

**For discussion
on 23 February 2010**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

Progress of Enforcement Action against Unauthorized Building Works

PURPOSE

This paper informs Members of the progress of the Government's enforcement action against unauthorized building works (UBWs) and seeks Members' views on the future policy direction and measures for tackling the problem.

BACKGROUND

2. Under the existing Buildings Ordinance (Cap. 123) (BO), all building works (except a small number of exempted works) require the Building Authority (BA)'s prior approval of plans and consent for commencement before such works can be carried out. Otherwise, no matter what scale such works is of, the works are unauthorized and subject to enforcement action by the Buildings Department (BD).

3. The problem of UBWs had become serious in Hong Kong in the late 1990's. In 2001, the total number of UBWs in the territory was estimated by the BD to be 800,000. Some UBWs, in particular large-scale projections such as steel cages and flower racks that pose potential danger to building users and pedestrians, were commonly found in buildings at that time. In February 2000, the then Planning and Lands Bureau established a task force (the task force) to formulate a comprehensive strategy for building safety and timely maintenance. The task force consulted the community widely on the strategy.

4. In order to tackle the problem of existing UBWs and to curb their proliferation, the task force formulated an enforcement policy on UBWs which came into effect in April 2001. Since September 1999, the BD had been conducting "blitz" operations to clear in one go all UBWs projecting from external walls of buildings. Under the 2001 enforcement policy, the

BD would adopt this approach for major clearances, particularly in respect of those items on the external walls of buildings that were 20 to 40 years old at that time (now 30 to 50 years old). In this context, the BD would increase such clearances from 500 and 600 buildings to 900 and 1,000 in 2001 and 2002 respectively. Owners not responding to advisory letters would be served with statutory orders. Those not complying with orders would be prosecuted. It was then estimated that the operations would remove 150,000 to 300,000 UBWs in five to seven years. The BD would also stop new or re-erection promptly through commissioning special patrol teams and responding to reports from members of the public. Another focus of the operations was illegal rooftop structures (IRSs). To remove serious fire risk, the BD would clear all 12,000 illegal rooftop structures on the 4,500 single-staircase buildings within seven years.

5. A review of the policy described in paragraph 4 above was conducted in 2006. The Government decided to continue with the special enforcement programme for another five years for the BD to further combat UBWs. The target was to remove 180,000 additional UBWs in five years.

PROGRESS OF ENFORCEMENT ACTION

6. The enforcement programmes have been progressing well and, as at the end of 2009, almost all the targets have been achieved. Since the launch of the 2001 programme, the BD has endeavoured to curb the emergence of new UBWs and remove about 40,000 target UBWs every year. When the BD identifies any new UBWs, UBWs posing obvious danger to life or property, or UBWs constituting a serious health hazard or environmental nuisance, the Department would immediately take enforcement action so as to safeguard public safety and health. To stop the proliferation of new UBWs, the BD commissions private consultants to set up special consultant teams to investigate into reports lodged by members of the public on UBWs under construction and to carry out regular patrol over the territory to proactively identify UBWs under construction. The consultant teams would carry out inspections within 48 hours upon receipt of reports from the public.

7. In summary, from 2001 to 2009, around 380,000 UBWs had been removed. It is expected that by the end of the ten-year programme in March 2011, more than 400,000 UBWs would have been removed. The BD's achievements thus far are highlighted in the ensuing paragraphs.

Large Scale Clearance Operations

8. From 2001 to 2009, the BD launched annually large scale clearance operations to clear in one go target UBWs on external walls and those in common areas of selected target buildings. Such UBWs include projecting structures, steel cages, large canopies, large glass panel external walls, large TV screens, large unauthorized signboards, UBWs contravening fire safety requirements and UBWs on canopies and cantilevered slab balconies. The annual target is to identify about 1,000 target buildings to clear such UBWs. From 2001 to 2009, UBWs in 11,828 target buildings were removed.

Illegal Rooftop Structures

9. The rooftop of a single staircase building should act as the fire refuge area for residents. IRSs on single staircase buildings will obstruct the refuge area, thus posing serious fire risk to the residents and the public. The BD's target in 2001 of taking enforcement action against IRSs on 4,500 single staircase buildings within seven years had already been achieved in 2007. During the operation, some 1,000 additional single staircase buildings had been identified with IRSs. As such, the clearance operation continued to tackle the same. As at the end of 2009, the BD cleared IRSs in 850 of this batch of additional buildings. Enforcement action against the remaining outstanding single staircase buildings will continue in 2010.

