

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

香港花園道美利大廈



Housing, Planning and Lands
Bureau

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Clerk to Bills Committee
(Attn : Ms Odelia Leung)
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Leung,

**Bills Committee on
Buildings (Amendment) Bill 2003**

In response to Members' questions at the Bills Committee meeting on 23 February 2004, the requested information is provided below. Since the Bills Committee has agreed to delete the minor works proposal from the Bill at the meeting of 23 April, we do not propose to include issues relating to minor works in this reply.

Persons liable for various offences and knowledge factor

Members requested the Administration to clarify the category of persons who may be held liable for the various offences concerning unauthorized building works, substandard building works and construction danger, and whether the person knows or does not know is a factor in determining liability for the offences.

We have set out the relevant offence provisions and the proposed revised penalty levels in a table in LC Paper No. CB(1) 1054/03-04(02) (Fines (Part II)). The table (with the part on minor works deleted) is now attached at **Annex I** for ease of reference. For offences under new sections 40(1AA), 40(2AB), 40(2AC) and 40(2B) of the Buildings Ordinance (BO) (detailed provisions set out at **Annex II**), the persons who may be held liable are the authorized persons (AP), registered structural engineers (RSE), registered geotechnical engineers (RGE), registered contractors (RC), site supervisors, persons who carry out the works and any other persons directly concerned with the works. For the offence under new section 40(2A), the persons who may be held liable are the AP, RSE, RGE, RC and any other persons for whom the works are being carried out. With regard to new section 40(2AA), the persons who may be held liable are AP, RSE, RGE and RC. For offences under new sections 40(1BA) and 40(2C), the persons liable are the persons served with the order under section 24 and 24A respectively (detailed provisions of sections 40(2AA), 40(1BA) and 40(2C) set out at **Annex II**). For section 24, it is provided in section 24(2) that an order shall be served on –

- (a) in the case of a building or building works but subject to subsection (2A), the owner of the land or premises on which the building has been erected or on which the building works have been or are being carried out;
- (b) in the case of street works, the frontagers; and
- (c) in the case of building works the subject matter of which is a signboard –
 - (i) the person for whom the signboard has been erected or is being erected; or
 - (ii) if that person cannot be found, the person who would receive any rent or other money consideration if the signboard were hired out or the person who is receiving such rent or money consideration; or
 - (iii) if the person referred to in subparagraphs (i) and (ii) cannot be found, the owner of the land or premises on which the signboard has been erected or is being erected.

In new section 24(2A), it is further provided that where the building or building works referred to in new subsection (2)(a) is or are –

- (a) connected to land or premises (hereinafter referred to as “other land or premises”) other than the land or premises on which the building has been erected or on which the building works have been or are being carried out; and
- (b) occupied or used by the owner or occupier of that other land or premises,

subsection (2)(a) shall not apply and in such a case, an order made under subsection (1) in respect of the building or building works shall be served on the owner of that other land or premises.

As regards whether the person knows or does not know is a factor in determining liability for the above offences, the Department of Justice advises that-

- (a) sections 40(1AA), (2AA), (2AB) and (2AC) are strict liability offences. There is no need for the Prosecution to prove the defendant’s knowledge on the subject of concern to which the offence relates. However, common law defence of reasonable mistaken belief is still available to the defendant. In particular, for subsection (2AA), a statutory defence has been provided for the AP, RSE, RGE or RC who did not know, nor could reasonably have discovered, the contravention referred to in the charge.

The Prosecution would often take into account the chance of a defendant successfully raising the defence so as to evaluate the prospect of conviction before instigating prosecution.

- (b) for sections 40(1BA), (2A), (2B) and (2C), the Prosecution is required to prove that the defendant has knowledge of the subject of concern to which the offence relates.

Consultation with small contractors

Members requested the Administration to consult small contractors on the revised proposals on fines set out in LC Paper No. CB(1) 1054/03-04(02).

We have sent LC Paper No. CB(1) 1054/03-04(02) (Fines (part II)) to various contractors' and trade associations to seek their views on the revised proposals on fines. The comments received so far have not indicated any strong objection to our proposals. However, the Hong Kong Construction Association Ltd has suggested in its letter of 7 April 2004 that the Building Works Tender Price Index (BWTPI) should be used for calculating the revision of fines. The BWTPI provides an indication of the price level of tender prices for the accepted tenders of new building works undertaken by Government through the Architectural Services Department, which excludes certain types of building works (i.e. site formation, piling, alterations and extensions and fitting out works). It is primarily an aid to adjust building cost data for estimating purposes. The Bills Committee had earlier advised that the use of the Building Cost Index, a similar index as the BWTPI, for adjustment of the fines was inappropriate. Furthermore, we consider that the BWTPI is not an appropriate reference because its scope of compilation is too restricted.

We have advised Members in LC Paper No. CB(1) 1054/03-04(02) that the deterrent effect of the fines may be reinstated by restoring the value of money and we have therefore proposed that the fines be increased with reference to the Composite Consumer Price Index. We understand that both the Hong Kong Institution of Engineers and the Hong Kong Institute of Architects had written to the Bills Committee supporting the proposals in the said LC Paper.

