

**Extract from Minutes of meeting of Panel on Planning, Lands and Works  
held on 24 June 2002**

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**V      Comprehensive Review of the Buildings Ordinance — Proposed Amendments to the Buildings Ordinance**

(LC Paper No. CB(1)1961/01-02(03) —

Paper provided by the  
Administration

12.     The Deputy Secretary (Urban Renewal and Buildings) of Planning and Lands Bureau (DS/PLB) briefed members on the Government's proposed amendments to the Buildings Ordinance (BO) (Cap. 123) and its regulations as detailed in the paper. The proposed amendments aimed at rationalizing the building control regime, strengthening safety requirements, promoting compliance with the law, and improving service to the public. The Administration planned to introduce the relevant legislative proposal to LegCo in the next legislative session.

Scope of proposed amendments

13.     In reply to Ir Dr Raymond HO, the Director of Buildings (D of B) advised that the review of BO was being conducted by phases. The proposed amendments set out in the paper were covered by Phase 1 of the review. According to the Buildings Department (BD)'s tentative plan, regulatory measures for advertisement signboards would be covered by Phase 2 while amendments to the regulations of BO for the enhancement of works standards to meet current requirements in works, such as fire-engineering approach and drainage works, would be covered by Phase 3. Pointing out that the United Kingdom had taken about a decade to review and implement changes on building regulations, D of B advised that it also took time for the Administration to conduct research, develop proposals and draft the proposed amendments. At the request of Ir Dr HO, D of B undertook to provide the Panel with information on the proposed scope of the phased review of BO and the provisional time schedule.

Minor works

14.     Mr Albert CHAN expressed concern about the Administration's proposal to amend 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 might carry out on their own or under the supervision of the authorized person (AP) and registered structural engineer (RSE), without the submission of building plans for approval by the Building Authority (BA). In view of the fact that the quality of some of the building works in Hong Kong was far from satisfactory, Mr CHAN queried the justifications for the proposed amendments which would entrust the AP, RSE and contractors with great authority in minor building works.

Action

15. D of B explained that under the existing building control regime, all building works (including minor building works) with few exemptions, had to comply with a number of requirements, including the approval of plans by BA, the appointment of an AP and an RSE to design and supervise the works, and the appointment of a registered general building contractor or a registered specialist contractor to carry out the works. The cost of compliance with these requirements was sometimes disproportionate to the scale of works involved. The Administration was of the view that the degree of control on different kinds of building works should be commensurate with their nature, scale, complexity and degree of risk. While the existing requirements should continue to apply to new buildings or less simple structures, the requirements and procedures for minor building works, such as the erection of a canopy over a window, should be simplified. The Administration believed that the simplified arrangement would encourage building owners to comply with the requirements when carrying out the relevant minor works, thus reducing the number of unauthorized minor works and enhancing public safety. D of B also pointed out that the proposed amendments were in line with the self-regulatory approach for building works adopted by some overseas countries.

16. Mr LAU Ping-cheung, Ir Dr Raymond HO and Mr IP Kwok him supported the simplified arrangement for minor works but considered that the types of minor works should be clearly defined. Ir Dr HO also considered that some related terms, such as “canopy” and “balcony”, should also be clearly defined in the proposed provisions.

17. Responding to Mr IP Kwok-him, D of B advised that minor works would be classified into three types. The first type must be conducted under the supervision of an AP and an RSE as necessary, such as works involving changes in the layout of internal staircase. The second type, such as the removal of rooftop structures, and the third type, such as the erection of drying/flower racks, could be carried out by registered minor works contractors on their own or under the supervision of an AP and an RSE as necessary, without the submission of building plans for approval of BA. While the contractors on the prevailing list of registered contractors for private works would be eligible for carrying out all these three types of minor works, a new register would be set up specifically for the second and third types of minor works. The Contractors Registration Committee would assist BA in considering applications for inclusion in the new register. Under the proposed arrangement, registered contractors who were prepared to carry out the second or third type of minor works would be required to notify BD before commencing the works and report to BD with the relevant building plans after completion of the works. Staff of BD would conduct audit checks to ensure that the works complied with the technical requirements and standards under BO. Moreover, BD would issue detailed guidelines on the technical standards and requirements for minor works. Non-compliance would result in the removal of the contractors from the list of registered contractors and/or prosecution.

