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

Background brief

Purpose

This paper provides background information on the Building (Minor Works) (Amendment) Regulation 2021 (L.N. 93 of 2021) ("the Amendment Regulation 2021") and the Buildings Ordinance — Resolution of the Legislative Council (Commencement) Notice (L.N. 94 of 2021) ("the Commencement Notice"). It also summarizes the major views and concerns expressed by Members on the relevant matters at the meetings of the Legislative Council ("LegCo"), the Panel on Development ("DEV Panel") and the Subcommittee on Proposed Resolution under Section 2(3) of the Buildings Ordinance (Cap. 123) ("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. After

validation, the said unauthorized building works ("UBWs") 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 demolition order under section 24 or a warning notice under section 24C of the Buildings Ordinance (Cap. 123) ("BO"). While the legal status of such features remains to be unauthorized, the validation scheme seeks to allow the continued use of such lower risk features after safety inspection and necessary strengthening 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 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,³ so that such PBWs could be retained for continued use under the validation scheme. The 11 types of PBWs 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;

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.

³ Prior to the passing of the proposed resolution by LegCo on 13 May 2021, only one type of PBW (i.e. signboard of a kind prescribed under section 38(1)(ke)(ic) of BO) was designated in Schedule 8 to BO.

- (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;
- (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 demolition order or warning notice under sections 24 or 24C of BO respectively will not be taken by BA against these 11 types of PBWs (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 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 PBWs erected before 1 September 2020. These matters include descriptions of these 11 types of PBWs (as detailed in 21 items of works 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 works meet the prescribed descriptions and requirements as to inspection and certification, enforcement action under sections 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 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.

Major views and concerns expressed by Members

10. In the course of deliberations at the meetings of LegCo, the DEV Panel and the Subcommittee, Members generally welcomed the proposed resolution to amend Schedule 8 to BO to expand the coverage of the validation scheme. Their major views and concerns on the relevant matters are summarized in the ensuing paragraphs.

Specifications of the proposed prescribed building or building works

11. Members noted that upon the passage of the proposed resolution, a separate amendment regulation (i.e. the Amendment Regulation 2021) would be tabled in LegCo to amend section 62A of B(MW)R and prescribe the specifications of the 11 additional types of PBWs in Schedule 3 to B(MW)R. Members sought details of the specifications of certain proposed PBWs items, including solid fence wall and mesh fence or metal railing. Members also enquired about the time frame of the relevant legislative exercise.

12. The Administration advised that it planned to table the Amendment Regulation 2021 in LegCo for negative vetting within the 2020-2021 legislative session tentatively. The proposed 11 additional types of PBWs were among the latest list of minor works items by virtue of B(MW)R as amended by the Amendment Regulation 2020 in September 2020, and the specifications of these PBWs would largely correspond to the standards of the relevant items as set out in the amended B(MW)R. Take solid fence wall as an example, the maximum height was 3 metres ("m") if erected on-grade and 1.1 m if erected on roof, whereas the maximum thickness was 100 millimetres. As regards mesh fence, the maximum height was 5 m if erected on-grade and 2.5 m if erected on roof. The Administration had taken into account the genuine needs of building occupants and implications of these PBWs on the structural safety of buildings when setting the relevant standards.

Extending the coverage of the validation scheme and taking enforcement actions against unauthorized building works

13. Members generally agreed that the proposed designation of an additional 11 types of unauthorized minor amenity features as PBWs under the validation scheme would be able to meet the genuine needs of building occupants and avoid wastage. In this connection, a Member urged the Administration to consider incorporating more commonly used minor amenity features into the validation scheme to enable more building owners or occupants to benefit from the scheme. He suggested that the Administration should consider allowing building owners to seek permission from BA on a case-by-case basis for the continued use of certain unauthorized features commonly used in buildings but not covered in the validation scheme (e.g. water tanks) after undergoing safety inspection and necessary strengthening by a PBP or a PRC to obviate the need for building owners to demolish such unauthorized features in the first place and then seek approval from BA for their reconstruction afterwards, which was a wastage of resources.

14. There was also a suggestion that the Administration should consider putting in place a mechanism of reviewing the types of minor amenity features to be incorporated into the validation scheme at a prescribed interval. On the other hand, some Members considered it necessary to monitor the safety of buildings on an ongoing basis after the passage of the proposed resolution and urged the Administration to enhance law enforcement actions against UBWs that would affect public safety and interests.

15. The Administration explained that in considering whether certain minor amenity features should be included in the validation scheme, the Buildings Department had all along adopted a risk-based approach pursuant to which the risks of the relevant features posed to the safety of buildings and occupants would be duly considered. With the commencement of the Amendment Regulation 2020 in September 2020, the number of minor works items covered in MWCS had increased from 126 to 187, including more types of minor amenity features. The 11 additional types of unauthorized minor amenity features proposed to be included in the validation scheme were low-risk features that could meet the genuine needs of building occupants. The Administration assured Members that in accordance with the risk-based approach, it would review the list of minor amenity features under the validation scheme from time to time to see if more items could be incorporated into the scheme, having regard to the needs of building owners and occupants as well as the risks of the relevant features posed to the structural safety of the buildings. Government

departments would also take law enforcement actions against UBWs posing risks to building safety and even fire safety resolutely.

