

## **BUILDINGS ORDINANCE**

### **(CAP 123)**

#### **Introduction**

#### **Historical Background**

The object of the current Buildings Ordinance 1955 (Cap 123) is to provide for the planning, design and construction of buildings and associated works and to make provisions for the rendering safe of dangerous buildings, land and connected matters. However, antecedents to the legislation (at least up to 1887), were significantly influenced by public health. The link between the control of buildings and matters of public health stemmed from a need for sanitation, safety and related matters in buildings. This link remained clearly established until 1935 when separate ordinances were enacted to cover matters relating to public health and building control.

#### **Early Legislation**

The earliest legislation on buildings in Hong Kong was Ordinance No 5 of 1844 entitled 'an Ordinance for the Preservation of Order and Cleanliness within the Colony of Hong Kong'. Amongst other things, it dealt with dilapidated buildings and the use of certain building materials. This was followed by the Nuisances Ordinance 1845 (14 of 1845) which repealed Ordinance No 5 of 1844. It provided limited planning and construction standards such as prohibiting the encroachment of Crown land and the use of any inflammable material for construction of buildings. In the years following, with people from Mainland China flooding into the territory because of trade opportunities, the already poor and insanitary living conditions in the territory deteriorated and building control became a problem.

#### **Buildings and Nuisances Ordinance (8 of 1856)**

The Buildings and Nuisances Ordinance 1856 (8 of 1856) was enacted following the Dempster Report on the sanitary condition of Hong Kong. This was the first attempt to comprehensively legislate in the area of building construction control in Hong Kong. The Ordinance prescribed construction standards such as thickness of walls, depth of foundations and use of certain building materials. It also set out basic sanitary requirements. The Surveyor General was charged with the responsibility of ensuring compliance with the Ordinance. However, with building activity increasing in response to the continuing influx of immigrants from Mainland China into Hong Kong, the administration and enforcement of the Ordinance were fraught with difficulties. Overcrowding and insanitary living conditions in the territory remained as before.

#### **Public Health Ordinance 1887 (24 of 1887)**

The Hong Kong Government commissioned an English sanitary engineer, Osbert Chadwick, to study and report on the sanitary conditions in the

territory. Chadwick's Report which followed this in 1882 concluded that the insanitary conditions were a menace to public health and recommended that new building legislation was necessary. A Sanitary Board with wide powers of inspection of houses was subsequently set up in 1883. The enactment of the Public Health Ordinance 1887 (24 of 1887), furthered these developments. The Sanitary Board was empowered to close premises unfit for human habitation and overcrowded buildings. Further, the Ordinance provided that a new building could not be occupied until the Sanitary Board had inspected it.

By comparison the passage of the first Public Health Act in England was in 1845 and was directed at conditions in Liverpool. The influence of this legislation spread from Liverpool to other cities in England and to other countries including Hong Kong. Housing was a focal point of the English legislation and was directed at such matters as dampness, ventilation and light, sanitation, fire risks and stability. From 1875 the Public Health Act was extended to new streets and buildings and increased the scope and nature of controls. From 1877 'Model Bylaws' were held out for adoption by local authorities in England. These Model Bylaws influenced and often served as the precedents for later building bylaws. In the Public Health Act 1936, the Model Bylaws were repeated and extended. In England there was also considerable variation in local practice as amendments were made by different local authorities to suit individual conditions. In addition amendments were also made over the years to reflect changes in building practices and materials. In an effort to harmonise the increasing diversity across bylaws enacted by local authorities in England a national Public Health Act was passed in 1961 to replace local authorities bylaws covering buildings with one standard. The new standard became a uniform set of building regulations and was then put forward by the Ministry of Public Building and Works. The new regulations came to apply uniformly in all local authorities in England and Wales save inner London. London was an exceptional case because it was then subject to the London Building Acts. At that time in 1961 there were 12 London Boroughs that were left outside the scope of the new 'Building Regulations'. The 12 London Boroughs were governed in these matters in part by the London Building Acts of 1930 to 1982 and certain Greater London Council (an umbrella organisation for the London Boroughs). However, the exception for London was to be short-lived and governed by special transitional provisions. Thus, once the Building Regulations were made in July 1965 and became effective from 1 February 1966, save for those transitional provisions, all local authorized bylaws were repealed. While these building bylaws, or building regulations as they then referred to, were still susceptible to amendment by local authorities to reflect local conditions, the amendments were subject to confirmation by the then relevant Minister of Housing and Local Government. The one large gap left in scheme was enforcement. Enforcement of the building regulations remained with the local authorities and thus was still subject to considerable variation. Similarly, the wide powers of relaxation of the building regulations that had been delegated to and left with the local authorities also detracted from their uniformity.

