

立法會 *Legislative Council*

LC Paper No. CB(1)820/20-21(02)

Ref: CB1/PS/1/20

Panel on Housing

Subcommittee on Issues Relating to Transitional Housing and Subdivided Units

Background brief on tenancy control of subdivided units prepared by the Legislative Council Secretariat

Purpose

This paper provides background information and summarizes the discussions at meetings of the Legislative Council and its committees on issues relating to tenancy control of subdivided units ("SDUs").

Background

2. All along there have been suggestions from members of the public urging the Administration to re-introduce tenancy control, such as control measures on rents and tenure of SDUs, with a view to safeguarding the interest of grassroots tenants.¹ In 2014, the Administration conducted a study on Hong Kong's experience and overseas experience in implementing tenancy control and briefed the Panel on Housing ("the Panel") on the research findings and observations.² The Administration elaborated its views on tenancy control in the Long Term Housing Strategy ("LTHS") promulgated in end-2014.³

¹ As mentioned in LC Paper No. IN16/16-17, tenancy control in Hong Kong started with the enactment of the Rents Ordinance in 1921 to protect the tenants from unreasonable rent increases and arbitrary evictions. Since then, the two forms of tenancy control – rent control and security of tenure – had been implemented through the amendment and/or enactment of various relevant ordinances. In December 1998, rent control was abolished, and in July 2004, the security of tenure was removed.

² The Panel discussed the Administration's research findings and observations on the issue of tenancy control at the meeting on 7 July 2014 and received public views on the subject at the meeting on 24 July 2014.

³ LC Paper No. CB(1)352/14-15(01) (paragraphs 6.15 to 6.18)

3. In gist, as expounded in LTHS, the Administration considered that public views on the subject of tenancy control were diverse and there was no consensus in the community over the issue yet. Weighing the pros and cons, and considering the potential adverse consequences associated with tenancy control measures which rendered them counter-productive, the Administration was of the view that it would not be in the interest of inadequately-housed households or the general public to introduce any tenancy control measures in Hong Kong.⁴ The Government has since reiterated on various occasions that tenancy control is a highly controversial issue and needs to be handled in a cautious manner.

4. On 14 January 2020, the Chief Executive ("CE") announced the setting up of a task force to study feasible options on the tenancy control of SDUs on the ground that without proper rental regulations, rental subsidies or electricity and water charges reductions provided by the Government would hardly benefit the large number of families⁵ living in SDUs who have been bearing heavy rents and unfavourable rental arrangements for a long time. On 16 April 2020, THB announced the appointment of the Task Force for Study on Tenancy Control of Subdivided Units ("the Task Force") to study and report to the Government the situation of SDUs in Hong Kong and advise the Government on whether tenancy control of SDUs should be implemented and the possible options.

5. At CE's Question and Answer Session in the Legislative Council on 4 February 2021, CE announced that the Secretary for Transport and Housing would submit in the current legislative session a bill which would take into account the recommendations of the Task Force on SDUs and the views of Members. The Task Force submitted its report to the Government on 31 March 2021. The Government has indicated that it would carefully consider the recommendations put forward by the Task Force, and introduce the relevant bill into the Legislative Council as soon as possible within the current legislative session.⁶

⁴ LC Paper No. [CB\(1\)352/14-15\(01\)](#)

⁵ According to the Long Term Housing Strategy Annual Progress Report 2019, it is estimated that there were 96 400 households living in SDUs.

⁶ Government's [press release](#) on 31 March 2021

Members' views and concerns

6. Members have expressed views on matters relating to tenancy control at meetings of the Legislative Council and its committees. The Panel held two meetings jointly with the Panel on Welfare Services on 4 June and 6 July 2018 to discuss with the Administration and receive public views on tenancy control. The Subcommittee to Follow Up Issues Related to Inadequate Housing and Relevant Housing Policies set up under the Panel discussed issues relating to tenancy control and rent subsidy measures. The Panel and the Subcommittee on Issues Relating to Transitional Housing and Subdivided Units ("the Subcommittee") set up under the Panel each received a briefing by the Administration on the work progress of the Task Force on 1 February 2021 and 25 February 2021 respectively. The major views and concerns of Members are summarized in the ensuing paragraphs.

