

立法會
Legislative Council

LC Paper No. CB(1)2340/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Sixth meeting on
Thursday, 27 May 2010, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Deputy Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king
Dr Hon Priscilla LEUNG Mei-fun
Hon Tanya CHAN

Member absent : Hon LEE Wing-tat

Public officers : Mr Tommy YUEN Man-chung
Attending Deputy Secretary for Development (Planning and Lands) 2

Mr Edward TO Wing-hang
Principal Assistant Secretary for Development
(Planning and Lands) 3

Mr Harry LIN Ting-yan
Assistant Secretary for Development (Buildings) 2

Mr LAM Siu-tong
Deputy Director of Buildings

Mr Alex CHOW Kim-ping
Assistant Director / Support
Buildings Department

Ms Rayne CHAI Chih-hui
Senior Government Counsel
Department of Justice

Miss Elaine NG Pui-kei
Government Counsel
Department of Justice

Clerk in attendance: Mr WONG Siu-yee
Chief Council Secretary (1)4

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Daniel SIN
Senior Council Secretary (1)5

I Meeting with the Administration

(LC Paper No. CB(1)1984/09-10 -- Minutes of meeting on
19 April 2010)

The minutes of the meetings held on 19 April 2010 were confirmed.

II Meeting with the Administration

Enforcement

(LC Paper No. CB(1)1417/09-10(02) -- Administration's response dated 18
March 2010 to issues raised at the
meeting on 19 February 2010 as
set out in LC Paper No.
CB(1)1390/09-10(08)

LC Paper No. CB(1)1624/09-10(01) -- Administration's paper on enforcement against registered professionals and contractors)

Outstanding issues from previous meetings

(LC Paper No. CB(1)1983/09-10(01) -- Administration's paper on response to issues raised at previous meetings

LC Paper No. CB(1)1983/09-10(02) -- Administration's paper on subsidiary legislation and practice notes

LC Paper No. CB(1)2003/09-10(01) -- Letter from Assistant Legal Adviser to the Administration dated 13 May 2010)

Other relevant papers previously issued

(LC Paper No. CB(3)389/09-10 -- The Bill

LC Paper No. CB(1)1168/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division

File Ref: DEVB(PL-CR) 2-15/08 -- Legislative Council Brief

LC Paper No. LS42/09-10 -- Legal Service Division Report

LC Paper No. CB(1)1168/09-10(02) -- Paper on Buildings (Amendment) Bill 2010 prepared by the Legislative Council Secretariat (Background brief)

LC Paper No. CB(1)1935/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 6 May 2010

LC Paper No. CB(1)1782/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 19 April 2010

LC Paper No. CB(1)1609/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 31 March 2010

LC Paper No. CB(1)1500/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 20 March 2010

LC Paper No. CB(1)1390/09-10(08) -- List of follow-up actions arising from the discussion at the meeting on 19 February 2010)

2. The Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

3. The Administration was requested to provide the following information --
 - (a) The current enforcement policies against unauthorized building works;
 - (b) Examples of cases of the prosecutions, convictions and disciplinary proceedings taken against registered professionals and contractors under the Buildings Ordinance (Cap. 123) since 1990; and
 - (c) The legal liability of a registered professional who, after inspecting a building, fails to report to the Building Authority a potential defect which subsequently causes injury.

III Any other business

4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
25 June 2010

**Proceedings of the
Bills Committee on Buildings (Amendment) Bill 2010
Sixth meeting on Thursday, 27 May 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000808	Chairman	Opening remarks and confirmation of minutes (LC Paper No. CB(1)1984/09-10).	
000809 – 001212	Administration	<p>The Administration's briefing on its paper (LC Paper No. CB(1)1417/09-10(02)).</p> <p>(a) The Administration advised that it might not be appropriate to require Registered Inspectors (RIs) to enter individual private premises to identify unauthorized building works (UBWs) therein or internal alteration works because such measure would cause disturbance and practical difficulties for owners.</p> <p>(b) The Administration suggested that the Subcommittee on Building Safety and Related Issues (the Subcommittee) would be an appropriate forum to address issues related to UBWs and subdivision of flats in private premises.</p>	
001213 – 001857	Mr WONG Kwok-hing Administration	<p>(a) Mr WONG said that the collapse of No. 45J of Ma Tau Wai Road highlighted the urgency to tackle the problems of unauthorized internal alteration works and subdivision of flats.</p> <p>(b) The Administration advised that the Secretary for Development (SDEV) had set up a core group to look into the problems.</p>	