### **Buildings Ordinance 1889 (15 of 1889)**

After many debates, a new Buildings Ordinance 1889 (15 of 1889) was eventually enacted and the Buildings and Nuisances Ordinance 1856 (8 of 1856) was repealed. The main object of the new Ordinance was to improve the structural stability and sanitary condition of buildings in Hong Kong. The new legislation was based on the Buildings and Nuisances Ordinance 1856 (8 of 1856) and the bylaws made under that Act. The bylaws made under the Metropolitan Building Act were known as the Model Bylaws of the Local Government Board in England. Building bylaws in England were initially introduced to prevent building practices that would otherwise be injurious to health and safety. This same association between buildings and health that defined the early English building controls also existed in Hong Kong as well. It can be seen from the earliest legislation up to the present day that the association still remains although not as prominently. To ensure structural stability, the Ordinance defined structural requirements of new buildings and required the use of non-combustible materials for the construction of building walls and roofs. To secure improved sanitary conditions, provisions were inserted for proper ventilation, the prevention of dampness and for drainage. Provisions were also made to regulate stone blasting, earth cutting and storage of timber with a view for the safety of workers and of adjacent buildings.

### **Closed Houses and Insanitary Dwellings Ordinance 1894 (15 of 1894)**

The Government of Hong Kong was forced to legislate again when an epidemic of bubonic plague in Guangzhou spread to Hong Kong at the turn of the 20th century. The Closed Houses and Insanitary Dwellings Ordinance 1894 (15 of 1894) was passed quickly to regulate the occupation of buildings closed by the Sanitary Board as a result of the plague. It returned many provisions with regard to domestic buildings, lighting and ventilation that had been omitted earlier from the 1887 and 1889 Ordinances as a result of strong opposition by the Legislative Council and property owners. Hence, once again, public health issues influenced the ways in which buildings were planned, constructed and controlled.

### **Public Health and Ordinance 1903 (1 of 1903)**

The next piece of building control legislation in Hong Kong was the Public Health and Buildings Ordinance 1903 (1 of 1903). The Public Health and Buildings Ordinance 1903 consolidated and amended the law relating to public health and buildings. It drew heavily for inspiration upon the London Building Act 1894 (57 and 58 Vic, Ch 212). In particular, provisions relating to the rights and liabilities of adjoining owners were taken mainly from Part VIII of the London Building Act 1894. However, Part III of the Ordinance, which dealt with buildings, was similar to the earlier Buildings Ordinance 1889. The Ordinance was expanded significantly and contained more stringent rules for the construction of buildings. These rules had been inserted largely as a result of a series of collapses of old houses that had occurred in 1902. A new standard was adopted for the thickness of walls that was based on the Glasgow Act 1900. Certain amendments gave further effect to

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recommendations in the earlier Chadwick's Report. The main objects of the new Ordinance were to provide for better ventilation in buildings and generally to improve and safeguard the public health - hence both the buildings and public health aspects. The responsibility for supervising building works was shifted to an 'authorized architect'. Today, under the Buildings Ordinance these powers belong to an 'authorized person'.

### **Buildings Ordinance 1935 (18 of 1935)**

In 1935, the 1903 Ordinance was repealed and two ordinances were passed to control public health and buildings separately. It was stated in report by the Director of Medical and Sanitary Services that there were disadvantages in mixing provisions on design and construction of buildings, which concerned mainly the Public Works Department, and provisions relating to house cleansing and the prevention of disease, which concerned mainly the Sanitary and Medical Departments. Thus, the Public Health (Sanitation) Ordinance 1935 (15 of 1935) and Buildings Ordinance 1935 (18 of 1935) were enacted. This marked an important break between the construction of buildings and their sanitation. The Buildings Ordinance extracted provisions from the 1903 Ordinance that dealt with the construction of buildings and amended them where it was considered necessary. It also incorporated modern methods of construction by acceptance of the London County Council Reinforced Concrete Regulations and provided for higher standards of lighting and ventilation.

### **Buildings Ordinance 1955 (Cap 123) (68 of 1955)**

The 1935 Buildings Ordinance was repealed pursuant to the current Buildings Ordinance 1955 (Cap 123) (68 of 1955). The original 1955 Ordinance was enacted to amend and consolidate the law relating to the construction of buildings. Certain portions of the 1935 Ordinance were re-enacted, either in the principal legislation or in the regulations. Some portions of the 1935 Ordinance were discarded as falling outside the province of the Building Authority or had been rendered obsolete by the progress made in building technology since the enactment of the 1935 Ordinance. One example of the re-enactment of a portion of the 1935 Ordinance can be seen in the provisions pertaining to the rights of adjoining owners. These provisions continue to in operation today under the Second Schedule to the Buildings Ordinance 1955. The legislation was presented in the form of an Enabling Bill and a Code of Regulations where the 'details' of the system of control are described. This enables the Regulations to be revised from time to time to keep abreast of developments in building practice. These regulations are now extensive and are referred to below. In conclusion, Hong Kong has a very long tradition of building control through legislation and regulation. Although the earlier building legislation was based upon both public health and building control legislation from England most of the current provisions reflect local conditions today. While the Buildings Ordinance 1955 has spanned a very long period of time when tremendous changes in building technology have

occurred, it has continued to evolve with changes in these practices and to provide a sound comprehensive control regime for construction and development in Hong Kong.