Rent control measures and cash allowance

7. Members expressed grave concern about the impact of high flat rentals on low-income tenants, and enquired whether the Administration would consider afresh implementing rent control or work out new measures to effectively help members of the public to rent private housing at reasonable rents.

8. The Administration advised that tenancy control measures might lead to an array of unintended counter-productive consequences, including reducing supply of rented accommodation; encouraging landlords to be more selective about their tenants, thereby limiting access to adequate housing by those with unstable financial means (e.g. daily-waged workers), ethnic minorities, persons with disabilities, and other socially disadvantaged groups; encouraging certain behaviour from landlords to offset the impact of the tenancy control measures (including increasing initial rent and requiring the tenants to pay excessive miscellaneous charges, etc.); and discouraging proper maintenance of rented accommodation by landlords.

9. In view of the Government's plan announced in the 2019 Policy Address to study whether to implement a scheme to provide cash allowance to low-income households on a regular basis, Members urged the Administration to explore in parallel the feasibility of introducing tenancy control on SDUs and implementing measures on rent control accordingly. When discussing the proposal on the Cash Allowance Trial Scheme⁷ ("the Scheme") on 14 January 2021, the Panel passed two motions calling on the Administration to

⁷ LC Paper No. [CB\(1\)293/20-21\(03\)](#)

implement the Scheme and tenancy control of SDUs in parallel in order that the cash allowance received by low-income families would not be "gnawed away" by rent increases.

10. The Administration advised that with the cash allowance under the Scheme would be provided to eligible General Applicant households (i.e. Families with two or more persons and elderly single-person applicants) not living in public housing, not receiving the CSSA and who had waited for public rental housing ("PRH") for more than three years, until they were offered the first PRH allocation. The Administration stressed that with the objective to alleviate the difficulties faced by grassroots households, the proposed cash allowance was not a "rental subsidy", and its rate was not linked to the rental level of private housing.⁸

Tenancy control on residential properties below a certain rateable value

11. Some Members urged the Administration to consider implementing "partial tenancy control" as a short-term measure, which would target at SDUs and cubicle apartments and would limit the rate of rent increase on the basis of the percentage of increase, the rate of inflation or the market rent of similar flats in the nearby areas.

12. The Administration advised that as seen from the tenancy control experience of some overseas economies, if tenancy control was imposed only on a particular market sector (often on lower-end residential properties), some tenants who were unable to rent flats in the controlled sector might be forced to seek accommodation in the uncontrolled sector, hence pushing up the rental level of the latter.⁹

Oral tenancies and tenancy agreements

13. Members observed that in the midst of the current supply-demand imbalance in housing, there were cases in which the landlord had not signed a tenancy agreement with the SDU tenant, and hence did not need to give a notice period for terminating tenancy. At the meeting on 9 January 2017, the Panel passed a motion requesting the Administration to immediately formulate and implement a "tenancy stabilization mechanism", which should include the introduction of legislation to require the signing of tenancy agreements to protect the rights and interests of both the landlords and the tenants, and the

⁸ LC Paper No. [CB\(1\)741/20-21\(01\)](#)

⁹ LC Paper No. [CB\(1\)1466/16-17\(01\)](#)

requirement that a tenancy agreement should set out a fixed tenancy term and a notice period for termination of tenancy.

