#### LEGISLATIVE COUNCIL BRIEF

Buildings Ordinance (Chapter 123)

#### BUILDING (MINOR WORKS) (AMENDMENT) REGULATION 2021

# AMENDMENT TO SCHEDULE 8 TO THE BUILDINGS ORDINANCE – COMMENCEMENT NOTICE

#### INTRODUCTION

In exercise of the power conferred to him by section 38 of the Buildings Ordinance ("BO") (Cap. 123) and paragraph (b) of the Resolution of the Legislative Council published in the Gazette as Legal Notice No. 69 of 2021, the Secretary for Development ("SDEV") has made the following two pieces of subsidiary legislation –

#### Annex A

- (a) the Building (Minor Works) (Amendment) Regulation 2021 ("the Amendment Regulation") (at **Annex A**), and
- (b) the commencement notice for the resolution of the Legislative Council ("LegCo") to amend Schedule 8 to the BO ("the Commencement Notice")(at **Annex B**).

#### Annex B

#### BACKGROUND AND JUSTIFICATION

2. The Minor Works Control System ("MWCS") came into full operation on 31 December 2010. It is regulated under the Building (Minor Works) Regulation ("B(MW)R") (Cap. 123 sub. leg. N). It provides an alternative for building owners to carry out small-scale building works in a lawful, simple, safe and convenient way where building owners may carry out minor works ("MW") under simplified requirements without the need to obtain prior approval of plans and consent to the commencement of such works from the Building Authority ("BA").

The B(MW)R was amended in 2020 to include additional types of building works as minor works under the MWCS. Upon those amendments coming into effect on 1 September 2020, a total of 187 minor works items have been covered under the MWCS.

- 3. Under the "risk-based" principle, the MWCS provides a validation scheme for certain minor amenity features out of the list of items covered in MWCS. Upon validation, those minor amenity features, as Prescribed Buildings or Building Works ("PBW") specified under section 39C(6)(b) of the BO, that were erected in contravention of the BO before the prescribed dates but meeting the descriptions and requirements prescribed under Schedule 3 to the B(MW)R would not be served an order under section 24 or a notice under section 24C of the BO merely on the ground that they have been completed or carried out in contravention of section 14(1) of the BO.<sup>1</sup>
- 4. While the legal status of the validated amenity features remain unauthorised, such amenity features would be tolerated. The validation scheme aims to allow the continued use of such lower risk amenity features after safety inspection and requisite strengthening, as well as certification, by a prescribed building professional <sup>2</sup> or a prescribed registered contractor <sup>3</sup> so as to meet the genuine needs of building occupants, minimise the burden of owners or occupants in seeking rectification and avoid wastage.
- 5. The validation scheme now covers existing unauthorised signboards and certain types of existing unauthorised minor amenity features, i.e. supporting frames or structures for air-conditioning units, water cooling tower and any associated air ducts, drying racks and canopies, involving 10 PBW items in total. With the expanded scope of minor works items from 1 September 2020 onwards, we propose the inclusion of

Section 14(1) of the BO stipulates the requirements for seeking prior approval and consent for commencement of building works from BA.

Prescribed building professional includes Authorized Person or Registered Inspector and, where applicable, Registered Structural Engineer and Registered Geotechnical Engineer.

Prescribed registered contractor includes Registered General Building Contractor, Registered Specialist Contractor registered to conduct a certain category of specialised works, as well as Registered Minor Works Contractor registered to conduct certain class/type/item of minor works.

Annex C

an additional 11 types of amenity features (involving 21 PBW items) covered under the MWCS and are considered to be of relatively lower risk into the validation scheme. A summary of the changes in the number of PBW items of Schedule 3 to the B(MW)R is set out at **Annex C**. The proposal would require (a) amendment to Schedule 8 to the BO to prescribe certain existing unauthorised minor amenity features as PBW, followed by (b) amendment to section 62A of and Schedule 3 to the B(MW)R to effect and prescribe the details of PBW. The LegCo passed the resolution to amend Schedule 8 to the BO on 13 May 2021. The current exercise seeks to amend mainly section 62A and Schedule 3 to the B(MW)R.

