Bills Committee on Buildings (Amendment) Bill 2003

List of follow-up actions arising from previous meetings (as at 8 March 2004)

Date of meeting	List of follow-up actions	Administration's response
8 July 2003	(a) To clarify the criteria for categorization of building works as minor works and specify in detail the types of works which would be regarded as such.	Information paper on "The Minor Works Control Regime" (CB(1) 2292/02-03(01)) discussed at the meeting on 23 September 2003
	(b) To explain the qualification for registration as minor works contractors.	J
	(c) To advise the overall policies, if any, on building maintenance and control of unauthorized building works (UBWs) and advertisement signboards and enforcement in these respects.	Information paper on "Unauthorized Building Works
	(d) To explain the policy, if any, to deal with cases in which owners have genuine financial difficulties in complying with removal order in respect of UBWs.	Enforcement Policy and Support for Owners" (CB(1) 2283/02- 03(02)) discussed at the meeting on 31 July 2003
	(e) To advise how enforcement action against UBWs could be taken without causing insurmountable hardship to the owners concerned. Requiring demolition of unauthorized cooling towers for air-conditioners of small food shops is an example in question.	
	(f) To consider measures to prevent large contractor companies from monopolizing the undertaking of minor works to the prejudice of existing small contractors.	Information paper on "The Minor Works Control Regime" (CB(1) 2292/02-03(01)) discussed at the meeting on 23 September 2003

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31 July 2003	(a) To explain the eligibility and procedures for applying for the Building Safety Loan Scheme. A member was concerned that there had been a case in which an applicant applying for a small amount under the Scheme was required to provide tenders for the works.	Information on "Building Safety Loan Scheme" (CB(1) 2405/02-03(03)) discussed at the meeting on 16 October 2003
	(b) To provide a paper to explain how to handle situations in which building owners are uncooperative and obstruct the carrying out of works to demolish unauthorized building works (UBWs).	Information paper on "Uncooperative Owners" (CB(1) 2405/02-03(04)) discussed at the meeting on 16 October 2003
	(c) To advise the legislative timetable, if any, for introducing amendments to the Building Management Ordinance (Cap. 344) to facilitate owners incorporations to undertake works on the common parts of their buildings in compliance with statutory notices or orders.	Letter dated 4 September 2003 from the Administration (CB(1) 2411/02- 03(01)) issued on 8 September 2003
	(d) To provide a paper to explain the existing practice or arrangement for recovering costs for demolishing UBWs or advertisement signboards affixed to a building the owners of which could not be identified or located. Please provide the statistics, if any, to show how frequent such a situation was encountered over the past few years.	Information paper on "Cost recovery for removal of unauthorized building works" (CB(1) 2415/02-03(06)) discussed at the meeting on 6 November 2003
	(e) To provide a copy of the Building Maintenance Guidebook, Guide on Erection and Maintenance of Advertising Signs and related pamphlets.	Publications from the Administration (CB(1)2409/02-03) issued on 4 September 2003
9 September 2003	(a) To provide written response to the views and concerns expressed by the organizations.	Information papers on "Response to Submissions" (CB(1) 59/03-04(03) & 719/03-04(03)) discussed at the meeting on 12 December 2003 and 8 January 2004
	(b) To review the proposed increases of maximum fines for selected offences which some	Information paper on "Fines"

