

**Bills Committee on Buildings Legislation (Amendment) Bill 2011**

**Administration's Response to Follow-up Issues  
of the Meeting held on 13 February 2012**

This note sets out the Administration's response to the follow-up issues arising from the meeting of the Bills Committee on 13 February 2012.

**Section 22 of the Buildings Ordinance and Warrants for entry into premises**

2. As mentioned in our response to the Bills Committee on the follow-up issues arising from the meeting on 12 January 2012 (Paper no. CB(2)1033/11-12(01)), since 2006, there have been a total of five cases in which staff of the Buildings Department (BD) had invoked the power under the existing section 22 of the Buildings Ordinance (BO) to break into premises, in the presence of police officers, for carrying out inspections and necessary works. The building safety issues involved in the five cases are as follows. The first case involved a choked manhole in the light well of a vacant premise resulting in foul water overflowing out onto the street causing serious health hazard to the public. The second case involved the falling of broken window glazing from an unauthorised roof top structure, which posed danger to the public. The third case involved building works associated with subdivision of a flat causing structural distress to the floor below. For the remaining two cases, both involved irregularities in building works associated with subdivision of flats where the alternative exit route from the subdivided units to the rear exit staircase of the building was blocked. In all these cases, the BD staff failed to gain entry into the premises because the owners could not be located or entry was expressly refused by the occupants.

3. Under Clause 3 of the Buildings Legislation (Amendment) Bill 2011 (the Bill), it is proposed that the Building Authority (BA) could apply to the Magistrate's Court for warrants under the BO to facilitate BA's entry into individual premises for inspection and enforcement action. 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.

4. The concept of emergency is well understood within the industry of building professionals. Similar reference is found in section 19 of the BO which provides that in case of emergency, building works or street works may be commenced without obtaining the BA's prior consent. In general, cases of emergency are circumstances where imminent danger or serious environmental nuisance is envisaged. These may include outbreak of fire in a building after which BD's officers need to enter premises to assess the overall structural condition of the building; dilapidation of projections/windows of premises involving loose eaves/air-conditioner supporting frames, dislodged window frames, defective concrete or external rendering, etc. with danger of falling from height; and defective/choked drainage causing serious environmental nuisance. Building inspection by the BD is generally carried out by professional grade officers or senior ranking technical grade officers who are competent to assess whether a case is an emergency situation warranting immediate follow-up action.

5. The circumstances under which a magistrate may issue a warrant authorizing BA's entry into premises are set out in the new section 22(1B). At the meeting of the Bills Committee on 13 February 2012, some members raised concern on the threshold of application by BD for a warrant to enter individual premises. In our last response to the Bills Committee (Paper no. CB(2)1033/11-12(01)), we have explained in detail our considerations for the grounds on which the BA could apply to the Court for a warrant to enter private premises, and the reasons why it is inappropriate to confine such grounds strictly to circumstances related to building safety as this would undermine the BA's ability to ascertain whether there are unauthorized building works (UBWs) carried out in contravention of the BO which could not be verified by external inspections only.

6. Under our proposal, a magistrate may issue a warrant authorizing the BA or an authorized officer to enter premises for specified purposes. Under the new section 22(4), "authorized officer" means a public officer authorized in writing by the BA for any of such specified purposes. In practice, "authorized officers" are BD officers who are professional grade officers of building surveyor or structural engineer ranks and above; and technical grade

officers of survey officer (building) or technical officer (structural) ranks and above, building safety officer rank, building safety assistant rank and building surveying graduate rank. These officers are also now involved in different types of enforcement action including those that require entry into private premises. It should be noted that consultants and contractors engaged by BD are not considered as authorized officers for the purpose of entry into premises under the BO.

### Surcharge on defaulted works

7. Under the Bill, we propose that a surcharge of not exceeding 20% of the cost incurred by BD be imposed on an owner in default of any BD's statutory orders or notices. At the last meeting of the Bills Committee on 13 February 2012, some depositions expressed that in case of buildings without owners' corporation, the carrying out of works may be frustrated by some uncooperative owners who refuse to comply with BD's orders or notices. They considered that the surcharge on defaulted works should be imposed only on those uncooperative owners but not those who are willing to carry out works in compliance of BD's orders or notices. The legislative intent of the imposition of a surcharge on defaulted works is not a penalty on the uncooperative owners but aims to encourage owners to undertake the works themselves in a timely manner instead of relying on the BD to carry out the works for them. Penalty on the uncooperative owners may be imposed by the Court upon their conviction of the relevant offences. It should be noted that in causing the necessary works to be carried out in default of the owners, apart from the cost of works themselves and the associated supervision charge, the BD has to incur effort in the arrangement for the defaulted works including the tendering for outsourced consultants and contractors as well as the management thereof. The cost incurred in such arrangement may have to be covered by the surcharge. Nevertheless, under our proposal, the BD will have a discretionary power to determine the amount of surcharge which is capped at 20% having regard to the circumstances of each case. Individual owners who have proven practical difficulties in arranging the required works may submit their justifications to the BD, who will consider the amount of surcharge to be imposed on a case-by-case basis.

