Original Article

An appraisal on the proposed minor works control regime in Hong Kong

Received (in revised form): 15th July 2009

Yung Yau

is currently a lecturer and conducts research at the City University of Hong Kong. Before joining the university, he practiced building control in the Buildings Department, the Government of Hong Kong Special Administrative Region. His research interests include housing studies, urban renewal, heritage conservation, real estate economics and finance and building performance assessment.

Correspondence: Department of Public and Social Administration, City University of Hong Kong, Tat Chee Avenue, Kowloon, Hong Kong, People's Republic of China

ABSTRACT In recent years, the systems of building control in many countries were reviewed or reformed. In the revamp processes, greater involvement of the private sector in the building approval exercise was frequently proposed although the duties to ensure the safety standard of building works have long been assumed by the governments. Hong Kong also followed this trend, and a minor works control regime (MCWR) was proposed in 2003 with an aim for streamlining the building proposal approval exercise. Under the proposed regime, private sector practitioners are allowed to certify certain types of small-scale building works. Despite the local government claim that the proposed MCWR could improve the overall building quality in the city, effectiveness of the new system is highly doubtful. This article aims to critically evaluate the proposed private certification initiative. Although new system may be able to speed up the process of building proposal approval, incentives for the citizens to engage in the new process seem not to be installed. Whether there exists a critical mass of qualified professionals in the private sector who are willing to validate existing unauthorized building works is also questionable. More importantly, the subsidiary revalidation scheme under the proposed control regime blurs the boundary between legal and illegal building works.

Journal of Building Appraisal (2010) 5, 251–258. doi:10.1057/jba.2009.30

Keywords: building control; building safety; self-certification; legalization of illegal building works; Hong Kong

INTRODUCTION

Building control has long been a government's duty probably because a safe and healthy built environment in a city is merit good, which needs to be provided by the government. That explains why the primary aim of building laws or regulations is to achieve a minimum standard of environmental health and safety, and consumer protection (Visscher and Meijer, 2007). In this sense, building regulations look alike as food safety and product safety laws that protect the well-being of the community. Yet, every coin has two sides. Builders and designers often regard building regulations as their burdens (Gann *et al*, 1998). It is simply because regulations create obstacles in the design and construction processes, and suffocate creativity in design and other innovations.

In front of building regulations, buildings with certain characteristics are barred from construction (Goodchild and Furbey, 1986). In spite of the downside, building regulations still play important roles in protecting the health and safety of the occupants and general public as a whole.

Owing to the importance of building control to human's well-being, governments should ensure that the regulations and procedures in place are effective. Therefore, regular reviews on the building control system are crucial. In recent years, comprehensive reviews of similar kind were conducted in different jurisdictions such as England and Wales in 2000, Australia in 2000 and Singapore in 2000. The reviews pursue for scraping or simplifying disproportionate building control exercises. Rather consistently, the opportunity of private certification of building works, that is allowing the private-sector practitioners to certify that the design or construction of a building work complies with the prevailing statutory requirements, was discussed in these building control reviews. In other words, the age-old belief that the government should assume the sole responsibility of building control was challenged. More and more governments have been looking for room for deregulation and opportunity to mobilize private resources in the building control process.

Following this international trend of shifting the responsibility of building control from the public sector to the private sector, the Government of the Hong Kong Special Administrative Region (hereafter 'Hong Kong') of the People's Republic of China proposed a private certification system for small-scale building works, so-called the minor works, in 2003. Under this new control system, the private-sector practitioners take up more duties and responsibilities from the government. Yet, the Hong Kong Government's initiative in private certification of building works has never attracted scholarly attention, although there could be significant and far-reaching implications. In this regard, this article aims to appraise the minor works control regime (MCWR), and to identify the problems of the system.

BUILDING CONTROL IN HONG KONG

The built environment was invented by human beings in the days immemorial for better accommodation because the natural environment seldom fits the requirements of the humans. To perform its primary function, built environment should be at least safe and healthy. Given that a minimum acceptable standard of safety and health of the built environment or buildings are achieved, public interests can be protected. This is why building control should be put in place (Buildings Department, 1999; Department for Communities and Local Government, 2008). Generally speaking, a building control system embraces, apart from building laws, regulations or codes for establishing a set of minimum acceptable standards for building design and construction, and mechanisms for scrutiny and law enforcements.