14. The Administration advised that it had been a long-established practice in Hong Kong for landlords and tenants to enter into oral tenancies. If the Administration required written tenancy agreements for all tenancies by legislation, it would pose an immediate effect on sitting tenants of oral tenancies, and prompt the relevant landlords to enter into new tenancy agreements with the tenants. In the midst of a shortage in housing supply, landlords might make various demands to their advantage during the creation of written tenancy agreements. According to the Administration, if the tenancy agreement had not set out the tenure of tenancy and the notice period for termination, or if the landlord and the tenant had not agreed upon other ways to terminate the tenancy, according to common law, a fixed term tenancy would end upon expiry of the term, and a periodic tenancy might be terminated by a notice to quit, with the notice period at a length similar to that of the periodic tenancy. Such arrangement could provide flexibility for landlords and tenants to agree on a termination arrangement that fitted both parties' needs.¹⁰

Installation of separate water and electricity meters for tenants of subdivided units

15. To prevent overcharging of water and electricity tariffs by landlords, Members requested the Administration to arrange separate water and electricity meters to be installed in SDUs and permit SDU tenants to open water and electricity accounts of their own for payment of tariffs.

16. The Administration advised that under current policies, SDU tenants might, subject to landlord's consent, certain preconditions and safety standards, apply to the Water Supplies Department ("WSD") and the two power companies (i.e. CLP Power Hong Kong Limited and Hongkong Electric Company Limited) for installation of separate water and electricity meters respectively. If SDU tenants suspected that they might have been overcharged by their landlords for the use of water or electricity, they could report the case to WSD or the two power companies for follow-up.

Study on Tenancy Control of Subdivided Units

17. Members opined that the Task Force should examine the feasible options for implementing tenancy control of SDUs, instead of taking time to

¹⁰ LC Paper No. [CB\(1\)1170/16-17\(01\)](#)

study whether to implement the measure. Members expressed concern whether the Administration's work to follow up the recommendations of the Task Force' study such as the required legislative amendments would further delay the introduction of tenancy control of SDUs. They enquired whether the bill on tenancy control of SDUs could be introduced within the current term of the Legislative Council and the measure could be implemented in parallel with the Cash Allowance Trial Scheme to control the rent of SDUs upon the implementation of the trial scheme.

18. The Administration advised that the Task Force had been pressing ahead with work on various fronts, including appraising the actual tenancy situations of SDUs and collecting views from different stakeholders in the community. The Task Force strived to complete the study in the first quarter of 2021 and submit its report to the Government for consideration. The Government would handle the matter in a timely manner once receiving the report.¹¹

19. When discussing the work progress of the Task Force at the Panel meeting on 1 February 2021, members expressed concern about SDU tenants' lack of bargaining power and inability to protect their basic rights. Members urged that the Government should devise and mandatorily require the landlord and the tenant to sign a standard tenancy agreement, which should set out a reasonable notice period for moving out, provide an option for the tenant to renew the tenancy, as well as stipulate the responsibility of repair/maintenance of the SDU; and that the Government should restrict the rate of rent increase, enhance regulation of the issue of "over-charging" of water and electricity bills.

20. The Administration advised that the Task Force had a relatively clear consensus that a standard tenancy agreement for SDUs should be devised, which should, inter alia, set out the rights and obligations of both the landlord and the tenant, the term and period of tenancy, rent, notice period for early termination of tenancy, the arrangements concerning electricity and water charges and other miscellaneous charges. As regards the tenants' right to renew the tenancy, the Task Force had to further discuss and deliberate on whether a certain degree of security of tenure should be offered to SDU tenants and whether some form of regulation should be enforced on the rate of rent increase upon tenancy renewal, etc, as well as the possible options. Furthermore, the Task Force would continue to explore ways to enhance information available relating to rental of SDUs, so as to help grass-root tenants acquire a better knowledge of the respective rights and obligations of the landlord and the tenant, and secure a more reasonable rent level.

¹¹ Government's [press release](#) on 9 December 2020

Regulating tenancy of subdivided units through legislation

21. When briefed by the Administration on the work progress of the Task Force on 25 February 2021, Subcommittee members emphasized the need to implement tenancy control on SDUs through legislation in order to safeguard the interests of grass-root tenants of SDU. The scope of regulation should cover standardized tenancy agreement, security of tenure, restrictions on rent adjustment, and overcharging tenants utility charges (including electricity and water charges) by landlords.

