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Paper for the House Committee

Report of the Subcommittee on Building (Minor Works) (Amendment) Regulation 2021 and Buildings Ordinance — Resolution of the Legislative Council (Commencement) Notice

Purpose

This paper reports on the deliberations of the Subcommittee on Building (Minor Works) (Amendment) Regulation 2021 and Buildings Ordinance — Resolution of the Legislative Council (Commencement) Notice ("the Subcommittee").

Background

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

3. In addition, MWCS provides a validation scheme for certain minor amenity features out of the list of minor works items covered in MWCS. These minor amenity features include unauthorized supporting frames or structures for air-conditioning units, water cooling towers and any associated air ducts, as well as drying racks and canopies. Upon validation, the said unauthorized minor amenity features meeting the descriptions and requirements prescribed under Schedule 3 to B(MW)R and erected before the commencement of MWCS on 31 December 2010 will not be served a removal order under section 24 or a warning notice under section 24C of

the Buildings Ordinance (Cap. 123) ("BO"). While the legal status of such validated features remains to be unauthorized, the validation scheme seeks to allow the continued use of such lower risk features after safety inspection and requisite strengthening, as well as certification, by a prescribed building professional ("PBP")¹ or a prescribed registered contractor ("PRC")² so as to meet the genuine needs of building occupants, minimize the burden of owners or occupants in seeking rectification and avoid wastage. In September 2013, the validation scheme was extended to cover existing unauthorized signboards erected before 2 September 2013 and meeting the prescribed descriptions and requirements.

4. In September 2020, B(MW)R was amended by the Building (Minor Works) (Amendment) Regulation 2020 (L.N. 60 of 2020) ("the Amendment Regulation 2020") to extend the coverage of MWCS. The amended B(MW)R came into operation on 1 September 2020.

Proposed resolution under section 2(3) of the Buildings Ordinance

5. The Secretary for Development ("SDEV") gave notice to move a motion at the Legislative Council ("LegCo") meeting of 24 March 2021 under section 2(3) of BO. The proposed resolution sought to amend Schedule 8 to BO to designate an additional 11 types of existing unauthorized minor amenity features as prescribed building or building works ("PBWs") in the Schedule, so that such amenity features could be retained for continued use under the validation scheme. The 11 types of amenity features proposed to be added to Schedule 8 to BO were as follows:

- (a) supporting structure for a building services installation, or metal casing for such an installation, of a prescribed type;
- (b) supporting structure for a radio base station of a prescribed type;
- (c) supporting frame for an air-conditioning unit, or for a light fitting, of a prescribed type;
- (d) solid fence wall of a prescribed type;
- (e) mesh fence or metal railing of a prescribed type;
- (f) pole of a prescribed type;
- (g) metal gate of a prescribed type;

¹ PBP includes authorized person or registered inspector and, where applicable, registered structural engineer and registered geotechnical engineer.

² PRC includes registered general building contractor, registered specialist contractor registered to conduct a certain category of specialized works, as well as registered minor works contractor registered to conduct certain class/type/item of minor works.

- (h) canopy of a prescribed type;
- (i) retractable awning of a prescribed type;
- (j) trellis of a prescribed type; and
- (k) metal ventilation duct or any associated supporting frame of a prescribed type.

6. The proposed resolution was passed by LegCo on 13 May 2021. The effect of the resolution is that enforcement action by the issue of a removal order or warning notice under section 24 or 24C of BO respectively will not be taken by BA against these 11 types of amenity features (upon validation) if they were completed or carried out before a date, and subject to compliance with certain descriptions and requirements.

Building (Minor Works) (Amendment) Regulation 2021 and Buildings Ordinance — Resolution of the Legislative Council (Commencement) Notice

Building (Minor Works) (Amendment) Regulation 2021

7. The Building (Minor Works) (Amendment) Regulation 2021 (L.N. 93 of 2021) ("the Amendment Regulation 2021") is made by SDEV under section 38 of BO to amend B(MW)R mainly to prescribe various matters in relation to the additional 11 types of amenity features erected before 1 September 2020. These matters include descriptions of these 11 types of amenity features (as detailed in 21 items of PBWs in the new Part 4 of Schedule 3 to B(MW)R) to be covered by the validation scheme and certain requirements relating to inspection and certification of these new items of PBWs. The effect of the Amendment Regulation 2021 is that if these 21 items of PBWs meet the prescribed descriptions and requirements as to inspection and certification, enforcement action under section 24 or 24C of BO will not be taken by BA against these items of works. The Amendment Regulation 2021 will come into operation on 1 September 2021.

Buildings Ordinance — Resolution of the Legislative Council (Commencement) Notice

8. By the Buildings Ordinance — Resolution of the Legislative Council (Commencement) Notice (L.N. 94 of 2021) ("the Commencement Notice"), SDEV appoints 1 September 2021 as the day on which the resolution made and passed by LegCo under section 2(3) of BO on 13 May 2021 and published in the Gazette as L.N. 69 of 2021 comes into operation to dovetail with the commencement date of the Amendment Regulation 2021.

9. The Amendment Regulation 2021 and the Commencement Notice were gazetted on 18 June 2021 and tabled before LegCo at its meeting of 23 June 2021 for negative vetting by LegCo.

The Subcommittee

10. At the meeting of the House Committee on 25 June 2021, Members agreed to form a subcommittee to study the Amendment Regulation 2021 and the Commencement Notice.

11. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon Holden CHOW Ho-ding, the Subcommittee has held one meeting with the Administration to scrutinize the Amendment Regulation 2021 and the Commencement Notice. The Subcommittee has invited written views on the two pieces of subsidiary legislation and no submission has been received.