Under the current building control system in Hong Kong, approval of the building proposal and consent to commencement of works have to be obtained before the construction of any building work in pursuant to Section 14 of the Buildings Ordinance (Chapter 123 of the Laws of Hong Kong), except for those works explicitly exempted by the ordinance. Building works constructed in contravention of this stipulation are unauthorized building works (UBWs), and are subject to statutory enforcement actions. Under this framework, a property owner has to appoint an authorized person (AP), who can be architects, engineers and surveyors registered under the Buildings Ordinance, to coordinate a building work. The AP submits the building proposal on behalf of the property owner to the Building Authority (BA) for approval (Chan, 1998). In the course

of action, a registered structural engineer (RSE) is usually required to involve, unless otherwise exempted, for the preparation and submission of the structural design drawings. The AP and RSE are held responsible under the Buildings Ordinance for supervising the proposed works carried out by the registered contractors. Upon the completion of the works, the AP has to notify the BA, and an occupation permit will be issued to the property owner upon satisfactory inspection by the BA (Chan, 1998).

HONG KONG GOVERNMENT'S INITIATIVES IN PRIVATE CERTIFICATION OF BUILDING WORKS

For a long time, governments have taken the principal roles in policing and enforcing building controls (Johnston, 1992). With a view to building safety, governments have endeavored to ensure building works to be properly designed and constructed through scrutinizing building proposals, issuing work permits, monitoring building works and inspecting completed works. For various reasons, however, an increasing number of public administrators queried why the responsibilities in building control should vest in the public authorities. In this light, decentralization of building control started in the 1970s in Europe. In England and Wales, for example, the central government planned a system of certifying building works by the private sector in 1979 (Ross, 1985; Downward, 1992). Under that proposed arrangement, a property owner could appoint an approved inspector who took responsibility for plan checking and inspection of the building works without the need to submit any plan to the government for scrutiny (Pitt, 1984; Office of the Deputy Prime Minister, 2005). The proposed self-certification mechanism was statutorily institutionalized in the Building Acts 1984 in the end (Billington *et al*, 2007).¹

Hong Kong government's initiatives of self-certification of building works

The decentralization of building control in Hong Kong started relatively late compared with the western counterpart. As the contemporary building control system in Hong Kong has been practiced for nearly half a century but it has been criticized for the red-taping and undue delay created, the Construction Industry Review Committee (2001, pp. 199) suggested that it was necessary 'to streamline the statutory approval procedures for various levels of building works'. The government commissioned Babbie Asia Limited to conduct a consultancy study on the feasibility of private certification of building submissions for all types of development in Hong Kong in February 2006 (Construction Industry Council, 2007). Yet, the government's initiative was faced with strong objections in the industry consultation exercise. As a result, the government was recommended not to further consider private certification of building submissions.

Nevertheless, at the same time when the feasibility of private certification was being explored, an MWCR was proposed by the Hong Kong Government in the early 2000s. The proposed MWCR allows property owners to skip the acquisition of prior approval of plans from the BA to undertake prescribed minor works provided that the works are undertaken or supervised by qualified persons. The prescribed minor works include alteration of non-load-bearing walls, fixing of external wall tiles and erection of medium-size projecting signboards, supporting frames for air conditioners, drying racks and window canopies. The rationale behind the new system is straightforward. Because of the trivial nature, scale and level of risk of these prescribed minor building works, stringent requirements laid down in the current building control system are not warranted. It is the government's intention to install incentives (for example streamlined procedures and lower costs) in the property owners to engage qualified persons to undertake the

works through the MWCR. If this end is achieved, the overall level of building quality in Hong Kong can be improved. After lengthy consultation and legislation processes, the government framed the MWCR in the Buildings (Amendment) Bill 2007 that was passed by the Legislative Council in June 2008. The Buildings (Amendment) Ordinance 2008 was gazetted on 27 June 2008, and the government is currently drafting the associated subsidiary regulations, with an expectation that the MWCR can be officially implemented by the end of 2009 (Yau, forthcoming).