22. The Administration advised that the Task Force acknowledged the need to regulate the overcharging of utility charges by landlords. The Administration would consider the detailed arrangements of sharing charges by different parties when drafting the relevant legislative amendments. The regulation of the rate of rent adjustment was a controversial issue. The Task Force would continue to explore the issue of security of tenure and the regulation of rent adjustment before completing the study.

23. Noting that the Task Force might propose setting the maximum rate of rent increase at 15% upon renewal of SDU tenancy, Subcommittee members expressed concern that such a cap was too high to be affordable to SDU tenants and should be set at 10% at most. Members also enquired about the measures to tackle the problems associated with sub-letting in the SDU market and measures to be included in the bill on tenancy control to monitor and enforce against contraventions.

24. The Administration advised that the 15% maximum rate of rent increase was only one of the options discussed by the Task Force. The Task Force would explore other feasible options. There was a need to balance the interests of both tenants and owners in determining the optimum rate. New tenancy restrictions imposed after acquisition by an owner might constitute an infringement of or a derogation from an owner's property rights and be held by the court as contravention of the Basic Law, unless such measures would not disproportionately infringe on the private property rights of landowners whilst protecting the interests of SDU tenants.

25. The Administration further advised that legislating against sub-letting, which was common in the SDU market, was not a viable option as it would drastically reduce the supply of SDUs in the market. The Task Force and the law drafting team of the Administration would continue to look at ways to protect the tenants' interests in the context of allowing sub-letting to exist in the market. It was anticipated that substantial resources would be required in

enforcing the bill on tenancy control and handling related disputes given the large number of SDU households in Hong Kong. The Rating and Valuation Department and the Lands Tribunal would face extra workload and would bid for additional resources if the situation warranted.

26. On Subcommittee members' suggestion that anti-circumvention clauses be provided in the bill on tenancy control to prevent landlords from taking pre-emptive actions to circumvent the rent control measures, the Administration advised that it would consider relevant provisions in the legislative amendments.

Council motions and questions

27. The Council passed a motion on "Studying the enactment of an ordinance on regulating subdivided units" at its meeting of 5 December 2018. The wording of the motion is at **Appendix I**.

28. In the Sixth LegCo, Dr LAU Siu-lai, Hon Vincent CHENG Wing-shun and Hon Starry LEE raised questions on water and electricity charges of tenants in inadequate housing, and problems of and support for tenants in inadequate housing. The questions and the Administration's replies are hyperlinked in **Appendix II**.

Relevant papers

29. A list of relevant papers is set out in **Appendix II**.

**Motion on
"Studying the enactment of an ordinance on regulating subdivided units"
moved by Hon Mrs Regina IP
at the Council meetings of 28 November and 5 December 2018**

Motion as amended by Hon Alice MAK, Hon LEUNG Yiu-chung and Hon Andrew WAN

That the housing problem of grass-roots families in Hong Kong is acute and there are over 150 000 families and elderly singletons waiting for public rental housing, with an average waiting time of 5.3 years, and quite a number of applicants live in units of flats subdivided into separate units (commonly known as 'subdivided units'); according to the estimate of the Government in 2017, there were about 91 800 households living in subdivided units across the territory; the Chief Executive has undertaken in the newly released Policy Address that the Government will actively facilitate various short-term community initiatives to increase the supply of transitional housing and allow wholesale conversion of industrial buildings for transitional housing; in the light of these new initiatives, it is believed that quite a number of transitional housing units leased out in the form of subdivided units will emerge in Hong Kong, but the existing Buildings Ordinance cannot comprehensively regulate the safety of flat subdivision works; in this connection, this Council urges the Government to adopt appropriate measures to regulate subdivided units by, among others, studying the enactment of an ordinance; the relevant measures include:

