

LEGISLATIVE COUNCIL BRIEF

Buildings Ordinance (Chapter 123)

Resolution to amend the Prescribed Building or Building Works

INTRODUCTION

The Secretary for Development has given notice to move a resolution (See **Annex A**) at the Legislative Council (“LegCo”) meeting of 24 March 2021. The resolution, which is to be moved under section 2(3) of the Buildings Ordinance (Cap. 123) (“the Ordinance”), seeks to amend Schedule 8 to the Ordinance to include certain existing unauthorized minor amenity features as Prescribed Building or Building Works¹ (“PBW”) such that these features would be tolerated even though they remain as unauthorized under the Ordinance.

BACKGROUND AND JUSTIFICATION

2. The Minor Works Control System (“MWCS”), regulated under the Building (Minor Works) Regulation (“B(MW)R”) (Cap. 123 sub. leg. N), came into operation on 31 December 2010. The B(MW)R was amended² in September 2020 to extend the coverage of the MWCS to include more types of building works as minor works. The MWCS provides an alternative for building owners to carry out small-scale building works in

¹ Under section 39C(6)(b) of the Ordinance, 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 Building (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).

² The Building (Minor Works) (Amendment) Regulation 2020 to extend the coverage of the MWCS was gazetted on 8 May 2020 and tabled at LegCo on 13 May 2020. Such amendment regulation has come into operation on 1 September 2020.

a lawful, simple, safe and convenient way. With the MWCS, 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”).

3. Furthermore, the MWCS provides a validation scheme for certain minor amenity features, out of the list of minor works items covered in MWCS. Specifically, once included in the validation scheme, those minor amenity features which were erected in violation of the Ordinance before the dates prescribed under the Ordinance but which meet 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 Ordinance merely on the ground that they have been completed or carried out in contravention of section 14(1) of the Ordinance. In other words, those features would be tolerated even though they have been completed or carried out without having first obtained the approval and consent from the BA before commencement of the building works concerned.

4. While the legal status of the validated features remain to be unauthorized, the validation scheme aims to allow the continued use of such lower risk features after safety inspection and necessary strengthening by a prescribed building professional (“PBP”)³ or a prescribed registered contractor (“PRC”)⁴ so as to meet the genuine needs of building occupants, minimize the burden of owners or occupants in seeking rectification and avoid wastage.

5. Currently, the validation scheme covers supporting frames or structures for air-conditioning units, water cooling tower and any associated air ducts, as well as drying racks and canopies. Such features if erected before the commencement of the MWCS on 31 December 2010 may be validated, provided that they meet descriptions and requirements prescribed under Schedule 3 to the B(MW)R. In 2013, the validation scheme was extended to cover existing unauthorized signboards erected

³ PBP includes Authorized Person or Registered Inspector and, where applicable, Registered Structural Engineer and Registered Geotechnical Engineer.

⁴ PRC 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.

before 2 September 2013 and meeting the prescribed descriptions and requirements.

THE PROPOSED RESOLUTION

6. The proposed extension of the validation scheme will require corresponding amendments to Schedule 8 to the Ordinance. Section 2(3) of the Ordinance provides that the LegCo may by resolution amend Schedule 8 to the Ordinance. The proposed resolution includes an additional eleven types of amenity features which are among the latest list of minor building works items by virtue of the amended B(MW)R which came into effect in September 2020. The eleven types of features are, namely, supporting structure or metal casing for a building services installation; supporting structure for a radio base station; supporting frame for an air-conditioning unit⁵ or for a light fitting; solid fence wall; mesh fence or metal railing; pole; metal gate; canopy; retractable awning; trellis, and metal ventilation duct or any associated supporting frame. They will, upon passage of the resolution in the Legislative Council, be prescribed in Schedule 3 to the B(MW)R by an amendment Regulation.

7. Under section 39C(1A) of the Ordinance, a date will be prescribed in the B(MW)R such that an order under section 24 or a notice under section 24C of the Ordinance would not be served if the PBW are completed or carried out before this date, subject to compliance with certain requirements prescribed under the B(MW)R. It is proposed that the date be set on 1 September 2020 to align with the commencement of the operation of the Building (Minor Works) (Amendment) Regulation 2020.

8. The Building (Minor Works) (Amendment) Regulation 2021 (“B(MW)(A)R 2021”), which includes amendments to section 62A of and Schedule 3 to the B(MW)R to effect the extension of the validation scheme, will be tabled before the LegCo meeting for negative vetting after the passage of the proposed resolution.

9. The Secretary for Development will appoint a commencement date by a notice published in the Gazette upon LegCo’s scrutiny of the B(MW)(A)R 2021 mentioned in paragraph 8 above.

⁵ Relative to the similar feature under the extant validation scheme, the maximum allowable weight of an air-conditioning unit which the frame supports under proposal is higher.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows –

Moving the motion at LegCo	24 March 2021
Commencement date	To be appointed by the Secretary for Development

IMPLICATIONS OF THE PROPOSED RESOLUTION

11. The proposed resolution is in conformity with the Basic Law, including the provisions concerning human rights. The proposed amendment to Schedule 8 to the Ordinance will not affect the binding effect of the Ordinance and the regulations made thereunder. The proposed resolution has no financial and civil service implications.

PUBLIC CONSULTATION

12. We have 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, have generally indicated support for the legislative amendments.

13. We consulted the Panel on Development of the LegCo on the legislative amendments including the proposed resolution to amend Schedule 8 to the Ordinance on 26 February 2019. Members were generally supportive of the legislative amendments.

ENQUIRY

14. 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
March 2021

Buildings Ordinance

Resolution of the Legislative Council

Resolution made and passed by the Legislative Council under section 2(3) of the Buildings Ordinance (Cap. 123) on 2021.

Resolved that—

- (a) the Buildings Ordinance (Cap. 123) be amended as set out in the Schedule; and
- (b) this Resolution is to come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

Schedule

Amendment to Buildings Ordinance

1. **Schedule 8 substituted**
Schedule 8—
Repeal the Schedule
Substitute

“Schedule 8

[ss. 2(3), 38(1)(ke)(ic) &
39C(6)(b)(ii)]

Prescribed Building or Building Works

Item	Description
1.	Signboard of a prescribed type.
2.	Supporting structure for a building services installation, or metal casing for such an installation, of a prescribed type.
3.	Supporting structure for a radio base station of a prescribed type.
4.	Supporting frame for an air-conditioning unit, or for a light fitting, of a prescribed type.

Item	Description
5.	Solid fence wall of a prescribed type.
6.	Mesh fence or metal railing of a prescribed type.
7.	Pole of a prescribed type.
8.	Metal gate of a prescribed type.
9.	Canopy of a prescribed type.
10.	Retractable awning of a prescribed type.
11.	Trellis of a prescribed type.
12.	Metal ventilation duct or any associated supporting frame of a prescribed type.

Note on interpretation:

1. In items 1 to 12—
prescribed (訂明) means prescribed in a regulation made under section 38(1)(ke)(ic).”.

Clerk to the Legislative Council

2021

Explanatory Note

Section 39C of the Buildings Ordinance (Cap. 123) establishes the Minor Works Validation Scheme. If certain requirements are met in respect of an unauthorized building or building works, the Building Authority must not serve any removal order or warning notice in respect of the building or building works.

2. This Resolution amends Schedule 8 to the Ordinance to include further types of unauthorized building or building works to be regulated under the Scheme.