# THE AMENDMENT REGULATION AND THE COMMENCEMENT NOTICE

- 6. The main provisions of the Amendment Regulation at **Annex A** are as follows
  - (a) provision to commence the Amendment Regulation on 1 September 2021;
  - (b) amendment to section 62A of the existing B(MW)R to provide for the extension of validation scheme to cover the new 21 items of PBW, and
  - (c) addition of a new Part 4 in Schedule 3 to the B(MW)R to prescribe the details of the new 21 items of PBW eligible for the validation scheme.
- 7. The Commencement Notice at **Annex B** provides for the commencement of the resolution to amend Schedule 8 to the BO on 1 September 2021 to dovetail with the commencement date of the Amendment Regulation as mentioned in paragraph 6(a) above. Meanwhile, we will make use of the two-month period between gazettal and the commencement date for publicity and public education.

#### LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows –

Publication in the Gazette	18 June 2021
Tabling in LegCo	23 June 2021
Commencement date	1 September 2021

# IMPLICATIONS OF THE AMENDMENT REGULATION AND THE COMMENCEMENT NOTICE

9. The Amendment Regulation and the Commencement Notice are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the BO and the regulations made thereunder. They have no financial and civil service implications.

#### **PUBLIC CONSULTATION**

- 10. We consulted the Building Sub-Committee of the Land and Development Advisory Committee, the Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers Committee and the Technical Committee of MWCS on the legislative amendments. Members of these committees, comprising different professional bodies, associations of the building and construction industry and trade associations, generally supported the legislative amendments.
- 11. We consulted the Panel on Development of the LegCo on the Amendment Regulation including the proposed resolution to amend Schedule 8 to the BO on 26 February 2019. Members were generally

supportive of the legislative amendments. As an important step for implementing the proposal, the LegCo passed the resolution to amend Schedule 8 to the BO on 13 May 2021.

#### **PUBLICITY**

12. A press release will be issued to announce the legislative amendments when the Amendment Regulation and the Commencement Notice are published in the Gazette on 18 June 2021. BD will launch public education and publicity programmes for practitioners, property management agencies and the general public to introduce the extension of validation scheme. In addition, BD will update the guidelines, the MWCS mobile application, BD's website and publish pamphlets to enable the public and industry to better understand the relevant requirements.

#### **ENQUIRY**

13. Enquiry on this brief can be addressed to Ms. Jasmine Choi, Principal Assistant Secretary (Planning & Lands) 3 of the Development Bureau at 3509 8806.

Development Bureau June 2021

#### Building (Minor Works) (Amendment) Regulation 2021

(Made by the Secretary for Development under section 38 of the Buildings Ordinance (Cap. 123))

#### 1. Commencement

This Regulation comes into operation on 1 September 2021.

#### 2. Building (Minor Works) Regulation amended

The Building (Minor Works) Regulation (Cap. 123 sub. leg. N) is amended as set out in sections 3 to 6.

### 3. Section 62 amended (provisions relating to section 39C(1) of Ordinance)

(1) Section 62(3), before "(appointed person)"—

Add

"and subsection (2)".

(2) Section 62(3)(a)(i), after "of the Ordinance"—

Add

"and subsection (2)".

## 4. Section 62A amended (provisions relating to section 39C(1A) of Ordinance)

(1) Section 62A—

Repeal subsections (1), (2) and (3)

#### Substitute

"(1) For the purposes of the definition of *prescribed building* or building works in section 39C(6)(b)(ii) of the Ordinance (which relates to section 39C(1A) of the

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Ordinance (*relevant provision*)), if any building or building works are of a type specified in Part 3 or 4 of Schedule 3, the building or building works are prescribed building or building works to which the relevant provision applies (*relevant construction*).