An overview of the MCWR in Hong Kong

Under the MWCR, minor works are classified into three classes in accordance with their scale, complexity and risk to safety (Buildings Department, 2008). Class I minor works, including erection of an internal staircase connecting two floors, repair of a structural building element (for example column or load-bearing wall) and removal of a large-scale illegal structure constructed on a building's roof, are works relatively more complex and involving substantial structural additions or alterations. Meanwhile, Class II minor works are less complicated and risky compared with Class I works. Examples of Class II works include alteration or repair of a non-load-bearing wall, erection of a medium-size projecting signboard and installation of external wall tiles. As for Class III minor works, they are building works of small scale and low risk. They are essentially erection and alteration of household minor works such as supporting frames for air conditioners, drying racks and window canopies.

As shown in Table 1, minor works are subject to different degrees of control according to their classes. When Class I or II minor works are proposed, the BA has to be notified, and plans and relevant documents are required to be submitted to the BA for record. For Class I minor works, the property owners are required to appoint a prescribed professional² to design and supervise the works undertaken by a prescribed registered minor works contractor company³ (Buildings Department, 2008). On the other hand, appointment of a prescribed professional is not a must in case of Class II or III works. Yet, the Class II works have to be carried out by a registered company-based minor works contractor. Given the less risky nature of Class III works, pre-construction submissions to the BA is not necessary, and the works can be carried out either by a registered company-based minor works contractor or a registered individual practitioner. Irrespective of the class of the works, record plans, certificates and relevant documents have to be submitted to the BA for record and audit after completion of the works.

Table 1: Proposed controls of minor works by classes

Class	Prescribed appointments	Submission before work commencement	Submissions after work completion
I	Minor works to be designed by prescribed building professionals and carried out by prescribed registered contractors under the supervision of the prescribed professionals	The Building Authority (BA) to be notified, and plans and relevant documents to be submitted to the BA for record	Record plans, certificates and relevant documents to be submitted to the BA after completion of works
II	Minor works to be carried out by prescribed registered contractors (companies)		
III	Minor works to be carried out by prescribed registered contractors (companies or individual practitioners)	No need for pre-construction submission to the BA	

Sources: Buildings Department, 2008; Yau, forthcoming.

One may notice that the above three-tier system targets new minor works, and have no dealing with the existing minor works. To supplement this system, the Hong Kong Government proposed the Household Minor Works Validation Scheme (HMWVS) for tackling the existing works. Under this scheme, supporting frames for air conditioners, drying racks and small canopies already built can be retained after the validation. To validate these minor works, property owners have to appoint a prescribed building professional or registered contractor to inspect the works and certify that the works are safe. In case the appointed inspector suggests reinforcement works to the existing minor works, the owners have to carry out the works in accordance with the inspector's recommendations. After the completion of all inspections and reinforcement works, a validation report will be submitted to the Buildings Department (Buildings Department, 2008).

APPRAISAL OF THE PROPOSED MCWR

Improvement in building safety

Like other self-certification schemes, the MWCR is featured with its streamlining effect. The MWCR opens the opportunity for a one-stop shopping in which a property owner can appoint a registered contractor who takes the roles of designer, builder and certifier simultaneously. As the appointed contractor is presumably competent in its field, the entity is reasonably empowered to self-certify its works for the compliance with the prevailing statutory requirements without the need for submissions to the local authority. Also, the integration of design and construction could enhance buildability of the works. Currently, minor works such as air conditioner support frames, drying racks and window canopies are now constructed illegally by 'cowboy builders'. Under the MWCR, only registered minor works contractors, whose competence and training are assured, are allowed to undertake the works. In this case, the overall safety of the built environment in Hong Kong can be improved by the MWCR.

Yet, self-certification of building works seemingly combines the lawmaker, judge and executioner all in one (Nor, 2008). As pinpointed by (Department for Communities and Local Government, 2008), in the absence of some form of post-certification monitoring and spot-checks, self-certification will bring about slippage of building safety standards over time. Therefore, the MWCR has to be backed up by a thoroughly designed monitoring, inspection and audit regime. Also, the Hong Kong Government should maintain strong enforcement powers for 'check and balance'. If heavier punishments for those homeowners who construct minor works illegally are not imposed or enforcement actions against UBWs are not strengthened after the implementation of the MWCR, the homeowners will just stick to their current practice, that is hiring a cowboy to build unauthorized minor works or carrying out the works by themselves. Unfortunately, all these strategies, which can change the behavior of the homeowners are yet to formulate in Hong Kong at this moment.