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	members and organizations considered to be too high.	(CB(1) 76/03-04(01)) discussed at the meetings on 6 and 11 November 2003
	(c) To explain the present enforcement situation concerning naming of streets and numbering of buildings under section 32(2) of the Buildings Ordinance.	Information paper on "Building Numbers" (CB(1) 59/03-04(02)) discussed at the meeting on 11 November 2003
23 September 2003	(a) To re-assess the minor works control scheme with respect to the following aspects:)
	Need	
	 whether it is necessary to impose control over the carrying out of works which are very minor in nature, such as erection of metal supporting frame for air- conditioning unit and of drying rack. Members are concerned whether such minor works are exempted under section 41(3) of the existing Buildings Ordinance (BO); and 	
	 how the submission of as-built plans and certificate of completion to the Building Authority (BA) after completion of Category III minor works enhances safety of the works. 	Information paper on "Minor Works Control Regime (Part II)" (CB(1) 237/03-04(02)) discussed at the meetings on 11 and
	<u>Feasibility</u>	27 November 2003
	- whether it is feasible to implement the proposed minor works control regime, in particular in respect of Category III minor works as some contractors currently engaged in those works may not be able to provide as-built plans of the works done; and	
	- whether it is practicable and cost-effective on the part of BA to keep and manage a huge amount of as-built plans expected to be submitted for Category III minor	

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	works.	
	<u>Impact</u>	
	 how the minor works control regime would affect existing contractors engaged in minor works; 	
	 how existing contractors engaged in minor works could be consulted on the minor works control regime; 	Information paper on "Minor Works Control Regime (Part II)"
	 whether the provision of top-up courses for contractors who do not have the appropriate academic qualifications for registration as minor works contractors is sufficient to meet the demand for such courses; the number of places in such courses and the amount of course fees contemplated; and 	(CB(1) 237/03-04(02)) discussed at the meetings on 11 and 27 November 2003
	 how members of the public could be informed of the minor works control regime and its implications. 	
	Liability	
	- whether it is an offence for owners who have appointed with or without knowledge unregistered contractors to carry out minor works; and	Information paper on "Minor Works Control Regime (Part II)" (CB(1) 237/03-04(02)) discussed at the meetings on 11 and 27 November 2003
	 whether it is appropriate that conviction of offences in relation to minor works and of offences of a serious nature under the BO attracts the same levels of fines and imprisonment terms. 	Information paper on "Fines" (CB(1) 76/03-04(01)) discussed at the meetings on 6 and 11 November 2003

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	(b) To provide a sample of an as-built plan for erection of supporting frame for air-conditioning unit under Category III minor works.(c) To compile a list of building works which will be regarded as exempted works under the BO.	Information paper on "Minor Works Control Regime (Part II)" (CB(1) 237/03-04(02)) discussed at the meetings on 11 and 27 November 2003
	(d) To give examples of existing laws which provide for a fine of \$1,500,000 and imprisonment for three years for conviction of offences. There has been concern that the three years' imprisonment for the offence of failure to notify BA of contravention of regulations resulting from carrying out buildings works shown in approved plans is too severe.	Information paper on "Fines" (CB(1) 76/03-04(01)) discussed at the meetings on 6 and 11 November 2003
	(e) To advise whether the present drafting of the proposed section 40(2AA) imposes a strict liability.	Information paper on "Minor Works Control Regime (Part II)" (CB(1) 237/03-04(02)) discussed at the meetings on 11 and 27 November 2003
16 October 2003	 (a) To advise if there are any applications for the Building Safety Loan Scheme (BSLS) which have been rejected because of the failure of the applicants to submit supporting documents in respect of the properties in question which are held under joint ownership. An example quoted is the failure of the applicant to produce a copy of the HKID card of the other co-owners. (b) To consider how applicants with negative equity could be assisted in applying for loans exceeding \$250,000 under BSLS as they are required to execute a legal charge registered against the title of a property owned by them or to obtain a letter of guarantee issued by a bank. 	Supplementary information on "Building Safety Loan Scheme and Uncooperative Owners" (CB(1) 237/03-04(03) discussed at the meeting on 6 November 2003
	(c) To advise how the interest rate for BSLS loans on the principle of "no gain, no loss" to Government is arrived at. Please also advise if the resources used in dealing with defaulting cases are included in the calculation.	