(2) The date prescribed for the purposes of section 39C(1A)(a) of the Ordinance is—

- (a) for any relevant construction that is of a type specified in Part 3 of Schedule 3—2 September 2013; and
- (b) for any relevant construction that is of a type specified in Part 4 of Schedule 3—1 September 2020.
- (3) For the purposes of section 39C(2) of the Ordinance—
  - (a) for a relevant construction falling within the description of an item of minor works under class
    - (i) if the construction is a specified construction, an authorized person is to be appointed to inspect the construction; and
    - (ii) if the construction is not a specified construction, an authorized person and a registered structural engineer are to be appointed to inspect the construction; and
  - (b) for a relevant construction falling within the description of an item of minor works under class II or class III—one of the following persons is to be appointed to inspect the construction—
    - (i) an authorized person;
    - (ii) a registered structural engineer;

- (iii) a registered inspector;
- (iv) a registered general building contractor;
- (v) a registered minor works contractor who is registered for the item;
- (vi) a registered minor works contractor who is registered for the type of minor works under the class that are the minor works described in the item."
- (2) Section 62A(4), before "(appointed person)"—

#### Add

"and subsection (3)".

(3) Section 62A(4)(a)(i)—

#### Repeal

"that contains the personal particulars and contact information of the person for whom the signboard"

#### Substitute

"(if the relevant construction is a signboard) that contains the personal particulars and contact information of the person for whom the construction".

(4) Section 62A(4)(a)(ii), after "of the Ordinance"—

#### Add

"and subsection (3)".

(5) Section 62A(4)(a)(iii) and (iv) and (b)—

#### Repeal

"signboard"

#### Substitute

"relevant construction".

(6) Section 62A(5)—

#### Repeal

everything after "Ordinance,"

#### Substitute

"if the relevant construction is a signboard and the requirements in section 39C(2), (3) and (4) of the Ordinance have been complied with in relation to it, the requirements must, within 5 years after the date of the compliance, be complied with in relation to the construction again."

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#### 5. Schedule 2 amended (designated exempted works)

Schedule 2-

#### Repeal

"Sch. 1]"

#### Substitute

"Schs. 1 & 3]".

#### 6. Schedule 3 amended (prescribed building or building works)

(1) Schedule 3, Part 1—

#### Repeal

"In this Schedule, *unauthorized* (違例), when used to describe any structure, means the structure is erected in contravention of any provision of the Ordinance."

#### Substitute

"1. In this Schedule-

building services installation (屋字裝備裝置) has the meaning given by section 1 of Part 1 of Schedule 1;

inaccessible roof (非開放屋頂) has the meaning given by section 1 of Part 1 of Schedule 1;

non-private garden (非私人花園) has the meaning given by section 1 of Part 1 of Schedule 1;

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private garden (私人花園) has the meaning given by section 1 of Part 1 of Schedule 1;

projecting signboard (伸出式招牌) has the meaning given by section 1 of Part 1 of Schedule 1:

total length of additional wall (新建牆壁總長度), in relation to a structure on a roof, means the difference between—

- (a) the total length of the non-load bearing walls (excluding the width of any door openings on the walls) on the roof (roof wall length) as shown on the approved plan; and
- (b) the roof wall length as measured when the structure is inspected;

trellis (花棚) has the meaning given by section 1 of Part 1 of Schedule 1;

unauthorized (違例), when used to describe any structure, means the structure is erected in contravention of any provision of the Ordinance;

wall signboard (靠牆招牌) has the meaning given by section 1 of Part 1 of Schedule 1.".

Schedule 3, Part 3, heading, after "Ordinance"—

Add

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"-Batch 1".

Schedule 3, after Part 3—

Add

#### "Part 4

6

### List of Prescribed Building or Building Works Relating to Section 39C(1A) of Ordinance—Batch

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- An unauthorized supporting structure for a building services 1. installation (supporting structure), or an unauthorized metal casing for such an installation (casing), on-grade, on a canopy (other than a cantilevered slab) or on a roof (other than a cantilevered slab) of a building, but only if-
  - (a) for a supporting structure—the structure—
    - (i) falls within the description of paragraph (b) of item 1.50 of Part 3 of Schedule 1 (item 1.50); and
    - (ii) does not fall within the description of item 2; and
  - for a casing—the casing—
    - (i) falls within the description of paragraph (c) of item 1.50; and
    - does not fall within the description of item 2.
- An unauthorized supporting structure for a building services 2. installation (supporting structure), or an unauthorized metal casing for such an installation (casing), on-grade or on a roof (other than a cantilevered slab and an inaccessible roof) of a building, but only if-