12. To allow sufficient time for the Subcommittee to complete the scrutiny of the Amendment Regulation 2021 and the Commencement Notice and compile a report to the House Committee, the Chairman moved a motion at the Council meeting of 14 July 2021 to extend the scrutiny period of the Amendment Regulation 2021 and the Commencement Notice to the Council meeting of 18 August 2021. The motion was passed at the Council meeting.

Deliberations of the Subcommittee

13. Members generally welcome the Amendment Regulation 2021 and the Commencement Notice. In the course of deliberations, the Subcommittee has examined issues relating to the operation of the validation scheme and the transitional arrangements for existing unauthorized minor amenity features relating to the 21 new PBW items before the commencement of the two pieces of subsidiary legislation. The Subcommittee's deliberations are set out in the ensuing paragraphs.

Operation of the validation scheme

14. Some members have suggested that notwithstanding the clear descriptions of the 11 additional types of existing unauthorized minor amenity features as detailed in the 21 items of PBWs in the new Part 4 of Schedule 3 to B(MW)R, the Buildings Department ("BD") should be given discretionary

power under MWCS to allow building owners to carry out certain small-scale building works which fall outside the scope of the said 21 new PBW items but of similar nature to these items, or allow such existing unauthorized features be retained for continued use upon validation so as to meet the genuine needs of building owners. A member has cited an example that a structure to cover an open carpark commonly found in a private housing estate is similar to that of retractable awnings or trellises, which are two types of amenity features covered by MWSC and the validation scheme.

15. The Administration has explained that the Amendment Regulation 2021 has prescribed details of the 21 new PBW items, which are among the list of minor works items covered in the MWCS by virtue of B(MW)R, with a view to providing clear and specific requirements of these PBW items for the industry to follow. As the list of minor works items does not include building works of carpark covers, BD has no power to allow building owners to carry out these building works under MWCS or validate the existing unauthorized carpark covers under the validation scheme. Building owners have to submit plans to and seek prior approval from BA before commencement of building works relating to carpark covers. Any change to the minor works items covered in MWCS and specifications of the PBW items can only be effected through legislative amendment to BO after consultation with the industry.

16. Pointing out that certain unauthorized building works ("UBWs"), such as metal ventilation ducts of some restaurants, are constructed in the common areas/external wall of a building without the consent of the owners' committee ("OC") or other building owners concerned, some members have enquired whether BD will take this factor into account in handling the validation of the concerned UBWs under the validation scheme.

17. The Administration has advised that apart from requiring building owners to comply with BO in carrying out building works under MWCS, the Technical Guidelines issued by BD have also reminded building owners, where necessary, to obtain the agreement from OC or other building owners concerned and fulfill obligations under other legislation and liabilities which may arise from relevant contractual documents in relation to such building works. However, objection raised by OC or other building owners in respect of the construction of certain UBWs is not a factor to be taken into account in connection with the validation of the concerned UBWs under the validation scheme which primarily focuses on the safety aspect of UBWs.

Transitional arrangements before the commencement of the two pieces of subsidiary legislation

18. Some members have enquired how BD will handle the existing UBWs relating to the 21 new PBW items from now until 1 September 2021 when the Amendment Regulation 2021 and the Commencement Notice will come into operation. Citing the case of a kindergarten where retractable awnings for protecting students from being hurt by objects falling from height have been demolished recently pursuant to a removal order issued by BD, members have suggested that BD should consider withholding enforcement actions against these UBWs during this interim period, so as to allow the building owners concerned to validate these UBWs after 1 September 2021 and hence obviate the need of removal.

19. The Administration has advised that UBWs to which the removal orders have been issued may be considered posing a safety risk after assessment according to their conditions. Coming into operation on 1 September 2021, the extended validation scheme allows the continued use of the 21 new PBW items after safety inspection and requisite strengthening, as well as certification, by a PBP or a PRC. Yet, building owners should comply with the removal orders in the interim given the unauthorized nature of the relevant UBWs. Building owners concerned may contact BD if they have any enquiries about the contents of the removal orders and their compliance. Members may also refer the concerned UBW cases that warrant a review to BD for follow-up, which will be considered on a case-by-case basis subject to the actual circumstances. In response to members' enquiry as to how building owners can re-erect the relevant amenity features after removal, the Administration has advised that with the commencement of the Amendment Regulation 2020 on 1 September 2020, building owners can appoint PRCs and PBPs (if necessary) to erect such amenity features in a lawful and simple way under MWCS.

Recommendation

20. The Subcommittee has completed scrutiny of the Amendment Regulation 2021 and the Commencement Notice. The Subcommittee raises no objection and will not propose any amendments to the two pieces of subsidiary legislation.

Advice sought

21. The Subcommittee Chairman gave a verbal report on the deliberations of the Subcommittee at the House Committee meeting on 16 July 2021. Members of the House Committee are invited to note this written report.

Council Business Division 1
Legislative Council Secretariat
28 July 2021

**Subcommittee on Building (Minor Works)
(Amendment) Regulation 2021
And Buildings Ordinance — Resolution of the Legislative Council
(Commencement) Notice**

Membership list

Chairman Hon Holden CHOW Ho-ding

Members Dr Hon Junius HO Kwan-yiu, JP
 Hon CHEUNG Kwok-kwan, JP
 Dr Hon CHENG Chung-tai

(Total : 4 members)

Clerk Ms Connie HO

Legal Adviser Ms Vanessa CHENG