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	 (d) Referring to the submission of supporting documents on incomes and bank accounts by applicants under the low income category for the interest-free BSLS loan (page 4 of the application form for BSLS), to consider whether a reference letter from a registered social worker in support of the application could serve the purpose. (e) To provide the number and percentage of BSLS applications received up to July 2003 which are made in response to orders issued by the Building Authority (BA). (f) To confirm whether all the sections referred to in the proposed section 39B(1) of the Buildings Ordinance (BO) (Cap. 123) were related to safety of buildings. Some members are concerned that the offences for contravention of proposed section 39B attract severe penalties. (g) To confirm whether a person aggrieved by an order served on an owners' corporation (OC) may appeal to an Appeal Tribunal appointed under BO. (h) To consider how to resolve genuine difficulties encountered by individual owners who feel aggrieved by a decision made by an OC in response to an order served on the OC. (i) To explain whether BA will take enforcement action when disputes between individual owners and OCs concerning compliance with statutory orders are yet to be settled. (j) To advise who will be liable to offences relating to obstruction of OC if the owner is a company. 	Supplementary information on "Building Safety Loan Scheme and Uncooperative Owners" (CB(1) 237/03-04(03) discussed at the meeting on 6 November 2003
6 November 2003	(a) To provide a sample rates demand note which contains a note that the charging of rates on a structure did not connote its legality.	A sample of rates demand notes provided by the Administration (CB(1) 338/03-04) issued on 14 November 2003

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	(b) To consider the feasibility of introducing mandatory or voluntary arbitration to resolve disputes between owners' corporations (OCs) and individual owners in connection with compliance with statutory orders served under the Buildings Ordinance (Cap. 123).	Information paper on "Relationship between Individual Owners and Owners' Corporations" (CB(1) 407/03-04(03)) discussed on 27 November 2003
	 (c) To consider the feasibility of operating an advisory service counter in the Lands Tribunal (LT) to help resolve disputes between OCs and individual owners in connection with compliance with statutory orders served under BO. (d) To advise how far individual owners could seek redress from LT under the Tenth Schedule to the Building Management Ordinance (Cap. 344) in relation to disputes with OCs concerning compliance with statutory orders served under BO. 	Information paper on "Relationship between Individual Owners and Owners' Corporations" (CB(1) 407/03-04(03)) discussed on 27 November 2003
	(e) To advise whether a reference letter from a registered social worker could be accepted for the purpose of supporting applications for interest-free loans under the Building Safety Loan Scheme from owners who might not fall within the low income category (if the assessment was made in terms of total household income) but whose family members habitually did not contribute to the family expenditure.	Letter dated 25 November 2003 from the Administration (CB(1) 434/03-04) issued on 27 November 2003
	(f) To advise the outcome of the Administration's examination of the feasibility of providing for separate penalties for minor works. A member suggested that a tier penalty system might be considered such as providing for penalties for summary conviction and conviction on indictment.	Information paper on "Fines (Part II)" (CB(1)1054/03-04(02)) discussed at the meeting on 23 February 2004
11 November 2003	(a) To ascertain the reference to which the level of fines had been made when the provisions relating to fines in the Buildings Ordinance (BO) (Cap.123) were enacted.	Information paper on "Fines (Part II)" (CB(1)1054/03-04(02))
	(b) To review whether it was appropriate to link the level of fines with the Building Cost Index. It had been suggested that reference might be made to the Consumer Price Index.	discussed at the meeting on 23 February 2004