Building plans for buildings under the Housing Department

Members requested the Administration to advise how far the building plans for buildings under the Home Ownership Scheme (HOS) and Tenants Purchase Scheme (TPS) were complete and could be made available for inspection upon request.

The record drawings for HOS and TPS buildings are being compiled by the Housing Department in stages and are expected to be completed in 2005/06. Progress on the drawing preparation is as follows:

- (a) TPS: There are 206 TPS blocks in 30 TPS estates. Drawings for 201 blocks in 30 estates have been completed.
- (b) HOS: There are 621 HOS blocks in 146 HOS courts. Drawings for 102 blocks in 23 courts have been completed.

I would be grateful if you will convey the above information to the Bills Committee Members.

Yours sincerely,



(Rick Chan)
for Secretary for Housing, Planning and Lands

c.c.	DB	(Attn : Mr C K Au)	[Fax : 2840 0451]
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Review of Penalty Levels of Offences under the Buildings Ordinance

Section	Description of offence	Existing Penalty (Year of last revision)	Proposed Penalty under Buildings (Amendment) Bill 2003	Revised Proposal
40(1AA)	Contravenes s.14(1) and carries out building works without approval and consent.	\$100,000 + 2 years Daily fine \$5,000 (1979)	\$600,000 + 2 years Daily fine \$30,000	\$400,000 + 2 years Daily fine \$20,000 (increase fine with reference to CPI, i.e. 4 times of existing level)
40(1BA)	Fails to comply with an order under BO s.24(1) for removal of UBW	\$50,000 + 1 year Daily fine \$5,000 (1979)	\$300,000 + 1 year Daily fine \$30,000	\$200,000 + 1 year Daily fine \$20,000 (increase fine with reference to CPI, i.e. 4 times of existing level)

Section	Description of offence	Existing Penalty (Year of last revision)	Proposed Penalty under Buildings (Amendment) Bill 2003	Revised Proposal
40(2A)	<ul style="list-style-type: none"> • Permits defective building works • Material deviation from approved plans • Misrepresentation of material facts 	\$250,000 + 3 years (1979)	\$1,500,000 + 3 years	\$1,000,000 + 3 years (increase fine with reference to CPI, i.e. 4 times of existing level)
40(2AA)	<ul style="list-style-type: none"> • AP, RSE or RGE contravenes BO s.4(3)(b) • RGBC or RSC contravenes BO s.9(5)(b) or (6)(b) <p>i.e. fails to notify BA of any contravention of the regulations which result from carrying out works shown in approved plans</p>	\$250,000 + 3 years (1979)	\$1,500,000 + 3 years	\$250,000 (existing fine unchanged, imprisonment term deleted)
40(2AB)	Contravenes conditions imposed under s.17(1) or fails to comply with the requirement of the order issued under this section in respect of building works other than those listed under s.40(2AC)	\$50,000 + 1 year (1981)	\$200,000 + 1 year	\$150,000 + 1 year (increase fine with reference to CPI, i.e. 3 times of existing level)

Section	Description of offence	Existing Penalty (Year of last revision)	Proposed Penalty under Buildings (Amendment) Bill 2003	Revised Proposal
40(2AC)	Contravenes conditions imposed under item 7 in BO s.17(1) – failure to take measures to prevent collapse when carrying out site formation works, piling works, excavation works or foundation works	\$250,000 + 3 years (1981)	\$1,500,000 + 3 years	\$750,000 + 3 years (increase fine with reference to CPI, i.e. 3 times of existing level)
40(2B)	Carries out works in a dangerous manner	\$250,000 + 3 years (1979)	\$1,500,000 + 3 years	\$1,000,000 + 3 years (increase fine with reference to CPI, i.e. 4 times of existing level)
40(2C)	Fails to comply with an order under s.24A to cease or remedy dangerous works	\$250,000 + 3 years Daily fine \$50,000 (1979)	\$1,500,000 + 3 years Daily fine \$300,000	\$1,000,000 + 3 years Daily fine \$200,000 (increase fine with reference to CPI, i.e. 4 times of existing level)

Relevant Detailed Provisions

Section	Description of offence
40(1AA)	Contravenes s.14(1) and carries out building works without approval and consent
40(1BA)	Fails to comply with an order under BO s24(1) for removal of UBW
40(2A)	<ul style="list-style-type: none"> • Permits defective building works • Material deviation from approved plans • Misrepresentation of material facts
40(2AA)	<ul style="list-style-type: none"> • AP, RSE or RGE contravenes BO s4(3)(b) • RGBC or RSC contravenes BO s9(5)(b) or (6)(b) i.e. fails to notify BA of any contravention of the regulations which result from carrying out works shown in approved plans
40(2AB)	Contravenes conditions imposed under s.17(1) or fails to comply with the requirement of the order issued under this section in respect of building works other than those listed under s.40(2AC)
40(2AC)	Contravenes conditions imposed under item 7 in BO s17(1) – failure to take measures to prevent collapse when carrying out site formation works, piling works, excavation works or foundation works
40(2B)	Carries out works in a dangerous manner
40(2C)	Fails to comply with an order under s.24A to cease or remedy dangerous works