Quality of building works

18. Referring to various defects of new buildings, Mr Albert CHAN expressed his grave concern about the quality of building works in Hong Kong and that the proposed amendments to relax the requirements for minor works would aggravate the situation.

Action

He also criticized BD for having failed to monitor the quality of building works and initiate prosecution action against the professionals/contractors concerned for non-compliance with the rules and regulations stipulated in BO. D of B disagreed and pointed out that the Department of Justice (D of J) considered each case carefully before deciding whether prosecution action should be initiated. In fact, prosecution action had been taken by the Administration. Mr CHAN pointed out that in most cases, prosecution action was initiated by the Independent Commission Against Corruption (ICAC), not BD. As far as he knew, BD had failed to take enforcement action against the professionals and contractors concerned on many reported cases, and had only advised the owners concerned to initiate civil action on their own. Mr CHAN considered it essential for the Administration to put in place concrete measures to monitor the work of the professionals and contractors, and to hold them accountable for their substandard works. In the absence of these measures to ensure the effective performance of the professionals and contractors, Mr CHAN consider it inappropriate to entrust them with greater responsibilities.

19. D of B assured members that BD had all along monitored the work of the professionals and contractors, and had initiated prosecution action if sufficient evidence was available. To further enhance the deterrent effect, the Administration had also proposed to increase the maximum fines for offences involving substandard building works or construction dangers. Mr Albert CHAN was not convinced and requested the Administration to provide statistics on the number of cases which prosecution had been initiated by BD in accordance with BO (Cap. 123) and its regulations in the past ten years and details of such cases.

20. Mr IP Kwok-him shared Mr Albert CHAN's concern about the quality of building works and urged the Administration to put in place measures to prevent the recurrence of problems commonly found in private buildings, such as water seepage problem. D of B assured members that the Administration would put in place more effective measures to improve the prevailing monitoring mechanism on the quality of building works. In this connection, Mr Albert CHAN requested the Administration to provide a table showing the prevailing monitoring mechanism (including penalty system) on the professionals and contractors, and the changes to be brought about by the proposed amendments to BO and its regulations. D of B agreed to provide the information. He also undertook to consider the need for setting up a special task force to review how supervision of building works could be improved further.

Unauthorized building works

21. Mr IP Kwok-him expressed concern on how the Administration could identify the persons who should be responsible for the removal of unauthorized buildings works (UBW) in a building. In response, D of B said that having carefully considered the possible ways of addressing the difficulties encountered in identifying the responsible owners, the Administration proposed to amend BO to provide that a removal order might be served on the owner of the unit in which the UBW was erected, or if the UBW erected in one unit, usually a common part, was connected to another unit and the UBW was used by the owner or occupier of the latter unit, the owner of the latter unit. It was expected that these proposed amendments would help identify

Action

persons responsible for the removal of UBWs and reduce the number of superceding orders to be issued, thus expediting enforcement action against UBWs.

22. Ir Dr Raymond HO enquired whether legislative amendments would be proposed in the current review to facilitate clearance of the existing 800 000 UBWs. D of B advised that the number of target buildings for clearance of UBWs had increased from 300 to 3 000 and a large-scale clearance operation of UBWs would take place in the current year. To enhance the deterrent effect, the Administration proposed to amend BO to empower BA to issue a warning notice on UBWs where a removal order was not issued, and to register the notice in the Land Registry if the UBW was not removed within two months. Owners would be responsible for paying the registration and de-registration fee. It was expected that these proposed amendments would encourage the owners concerned to remove the UBWs voluntarily.

Increasing penalties

23. Responding to the Chairman's enquiry on the penalties stated in paragraph 17 of the paper, D of B advised that penalties for serious offences involving substandard building works or construction dangers were fines ranging from \$50,000 to \$250,000. As the penalties had not been reviewed for some 20 years, the Administration proposed to increase the maximum fines for selected offences by four to six times their current levels to enhance the deterrent effect.

24. Ir Dr Raymond HO considered that a reasonable increase in the level of fines should be considered for UBWs. D of B advised that the Administration had carefully considered the level of fines to be adopted and consulted the professional bodies, which found the proposed level of fines acceptable. Mr LAU Ping-cheung considered that the Administration should make reference to the level of fines provided in existing legislation before making its final decision.