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	 (c) To review the proposal to increase the maximum fine from \$250,000 to \$1.5 million under section 40(2AA) of BO for failure to notify the Building Authority of any contravention of building regulations resulting from the carrying out of works shown on approved plans. (d) To review whether it was appropriate for the proposed offence under section 40(2AA) of BO to be a strict liability offence. 	Information paper on "Fines (Part II)" (CB(1)1054/03-04(02)) discussed at the meeting on 23 February 2004
	(e) To review comprehensively the present situation about display of street names and building numbers and report the outcome of the review to the Panel on Planning, Lands and Works. Members were concerned about inadequate display of street names and building numbers in the territory. A member was also concerned that normally a building number was only shown at the entrance of a large shopping arcade but the shops which fronted or abutted the street concerned were numberless.	Information paper on "Display of street names and building numbers" (CB(1)1193/03-04(01)) issued on 3 March 2004
	 (f) To answer at the following meeting the following questions raised by members: (i) would the proposed minor works control scheme backfire as contractors and building owners might be reluctant or unable to comply with the proposed provisions, defeating the purpose for introducing the scheme; (ii) whether works which altered fire services installations without changing the structural elements of a building would be regarded as exempted works under section 41(3AA)(a) of BO; (iii) whether the contractor and/or the owner concerned would be held liable if the as-built plan for a supporting frame for an air-conditioning unit was found to be incorrect; (iv) whether the contractor for installing a new air-conditioning unit using an 	Information paper on "Minor Works Control Regime (Part II)" (CB(1) 237/03-04(02)) discussed at the meeting on 27 November 2003 and verbal clarification
	(iv) whether the contractor for installing a new air-conditioning unit using an existing supporting frame and/or the owner concerned would be held liable if the existing supporting frame was used and it fell off during installation of the	

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	unit and caused injury to a person; and (v) were there any mechanism and measures to deal with existing supporting frames and whether the owners concerned would be held criminally liable under BO if these structures fell off causing injury to a person.	Information paper on "Minor Works Control Regime (Part II)" (CB(1) 237/03-04(02)) discussed at the meeting on 27 November 2003 and verbal clarification
27 November 2003	(a) To advise whether applicants, failing in examination of a recognized top-up course for minor works contractors, had to pay an examination fee again if they re-sit the examination and if so, the fee level.(b) To review the proposed minor works control regime to address members' concern that the proposed regime was nuisance-causing but ineffective to enhance public safety. To address some members' concern that it was unclear what constituted exempted works.	Information paper on "Minor Works Control Scheme (Part III) and Exempted Works" (CB(1)719/03-04(02)) discussed on 29 January 2004
	 (c) To provide legal advice on nature of disputes between owners' corporations and individual owners in relation to statutory orders issued by the Building Authority (BA) which could be heard by the Lands Tribunal under the Tenth Schedule to the Building Management Ordinance (Cap. 344). (d) To consider the proposal of extending the scope of the Appeal Tribunal (Buildings) to hear and determine cases of disputes between individual owners and owners' corporations relating to the manner of complying with a statutory order issued by BA. Some members considered that this proposal might resolve the complication arising from the anomaly of having two bodies, namely, the Appeal Tribunal (Buildings) and the Lands Tribunal, handling matters relating to compliance with a statutory order issued by BA, and the Appeal Tribunal (Buildings) could be a better venue in view of the technical background of its members. 	Outstanding

Date of meeting	List of follow-up actions	Administration's response
12 December 2003	 (a) To clarify the circumstances which would fall within Regulation 41D(3)(a) of the Building (Planning) Regulations concerning exemption from provision of emergency vehicular access (EVA). An example quoted by a member was inability of a person to purchase the land surrounding the building in question or obtain the approval of the relevant landowner for the provision of EVA which would encroach on his land. (b) To advise the types of foundation works which required the appointment of a geotechnical engineer. A member was concerned whether the carrying out of foundation works for the construction of high-rise superstructures required the appointment of a geotechnical engineer. 	Letter dated 28 January 2004 from the Administration (CB(1)873/03-04(02) issued on 28 January 2004
	(c) To explain the impact of the Bill, if any, on building works carried out in the New Territories (NT). Some members had raised queries about application of the requirement of mandatory provision of EVA and the appointment of Registered Geotechnical Engineers to building works involving small houses and low-density residential complex in the NT.	
	(d) To report to the relevant Panels of LegCo about the outcome of consultation with the trade concerning the qualification and experience for registration as Class A and Class B minor works contractors.	Outstanding
	(e) To ascertain whether under the Tenth Schedule to the Building Management Ordinance (Cap. 344) the Lands Tribunal could handle disputes between individual owners and owners' corporations concerning the award of damages and compensation in connection with the compliance with a statutory order issued by the Building Authority.	
	(f) To provide a paper to explain the issue of warning notice on unauthorized building works and the registration of warning notice in the Land Registry.	Information paper on "Warning Notice" (CB(1) 702/03-04(02)) discussed at the meeting on 12 February 2004
	(g) To review the proposal for charging the issue of a copy of document kept under the Buildings Ordinance (Cap. 123) at \$38 per copy.	Outstanding