Time Marker	Speaker	Subject(s)	Action Required
001858 – 002806	Prof Patrick LAU Administration Chairman	<p>(a) In response to Prof LAU, the Administration advised that RIs were not intended to be empowered to enter individual private premises for prescribed inspections, and a qualified person would not be obliged, under the proposed legislation, to report any UBWs found inside individual private premises during a window inspection.</p> <p>(b) The Administration further advised that professionals would be advised to report UBWs found inside individual private premises during a prescribed inspection in accordance with the Code of Practice or practice notes to practitioners to be issued.</p>	
002807 – 003833	Deputy Chairman Administration	<p>(a) In response to the Deputy Chairman, the Administration advised that RIs were required to inspect building structures, means of fire escape and, drainage pipes, and were required to record and report any UBWs found on external walls, common parts and the exterior of the building (including rooftop and podium).</p> <p>(b) The Chairman and Deputy Chairman considered that as owners might engage the same professional to inspect the building and their windows at the same time, the Bill was ambiguous as to whether that professional was obliged to report any UBWs found while conducting inspections inside individual private premises.</p> <p>(c) The Administration clarified that the Bill did not cover inspection of building structures inside individual private premises.</p>	

Time Marker	Speaker	Subject(s)	Action Required
003834 – 004612	Mrs Sophie LEUNG Administration	<p>(a) As the Bill required RIs to report UBWs found in common parts or external walls, Mrs LEUNG suggested that provisions should be added to encourage RIs to report other UBWs found, and such provisions should be widely publicized when implemented.</p> <p>(b) The Administration advised that the Code of Practice or practice notes to practitioners to be issued would include the relevant provisions.</p>	
004613 – 005754	Ms Cyd HO Administration	<p>(a) Ms HO asked how the Administration would ensure that owners would engage qualified professionals to carry out inspections and repairs in accordance with statutory requirements. The Administration advised that the minor works control system would help achieve this objective. Extensive publicity and public education programme would be launched to raise public awareness.</p> <p>(b) Ms HO asked whether the Buildings Department (BD) would handle anonymous complaints. The Administration advised that all complaints would be investigated regardless of the source, and appropriate actions would be taken in accordance with the prevailing enforcement policy.</p> <p>(c) In response to Ms HO, the Administration explained the general investigation procedure on reports of UBWs. Owners were generally co-operative and would allow access by BD staff. In necessary situations, BD staff, accompanied by</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>a police officer, could break into and enter private premises even without the occupants' consent.</p>	
005755 – 010615	Ms Starry LEE Administration Chairman	<p>Ms LEE criticized BD's current enforcement practice. Some owners ignored BD's statutory orders and the protracted procedures required were counterproductive in curbing proliferation of UBWs. The Administration explained that owners may appeal against a statutory order to the Appeal Tribunal such that the Building Authority could not enforce the order until the appeal was disposed of. Prosecution proceedings could be time-consuming.</p>	
010616 – 011451	Chairman Administration	<p>(a) The Chairman said that the community expected the Bill to safeguard public safety, and he maintained that UBWs and internal alteration works in private premises should be covered under the Mandatory Building Inspection Scheme (MBIS).</p> <p>(b) The Administration advised that the Buildings Ordinance (Cap. 123) (BO) already contained provisions dealing with UBWs. It was a general view from previous public consultation that UBWs should not be covered in the Bill.</p> <p>(c) The Administration was separately exploring how subdivision of flat should be tackled. The Chairman commented that it would cause less hassle to the public to extend MBIS to cover these building works rather than introducing another scheme.</p>	