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- (a) for a supporting structure—the structure falls within the description of paragraph (b) of item 3.50 of Part 3 of Schedule 1; and
- (b) for a casing—the casing falls within the description of paragraph (c) of that item.
- 3. An unauthorized supporting structure for a radio base station solely for telecommunications services in the form of an equipment cabinet, on a roof of a building, but only if the structure falls within the description of paragraphs (b), (c) and (d) of item 1.14 of Part 3 of Schedule 1.
- An unauthorized supporting frame for an air-conditioning unit projecting from an external wall of a building, but only if—
  - (a) the frame—
    - (i) is designed for an air-conditioning unit of more than 100 kg but not more than 150 kg in weight; and
    - (ii) falls within the description of paragraphs (c) and (d) of item 2.49 of Part 3 of Schedule 1; or
  - (b) the frame—
    - (i) is designed for an air-conditioning unit of not more than 100 kg in weight; and
    - (ii) falls within the description of paragraphs (b) and (c) of item 3.27 of Part 3 of Schedule 1.

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5. An unauthorized supporting frame for a light fitting projecting from an external wall of a building, but only if—

- (a) the frame—
  - (i) is designed for a light fitting of more than 100 kg but not more than 150 kg in weight;
  - (ii) falls within the description of paragraphs (c) and (d) of item 2.49 of Part 3 of Schedule 1; or
- (b) the frame—
  - (i) is designed for a light fitting of not more than 100 kg in weight; and
  - (ii) falls within the description of paragraphs (b) and (c) of item 3.27 of Part 3 of Schedule 1.
- 6. An unauthorized solid fence wall on-grade, but only if the wall—
  - (a) falls within the description of paragraph (a) of item 2.6 of Part 3 of Schedule 1; and
  - (b) is not a wall falling within the description of paragraphs (a) and (b) of item 5 of Part 2 of Schedule 2.
- 7. An unauthorized solid fence wall on a roof of a building, but only if—
  - (a) the wall falls within the description of paragraphs(e), (f) and (g) of item 3.55 of Part 3 of Schedule1;

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- (b) the requirement in paragraph (d) of that item is complied with;
- (c) the total length of additional wall per m<sup>2</sup> of the roof area is not more than 0.3 m; and
- (d) the wall is not a wall falling within the description of paragraphs (d) and (g) of item 20 of Part 2 of Schedule 2.
- 8. An unauthorized external mesh fence or metal railing (with or without a solid fence wall as its lower part) (*structure*) on-grade, but only if the structure—
  - (a) falls within the description of paragraphs (a), (b) and (c) of item 2.7 of Part 3 of Schedule 1; and
  - (b) does not fall within the description of item 16 of Part 2 of Schedule 2.
- 9. An unauthorized mesh fence or metal railing (with or without a solid fence wall as its lower part) (*structure*) on a roof of a building, but only if—
  - (a) the structure falls within the description of paragraphs (c) and (e) of item 2.56 of Part 3 of Schedule 1 and—
    - (i) the requirement in paragraph (d) of that item is complied with;
    - (ii) if the lower part of the structure is a solid fence wall—
      - (A) the wall falls within the description of paragraph (f)(i), (ii) and (iii) of that item; and

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- (B) the total length of additional wall per m<sup>2</sup> of the roof area is not more than 0.3 m; and
- (iii) the structure is not a structure falling within the description of paragraphs (c), (d) and (f) of item 18 of Part 2 of Schedule 2 or paragraph (b); or
- (b) the structure falls within the description of paragraphs (c) and (e) of item 3.56 of Part 3 of Schedule 1 and—
  - (i) the requirement in paragraph (d) of that item is complied with;
  - (ii) if the lower part of the structure is a solid fence wall—
    - (A) the wall falls within the description of paragraph (f)(i), (ii) and (iii) of that item; and
    - (B) the total length of additional wall per m<sup>2</sup> of the roof area is not more than 0.3 m; and
  - (iii) the structure is not a structure falling within the description of paragraphs (c), (d) and (f) of item 18 of Part 2 of Schedule 2.
- 10. An unauthorized mesh fence or metal railing on top of a solid fence wall (other than an unauthorized solid fence wall) (*construction*) on-grade, but only if the construction—
  - (a) falls within the description of paragraphs (a) and (b) of item 1.59 of Part 3 of Schedule 1; and