Uncooperative owners

25. Mr Albert CHAN expressed reservation on the proposal to amend BO to provide that owners who without reasonable excuse obstruct their owners' corporation (OC) in complying with an order served by BA for repair works or removal of UBWs in common parts of the building might be prosecuted. Pointing out that it was not uncommon for individual owners to disagree with their OC over the scope of the repair work and the tendering procedures for appointing contractors, Mr CHAN urged the Administration to handle the matter carefully. D of B assured members that BD would give sufficient notice to all individual owners when an order was served on the OC and would remind owners that prosecution under BO might be instigated against any uncooperative owners. BD would resort to this deterrent only when the owners continued to refuse to cooperate without reasonable excuse.

26. Mr Albert CHAN did not consider the proposal necessary, as OCs were empowered under the Building Management Ordinance (Cap. 344) to take action against uncooperative owners, and BA was empowered under BO to remove the UBWs and recover the cost from the owners concerned. D of B pointed out that the amendment was proposed at the request of some owners to address the practical

Action

difficulties encountered by OCs in seeking support of individual owners of the building to pay their share to fund the works required for compliance with BA's orders. The proposed amendment had been discussed between BD and the Home Affairs Department. Nevertheless, the Administration would exercise care in implementing the proposal.

27. Mr LAU Ping-cheung enquired whether D of J had been consulted on the legal basis for taking prosecution action against individual owners and whether the proposal would infringe upon the basic right of individual owners. D of B advised that D of J considered the proposal legally acceptable. While OCs were issued with statutory orders for repair works and removal of UBWs in common parts of the building, they worked for individual owners who should bear the ultimate responsibility to carry out the necessary works. Owners who without reasonable excuse obstructed their OC in complying with an order served by BA would be subject to prosecution on the same basis as other owners who failed to comply with statutory order served on them. The Administration considered the proposal a practical and reasonable arrangement to assist OCs and owners in resolving building management problems. Citing some previous cases where uncooperative owners obstructed the conduct of building repair works, Ir Dr Raymond HO supported the proposal.

28. Members pointed out the need for a clear definition of “reasonable excuse” to avoid disputes between OCs and individual owners. The Deputy Director of Buildings Department appreciated Members' concern and pointed out that individual owners would be prosecuted under two circumstances. First, the owners concerned obstructed the conduct of the repair/removal works, e.g. the removal of an UBW in common parts of the building. Secondly, the owners concerned refused to pay their share to fund the works, despite the fact that the sum had been calculated in accordance with the proportion of the unit(s) they owned in the building. Miss CHAN Yuen-han considered that while prosecution might be justified in the first case, it might not be so in the second case. She pointed out that she had come across a number of cases where individual owners complained against the OCs for requiring them to pay for a substantial sum for the repair works. It was difficult to establish whether the excuses provided by the owners concerned were reasonable.

29. D of B pointed out that it was necessary to introduce the proposed amendment to address the building management problems caused by uncooperative owners. He assured members that the Administration would exercise great care in handling the relevant cases. D of J would consider each and every case carefully before deciding whether prosecution action should be initiated. While it would be difficult to spell out all the circumstances under which prosecution action would be initiated, what constituted a “reasonable excuse” would be specified in the relevant provision.

30. At Miss CHAN Yuen-han's request, D of B undertook to consider the feasibility of putting in place an appeal mechanism to enable the owners concerned to lodge their appeals, say, to the Director of Buildings, before the Administration took prosecution action against them.

Action

(*Post-meeting note:* The information provided by the Administration in response to members' requests in paragraphs 13, 19, 20 and 30 above was circulated vide LC Paper No. CB(1)2489/01-02 (English version) and CB(1)2612/01-02 (Chinese version) on 9 September and 30 September 2002 respectively.)

Provision of Emergency Vehicular Access

31. Referring to paragraph 12 of the paper, Mr LAU Wong-fat noted that the Administration proposed to amend the BO to require the provision of Emergency Vehicular Access (EVA) to all new buildings. He supported the proposed amendment provided that BA might grant exemptions in exceptional cases, such as for new buildings in the New Territories where EVA would have to route through private lands and involve substantial cost. He however considered that the Administration should clearly specify the criteria for granting such exemptions. D of B said that each case would be considered on its merits and the granting of exemptions would be subject to appropriate preventive and/or mitigation measures to protect public safety.

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