

**For discussion on
14 June 2002**

**LEGISLATIVE COUNCIL PANEL
ON PLANNING, LANDS AND WORKS**

Review of the Buildings Ordinance

PURPOSE

This paper outlines the Government's proposed amendments to the Buildings Ordinance (Cap. 123) and its regulations.

PROPOSALS

2. The Buildings Ordinance (BO) and its regulations require periodic updating to better suit present day circumstances, facilitate good design and construction of buildings, and promote building safety and timely maintenance.
3. We propose to amend the BO with a view to -
 - (a) rationalizing the building control regime by -
 - (i) empowering qualified building professionals and contractors to carry out specified minor works without seeking approval from the Building Authority (BA);
 - (ii) broadening the composition of the Contractors Registration Committee and extending the validity period for the registration of professionals under the Ordinance; and
 - (iii) providing for the registration and control of geotechnical engineers;
 - (b) strengthening safety requirements by mandating the provision of emergency vehicular access;
 - (c) promoting compliance with the law by -

- (i) clarifying the responsible party for the purpose of removal orders of unauthorised building works (UBWs);
 - (ii) enabling the BA to issue warning notices on UBWs and register these with the Land Registry;
 - (iii) increasing penalties for serious building offences;
 - (iv) providing for the prosecution of uncooperative owners; and
- (d) improving service to the public by relaxing requirements for obtaining copies of building records.

4. The rationale and details of the individual proposals are provided below.

(a) Rationalizing the Building Control Regime

(i) Minor works

5. The existing building control regime applies to all building works with few exemptions. Even minor works, for example, the erection of a canopy over a window, have to comply fully with all the provisions for building works. These requirements include the approval of plans by the BA, appointment of an authorized person (AP) and a registered structural engineer (RSE) to design and supervise the works as well as the appointment of a registered general building contractor (RGBC) or a registered specialist contractor (RSC) to carry out the works. The cost of compliance with these requirements is sometimes disproportionate to the scale of works involved. Many minor works are carried out without approval and hence have no proper quality control at all.

6. We consider that the degree of control on different kinds of building works should be commensurate with their nature, scale, complexity and degree of risk. There should be room for building professionals and registered contractors to take on greater responsibility in the control of minor works. We therefore propose to amend the BO to introduce a new category of relatively simple and small-scale building works, i.e. “minor works”, that a new category of registered contractors may carry out on their own or under the supervision of the AP and RSE, without the submission of building plans for approval by the BA. In keeping with the nature of minor works, the qualification and experience requirements for registered contractors of these works should be

lower than those for the two types of contractors that may be registered under the BO at present.

7. We propose that the BA should specify different types of minor works and amend them from time to time by notice in the Gazette. The Buildings Department (BD) will conduct audit checks on the construction of such minor works to ensure that they comply with technical standards under the BO.

8. We believe that under the proposed arrangement, building owners will be more prepared to comply with building controls when they carry out minor works. This will contribute to better control of minor works and hence increased public safety.

(ii) Registration matters

9. The BA may appoint a Contractors Registration Committee (CRC) to assist it in considering applications for inclusion in the registers of contractors under the BO. At present the composition of a CRC is the same for all categories of such contractors. This does not sufficiently allow for persons having the most relevant experience to consider applications for registration under the different categories of contractors. We therefore propose to amend the BO to increase the number of persons with relevant expertise who may sit on a CRC for considering applications for registration as registered specialist contractors.

10. The present registration and renewal period for various professionals under the BO is one year. To reduce the need for going through the time-consuming process at frequent intervals, we are looking into the possibility of extending the registration period for AP/RSE and contractors. The details are being worked out having regard to the cost recovery principle and the need to ensure continued competence of the AP/RSE and contractors.

(iii) Registration of geotechnical engineers

11. Many developments in Hong Kong's hilly terrain stand on steep hillsides and man-made slopes. Such building works call for expertise in geotechnical works. At present, the BO requires an AP or RSE to be responsible for such highly specialised works while geotechnical engineers actually involved in the design and supervision of geotechnical works do not have any statutory role to play. This is not satisfactory. We therefore propose

to amend the BO to provide for the registration of geotechnical engineers, and for registered geotechnical engineers to be appointed to undertake the investigation, design and supervision of geotechnical works and be statutorily responsible for their works.

(b) Provision of Emergency Vehicular Access

12. At present, there is no statutory requirement that emergency vehicular access (EVA) be provided for building developments. This is clearly unsatisfactory given the importance of such access in case of fire or other calamities. We therefore propose to amend the BO -

- (a) to require the provision of EVA to all new buildings;
- (b) to provide that the BA may grant exemptions in exceptional cases, subject to appropriate preventive and/or mitigating measures;
- (c) to promulgate design standards for EVA according to the intended use of the new buildings; and
- (d) to empower the BA to issue orders to repair and maintain the EVA.