Removal of Unauthorised Signboards

10. The BD has been carrying out regular patrolling survey and handling the public's reports on dangerous and abandoned signboards. Overall speaking, the BD had removed over 20,000 abandoned, dangerous and unauthorized signboards during the period from 2001 to 2009. The Department has also launched special operations from time to time. For instance, in March 2009, the BD embarked on a 12-month special operation to remove 5,000 abandoned signboards on top of the Department's annual action. Up to early February 2010, over 5,200 abandoned signboards (more than the original target) had been removed under the special operation.

Co-ordinated Maintenance of Buildings Scheme

11. The BD, in association with six other government departments,

namely the Home Affairs Department, Fire Services Department, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Water Supplies Department and Environmental Protection Department, conducts the “Coordinated Maintenance of Buildings Scheme” in various districts throughout Hong Kong. The purpose of the Scheme is to assist building owners and owners’ corporations (OCs) in resolving building management and maintenance problems. Starting from 2005, the BD has also invited the Hong Kong Housing Society (HKHS) to provide free advice on building management and maintenance to the participating owners. The departments will assist owners and OCs to pursue the required building improvement works and, where necessary, initiate joint enforcement actions. The scope covers removal of UBWs, maintenance of building structure and repair of drainage system, as well as improvement of fire service and electrical installations. Since the implementation of the Scheme in 2000, around 1,300 buildings have been selected as target buildings for the carrying out of repair and improvement works. At the end of 2009, the repair and improvement works of 774 target buildings had been completed.

Issue of Warning Notices

12. The Buildings (Amendment) Ordinance 2004, which came into operation on 31 December 2004, empowers the BA to issue a warning notice to an owner notifying him of the existence of UBWs in his premises and that the notice will be registered in the Land Registry (LR) if the UBWs are not removed within a specified period. The BD utilises such power to tackle UBWs that are not subject to immediate enforcement action under its enforcement policy. This arrangement serves to raise community awareness of the liability of owners for their UBWs, thereby encouraging owners to remove their UBWs voluntarily so as to avert an encumbrance registered against their property titles. The BD issues around 8,000 warning notices annually. The total number of warning notices issued during the period from 2005 to end 2009 is about 35,000.

Prosecutions

13. If an owner, without any reasonable excuse, fails to remove his UBWs within the period specified in the removal order served on him under the BO, the BD will initiate prosecution action against the owner. The BD may also cause the removal work to be carried out and recover the costs

including supervision charges from the owner concerned. The total number of prosecutions instigated during the period from 2001 to end 2009 is around 18,000. Taking 2009 as an example, the average penalty ordered by the Court was about \$3,200 and the highest case was \$83,400.

14. Statistics of the BD's overall enforcement action against UBWs from 2001 to 2009 is at Annex.

POLICY DIRECTION AND MEASURES TO TACKLE UBWs

15. It is community consensus that building owners should be responsible for proper maintenance and management of their properties. This community consensus was reached in the public consultation conducted by the task force in 2000, and reaffirmed in the subsequent two rounds of public consultation on building management and maintenance conducted in 2003 and 2005. It is generally agreed that the role of the Government should be to assist and support those responsible and to take action against the non-compliant. The Government should also establish an appropriate statutory control regime to meet the development needs of the community and facilitate compliance by building owners.

16. In the ten-year programme, the Government has devoted significant resources to taking enforcement action against UBWs. With the BD's yearly large scale clearance operations, nearly 12,000 buildings have been covered, with about 400,000 UBWs demolished. The targets of the ten-year operation have been generally met and most of the high-risk UBWs in Hong Kong have been removed. As the ten-year enforcement programme will soon conclude by the end of 2010/11, we have taken stock of the achievements and reviewed the Government's overall strategy for enhancing building safety in Hong Kong. We will continue to adopt a multi-pronged approach to tackle the building safety problem, covering the following four major areas:

- (a) legislation;
- (b) inspection and enforcement;
- (c) support and assistance measures; and
- (d) public education and publicity

17. Noting resource constraints, we will optimise existing resources and leverage on synergy amongst the various stakeholders involved in building management and maintenance (including the Government, building owners, tenants, building professionals and the industry as well as non-government organisations). The ensuing paragraphs outline the Government's strategies for tackling the problem of UBWs.