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8 January 2004	 Item 54 in CB(1)719/03-04(01) (a) To report to the Bills Committee before completion of scrutiny of the Bill how water seepage cases will be handled in future. Members are gravely concerned about the ineffective ways in which water seepage cases are handled by different Government departments at present. They request the Administration to formulate a comprehensive plan with proposed timing to deal with water seepage problems at root. Members make the following proposals: (i) a Government department, preferably Buildings Department, should be designated to deal with water seepage; (ii) an adjudicating body such as tribunal may need to be established to hear and determine water seepage disputes; and (iii) the cost incurred in handling water seepage may be shared by the relevant parties. Item 59 in CB(1)719/03-04(01) 	Outstanding
	 (b) To discuss with the Law Society of Hong Kong how clause 62 (new Regulation 25 of Building (Administration) Regulations) will affect conveyancing, if any. Some members' concerns in this respect are as follows: (i) whether an architect's certificate will be required in conveyancing to certify that minor works in the property concerned are completed in accordance with the Buildings Ordinance (BO); and (ii) how minor works which were completed not in accordance with the BO before the enactment of the relevant provision on minor works should be handled in so far as conveyancing is concerned. 	Letter dated 16 February 2004 from the Administration (CB(1)1054/03-04(03)) discussed at the meeting on 23 February 2004

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	The Administration is requested to report the outcome of discussion to the Bills Committee. (c) To clarify whether the BO will apply to public housing blocks which belong to the Housing Authority but were partly sold to members of the public.	Letter dated 16 February 2004 from the Administration (CB(1)1054/03-04(03)) discussed at the meeting on 23 February 2004
29 January 2004	Paragraph 8(a) in CB(1)719/03-04(02) (a) To consider the feasibility of devising a simplified scheme concerning the submission of record plans for Category III minor works. Members suggested that for the erection of supporting frames for air-conditioning units or drying racks, different standardized options might be prescribed in a standardized form for easy completion by minor works contractors. Where the minor works fell outside the prescribed options, the minor works contractors concerned might be required to submit record photographs and record plans or written description of the completed minor works. Paragraph 8(b) in CB(1)719/03-04(02) (b) To consider providing flexibility in respect of the required attendance rate for top-up courses and the need to pass the examinations for such courses for registration as Class B minor works contractors. Members suggested that different options be provided to cater for the circumstances of different contractors. These options might include passing the required examination without the need to attend the top-up courses, attaining a prescribed attendance rate for the top-up courses and passing the required examination, and attaining a higher prescribed attendance rate for the top-up courses without the need to sit for the required examination. Paragraph 8(c) in CB(1)719/03-04(02) (c) To advise the qualifications for provisional registration as minor works contractors after consultation with the trade including self-employed small minor works contractors. Members were concerned about the documentary evidence required to	Letter dated 20 February 2004 (CB(1)1054/03-04(04)) discussed at the meeting on 23 February 2004

