

Bills Committee on Buildings Legislation (Amendment) Bill 2011

**Administration's Response to Follow-up Issues
of the Meeting held on 12 January 2012**

This note sets out the Administration's response to the follow-up issues arising from the meeting of the Bills Committee on 12 January 2012.

Failure of Buildings Department to enter premises

2. The Buildings Department (BD) does not keep statistics on the number of cases of BD staff failing to gain entry into premises for the purpose of the Buildings Ordinance (BO). In general, the reasons for failing to gain entry include, for example, the premises are invariably vacant; the occupants are absent at the time of entry; or entry is expressly refused by the building management or the occupants. As an illustration of the difficulties of access by BD staff, in the Large Scale Operation against irregularities of building works associated with sub-divided flats conducted in 2011, in some 116 target buildings inspected, the BD could only gain access to 543 flats with sub-divided units out of 800 such flats. In other words, access could not be gained to about one-third of the sub-divided flats to conduct inspection.

Section 22 of the BO and Warrants for entry into premises

3. Since 2006, there have been a total of five cases in which BD staff had invoked the power under the existing section 22 of the BO to break into premises for carrying out inspections and necessary works.

Right of owner or occupier to respond to application for warrant

4. Under the Buildings Legislation (Amendment) Bill 2011 (the Bill), we propose to make provision for the Building Authority (BA) to make application to the Magistrate's Court for warrants under the BO to facilitate BA's entry into individual premises for inspection and enforcement action. In general, applications for Court warrants are ex parte. In other words, a magistrate may, in the absence of the owner or occupier concerned, issue a warrant authorizing BA's entry into the premises for specified purposes.

Nonetheless, under our proposal, notice of intention to apply for a warrant has to be served on the owner or occupier before the BA may make an application to the Court. After such notice has been served, the magistrate may, upon application, allow an affected owner or occupier to make representations at the hearing when the magistrate determines the application for warrant.

Grounds for application of warrant

5. At the last meeting of the Bills Committee on 12 January 2012, some Members raised concern about the grounds on which the BD could apply to the Court for a warrant to enter private premises, and suggested that such grounds be confined strictly to circumstances related to building safety. We set out below our consideration.

6. The primary purpose of the warrant proposal is to enable the BD to respond to complaints and take enforcement actions against building-related problems more efficiently and effectively to preserve the integrity of the building control regime. The proposal aims to address the current problem faced by the BD that it has practical difficulties in exercising the existing power under section 22 of the BO to enter individual premises and, where necessary, break into such premises in the presence of a police officer, for specified purposes given the public's general concern over the disturbance it may cause and the interference with private property rights. At present, the BD will only resort to its power of forced entry in extreme cases where there is a clear sign of imminent danger or serious nuisance. This certainly undermines the effectiveness of our enforcement regime.

7. We must emphasise that the proposal to provide for application to the Court for a warrant is **NOT** an expansion of the existing power of the BA. Under the proposed provisions in the Bill, the BA could enter or break into premises without a warrant only under emergency situations. Otherwise, unless entry is permitted by the owners or occupants, the BA would have to apply to the Court for a warrant to enter the premises for inspection or carrying out the necessary works.

8. Apart from introducing the requirement for application to the Court for the warrant whereby the Court would act as a gatekeeper for ascertaining whether the relevant statutory requirements have been complied with, we have

also specified more clearly the grounds on which a warrant could be granted. Under the existing section 22, the BA could exercise its power to enter or break into the premises to, inter alia, “ascertain whether the provisions of this (Building) Ordinance or any notice order or regulation hereunder are being complied with”. Under our proposal in the Bill, an application for warrant for entry into premises could only be made when there is ground of reasonable suspicion of such circumstances as stipulated in the new section 22(1B)(a)¹ of the BO, and that is also subject to other requirements being met at the same time. The “reasonable suspicion” requirement is imposed on other grounds on which a warrant could be applied. This has considerably raised the threshold of entry under non-emergency situations. The BA would have to satisfy the Court that it has ground of reasonable suspicion having regard to the circumstances of the case.