Efficiency in building control

The MWCR offers property owners an alternative route, which is supposedly cheaper and faster, to submit building proposals. Also, market competition in the private sector could lead to lower-cost services. However, whether the new system can help save money as a whole is not conclusive for two reasons. First, the new system extends the regime to building works currently exempted from the requirements of building submissions such as above-ground drainage works and repairs of external finishes. That means property

owners have to pay more if these works are proposed. Second, only a small group of professionals (that is prescribed building professionals) and contractors are qualified to supervise and carry out the works. Based on the studies by Donabedian (1995) and Law and Kim (2005), this kind of regulation creates an entry barrier to the private certification market, and results in higher service fees due to quasi-monopoly. If the overall cost of participation in the MWCR is not low enough, homeowners will not have incentives to engage in the new system.

Responsibilities of various parties

As mentioned before, the contactors and building professionals serve as certifiers. In this situation, who should bear the responsibilities in case of building failures (for example collapse of a minor work)? The government, builder, certifier or property owner? The Buildings (Amendment) Ordinance 2008 does not give any answer to this question. Unless the burden of responsibility is clearly specified, no one (except the government) is willing to engage in the MWCR because of the unforeseeable risk associated with the minor works. Or else, some building professionals and contractors provide the services but charge at a very high 'risk premium'.

Validated minor works versus unauthorized building works

It is quite clear that MWCR offers an alternative route for building submissions for new minor works. The new minor works constructed in accordance with the prescribed procedures are legal in nature. However, the legal status of the minor works validated under the HMWVS is uncertain. Some may think that the Hong Kong Government tries to legalize the existing UBWs through the HMWVS. However, Buildings Department (2008) expressly stated that enforcement action would not be taken by the BA against the validated minor works unless the safety conditions of the works deteriorated. Apparently, this statement implies that the HMWVS is in actual fact an extension of the contemporary enforcement (or tolerance) policy in which small-scale, good-condition household UBWs are tolerated. The HMWVS will render the boundary between the validated minor works and UBWs unclear, and it could hinder the property owners in various property-related activities such as purchase of third-party liability insurance and property conveyance.

CONCLUSION

For various reasons, many western nations have attempted to involve the private sector in building control. Hong Kong follows this trend, and the government proposed private certification of building submissions in the early 2000s. However, similar to the situation in England and Wales, the Hong Kong Government's initiative to let the private sector self-certify building submissions for all types of development in Hong Kong did not receive the wide acceptance from the industry (Office of the Deputy Prime Minister, 1999; Department for Communities and Local Government, 2008). Yet, the Government has worked on the initiative by reducing the scope of private certification to minor works. This study attempted to appraise the proposed MWCR.

The Hong Kong Government intended to label the MWCR as a form of re-regulation, rather than deregulation. Nonetheless, without clearly specifying the responsibilities and liabilities of different parties in the new regime, it is sensible for one to suspect that the government tries to shift the burden of building control to private sector. Also, although the government envisaged that the MWCR could help meliorate building safety in Hong Kong, this end can be achieved only if the property owners go through the process laid down in the MWCR. Incentives should be installed in the system, or the property

owners continue to opt for constructing UBWs. More importantly, the HMWVS blurs the boundary between legal and illegal building works, creating a root for social unrest in the future. The findings from this study are not only applicable to Hong Kong, but also to other jurisdictions, particularly those undertaking regulatory reform in the area of building control. For example, Australia and the United Kingdom are reforming their building control systems (Department for Communities and Local Government, 2008; Department of Housing and Works, 2008). Also, the Malaysian government proposed to implement self-certification of building works in 2005 (Nor, 2008). In this regard, the critiques of this study could offer valuable insights to the public administrators in these countries in formulating better building control systems.