(c) Promoting Compliance with the Law

(i) Responsible party for UBWs

13. Under the BO, the BA may serve a removal order on the owner of a UBW. In the case of non-compliance, the BA may carry out all necessary buildings works required under its order and recover the cost from the person served with the order afterwards. However, in serving removal orders, BD sometimes encounters difficulties in identifying the responsible owners, especially when the UBWs are erected in common parts of buildings (e.g. an unauthorized structure on a common roof). There have also been delays in enforcement work if there is a change of ownership because of the need to serve orders on the new owner.

14. To address the present difficulties, we propose to amend the BO -

- (a) to provide that a removal order made under the BO may be served on -

- (i) the owner of the unit in which the UBW is erected; or
 - (ii) if the UBW erected in one unit, usually a common part, is connected to another unit and the UBW is used by the owner or occupier of the latter unit, the owner of the latter unit;
- (b) to provide for the registration of removal orders issued under the BO in the Land Registry; and
- (c) to enable the BA to recover the cost of removal work from any person who at the date of completion of the work is the owner of the unit involved.

These proposed amendments will clearly specify the person responsible for the removal of UBWs and reduce the number of superseding orders to be issued, thus expediting enforcement work against UBWs.

(ii) Warning notices

15. Given the large number of UBWs, the BA normally only issues removal orders against UBWs that present imminent dangers to the public or cause serious environmental or health hazards. In other cases, BD issues advisory letters to owners, asking them to remove the UBWs voluntarily. Experience shows that these advisory letters have had limited effect.

16. To increase the deterrent effect and to encourage owners to remove UBWs voluntarily, we propose to amend the BO to empower the BA to issue a warning notice on UBWs where a removal order is not issued, and to register the notice in the Land Registry if the UBW is not removed within a specified period. The BA may lift the registration when contraventions referred to in the warning notice have been rectified and the owner has reimbursed the BA's cost incurred in the registration. The proposal will have the added advantage of providing a measure of consumer protection to prospective property buyers, who will become aware of the existence of UBWs in the premises through a search in the Land Registry.

(iii) Increasing penalties

17. Under the BO, penalties for serious offences involving substandard building works or construction dangers are fines ranging from \$50,000 to

\$250,000 and imprisonment terms ranging from one to three years. These penalties have not been reviewed for some 20 years. Their deterrent effect has been eroded. We therefore propose to amend the BO to increase the maximum fines for selected offences by between four and six times their current levels.

(iv) Uncooperative owners

18. At present, the owners' corporation (OC) of a building is responsible for complying with statutory orders for repair works and removal of UBWs in common parts of the building. Sometimes the OC concerned may have difficulty in complying with the orders and may be prosecuted for non-compliance because some individual owners do not cooperate through failing to pay their share to fund works required for compliance with the BA's orders, obstructing the execution of works required or refusing entry to their individual properties for the execution of such works. Since individual building owners should bear the ultimate responsibility to carry out the necessary repair and removal works, we propose to amend the BO to provide that owners who without reasonable excuse obstruct their OC in complying with an order served by the BA may be prosecuted. This amendment will enable OCs to comply with statutory orders more easily. BD will give sufficient notice to all individual owners when an order is served on the OC and will remind uncooperative owners that prosecution under the BO may be instigated against them. BD will ensure that this deterrent will only be resorted to when the owners continue to refuse to cooperate without reasonable excuse. In practice, we envisage that the number of such intransigent owners will be low.

(d) Facilitating the Provision of Copies of Building Records

19. The BO provides that the BA may charge a fee for issuing certified true copies of building plans and documents. There is however no corresponding power to charge a fee for non-certified copies, nor for the inspection of such plans and documents.

20. With building professionals taking on greater responsibilities, we intend to facilitate their work by providing an efficient service for the inspection and copying of building plans and documents on a cost recovery basis. We also propose to meet the increasing demand for non-certified copies of such plans and documents on a user pays principle.

(e) **Migrating from Prescriptive Regime to Performance-based Regime**

21. In addition to the proposed amendments outlined above, we believe that the prescriptive standards approach underlying the BO and its Regulations need an overhaul. The migration of prescriptive requirements to a performance-based regime will provide increased flexibility and foster modern and innovative building design. For example, the design of window opening under the performance-based requirement will be specified in terms of the level of day lighting and ventilation provision, instead of the set of dimensions now stipulated in the Building (Planning) Regulations (B(P)R). Formulating performance-based requirements for all current prescriptive requirements is a major task that takes time. To kick-start the process, we propose to introduce the new approach in the application of the B(P)R first.

WAY FORWARD

22. We are drafting the necessary legislative amendments with a view to introducing them in the next legislative session.

**Planning & Lands Bureau
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