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	be produced to substantiate claim of experience in minor works. They were worried that self-employed minor works contractors might not have business registration or receipts to prove that they had been engaged in minor works. (d) To advise the channel of appeal concerning applications for provisional registration as minor works contractors. Members called for the provision of simple appeal procedures without the need to resort to legal proceedings.	Letter dated 20 February 2004 (CB(1)1054/03-04(04)) discussed at the meeting on 23 February 2004
	Paragraph 10 in CB(1)719/03-04(02)	
	(e) To clarify whether notice published in the Gazette concerning minor works and specified exempted works under the proposed section 8A(2A) and 41(3AA)(b) respectively was subsidiary legislation. Members were concerned that publishing the notice in the Gazette was not an effective or user-friendly means to inform members of the public or interested persons about minor works and specified exempted works. Some members suggested setting out the details of these works in a schedule to the principal ordinance.	Outstanding
	(f) To review the drafting of the criteria for exempted works under the proposed section 41(3AA) to avoid ambiguity. Some members were concerned that the existing subsection (3AA)(a)(i) and (iii) were unclear. They pointed out that (i) referred to the location of carrying out of works and not of the works themselves. Under the present drafting of (iii), the layman would not be aware that aluminum windows in external wall had to bear wind load and thus were not regarded as exempted works.	Letter dated 20 February 2004 (CB(1)1054/03-04(04)) discussed at the meeting on 23 February 2004
12 February 2004	CB(1)719/03-04(03) (a) To provide a list of bodies referred to in paragraph 3(e) for nomination of persons for selection by the Building Authority (BA) to sit on Contractors Registration Committee (CRC).	Outstanding
	(b) To advise whether any checking and assessment would be done before an application	J

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	for renewal of registration as a Registered Contractor (RC) is approved. Whether total subletting of construction projects is one of the factors taken into account by BA in considering renewal applications? In this respect, please explain whether total subletting of private construction projects is regulated by BA and if so, how.	
	(c) To provide the number of applications for renewal of registration as a RC which were rejected because of poor track records of the applicants over the past three years, if any.	
	(d) To review the composition of CRC to ensure balance of representation. Some members are concerned that an unbalanced CRC may unjustifiably exclude qualified applicants from registration as RCs in order to protect the interest of existing RCs. Please provide relevant figures, if any.	Outstanding
	<u>CB(1)702/03-04 (02)</u>	
	(e) To devise a practical regime to deal with existing unauthorized minor building works upon enactment of the proposed provisions concerning warning notice. Whether warning notices will be issued against existing unauthorized minor building works such as supporting frames for air-conditioning units and drying racks. Some members are concerned about the impact of registration in the Land Registry of warning notices against existing unauthorized minor building works on conveyancing.	
23 February 2004	<u>CB(1)1054/03-04(02)</u>	
	(a) To clarify the category of persons who may be held liable for the various offences concerning unauthorized building works, substandard building works, construction danger and minor works. Whether the person knows or does not know is a factor in determining liability for the offences.	Outstanding
	(b) To review the penalty scheme for minor works. In this respect, some members have expressed the following views:	

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	 (i) whether it is feasible to provide a separate penalty scheme for different categories of minor works. Members consider that the revised proposals of penalty levels for minor works remain too high, in particular that for not appointing a registered contractor for carrying out household minor works, like installation of supporting frames for air-conditioners and drying racks; 	Outstanding
	(ii) how to deal with the existing household minor works even if a separate penalty scheme was proposed for Category III minor works;	
	(iii) whether it is desirable and practical from the policy perspective not to hold owners and owners corporations liable for offences in relation to appointment of Class B registered minor works contractors; and	
	(iv) to consult small contractors on the revised proposals on fines.	
	(c) To clarify whether repair works or alteration works to small houses and squatter houses are subject to the Buildings Ordinance and the proposed minor works control regime. Please address this query in the paper to be provided concerning the impact of the Bill on building works carried out in the New Territories.	
	<u>CB(1)1054/03-04(03)</u>	
	(d) To advise how far the building plans for buildings under the Home Ownership Scheme and Tenants Purchase Scheme are complete and could be made available for inspection upon request.	
	<u>CB(1) 1054/03-04(04)</u>	
	(e) To provide the outline or description of the top-up courses for registration as Class B minor works contractors.	