### **General framework for building controls**

Since 1 June 1956, building controls in Hong Kong have been administered principally under the Buildings Ordinance 1955 (Cap 123) and its subsidiary legislation or regulations as they are referred to. The subsidiary legislation is made pursuant to s 38 of the principal legislation or Ordinance. The present Ordinance is applicable throughout Hong Kong including the New Territories save certain limited exceptions that are referred to in the legislation and discussed below. Since 1 August 1983, building development in the private sector has been the responsibility of the Buildings Department (formerly the Buildings Ordinance Office). The Buildings Department is headed by a Director of Buildings who is named as the 'Building Authority' under s 2 of the present Ordinance. While the Building Authority is referred to generally here and in the third person this association may be borne in mind. The powers granted to the Building Authority under the present Ordinance may be carried out and exercised by any officer authorized by the Director of Buildings but subject to his instructions: see s 2(2) of the present Ordinance. The Buildings Department is divided into several specialised divisions including control and enforcement, development, structural engineering, litigation and legislation. Three important pieces of subsidiary legislation are the Building (Administration) Regulations; the Building (Construction) Regulations; and the Building (Planning) Regulations. Other subsidiary legislation includes the Building (Demolition Works) Regulations; Building (Private Streets and Access Roads) Regulations; Building (Refuse Storage Chambers and Chutes) Regulations; Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations; Building (Ventilating Systems) Regulations; the Building (Oil Storage Installations) Regulations; and Building (Energy Efficiency) Regulation.

**Part I** of the present Ordinance deals with the registration of 'authorized persons', 'structural engineers' and 'contractors'. It also deals with these groups' respective duties, the means by which they may be censured or removed from their respective registers and the establishment and composition of Disciplinary Boards. Authorized persons play an extremely important role and act as a check upon construction as it is part of their duties to notify the Building Authority of any contravention of the regulations made under the present Ordinance that results from or would result from carrying out work shown in plans approved by the Building Authority.

**Part II** of the present Ordinance sets out how the various stages of the erection of a building can be controlled. No building works (unless those not affecting the structure of the buildings) or street works can be commenced unless the Building Authority has approved the plans for such works (s 14). s 16(1) of the present Ordinance lists a number of grounds on which plans submitted for approval may be refused by the Building Authority, inter alia, where any approved or draft plan prepared under the Town Planning

Ordinance (Cap 131) is contravened (para (d)). So, through its ability to refuse to approve plans, the Building Authority acts to enforce planning controls or development controls. In addition, the Building Authority is also empowered to make various orders when the Buildings Ordinance is contravened. For example, the Buildings Department plays important roles in safety matters and control of buildings by issuing demolition or alteration orders under s 24, issuing orders with regard to unauthorized and dangerous structures under s 24A, issuing orders for building works to cease under s 23, and for granting occupation permits under s 21. Public officers or others may take any of these actions when acting in certain designated roles.

**Part III** of the present Ordinance contains a wide range of miscellaneous and general provisions ranging covering projections on or over streets, recover of costs by the Building Authority, service of notices and orders, limitation of public liability and making regulations.

**Part IV** sets out offences, fines and other means of punishment for contraventions of the Ordinance.

**Part V** provides for exemption from the provisions of the Ordinance. In particular, s 42 of the present Ordinance empowers the Building Authority under special circumstances to permit modifications to provisions of the Ordinance. This section has offered the government 'a useful tool in bargaining with the developers' as it has allowed developments, which have not conformed to the provisions of the present Ordinance to be approved: see [10.056], Bristow, *Land-use Planning in Hong Kong* (Oxford University Press, 1984).

**Part VI** of the present Ordinance provides for an Appeal Tribunal (Buildings) to be set up for the purpose of hearing appeals from the Building Authority. This is supplemented by the Building (Appeal) Regulations which specify the appeal procedure. The Appeal Tribunal may, by way of case stated, refer any question of law relating to the appeal to the Court of Appeal for its decision (s 53C). It should be noted that the provisions in the present Ordinance may operate subject to or be circumscribed by other statutory provisions: see for example, *Hui Sui Sam & Anor v Director of Public Works* [1983-85] CPR 18, regarding the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap 276).

**Part VII** of the present Ordinance deals with transitional arrangements.

**Part VIII** of the present Ordinance deals with saving and validation.