9. In exercising control on existing buildings, signs of hazards may not be always apparent from the outside of the premises. In many circumstances, it is necessary for BA’s staff to enter into premises for ascertaining whether there are unauthorized building works (UBWs) carried out in contravention of the BO compromising building standards or even creating public safety hazards which could not be verified by external inspections only. Such circumstances include alteration of internal structure or drainage system, change in use of premises, blockage of means of escape, etc. While such contraventions may not pose immediate safety concern, the entry into premises for a thorough inspection may still be essential in some cases for ascertaining the contraventions before the BA could consider taking appropriate follow-up enforcement actions to rectify the contraventions.

10. In fact, under the revised enforcement policy against UBWs, which was formulated against the backdrop of general community support for a tougher stance in enforcing against UBWs and which has come into operation since April 2011, the coverage of actionable UBWs has been extended to include UBWs on rooftops and podiums as well as in yards and lanes of

¹ Under the new section 22(1B)(a), a magistrate may issue a warrant if he is satisfied that there are reasonable grounds for suspecting that -

- (i) building works have been or are being carried out to the premises or land in contravention of any provision of this Ordinance;
- (ii) the use of the premises or land has contravened any provision of this Ordinance;
- (iii) the premises have been, or the land has been, rendered dangerous, or the premises are, or the land is, liable to become dangerous;
- (iv) the drains or sewers of the premises or land are in a defective or insanitary condition; or
- (v) a notice or order served under this Ordinance has not been complied with.

buildings, irrespective of their risk to public safety or whether they are newly constructed. In this connection, to confine the ground on which the BD could apply for warrant to circumstances related to immediate building safety only would inadvertently affect the power of BD to enforce the BO.

11. Having regard to the above, we consider that the present proposal in the Bill would help equip the BA with the necessary power to take enforcement action in accordance with its enforcement policy, and at the same time introduce safeguards to ensure that such power would be used only when there is genuine need.

BD's follow-up actions on the Ma Tau Wai fire incident and Larch Street case

Ma Tau Wai fire incident

12. Immediately after the fatal fire incident at Mau Tau Wai Road on 15 June 2011, BD staff conducted thorough inspections of the building concerned. According to the approved plans of the 8-storey composite building, there were two flats for domestic use on each floor from the 1st to 7th floors. The inspection revealed that 12 out of the 14 flats had been sub-divided into individual units. As a result, the alternative exit route from most of the sub-divided units to the rear staircase had been blocked by partition walls. On 30 June 2011, a total of 12 removal orders were issued under section 24 of the BO requiring the concerned owners to remove the UBWs or rectify the irregularities within 60 days. The 60-day compliance period, which is the norm for removal orders issued by the BD, is considered reasonable for the owners to arrange contractors to carry out the rectification works.

13. Inspections by BD staff on 30 August and 31 August 2011 revealed that out of the 12 orders issued, three had been complied with while the remaining nine had not. Regarding these non-compliant cases, the BD on 31 August 2011 served notices of intention to apply for closure orders on 8 September 2011 under section 27 of the BO. The purpose of closure was to facilitate removal works by Government contractors without causing safety hazard to the occupants or members of the public. On the other hand, the BD has initiated prosecution action against the owners in default. The owners were convicted and fined by the Court.

14. On 7 September 2011, the BD staff conducted a site inspection and confirmed that the owners concerned had, in compliance with the removal orders, carried out the required works. As such, the application for closure order from the Court was cancelled. A further inspection on 21 September 2011 confirmed that all the required works had been completed and the removal orders were complied with on 23 September 2011.

Larch Street case

15. Since 2009, the BD has been receiving numerous complaints from the public and referrals from other Government departments against irregularities on the 4th, 5th and Roof Floors of an existing building situated at Nos 78 and 78A, Larch Street, Tai Kok Tsui. In response to the complaints, the BD had conducted inspection of the UBWs from the outside of the building and taken prompt enforcement action against these external UBWs. In April 2009, the BD served removal orders requiring the demolition of the UBWs at the external wall of the 4th floor and on the Roof Floor of the building. In addition, pursuant to the revised enforcement policy against UBWs which has commenced since April 2011, the BD issued removal orders in April 2011 for demolition of the flat roof structures on the 4th floor.

