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Paper for the House Committee meeting on 26 June 2020

**Report of the Subcommittee on
Building (Minor Works) (Amendment) Regulation 2020 and
Building (Planning) (Amendment) Regulation 2020**

Purpose

This paper reports on the deliberations of the Subcommittee on Building (Minor Works) (Amendment) Regulation 2020 and Building (Planning) (Amendment) Regulation 2020 ("the Subcommittee").

Background

2. Before the implementation of the minor works control system ("MWCS"), all building works, unless they were exempted under section 41 of the Buildings Ordinance (Cap. 123) ("BO"), required the prior approval and consent of the Building Authority ("BA"), i.e. the Director of Buildings (section 2(1) of BO), before their commencement. Following the full operation of MWCS since 31 December 2010, building owners may carry out designated minor works ("MW") in accordance with simplified requirements prescribed in the rules and regulations made under BO without the need to obtain prior approval of plans and consent to the commencement of such works from BA. The Building (Minor Works) Regulation (Cap. 123N) ("B(MW)R") provides for various matters relating to the implementation of MWCS.¹

¹ Such matters include the classification and details of MW items covered under MWCS, the simplified requirements for carrying out such works, the registration of MW contractors, and the duties of prescribed building professionals and prescribed registered contractors in carrying out such works.

Currently, there are 126 items of building works designated as MW under Part 3 of Schedule 1 to B(MW)R. These MW items are classified into three classes (i.e. Classes I, II and III, with more controlling measures imposed on Class I MW items) according to their scale, complexity and the safety risk that they may pose.² Irrespective of their classification, all MW items are required to be carried out by prescribed registered contractors ("PRCs"). For Class I MW items, the building owner will have to engage a prescribed building professional ("PBP") to design and supervise the carrying out of the MW items. The PBPs or PRCs are also required to make appropriate submissions that contain details of the MW items concerned to the Buildings Department ("BD") for record before the commencement (for Classes I and II MW items only) and after the completion of work (for all MW items).

3. Besides, Designated Exempted Works ("DEW") items have been introduced under MWCS. They are building works that are very simple and of a very small scale. By virtue of section 41(3B) of BO, DEW prescribed in the rules and regulations under BO may be carried out without the approval of plans, consent to the commencement of works, or appointment of PBPs and PRCs. There are currently 15 DEW items listed under Part 2 of Schedule 2 to B(MW)R.

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4. According to the Administration, MWCS has proven to be a simple and convenient channel for carrying out minor building works. In response to increasing demand to extend the coverage of MWCS to more small-scale building works to bring greater convenience to the public and facilitation to the industry, the Secretary for Development ("SDEV") has made the Building (Minor Works) (Amendment) Regulation 2020 (L.N. 60) ("B(MW)(A)R") mainly to include more works items under MWCS and provide for transitional arrangements. In summary, this legislative amendment exercise involves the addition of 70 MW items and the repealing of nine MW items, as a result of which the list of MW items would increase from 126 to 187. The presentation

² Class I MW items include relatively complicated MW (e.g. Item 1.34: building works associated with removal of any stairlift or lifting platform). Class II MW items are mainly MW of comparatively low complexity and safety risk (e.g. Item 2.38: removal of any unauthorized structure hung underneath the soffit of, or fixed to, a balcony or canopy other than a cantilevered slab). Class III MW items are mainly common household MW (e.g. Item 3.10: removal of any supporting structure for an antenna or transceiver located on the roof of a building).

of 56 existing MW items would also be amended. Besides, the number of DEW items would increase from 15 to 30, while the presentation of eight existing items would be amended. A summary of the amendments to MW items in Schedule 1 and DEW items in Schedule 2 to B(MW)R is in [Appendix II to the Legislative Council Brief](#) on B(MW)(A)R and the Building (Planning) (Amendment) Regulation 2020 (L.N. 61) ("B(P)(A)R").

5. SDEV has also made B(P)(A)R to make corresponding amendments to Regulation 7 of the Building (Planning) Regulations (Cap. 123F)³ by including the following new types of features: (a) metal ventilation ducts and the associated supporting frames; (b) supporting frames for antennas and transceivers for public telecommunications services; (c) supporting frames for light fitting; and (d) retractable awnings meeting certain dimensional and positional requirements in addition to the existing features that may project over street. In effect, such new features may be erected under MWCS when meeting the criteria of the relevant MW items including the dimensional and positional requirements stipulated in B(P)(A)R.

6. B(MW)(A)R and B(P)(A)R were gazetted on 8 May 2020 and tabled before the Legislative Council at its meeting of 13 May 2020 for negative vetting. These two amendment regulations will come into operation on 1 September 2020 which, according to the Administration, is more than three months after the date of gazettal with a view to allowing sufficient time for publicity and public education.