Statutory Building Control System

18. One of the causes of the emergence of UBWs in the past is the stringent definition and requirement under the BO. Under the existing provisions of the Ordinance, all building works, despite their scale and complexity, are under the control of one single building control system. Prior approval of building plans and consent to commence building works must be obtained from the BA before commencement of such works. In practice, in comparison with the construction of a new building, many building works carried out in existing buildings are in fact relatively simple and of a small scale (e.g. erection of supporting frames for air conditioners and laundry drying racks, etc.). The existing control system does not distinguish between the two and is not commensurate with the complexity of minor building works. As a result, the BO has not been complied with in relation to many of these minor works, rendering a large number of such works unauthorized.

Minor Works Control System

19. The new minor works control system will curb the proliferation of new UBWs in future, impose better control on signboards as well as rationalize certain existing minor household UBWs.

20. The minor works control system will provide a lawful, simple, safe as well as convenient means for building owners to carry out small-scale building works. The Buildings (Amendment) Ordinance 2008, passed by the Legislative Council in June 2008, amends the BO for the introduction of the system. A new category of building works, namely “minor works”, and a register of “registered minor works contractors” for carrying out such minor works, will be introduced under the BO. In respect of minor works, the requirement to seek the BA’s prior approval of building plans and consent to commence works will be dispensed with. Minor works will be classified

into three classes according to their nature, scale and complexity as well as the risk to safety they pose. Class I minor works are relatively more complicated and have to be designed and supervised by authorised persons (APs) and carried out by registered contractors. However, the other two classes of minor works are relatively simpler and can be carried out by registered contractors without the involvement of APs. The new system will save time and cost for owners in carrying out small-scale building works and hence encourage their compliance. In this way minor building works will be carried out in a lawful manner and hence the proliferation of UBWs will be curbed.

Control of Signboards

21. The minor works control system will facilitate the BD in controlling the erection of small signboards in future. Under the new control system, a person for whom a signboard is erected or altered will be required to provide his/her personal particulars in the minor works submission to the BA upon completion of the works. This is to facilitate the BA in taking enforcement action when the operator concerned moves out of the premises and in case such operator fails to demolish the signboard, rendering the same abandoned. The BA will make use of such information to contact the operator to require the demolition of signboards.

Validation of Existing Household Minor UBWs

22. We note that before the introduction of the minor works control system, small-scale household building works have been carried out in some buildings without obtaining prior approval and consent from the BA. Typical examples include supporting frames for air conditioners, laundry drying racks and small canopies. These items are of practical use for the households concerned. For the rationalization of the aforementioned three types of minor works carried out under such circumstances and to allow owners to retain these features for continued use, a “household minor works validation scheme” (validation scheme) will be established under the minor works control system.

23. To participate in the validation scheme, building owners should appoint appropriate building professionals and/or registered contractors to certify on inspection that the existing unauthorized minor household

structures meet the safety requirements. Depending on the circumstances, alteration, improvement and/or reinforcement works may be required to meet the safety and dimensional standards before such structures can be certified. The necessary works to be conducted to the unauthorized minor household structures will be specified as minor works and have to be carried out in accordance with the relevant simplified requirements. Enforcement action will not be taken by the BD against the validated minor household structures unless there is a change in their safety conditions. Nevertheless, the legal status of such structures will remain unauthorized and will not change by joining the validation scheme. The validation scheme will improve the safety condition of some existing small household minor works and allow building owners to retain the same for continued use.

Designated Exempted Works

24. There are building works that are very simple and of a very small scale (e.g. removal of a short outdoor fence wall). Such works may be carried out without the control of the BO, given their nature, structural implications and safety risk. The new minor works control system will stipulate certain very small scale works as "designated exempted works". Building owners may carry out such works and will not create UBWs.

Latest progress

25. With the passage of the Building (Minor Works) Regulation and Building (Minor Works) (Fees) Regulation in April and December 2009 respectively, we have already kick started the registration of minor works contractors in late December 2009. An intensive publicity programme is being mounted to encourage minor works practitioners to register early. We aim to fully launch the minor works control system within 2010. The BD will step up its publicity and public education efforts, for both building owners and the industry, to make sure that stakeholders will comply with the new control system. The Department will take enforcement actions if irregularities are found after the implementation of the new system.