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- is not a construction falling within the description of paragraphs (b) and (c) of item 21 of Part 2 of Schedule 2 or item 11.
- An unauthorized mesh fence or metal railing on top of a solid 11. fence wall (other than an unauthorized solid fence wall and a solid fence wall falling within the description of item 5 of Part 2 of Schedule 2 that was erected, altered or repaired without the approval and consent of the Building Authority under section 14(1) of the Ordinance) (construction) ongrade, but only if the construction—
  - (a) falls within the description of paragraphs (a), (b) and (c) of item 2.57 of Part 3 of Schedule 1; and
  - does not fall within the description of paragraph (b) of item 21 of Part 2 of Schedule 2.
- An unauthorized external pole on-grade, but only if— 12.
  - (a) the pole falls within the description of paragraphs (a) and (b) of item 2.53 of Part 3 of Schedule 1; and
  - either of the following—
    - (i) the height of the pole, including any feature at its top, is more than 3 m;
    - the weight of the pole, including any feature at its top but excluding any pedestal, is more than 100 kg.
- An unauthorized pole on a roof of a building, but only if— 13.

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- the height of the pole, including any feature at its top, is more than 1.5 m but not more than 2.5 m and
  - the pole falls within the description of paragraph (d) of item 2.54 of Part 3 of Schedule 1; and
  - (ii) the requirements in paragraphs (e) and (f) of that item are complied with; or
- the height of the pole, including any feature at its top, is not more than 1.5 m and
  - the pole falls within the description of paragraph (d) of item 3.54 of Part 3 of Schedule 1;
  - the requirements in paragraphs (e) and (f) of that item are complied with; and
  - the pole is not a pole falling within the description of paragraphs (c) and (d) of item 19 of Part 2 of Schedule 2.
- An unauthorized metal gate at a fence wall, but only if— 14.
  - (a) the gate falls within the description of paragraphs (c) and (d) of item 1.16 of Part 3 of Schedule 1;
  - the gate falls within the description of paragraphs (c), (d) and (e) of item 2.16 of Part 3 of Schedule 1; or
  - the gate—

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- (i) falls within the description of paragraphs (c) and (d) of item 3.13 of Part 3 of Schedule 1; and
- (ii) is not a metal gate falling within the description of paragraphs (c), (d) and (e) of item 8 of Part 2 of Schedule 2.
- 15. An unauthorized canopy projecting from an external wall of a building over an entrance to the building, but only if the canopy—
  - (a) falls within the description of paragraphs (b) and (c) of item 1.27 of Part 3 of Schedule 1; and
  - (b) is not a canopy falling within the description of paragraphs (c), (d) and (e) of item 14 of Part 2 of Schedule 2 or item 16.
- 16. An unauthorized canopy projecting from an external wall of a building, but only if—
  - (a) the canopy falls within the description of paragraphs (c) and (d) of item 3.25 of Part 3 of Schedule 1; and
  - (b) no part of the canopy projects more than 500 mm from the wall.
- 17. An unauthorized retractable awning for an opening on an external wall of a building, but only if—
  - (a) the opening falls within the description of paragraph (b) of item 2.43 of Part 3 of Schedule 1; and

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- (b) the awning falls within the description of paragraphs (c), (d), (e), (f) and (g) of that item.
- 18. An unauthorized trellis in a garden on-grade, but only if—
  - (a) the trellis falls within the description of paragraphs (a) and (b)(i) and (ii) of item 2.44 of Part 3 of Schedule 1;
  - (b) if the trellis is located in a private garden—the aggregate of the area covered by each trellis located in the garden is—
    - (i) not more than 20 m<sup>2</sup>; and
    - (ii) not more than 5% of the total area of the garden; and
  - (c) if the trellis is located in a non-private garden the requirements in paragraph (b)(iv)(A) and (B) of that item are complied with.
- 19. An unauthorized trellis on a roof of a building, but only if—
  - (a) the trellis falls within the description of paragraphs (c), (d) and (e) of item 1.45 of Part 3 of Schedule 1 and—
    - (i) if the trellis is located in a common part of the building—the requirements in paragraph (f)(i) and (ii) of that item are complied with;
    - (ii) if the trellis is located in a part that is not a common part of the building (non-common part)—the aggregate of the area covered by