The Subcommittee

7. At the House Committee meeting on 29 May 2020, Members agreed to form a subcommittee to study B(MW)(A)R and B(P)(A)R. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon Tony TSE, the Subcommittee has held two meetings and invited written views from the public.⁴

³ Section 31(1)(a) of BO provides that no building or other structure shall be erected in, over, under or upon any portion of any street unless the building or other structure complies with the relevant criteria stipulated in Part II of the Building (Planning) Regulations (Cap. 123F). Regulation 7 of Cap. 123F sets out the criteria for eaves, cornices, mouldings, other architectural projections, pipes, gutters, drying racks and supporting structures for air-conditioning units.

⁴ A written submission has been received from The Hong Kong Institution of Engineers (LC Paper No. [CB\(1\)755/19-20\(01\)](#)).

8. To allow sufficient time for the Subcommittee to complete the scrutiny of B(MW)(A)R and B(P)(A)R and compile a report to the House Committee, the Chairman moved a motion at the Council meeting of 10 June 2020 to extend the scrutiny period of B(MW)(A)R and B(P)(A)R to the Council meeting of 8 July 2020. As the motion was not dealt with at the Council meeting of 10 June 2020, the scrutiny period of B(MW)(A)R and B(P)(A)R had expired after the said Council meeting.

Deliberations of the Subcommittee

9. The Subcommittee in general supports introducing B(MW)(A)R and B(P)(A)R to include more MW and DEW items under MWCS. In the course of deliberations, the Subcommittee has examined the control over MW under MWCS, provision of means of access for maintenance to the exterior of buildings, and suggestions relating to slope repair and maintenance works.

Control over minor works under minor works control system

10. The Subcommittee notes that since the implementation of MWCS from 31 December 2010 and up to 31 December 2019, BD has received over 920 000 MW submissions, the majority of which are related to the replacement or repair of windows, repair of minor defects in slabs, beams, columns and walls, replacement or alteration of drains and erection of supporting frames of air-conditioning units. In view of the expansion of MW items by virtue of B(MW)(A)R, coupled with the continuous increase in the number of aged buildings that are subject to the inspection and maintenance requirements under the Mandatory Window Inspection Scheme ("MWIS") and Mandatory Building Inspection Scheme ("MBIS"), it is expected that the number of MW submissions will rise. To ensure works quality and compliance, the Chairman has called on the Administration to set a target on the minimum percentage of audit checks/site inspections to be conducted on the MW submissions received. Given that B(MW)(A)R will soon come into effect on 1 September 2020, the Chairman has urged the Administration to take timely publicity and education initiatives to facilitate understanding of MWCS and the amendments made under B(MW)(A)R by relevant stakeholders, including practitioners, building owners and the general public. The Administration should also ensure that there will be a sufficient number of PRCs in the market to cope with the increase in MW works demand and sustain competitive prices for these works under the expanded MWCS regime.

11. According to the Administration, MW items covered in MWCS are smaller in scale and pose a lower level of risk. BD will check all MW

submissions to ensure that qualified personnel have been appointed and will conduct audit checks. Any irregularities identified during the audit checks/site inspections are required to be rectified by the appointed PBPs and/or PRCs, as applicable. Every year, some 7 000 submissions have been audited of which about 12% have been inspected on site. While BD has not set a target on the percentage of audit checks/site inspections to be conducted, it will conduct necessary audit checks/site inspections whenever the situation warrants. For example, more audit checks/site inspections may be required under special circumstances or for specific types of MW that need special attention. With the on-going publicity work to facilitate better public understanding of the MWCS regime, the number of non-compliant cases has been decreasing. Furthermore, BD will commence publicity and public education programmes to promulgate the updated MW control regime, including hosting briefing sessions, some in collaboration with the industry, broadcasting Announcement on Public Interests on television, radio and social media, updating the guidelines and the MWCS mobile application, and publishing pamphlets as well as information on BD's website. BD has also published on its website for public reference the cost information for window inspection and common window repair items under MWIS and for building inspection under MBIS.

12. Regarding the new MW item 2.45 (covering the erection, alteration or removal of any trellis on a roof of a building) proposed to be added to Schedule 1 to B(MW)R by section 14 of B(MW)(A)R, the Subcommittee has sought clarification on the rationale for prescribing the criteria under item 2.45(d)(iii) and (iv) that for erection or alteration works carried out in a common/non-common part of the building, each trellis covers an area of not more than 5 square metres ("sq m"), and the aggregate of the area covered by each trellis located in that common/non-common part should be not more than 20 sq m (for non-common part only) and not more than 5% of the total area of the part.

13. The Administration has advised that the relevant criteria aim to ensure that no overloading of the existing roof structure will be caused by the trellis. In case associated repair works has to be carried out on the roof finishes of a building after completing the trellis works, such works on the roof finishes can be carried out as a DEW item (item 7) under B(MW)R, subject to meeting the relevant criteria for DEW item 7 as amended under section 15 of B(MW)(A)R.

14. Ir Dr LO Wai-kwok has opined that while expanding MWCS to bring convenience to the public and facilitation to the industry, BD should ensure that MW items are properly designed and carried out such that building safety will not be compromised. The Administration assured members that safety is a core principle in designing and implementing MWCS, as enshrined in the

classification of MW items into three classes (i.e. Classes I, II, and III) according to their nature, scale and complexity, and the risk, with more stringent controlling measures imposed on Class I MW items. Besides, a works item can be carried out under MWCS only if the prescribed criteria stipulated in B(MW)R for the respective MW item are met. Such criteria have been carefully devised to facilitate proper control under MWCS.