Mandatory Building Inspection

26. Building neglect has been a long-standing problem in a highly developed and densely populated city like Hong Kong with a stock of aging

buildings. Owners do have the responsibility to properly maintain and repair their own properties. Views collected from the 2003 and 2005 public consultations agreed with the direction of introducing legislation to require mandatory inspection of buildings. The proposed Mandatory Building Inspection Scheme (MBIS) will cover private buildings aged 30 years or above, except domestic buildings not exceeding three storeys in height. The BA will select around 2,000 private buildings every year and require their owners to carry out inspection and, where necessary, repair works in relation to the common parts, external walls and projections of the buildings. Owners of the buildings so selected, after the first inspection, will be required to carry out building inspections once every ten years.

27. UBWs identified in the MBIS will have to be reported to the BD. The registered inspectors appointed for MBIS inspections will be required to report to the BA UBWs identified in the common parts and external walls of the buildings inspected and assess the safety conditions of these UBWs. For UBWs posing an imminent danger, the BD will order their removal in accordance with its enforcement policy against UBWs. We are mindful that it would be more convenient and less costly for individual owners to remove all UBWs in one go together with other rectification works to be carried out in the common parts/external walls of the buildings. As such, we will encourage the owners to demolish all UBWs on a voluntary basis, and will provide appropriate technical and financial assistance. We will also invite owners to join the validation scheme under the minor works control system. As described above, under the validation scheme, owners may retain three types of commonly found small-scale household UBWs for continued use after safety inspection and necessary remedial works are carried out. Validated UBWs will be subject to periodic inspections under the MBIS in the future cycles.

28. The Buildings (Amendment) Bill 2010 to implement the MBIS and Mandatory Window Inspection Scheme was introduced into the Legislative Council on 3 February 2010. We will work closely with the Bills Committee to expedite the scrutiny of the Bill. Implementation of the MBIS will enable the BD to have a better grasp of the UBWs conditions of old buildings in Hong Kong. It will facilitate the Department in prioritizing its enforcement actions.

Public Education and Assistance to Owners

29. Success in removing UBWs can only be achieved if all concerned in our community play their due part. Maintaining building safety and keeping a building free of UBWs are the ultimate responsibility of building owners. This will be the main message that we will drive home in our future public education programmes. We will put emphasis on owners' responsibility and merits of timely maintenance, risk from unsafe building works and liability from building/retaining UBWs. Community participation and support are also crucial. Property owners and occupants, building professionals, contractors and non-governmental organisations must join the Government in promoting a responsible concern for our built environment and helping owners live up to their responsibility for maintaining their property and removing their UBWs. To cultivate positive attitudes, particularly among building owners and occupants, we will publicize the risks of building neglect, explain the latest legislative proposals and statutory building control system, and emphasize UBWs as a risk and liability in our publicity campaigns.

30. The BD, together with our partner organisations such as the HKHS and Urban Renewal Authority (URA), offer various loans and subsidy packages, and provide financial and technical support to help OCs and owners in need to maintain their buildings, including the removal of UBWs. The assistance schemes include the \$1-billion Building Maintenance Grant Scheme for Elderly Owners launched in May 2008 and administered by the HKHS, the Comprehensive Building Safety Improvement Loan Scheme administered by the BD, the Building Maintenance Incentive Scheme and Home Renovation Loan Scheme administered by the HKHS, as well as the Building Rehabilitation Materials Incentive Scheme and Building Rehabilitation Loan Scheme administered by the URA. We will continue to encourage building owners to make use of the assistance packages available to demolish UBWs in their properties. Technical advice will be promptly offered to owners should they encounter any difficulties in carrying out the demolition works.

Continued Enforcement Action Against UBWs

31. With the completion of the ten-year enforcement programme and the launch of the various aforementioned initiatives, the problem of UBWs in

Hong Kong has been significantly alleviated. With the completion of the enforcement programme, the targets for certain existing schemes, such as the large scale clearance operations and Co-ordinated Maintenance of Buildings Scheme, will be suitably adjusted in the next few years. However, to protect public safety, the BD will continue to take immediate enforcement action against UBWs constituting obvious and imminent danger to life and property, newly erected UBWs and UBWs under construction. The Department will also continue to attend to reports on UBWs from members of the public.