16. At the same time, since 2009, the BD has been making extensive efforts to conduct inspection of the interior of the buildings for investigation of change in use and sub-divided units. In the past two years, BD staff and its outsourced consultants had made a total of 15 attempts of inspection including one inspection at the night time, but entry to the concerned premises was unsuccessful because of the uncooperative stance of the occupants and the doors were very often locked. After repeated unsuccessful attempts, in mid-2011, the BD planned a break-in operation for 22 August 2011. Before the scheduled break-in date, the head tenant contacted the BD and arranged it for inspection of the interior of the 4th floor and Roof Floor of the building on 12 August 2011. Subsequently, with the assistance of the head tenant, the BD was allowed access to the interior of the 5th Floor for inspection on 23 August 2011. The break-in operation was therefore not necessary and called-off. The inspections revealed that the industrial premises and the unauthorized flat roof structures on the 4th Floor had been sub-divided into about 60 cubicles for domestic use. In September 2011, the BD served removal orders against the UBWs and discontinuation orders against the

change in use to domestic use under sections 24 and 25 of the BO respectively.

17. To ensure the safety of the occupants and the public, the BD had decided to engage Government contractors to demolish the UBWs in the owners' default and thereafter recover the cost of such works together with the supervision charge from the owners. In order for the Government contractors to carry out the necessary demolition works without danger to the occupants or the public, the BD will apply for closure orders on 7 March 2012 from the Court to vacate the premises for the works. Notices of intention to apply for closure orders were issued to the owners and occupants on 29 December 2011. The BD has scheduled the closure order application for early March 2012 such that occupants now living in the subject premises will have more time for relocation.

Special operations to inspect buildings after major incidents

18. After any major incidents involving building safety issues, the paramount task for the BD is to deal with the situation including all necessary emergency actions to ensure the safety of the buildings and personnel involved, followed by a thorough investigation into the causes of the incidents. Depending on the particular circumstances, the BD may also carry out special operations to ascertain the safety of buildings under similar circumstances as the subject building in the incidents.

19. One example of such special operations is the territory-wide inspection of all buildings aged 50 years or above in Hong Kong that was carried out after the building collapse incident at No. 45J Ma Tau Wai Road on 29 January 2010. Given that the purpose of the operation was to ascertain the structural safety of these buildings, inspections mainly focused on the common areas as well as the external walls and the areas outside the buildings. Inspections were conducted by survey on the external elevations and the accessible common areas of the building. The external/internal finishes, structural members (such as slabs, beams, columns and loadbearing walls) and non-structural members (such as partition walls, parapet walls, window frames/glazing and window sills, etc.) were inspected to identify details of any defects and damage, evidence of material deterioration and excessive deformations in order to review the latest structural condition of the buildings.

A total of 4,011 buildings were inspected. The buildings were grouped into four categories as follows according to their conditions identified during inspection –

Category I: Buildings requiring emergency remedial works (2 buildings)

Category II: Buildings with obvious defects found (1,030 buildings)

Category III: Buildings with minor defects found (1,270 buildings)

Category IV: Buildings with no apparent defect (1,709 buildings)

20. The operation identified two buildings in serious dilapidation condition which warranted immediate remedial works by Government contractors. Another 1,030 buildings were found to exhibit different extents of defects which warrant the issue of repair/investigation orders. The BD has been taking follow-up actions on the orders issued, including arranging Government contractors to carry out the works for orders in default. Some of the buildings have also been included as Category II target buildings under the Operation Building Bright programme.

21. Another example is the special operation launched subsequent to the Fa Yuen Street fire incident on 30 November 2011. The BD has since April 2011 commenced a Large Scale Operation against irregularities of building works associated with sub-divided units, and has set a target of inspecting 150 buildings with sub-divided units per year. Soon after the Fa Yuen Street fire incident, the BD has adjusted its enforcement strategy against sub-divided units by taking into account the fire risk that might be brought about by adjacent hawker stalls when choosing the target buildings. Some 340 buildings, which are old double-staircase buildings situated in the vicinity of hawker stalls, have been selected for inspection. The BD will endeavour to complete the inspection of this category of buildings by mid-2012. The focus of the inspection is on the condition of the common staircases to ascertain if the escape routes to the exit staircases have been blocked. Particular attention is paid to check whether the alternative exit route to the rear staircase from a flat has been blocked due to sub-division of the flat, hence leaving some of the occupants with only one of the staircases to escape instead of both during fire. The BD will also maintain close liaison with the Fire Services Department in case floating obstruction in the fire escape route is identified during the course of inspection. The BD will issue removal orders to rectify the situation once UBWs obstructing the means of escape or affecting the fire

safety of the buildings or other irregularities of building works associated with the sub-divided flats are identified.

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