Provision of means of access for maintenance to the exterior of buildings

15. Mr LUK Chung-hung has expressed concerns over the work-at-height safety issue and operational difficulties relating to the use of truss-out scaffolds or suspended working platforms for carrying out maintenance works at the exterior of buildings, and asked about the Administration's latest work progress in promoting the provision of adequate means of access for such works. While noting that new provisions have been introduced under the Building (Construction) Regulation (L.N. 5)⁵ mandating the provision of adequate means of access for maintenance of facilities at the exterior of buildings (for example, air-conditioners) in order to provide better protection for workers' safety, he asked about the progress of the promulgation of the relevant code of practice on design for safety for external maintenance, and the arrangements for encouraging the provision of similar means of access at existing buildings.

16. The Administration has advised that BD promulgated the "Code of Practice on Design for Safety – External Maintenance" ("the Code") in September 2019, which specifies the deemed-to-satisfy requirements for compliance with the above-mentioned provisions on means of access for maintenance to external building elements of a building (i.e. maintenance and repair access) in building design. The relevant Technical Committee formed by BD will collect views and feedback on the use of the Code from the building industry and practitioners, and review the Code from time to time for refinements where necessary and as appropriate. As regards existing buildings, external wall designs vary and hence it is not practical to mandate the provision of such maintenance and repair access. Notwithstanding this, the Labour Department has issued relevant codes of practice and guidelines on practical operation requirements and safety measures in respect of external wall work safety, and has been working with relevant professionals to study and analyze the external wall designs of some existing residential buildings

⁵ The new Building (Construction) Regulation was gazetted on 10 January 2020 and tabled at the Legislative Council for negative vetting on 15 January 2020. It will come into operation on 1 February 2021.

with a view to making recommendations on possible problems encountered when conducting external wall works at these buildings.

Suggestions relating to slope repair and maintenance works

17. The Subcommittee has noted the suggestion made by The Hong Kong Institution of Engineers ("HKIE") of designating slope repair and maintenance works as a DEW item in Schedule 2 to B(MW)R to facilitate timely commencement of repair works of damaged structures before the onset of the rainy seasons. Furthermore, regarding the new DEW item 25 (covering the alteration, repair or removal of any surface drainage on-grade) proposed to be added to Schedule 2 to B(MW)R by section 15 of B(MW)(A)R, HKIE suggests defining the depth of the channel by considering the appropriate fall of 300 millimetres ("mm"); and inclusion of any essential repair of channels for natural, formed or man-made slopes or any retaining walls.

18. On the above suggestions, the Administration has advised that certain types of repair works for slopes or retaining walls that are of routine nature are designated as Class III MW item 3.53 under B(MW)(A)R. Such works cover repairs of (i) any pointing in a masonry retaining wall; (ii) the hard cover of any natural, formed or man-made slope; (iii) any surface drainage channel, catch-pit or sand-trap connected to a slope; and (iv) any surface drainage channel, catch-pit or sand-trap connected to a retaining wall which does not involve any excavation of a depth of more than 300 mm. Having considered their nature, scale and complexity as well as the risk they pose, the Administration considers it appropriate to designate such works as a Class III MW item. According to the Administration, as Class III MW item requires only the appointment of a Class III MW contractor for carrying out the works and there is no need for prior notification to BD before works commencement, the relevant repair works can be done in a timely manner.

19. Regarding the proposed new DEW item 25 to be introduced under B(MW)(A)R, the Administration considers it necessary to maintain the proposed conditions for the item, namely (a) the depth of the channel is not more than 300 mm; and (b) the channel is not for any natural, formed or man-made slope or any retaining walls. The Administration has explained that the depth control in (a) aligns with that of the extant DEW item 9 which restricts any excavation of more than 300 mm, with the depth being measured vertically from the highest point of the channel to the soil beneath the channel, and that (b) has been included in consideration of the risks of works in relation to surface drainage channels for natural, formed or man-made slopes or any retaining walls.

Recommendation

20. The Subcommittee has completed scrutiny of B(MW)(A)R and B(P)(A)R. The Subcommittee generally supports B(MW)(A)R and B(P)(A)R. Members note that the scrutiny period for the two amendment regulations has expired after the Council meeting of 10 June 2020, and have not raised any proposed amendments to B(MW)(A)R and B(P)(A)R. Members also note that the Administration has not proposed any amendments to the two amendment regulations.

Advice sought

21. Members of the House Committee are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
23 June 2020

Appendix

Subcommittee on Building (Minor Works) (Amendment) Regulation 2020 and Building (Planning) (Amendment) Regulation 2020

Membership list

Chairman Hon Tony TSE Wai-chuen, BBS

Members Hon Abraham SHEK Lai-him, GBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon LUK Chung-hung, JP

(Total : 4 members)

Clerk Ms Doris LO

Legal Adviser Miss Rachel DAI