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

Background brief

Purpose

This paper provides background information on the Building (Minor Works) (Amendment) Regulation 2020 ("B(MW)(A)R") (L.N. 60) and the Building (Planning) (Amendment) Regulation 2020 ("B(P)(A)R") (L.N. 61) which are proposed to be made mainly for the extension of the coverage of the minor works control system ("MWCS") to more small-scale building works. The paper also summarizes the views expressed by Members on the legislative proposal at the meeting of the Panel on Development ("DEV Panel").

Background

2. Before the implementation of MWCS, all building works, unless they are exempted under section 41 of the Building 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 Cap. 123), 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) provides for various matters relating to the implementation of MWCS.¹ Currently, there are

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 ("PBPs") and prescribed registered contractors ("PRCs") in carrying out such works.

126 items of building works designated as MW under Part 3 of Schedule 1 to Cap. 123N. 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

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3. According to the Administration, MWCS has proven to be a simple and convenient channel in carrying out minor building works. Its implementation is generally welcomed by both the industry and the public. 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 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 of 56 existing MW items would also be amended. Besides, the number of designated exempted works ("DEW")³ 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 I and DEW items in Schedule 2 to Cap. 123N is in [Appendix II to the Legislative Council Brief](#) on B(MW)(A)R and B(P)(A)R.

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).

³ DEW 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 commence works, or appointment of PBPs and PRCs.

4. SDEV has also made B(P)(A)R to make corresponding amendments to Regulation 7 of the Building (Planning) Regulations (Cap. 123F)⁴ 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.

5. 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.

Concerns and views expressed by Members

6. DEV Panel was consulted on 26 February 2019 on the Administration's proposal to amend the extant Building (Minor Works) Regulation for inclusion of more minor building works items into MWCS. Members in general welcomed the proposed amendments.

7. Given that under the existing MWCS, no prescribed building professionals ("PBPs") were required to be engaged for Classes II and III MW, a Member was concerned that it would be difficult to regulate MW and pursue responsibilities in case of any works problems. The Administration advised that MW items covered in MWCS were smaller in scale and posed a lower level of risk. In view of their lower risk level, Class II and Class III MW could be carried out without engaging PBPs to design and supervise the works. Yet, the Buildings Department ("BD") would conduct audit checks and the number of non-compliant cases had been decreasing.

⁴ 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 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.

8. Members expressed concern about the regulation of MW, including whether BD had adequate manpower to carry out audit checks/site inspections against irregularities and non-compliant cases after the inclusion of more MW items under MWCS.

9. The Administration advised that a team comprising professional and technical staff had been set up in BD to carry out audit checks/site inspections. BD would review the workload of its staff, improve the work efficiency from time to time, and sought additional manpower in accordance with established mechanism if necessary. Every year, some 7 000 submissions were audited of which about 12% were inspected on site. Any irregularities identified during the audit checks/site inspections were required to be rectified by PBPs and prescribed registered contractors ("PRCs"), who were vested with legal responsibilities under BO and the subsidiary regulations to supervise, carry out and certify all the completed minor works were structurally safe. Depending on the seriousness of the irregularities, PBPs and PRCs might be sanctioned under BO. As PBPs and PRCs were getting familiar with MWCS, the percentage of non-compliant cases had decreased from about 16% in 2014 to about 2% in 2018. Since the implementation of MWCS, BD had instigated prosecutions against 17 cases involving two PBPs and 18 PRCs/their Authorized Signatories. BD would continue to strengthen its publicity work to facilitate the public, PBPs and PRCs to understand the MWCS regime.

10. A Member enquired if an Authorized Person ("AP") had to be appointed for the installation of green features on rooftop. The Administration explained that depending on the size and height of the green features, they would be classified as Class I (need to appoint an AP) or Class II (no need to appoint an AP) MW items. Generally speaking, green features on rooftop would mostly be classified as Class I item and those installed on-grade would mostly be classified as Class II item.

11. Regarding the proposed inclusion of the erection of metal supporting frames for antennas and transceivers on external walls of buildings under MWCS, a Member sought clarification on whether the level of non-ionising radiation ("NIR") was measured collectively from all antennas and transceivers at a location against the relevant radiation exposure limits. The Administration advised that in gist, to ensure radiation safety, both NIR of the radio base station ("RBS") under application and aggregate NIR from all RBSs at the same location and in the vicinity would be taken into account by the Office of the Communications Authority when processing the application.

Council questions

12. Questions relating to MWCS were raised at various Council meetings. The relevant hyperlinks are in the **Appendix**.

Latest development

13. At the House Committee meeting on 29 May 2020, Members agreed that a subcommittee should be formed to study B(MW)(A)R and B(P)(A)R.

Relevant papers

14. A list of relevant papers with their hyperlinks is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
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**Building (Minor Works) (Amendment) Regulation 2020 and
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List of relevant papers

Council/Committee	Date of meeting	Paper
Panel on Development	26 February 2019	Administration's paper on "Proposed Amendments to the Building (Construction) Regulations, and the Building (Minor Works) Regulation" [LC Paper No. CB(1)593/18-19(04)] Minutes of meeting [LC Paper No. CB(1)1335/18-19] Follow-up paper [LC Paper No. CB(1)833/18-19(01)]
Council meeting	13 May 2020	Legislative Council Brief on Building (Minor Works) (Amendment) Regulation 2020 and Building (Planning) (Amendment) Regulation 2020
House Committee	29 May 2020	Legal Service Division Report on Subsidiary Legislation Gazetted on 8 May 2020 [LC Paper No. LS71/19-20]

Hyperlinks to relevant Council questions:

Date	Council question
21 June 2017	Question raised by Hon Andrew WAN on " Installation of radio base stations for mobile communications in private buildings "

Date	Council question
1 November 2017	Question raised by Hon Starry LEE on " Monitoring of minor works carried out in private residential buildings "
9 January 2019	Question raised by Hon Vincent CHENG on " Handling of unauthorised signboards "