8. Some depositions have expressed in their submissions that certain owners might not be able to comply with BD's orders to carry out the works

because of financial difficulties, and suggested that a surcharge should not be imposed in such cases. BD would take into account genuine financial difficulties of the owners in exercising the discretion in determining the amount of surcharge. Nevertheless, in assessing the financial conditions of the owners concerned, BD will also take into account the fact that there are at present various schemes offering financial assistance to owners for carrying out building maintenance/repair works required by BD's statutory orders, including the Comprehensive Building Safety Improvement Loan Scheme, the Building Maintenance Grant Scheme for Elderly Owners and the Integrated Building Maintenance Assistance Scheme.

### Signboard Control System

9. We propose to introduce a statutory signboard control system, similar to the one for prescribed building works at present (i.e. unauthorised small canopies, drying racks and supporting frames for air-conditioners) under the Building (Minor Works) Regulation (Cap.123 sub. leg. N) (B(MW)R), under which the continued use of certain existing unauthorised signboards (e.g. those that are within stipulated dimensional requirements, or not blocking operation of emergency vehicles, etc.) will be allowed after safety checks and certification by registered building professionals or registered contractors. Under the proposed system, the safety checking and certification have to be conducted once every five years. Unauthorised signboards not joining the scheme will be subject to the BD's enforcement action. The detailed technical requirements of signboards under the signboard control system will be set out in an amendment regulation, which will be tabled at LegCo upon the passage of the Bill.

10. At the meeting of the Bills Committee on 13 February 2012, some deputations considered that the period of five years for safety checking under the signboard control system might be too long. The proposed interval of five years aims to strike a balance between the need to tackle the building safety problem arising from the existing unauthorised signboards and to avoid bringing undue inconvenience to business operators. In between the five-year interval, the signboard owner should be responsible for proper maintenance of the signboard. Where an existing signboard is rendered dangerous because of a change in circumstances or lack of proper maintenance, the BD may take prompt enforcement action under section

105(1) of the Public Health and Municipal Services Ordinance (Cap. 132) to require the signboard owner to remove it or do any such work to render it safe for protecting public safety. It should be noted that under the Mandatory Building Inspection Scheme (MBIS), the inspection cycle of a building, including the common parts, external walls, projections as well as signboards, is 10 years. The requirement of safety checking on unauthorised signboard every five years under the signboard control system is considered reasonable.

11. We note the suggestion of some deputations for the BD to collect a deposit from the signboard owner under the signboard control system, so that the BD may make use of the deposit to cover the cost of demolition of the signboard if it subsequently becomes abandoned. As we explained at the last meeting, the primary purpose of the signboard control system is to ensure the safety of existing unauthorised signboards. We are mindful that collecting deposits from signboard owners may inadvertently discourage them from joining the signboard control system. Besides, there would also be additional administrative costs in collecting and managing the deposits. To facilitate future enforcement against abandoned signboards and recovery of cost for removal and other necessary action related to such signboards, the BD will require signboard owners to provide their personal particulars in the specified form under the signboard control system.

#### Registered Inspectors to Comprehensively Report Exterior Unauthorised Building Works under MBIS

12. At the last meeting of the Bills Committee, some deputations sought clarifications on the duty of registered inspectors (RIs) in relation to the scope of identification of UBWs under the MBIS. Under the Buildings (Amendment) Ordinance 2011, an RI appointed to carry out a prescribed inspection must notify the BA of any building works in the common parts or the external walls of the building, identified during the course of the prescribed inspection, that have been or are being carried out in contravention of any provision of the BO. To dovetail with the enforcement policy against UBWs which has come into operation since April 2011, we propose under the Bill to extend the scope of identification of UBWs to include those on the exterior of the building, including roof, podium, yard, slope and street. As the RIs are only required to report the UBWs identified during the course of prescribed inspection and the coverage of such inspection does not include

any private premises, the RIs are not expected to enter individual owner's premises for inspection of UBWs. More detailed guidelines and requirements will be laid down in the Code of Practice for MBIS and the Mandatory Window Inspection Scheme which is now under preparation.

Other issues of concern raised by deputations

13. Deputations who attended the last meeting or in their submissions also gave valuable comments on various other issues that are not directly related to the legislative proposals in the Bill. We will provide a consolidated response to these issues separately in due course.

**Development Bureau  
Buildings Department  
February 2012**