NOTES

- 1 Similar third-party private certification has been exercised in some other parts of Europe (for example the Netherlands, and Denmark and Germany) and in Australia as well except that self-certification is allowed only for low-risk minor building works such as insubstantial extension of building and erection of fencing. For more information, please refer to Visscher and Meijer (2007).
- 2 In the information leaflet published by the Buildings Department, the prescribed professional can be an AP, an RSE or a registered geotechnical engineer (Buildings Department, 2008). However, professional bodies representing surveyors and housing managers strongly urged the government to regard their professions qualified for the MWCR.
- 3 Under the MWCR, there will be a register of minor works contractors who are categorized into two groups: (i) contractor companies and (ii) individual practitioners (Buildings Department, 2008).

REFERENCES

- Billington, M.J., Bright, K.T. and Waters, J.R. (2007) *The Building Regulations: Explained and Illustrated*. Oxford: Blackwell.
- Buildings Department. (1999) *Building Development and Control in Hong Kong*. Hong Kong: Buildings Department.
- Buildings Department. (2008) *Minor Works Control System*. Hong Kong: Buildings Department.
- Chan, E.H.W. (1998) Building control in connection with real estate development. In: T.N.T. Poon and E.H.W. Chan (eds.) *Real Estate Development in Hong Kong*. Hong Kong: Pace Publishing Limited, pp. 66–78.
- Construction Industry Council. (2007) *Fourth Meeting of the Business Facilitation Advisory Committee, BFAC Paper 3/07*. Hong Kong: Construction Industry Council.
- Construction Industry Review Committee. (2001) *Construction for Excellence: Report of the Construction Industry Review Committee*. Hong Kong: Construction Industry Review Committee.
- Department for Communities and Local Government. (2008) *The Future of Building Control: Consultation*. London: Department for Communities and Local Government.
- Department of Housing and Works. (2008) *Streamlining Building Control: A New Building Act for Western Australia*. Adelaide, Australia: Department of Housing and Works.
- Donabedian, B. (1995) Self-regulation and the enforcement of professional codes. *Public Choice* 85(1/2): 107–118.
- Downward, A. (1992) *Building Control: A Guide to the Law*. Reading, MA: The College of Estate Management.
- Gann, D.M., Wang, Y. and Hawkins, R. (1998) Do regulations encourage innovation? The case of energy efficiency in housing. *Building Research and Information* 26(4): 280–296.
- Goodchild, B. and Furbey, R. (1986) Standards in housing design: A review of the main changes since the Parker Morris Report 1961. *Land Development Studies* 3(2): 79–99.
- Johnston, L. (1992) *The Rebirth of Private Policing*. London: Routledge.
- Law, M.T. and Kim, S. (2005) Specialization and regulation: The rise of professionals and the emergence of occupational licensing regulation. *The Journal of Economic History* 65(3): 723–756.

- Nor, K.M. (2008) Self-certification versus private certification doctrines on the issuance of the Certificate of Completion and Compliance for buildings in Malaysia. *Journal of Building Appraisal* 4(2): 125–131.
- Office of the Deputy Prime Minister. (1999) *Taking Forward Self-Certification under the Building Regulations: Consultation*. West Yorkshire, UK: Office of the Deputy Prime Minister.
- Office of the Deputy Prime Minister. (2005) *Building Regulations: Explanatory Booklet*. West Yorkshire, UK: Office of the Deputy Prime Minister.
- Pitt, P.H. (1984) The private certification of building control 2. *Structural Survey* 2(4): 362–364.
- Ross, M. (1985) Legal liabilities and the impact of the Building Act 1984. *Property Management* 3(3): 21–26.
- The Government of the Hong Kong Special Administrative Region. (2007) *Buildings (Amendment) Bill 2007*. Hong Kong: Legislative Council.
- The Government of the Hong Kong Special Administrative Region. (2008) *Buildings (Amendment) Ordinance 2008*. Hong Kong: Legislative Council.
- Visscher, H. and Meijer, F. (2007) Dynamics of building regulations in Europe. Paper presented at the ENHR Conference 2007; 25–28 June, Rotterdam, the Netherlands.
- Yau, Y. (forthcoming) On the proposed private certification of building works in Hong Kong. *International Journal of Law in the Built Environment*, 1(3): in press.