Manpower Resources for Demolition of UBWs

32. Upon the completion of the ten-year enforcement programme, the BD will re-prioritize its resource deployment, putting the Department's focus on the implementation of the new statutory regimes, public education programme as well as the preventive inspection and repair initiatives. The BD will continue to allocate adequate manpower resources to protect building safety in Hong Kong. The Department will take enforcement action against UBWs that pose an imminent danger and act on complaints lodged by the public.

33. For the implementation of the ten-year time-limited enforcement programme, the BD has engaged about 500 non-civil service, time-limited contract (NCSC) staff. With the completion of the task, the BD will release these NCSC staff through natural wastage and non-renewal of contracts upon expiry. The Department will provide appropriate employment assistance to these NCSC staff to help them secure new jobs. The BD will continue to maintain dialogues with the staff to address their concerns and needs over the release arrangements.

ADVICE SOUGHT

34. Members are invited to comment on the future policy direction and measures to tackle the problem of UBWs.

Development Bureau
February 2010

Statistics of Enforcement Against Unauthorized Building Works
2001-2009

**1. Number of Buildings under “Large-scale Clearance Operation”
by Buildings Department**

Year	Number of Buildings
2001	1,571
2002	1,759
2003	1,007
2004	1,027
2005	1,000
2006	1,169
2007	1,514
2008	1,579
2009	1,202
Total	11,828

2. Number of Unauthorized Building Works Removed

Year	Number
2001	20,647
2002	37,923
2003	49,556
2004	41,210
2005	40,365
2006	48,479
2007	51,312
2008	47,593
2009	42,425
Total	379,510

3. Number of Buildings under “Coordinated Maintenance of Buildings Scheme” Jointly Undertaken by Various Departments

Year	Number
2001	150
2002	200
2003	200
2004	_ Note 1
2005	150
2006	153
2007	150
2008	150
2009	150
Total	1,303

Note 1 No Scheme was conducted in 2004 as the concerned departments were reviewing the Scheme.

4. Number of Single-staircase Buildings with Illegal Rooftop Structures Removed

Year	Number of Buildings
2001	402
2002	632
2003	713
2004	714
2005	705
2006	704
2007	707
2008	632
2009	130 ^{Note 2}
Total	5,339

Note 2 The number of buildings in 2009 is less than those in previous years, because the Buildings Department's programme to clear illegal rooftop structures in 5,500 single-staircase buildings is approaching completion. The Buildings Department will continue to clear illegal rooftop structures in the remaining single-staircase buildings.

5. Number of Signboards on External Walls of Buildings Removed

Year	Number
2001	1,491
2002	1,917
2003	1,375
2004	1,496
2005	1,597
2006	1,690
2007	2,428 ^{Note 3}
2008	1,881
2009	6,470 ^{Note 4}
Total	20,345

Note 3 The Buildings Department and Home Affairs Department in collaboration launched a special operation to remove abandoned signboards during January to July 2007. Therefore the number of signboards removed in 2007 was more than those in previous years.

Note 4 The Buildings Department launched a 12-month special operation in March 2009 to remove about 5,000 abandoned signboards. Therefore the number of signboards removed in 2009 was more than those in previous years.

6. Number of Removal Orders Issued by Buildings Department

Year	Number
2001	13,212
2002	54,010
2003	24,003
2004	27,805
2005	25,007
2006	32,711
2007	32,898
2008	32,847
2009	31,453
Total	273,946

7. Number of Prosecution Cases for Non-Compliance with Removal Orders Instigated by Buildings Department

Year	Number of Prosecution Cases
2001	392
2002	466
2003	684
2004	1,664
2005	2,962
2006	3,042
2007	3,021
2008	3,091
2009	3,063
Total	18,385

8. Number of Warning Notices Issued by Buildings Department

Year	Number
2001	—
2002	—
2003	—
2004	—
2005	2,184 ^{Note 5}
2006	8,498
2007	8,621
2008	8,272
2009	7,638
Total	35,213

Note 5 The Buildings Department only started to issue warning notices in accordance with the then newly amended legislation in 2005. Therefore, the figure cannot reflect a full-year situation.