

For information

**Legislative Council
Subcommittee on Issues Relating to Policy on Industrial Buildings**

**Enforcement Actions against Non-industrial Uses in Industrial Buildings
by the Buildings Department**

PURPOSE

This paper gives an overview on the prevailing enforcement policy and relevant actions against non-industrial uses in industrial buildings (IBs) carried out by the Buildings Department (BD).

BACKGROUND

2. BD regulates the planning, design and construction of buildings and associated works on private land with the powers conferred by the Buildings Ordinance (Cap. 123) (BO) to ensure their compliance with safety and health standards. In this connection, the BO prescribes building design and construction standards in various aspects including structural, fire safety and sanitation.

3. BD has adopted a “risk-based” approach in determining the priority of enforcement action against cases of change in use of buildings. If a building is not suitable by reason of its construction for its present or intended use, BD may issue an order under section 25(2) of the BO to prohibit such use or require the owner or occupier to discontinue such use of the building. Depending on the circumstances, BD may also require the owner to render the building safe under section 26(1) of the BO. If actionable unauthorised building works (UBWs) are identified at the same time, BD may invoke section 24(1) of the BO to order the owner to remove the UBWs.

4. If a statutory order has not been complied with, BD may instigate prosecution against the owner to ensure compliance with the order as soon as possible. Section 40 of the BO provides that owners who fail to comply with orders issued under section 25(2) or section 26(1) of the BO shall be liable on conviction to a maximum fine of \$50,000 and to imprisonment for one year, and to a further fine of \$5,000 for each day during which the non-

compliance has continued. Owners who fail to comply with orders issued under section 24(1) of the BO shall be liable on conviction to a maximum fine of \$200,000 and to imprisonment for one year, and to a further fine of \$20,000 for each day during which the non-compliance has continued.

5. In addition, depending on the actual circumstances, such as whether the premises are in imminent danger, BD will consider applying to the court for a closure order to close down the premises and arranging government contractors to carry out necessary removal and rectification works. The costs of the works, together with supervision and surcharges, will be recovered from the owners afterwards.

6. BD has all along taken enforcement actions against cases of non-industrial uses in IBs in accordance with the above policy under the BO.

ENFORCEMENT ACTION AGAINST ILLEGAL DOMESTIC USE IN IBs

7. IBs are not designed for domestic use and units in IBs may be used for industrial activities or storage of dangerous and/or inflammable goods. Even if all the other units are vacant or not used for industrial activities or storage of dangerous and inflammable goods at the time the occupiers move in, they can still be used for industrial use which is incompatible with domestic use, or used for storing dangerous and inflammable goods at any time. As such, illegal use of IB units as domestic premises will pose a serious safety risk to occupiers. Moreover, if these illegal domestic premises have undergone unauthorised sub-division, it may hinder timely evacuation of the occupiers in case of accident. To ensure public safety, the Government has to take stringent enforcement action against illegal domestic premises in IBs.

8. In light of the potential risk of illegal domestic use in IBs, BD has stepped up its enforcement actions against such use through large-scale operations (LSOs) since 2012. To enhance the effectiveness of inspection and enforcement actions, IBs which are more likely to be used as illegal domestic premises have been selected as target buildings, covering IBs with public reports or referrals by other government departments and old IBs in multiple ownership. If illegal domestic premises are identified, BD will issue statutory orders requiring the cessation of domestic use of the premises and rectification of dangerous situations. If actionable UBWs are identified, BD will at the same time issue orders requiring the owners to remove the UBWs.

9. To assist owners and occupiers to comply with the requirements of the orders as soon as possible, BD will assess the actual circumstances of each case when taking enforcement action and liaise closely with relevant departments, including the Housing Department (HD), Social Welfare Department (SWD) and Home Affairs Department (HAD). The in-house social services teams (SST) of BD will provide social welfare assistance and counselling services for owners and occupiers affected by BD's enforcement actions depending on their needs, and facilitate their communications with BD. The SST will visit the affected occupiers and assist them in applying for the "Relocation Allowance for Residents of Illegal Domestic Premises in Industrial Buildings Who Have to Move out as a Result of the Buildings Department's Enforcement Action" under the Community Care Fund. The SST will also provide appropriate assistance and counselling as well as making referral to relevant departments for follow-up, including HD, SWD and HAD, depending on the circumstances of the occupiers to render suitable support and assistance.

10. As at 31 March 2020, under the LSOs against illegal domestic premises in IBs, BD inspected 179 target buildings and identified a total of 227 illegal domestic premises. A total of 473 statutory orders were issued to the owners under sections 24(1), 25(2) and 26(1) of the BO requiring the removal of UBWs, cessation of illegal domestic use and rectification of dangerous situations; 401 of the orders have been discharged. Besides, 38 prosecutions were instigated against owners' failure to comply with the statutory orders. Among the cases, 37 of the defendants concerned were convicted. BD also applied to the court for closure orders for three cases and arranged government contractors to carry out the requisite works on behalf of the default owners.

ENFORCEMENT ACTION AGAINST OTHER NON-INDUSTRIAL USES IN IBs

11. For cases of other non-industrial uses in IBs which do not involve illegal domestic use, BD will assess the actual circumstances of the uses after inspection, including the impact of the uses on building structures, means of escape and fire resisting construction. If there is obvious hazard or imminent danger to life or property, serious health hazard or environmental nuisance, BD will require the removal of actionable UBWs in the premises, cessation of the uses and rectification of dangerous situations by the owners concerned under sections 24(1), 25(2) and 26(1) of the BO respectively. Prosecution will also be instigated in cases of non-compliance.

12. From 2017 to 31 March 2020, nine statutory orders were issued for cases mentioned in paragraph 11 in accordance with section 24(1) of the BO requiring the owners to remove the UBWs. Three of the orders have been complied with. BD is following up the compliance of the remaining six orders.

Buildings Department
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