Approvals required for carrying out the proposed prescribed building or building works

16. Noting that the proposed extended validation scheme would cover 11 additional types of unauthorized minor amenity features that were completed or carried out before 1 September 2020, Members enquired whether simplified procedures would be introduced for building owners to carry out building works relating to these 11 types of minor amenity features after 1 September 2020.

17. The Administration explained that amendment under the proposed resolution concerned validation and continued use of the proposed 11 types of amenity features that were completed or carried out before 1 September 2020. With the commencement of the Amendment Regulation 2020 on 1 September 2020, PBPs or PRCs could carry out the works relating to the said 11 types of amenity features pursuant to the simplified requirements under MWCS whereby the PBPs or PRCs concerned were no longer required to submit plans to and seek prior approval from BA before carrying out the relevant works. They were only required to submit a Notice of Commencement to BA before commencement of works (if applicable) and a Certificate of Completion upon completion of works.

Unauthorized extensions of squatter structures

18. Some Members expressed concern about the way in which the Lands Department ("LandsD") dealt with unauthorized extensions (e.g. canopies and flower racks) of squatter structures and agricultural structures.⁴ According to the prevailing squatter control policy of LandsD, the entire squatter structure would need to be demolished should any unauthorized extensions be found. LandsD also took quite a long time to process the applications submitted by squatter occupants for carrying out minor building works or erecting extensions for their squatter structures. To address the genuine needs of squatter occupants, these Members suggested

⁴ Squatter structures generally refer to structures illegally occupying government land or erected on private agricultural land in breach of lease conditions. The Government conducted a territory-wide Squatter Control Survey in 1982 to record the locations, dimensions (i.e. length, width and height), building materials and uses of the squatter structures. Such records formed the basis for squatter control. (Source: Administration's reply to LegCo Question No. 8 on "[Squatter structures and agricultural structures](#)" at the Council meeting of 4 November 2020)

that LandsD should consider introducing a streamlined control system similar to MWCS to allow PBPs or PRCs to carry out small-scale building works for and to validate the minor amenity features of squatter structures to ensure their safety. These Members were of the view that notwithstanding that the squatter structures were unauthorized, LandsD should consider rationalizing the squatter control policy, taking into consideration that there were currently about 200 000 squatter structures and quite a number of occupants would remain residing in these structures in the next decade or so. They urged the Administration to consider reviewing the outdated squatter control regime, as well as the internal work flow and procedures of LandsD in respect of squatter control.

19. The Administration advised that squatter structures were outside the control of BO. They were unauthorized in nature but were tolerated on a temporary basis under prevailing squatter control policy of LandsD. The Administration further stressed that any illegal extension or expansion of surveyed squatter structures was not allowed under the prevailing policy because this practice, if allowed, was potentially open to abuse and might cause great harm. Therefore, LandsD had to be very careful in handling the policy in this regard. That said, the Administration was willing to consider whether there was room for the proper handling of the squatter facilities.

Latest development

20. At the House Committee meeting on 25 June 2021, Members agreed that a subcommittee should be formed to study the Amendment Regulation 2021 and the Commencement Notice.

Relevant papers

21. A list of the relevant papers on the LegCo website is in the **Appendix**.

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

List of relevant papers

Council/Committee	Date of meeting	Paper
Panel on Development	26 February 2019	<p>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)]</p> <p>Minutes of meeting [LC Paper No. CB(1)1335/18-19]</p>
House Committee	12 March 2021	<p>Legal Service Division Report on Proposed Resolution under section 2(3) of the Buildings Ordinance (Cap. 123) [LC Paper No. LS46/20-21]</p>
Council meeting	24 March 2021	<p>Legislative Council Brief on Buildings Ordinance (Cap. 123) — Resolution to amend the Prescribed Building or Building Works</p> <p>Proposed Resolution under the Buildings Ordinance to be moved by the Secretary for Development [LC Paper No. CB(3)383/20-21]</p>
Subcommittee on Proposed Resolution under Section 2(3) of the Buildings Ordinance (Cap. 123)	30 March 2021	<p>Minutes of meeting [LC Paper No. CB(1)897/20-21]</p> <p>Report of the Subcommittee [LC Paper No. CB(1)807/20-21]</p>

Council/Committee	Date of meeting	Paper
Council meeting	12 May 2021	Hansard — Proposed Resolution under the Buildings Ordinance
Council meeting	23 June 2021	Legislative Council Brief on Buildings Ordinance (Cap. 123) — Building (Minor Works) (Amendment) Regulation 2021 and Amendment to Schedule 8 to the Buildings Ordinance — Commencement Notice
House Committee	25 June 2021	Legal Service Division Report on Subsidiary Legislation Gazetted on 18 June 2021 [LC Paper No. LS81/20-21]