Time Marker	Speaker	Subject(s)	Action Required
011452 – 011722	Mr Abraham SHEK Administration	Mr SHEK considered that the scope of the Bill should not be stretched too wide. Further discussion on the control of UBWs and subdivision of flat in individual private premises could be followed up either by the Panel on Development or the Subcommittee.	
011723 – 011857	Mr CHAN Kam-lam	Mr CHAN said that it was not practical to tag the plethora of building safety issues on the Bill. Given the community's concern about UBWs and subdivision of flat, the Administration should examine the matter separately.	
011858 – 012219	Mr WONG Kwok-hing Administration Chairman	<p>(a) Mr WONG asked the Administration to provide information on the current enforcement policies against UBWs.</p> <p>(b) Mr WONG suggested that the Administration should computerize the records of UBWs to improve transparency and facilitate future enforcement operations. The Administration advised that when the minor works control system came into operation, all new minor works would be registered in BD's computer system and the records would be accessible to public.</p> <p>(c) The Administration further advised that SDEV's core group would examine, among other matters, whether a computerized record of existing UBWs should be established. However, as the status of UBWs was often very fluid, the high cost of maintaining the computer records might not be justified.</p>	Administration to take action as required in paragraph 3 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
012220 – 012511	Prof Patrick LAU Administration Chairman	Prof LAU requested the Administration to provide examples of cases of the prosecutions, convictions and disciplinary proceedings taken against registered professionals and contractors under BO since 1990.	Administration to take action as required in paragraph 3 of the minutes
012512 – 012901	Ms Starry LEE Administration Chairman	<p>(a) Ms LEE had reservations on not requiring RIs to report UBWs or suspected subdivision of flat in individual private premises to the Building Authority. The requirement would not incur too much work on RIs, but was what the community expected the Bill to cover.</p> <p>(b) The Administration explained that there were many types of subdivision of flat; some were already regulated under the existing legislation. SDEV's core group was looking into the issue from a wider perspective.</p> <p>(c) In response to Ms LEE, the Administration advised that RIs would be required to report to the Building Authority unauthorized advertising signboards on external walls.</p>	
012902 – 013216	Mr WONG Kwok-hing Administration	In response to Mr WONG, the Administration advised that SDEV's core group would complete its review by the end of 2010 and come up with recommendations.	
013217 – 013317	Ms Sophie LEUNG	Mrs LEUNG suggested that issues related to UBWs and subdivision of flat in individual private premises should be followed up by the Subcommittee.	

Time Marker	Speaker	Subject(s)	Action Required
013318 – 013351	Ms Starry LEE	Ms LEE maintained that RIs should be required to report any UBWs and subdivision of flat found in individual private premises during an inspection because the requirement should not incur too much additional workload.	
013352 – 013950	Ms Miriam LAU Chairman Administration	(a) In response to Ms LAU, the Administration advised that it would explore with the Hong Kong Housing Society whether the launch of the Voluntary Building Classification Scheme could be advanced. (b) As regards Ms LAU's comments on subdivision of flat, the Administration advised that SDEV's core group would also examine how such works should be regulated.	
013951 – 014336	Administration	Briefing by the Administration on how UBWs would be handled under MBIS, and the Household Minor Works Validation Scheme.	
014337 – 014729	Ms Starry LEE Administration	In response to Ms LEE, the Administration stressed that household UBWs validated under the Household Minor Works Validation Scheme would remain as UBWs. While the scheme would not cover metal gates, BD would initiate enforcement action when these installations obstructed means of escape.	
014730 – 015718	Dr Priscilla LEUNG Administration Deputy Chairman	(a) In response to Dr LEUNG, the Administration advised that the Household Minor Works Validation Scheme would not cover windows protruding from buildings. Authorized BD staff could enter a private premises, in the presence of a police officer if necessary, to conduct inspection or investigation.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) As RIs would not be empowered under the Bill to enter individual private premises for MBIS, the Deputy Chairman sought clarification on whether RIs would be liable for failing to report UBWs which subsequently fell off the external wall.</p> <p>(c) The Administration advised that RIs should report any UBWs on external wall that they considered to be potentially dangerous. They should exercise professional judgement as to whether emergency attention was required. It would be up to the court to determine if an RI had been negligent or had deliberately omitted to report UBWs based on the facts of the case.</p>	
015719 – 015859	Dr Priscilla LEUNG Administration Chairman Deputy Chairman	<p>(a) Dr LEUNG sought further clarification on an RI's liability if UBWs fell off an external wall and caused injury before the RI's report reached the Building Authority.</p> <p>(b) The Administration was requested to provide information on the legal liability of a registered professional who, after inspecting a building, failed to report to the Building Authority a potential defect which subsequently caused injury.</p>	Administration to take action as required in paragraph 3 of the minutes
015900 – 020048	Chairman	The next meeting would be held at 2:30 pm on 8 June 2010.	