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each trellis located in the non-common part is—

- (A) not more than 20 m<sup>2</sup>; and
- (B) not more than 5% of the total area of that part; and
- (iii) the trellis does not fall within the description of paragraph (b); or
- (b) the trellis falls within the description of paragraphs (c) and (d)(i) and (ii) of item 2.45 of Part 3 of Schedule 1 and—
  - (i) if the trellis is located in a common part of the building—the requirements in paragraph (d)(iii)(A) and (B) of that item are complied with; and
  - (ii) if the trellis is located in a part that is not a common part of the building—the requirements in paragraph (d)(iv)(A) and (B) of that item are complied with.
- 20. An unauthorized external metal ventilation duct, or an unauthorized supporting frame associated with an external metal ventilation duct, on-grade or on a roof of a building, but only if—
  - (a) the duct or frame—
    - (i) falls within the description of paragraph (b) of item 2.47 of Part 3 of Schedule 1; and
    - (ii) does not fall within the description of paragraph (b) of item 3.47 of Part 3 of Schedule 1 (item 3.47); or

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(b) the duct or frame—

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- (i) falls within the description of paragraph (b) of item 3.47; and
- (ii) is not a duct or frame falling within the description of paragraphs (b) and (c) of item 22 of Part 2 of Schedule 2.
- 21. An unauthorized external metal ventilation duct, or an unauthorized supporting frame associated with an external metal ventilation duct, but only if the duct or frame falls within the description of paragraph (a), (b) or (c) of item 3.48 of Part 3 of Schedule 1.".

Secretary for Development

8 June 2021

#### **Explanatory Note**

Part 9 of and Schedule 3 to the Building (Minor Works) Regulation (Cap. 123 sub. leg. N) (*principal Regulation*) deal with matters relating to the Minor Works Validation Scheme.

2. The main purpose of this Regulation is to amend the principal Regulation to specify more building or building works to be covered by the Scheme.

### **Buildings Ordinance**

# Resolution of the Legislative Council (Commencement) Notice

Under paragraph (b) of the Resolution of the Legislative Council published in the Gazette as Legal Notice No. 69 of 2021, I appoint 1 September 2021 as the day on which the Resolution comes into operation.

Secretary for Development

8 June 2021

### Summary of Changes in the Number of Prescribed Building or Building Works Items in The Proposed Amendments to Schedule 3 to Building (Minor Works) Regulation

		<b>Total PBW items</b>
1.	No. of existing Prescribed Building or Building	4
	Works ("PBW") items (Household) <sup>1</sup>	
2.	No. of existing PBW items (Signboard) <sup>2</sup>	6
3.	No. of new PBW items (Amenity Features) [Note]	21

[Note]: The proposed new PBW items correspond to the following types of amenity features specified in Schedule 8 to the Buildings Ordinance ("BO") -

Descriptions of PBW as amended in Schedule 8 to BO	Corresponding New PBW Items in Part 4 of Schedule 3 to B(MW)R
Supporting structure or metal casing for a	Items 1 & 2
building services installation	
Supporting structure for a radio base station	Item 3
Supporting frame for an air-conditioning unit,	Items 4 & 5
or for a light fitting	
Solid fence wall	Items 6 & 7
Mesh fence or metal railing	Items 8, 9, 10 & 11
Pole	Items 12 & 13
Metal gate	Item 14
Canopy	Items 15 & 16
Retractable awning	Item 17
Trellis	Items 18 & 19
Metal ventilation duct or any associated supporting frame	Items 20 & 21

<sup>&</sup>lt;sup>1</sup> The household minor works validation scheme came into operation on 31 December 2010.

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<sup>&</sup>lt;sup>2</sup> The signboard validation scheme came into operation on 2 September 2013.