed)

I, _____
Name in English (In accordance with the registration record)

中文姓名 Name in Chinese (In accordance with the registration record)

confirm that in accordance with the provisions of section 11 of the Building (Inspection and Repair) Regulation, I have been appointed as the registered inspector detailed in **Part A**; and

I will carry out the prescribe inspection in respect of the above Building Authority's Notice in accordance with the Buildings Ordinance and Regulations.

RI /
Certificate of Registration Number

Date of expiry
of registration

day month year

20

Signature of registered inspector

_____ 20 _____
day month year

* delete as appropriate



BUILDINGS ORDINANCE (CAP. 123) Section 30E(1)(a)
BUILDING (INSPECTION AND REPAIR) REGULATION
Section 11

NOTICE OF APPOINTMENT OF QUALIFIED PERSON
(PRESCRIBED INSPECTION OF WINDOWS)

[Please complete in BLOCK LETTERS and tick in the appropriate box(es)]

To the Building Authority

Building Authority's Notice No.

(as shown at the top of the Notice)

Address of *building / *premises
(as shown in Building Authority's Notice)

Notes:

To comply with the Buildings Ordinance and Regulations, the following form(s) as listed below must be submitted to the Building Authority before commencement of repair works if necessary (for more details please visit BD's website www.bd.gov.hk) :-

- (i) Form MW01 for Class I or Class II Minor Works; and
- (ii) Form BA4 for building works requiring the Building Authority's prior approval of the related prescribed plans.

Part A Notice of appointment of qualified person

(To be completed by the person for whom the prescribed inspection is to be carried out)

1. Particulars of the person for whom the prescribed inspection is to be carried out

Name in English (Surname first)

中文名稱 Name in Chinese (if any)

☐ Corporation No.

☐ Business Registration No.

☐ HKID No.

☐ Passport No.

Country of issue of passport (If applicable)

Correspondence Address

Flat/Room Floor Block Name of Building / Estate

Number and Name of Street / Road / Village

District

☐ Hong Kong

☐ Kowloon

☐ New Territories

Telephone Number :

Fax Number :

Optional for effective communication

E-mail Address

2. Particulars of the appointed qualified person

In accordance with the provisions of section 30E(1)(a) of the Buildings Ordinance, I/we have appointed the qualified person as below to carry out the prescribed inspection in respect of the above Building Authority's Notice.

Name in English (In accordance with the registration record)

*AP()/*RSE/*RI/
*RGBC/*RMWC
Certificate of Registration Number

中文姓名
Name in Chinese (In accordance with the registration record)

Telephone Number : _____ Fax Number : _____

Signature of the person for whom the prescribed inspection is to be carried out
and affixed with company seal (if applicable)

day month year

Part B Confirmation of appointment by the qualified person

(To be completed by the qualified person appointed)

I/We, _____
Name in English (In accordance with the registration record)

中文姓名 Name in Chinese (In accordance with the registration record)

confirm that in accordance with the provisions of section 11 of the Building (Inspection and Repair) Regulation,
I/we have been appointed as the qualified person detailed in **Part A**; and
I/we will carry out the prescribed inspection in respect of the above Building Authority's Notice in accordance with
the Buildings Ordinance and Regulations.

*AP()/*RSE/
*RI/*RGBC/*RMWC
Certificate of Registration Number

Date of expiry of
registration

day month year

Signature of qualified person

day month year

* delete as appropriate



BUILDINGS ORDINANCE (CAP. 123)
BUILDING (INSPECTION AND REPAIR) REGULATION
Section 14(2)

CERTIFICATE OF COMPLETION OF PRESCRIBED INSPECTION AND REPAIR OF WINDOW(S)

[Please complete in BLOCK LETTERS and tick in the appropriate box(es)]

To the Building Authority

Building Authority's Notice No. _____

(as shown at the top of the Notice)

Address of *building / *premises
(as shown in Building Authority's Notice)

I/We, _____,
Name in English (In accordance with the registration record)

中文姓名 Name in Chinese (In accordance with the registration record)

(☐ a natural person ☐ not a natural person), appointed under section 30E(1)(a) and (b) of the Buildings Ordinance, confirm that the prescribed inspection under the above Notice was completed on

_____,
day month year

2. In accordance with section 14(2) of the Building (Inspection and Repair) Regulation, I/we certify that
- (a) (☐ I/we ☐ my/our representative) have/has carried out the prescribed inspection under the above Notice in accordance with the Buildings Ordinance;
 - (b) in my opinion the window(s) has/have been rendered dangerous, or is/are liable to become dangerous; and a prescribed repair in respect of the window(s) is required to be carried out to render the window(s) safe;
 - (c) the prescribed repair has been carried out in accordance with the Buildings Ordinance; and
 - (d) in my opinion the window(s) specified under the above Notice has/have been rendered safe after completion of the prescribed repair.

Tel. Number: _____

Fax Number: _____

*AP()/*RSE/

*RI/*RGBC/*RMWC

Certificate of Registration Number

Date of expiry of
registration

_____,
day month year

Signature of qualified person

_____,
day month year

* delete as appropriate

c.c. Person for whom the prescribed inspection and prescribed repair are carried out