- (1) by drawing reference from the Housing Act 2004 of the United Kingdom and the experience of other countries, formulating policies on the regulation of subdivided units, which include establishing a licensing system for regulating the operation of subdivided units, and setting standards for the facilities, number of occupants and area of units, so as to ensure a comfortable and safe living environment for households;
- (2) enacting legislation to require the installation of separate water and electricity meters for each subdivided unit to prevent overcharging of water and electricity tariffs by landlords;
- (3) enacting legislation to regulate the rental of subdivided units, including regulating the rate of rental increase for subdivided units to prevent the households from being heavily burdened by rental;
- (4) before legislating for regulation, expeditiously providing a rental allowance for all grass-roots families which have been waitlisted for public rental housing for over three years and living in subdivided units;

- (5) reviewing the Landlord and Tenant (Consolidation) Ordinance to provide tenants of subdivided units with appropriate tenancy protection, e.g. requiring landlords to sign stamped tenancy agreements with their tenants, stipulating such information as the charging mode for electricity and water tariffs and the notification period for deferred vacation in tenancy agreements;
- (6) establishing a dedicated fund for transitional housing to be used for, among others, supporting the conversion of industrial buildings into subdivided units as transitional housing to ensure that the transitional housing units leased out in the form of subdivided units after conversion and their facilities are compliant with the legal requirements, so as to improve the living environment of grass-roots families;
- (7) extensively consulting the community on the study of the enactment of an ordinance on regulating subdivided units and the review of the Landlord and Tenant (Consolidation) Ordinance; and
- (8) enacting legislation to allow tenants of subdivided units to open water and electricity accounts of their own for paying tariffs;

moreover, this Council also urges the Government to establish a registration system for households of subdivided units or conduct an annual survey on households of subdivided units (including those living in factory buildings) through the Census and Statistics Department, so as to ensure that the Government can grasp the actual number of households of subdivided units, thereby formulating appropriate regulatory policies for them.

Appendix II

List of relevant papers

Council/ Committee	Date of meeting	Papers
Panel on Housing	4 November 2019	Administration's paper (LC Paper No. CB(1)67/19-20(04)) Minutes of meeting (LC Paper No. CB(1)294/19-20) Administration's supplementary paper (LC Paper No. CB(1)235/19-20(01))
Panel on Housing	8 November 2019	Administration's paper (LC Paper No. CB(1)32/19-20(01)) Minutes of meeting (LC Paper No. CB(1)492/19-20) Administration's supplementary paper (LC Paper No. CB(1)373/19-20(01))
Panel on Housing	2 December 2019	Minutes of meeting (LC Paper No. CB(1)544/19-20)
Subcommittee to Follow Up Issues Related to Inadequate Housing and Relevant Housing Policies	-	Report of the Subcommittee (LC Paper No. CB(1)555/19-20)
Panel on Housing	26 May 2020	Administration's paper (LC Paper No. CB(1)652/19-20(01)) Minutes of meeting (LC Paper No. CB(1)948/19-20) Administration's supplementary paper (LC Paper No. CB(1)882/19-20(01))

Council/ Committee	Date of meeting	Papers
Panel on Housing	2 November 2020 and 14 January 2021	Administration's paper (LC Paper No. CB(1)299/20-21) Administration's paper (LC Paper No. CB(1)293/20-21(03))
Panel on Housing	14 January 2021	Administration's paper (LC Paper No. CB(1)293/20-21(03))
Panel on Housing	1 February 2021	Administration's paper (LC Paper No. CB(1)504/20-21(06))
Subcommittee on Issues Relating to Transitional Housing and Subdivided Units	25 February 2021	Administration's paper (LC Paper No. CB(1)601/20-21(02))

Hyperlinks to relevant Council Questions and Motions:

Date	Council Question/Motion
11 January 2017	Council question on collection of electricity and water charges by landlords from tenants of inadequate housing
21 November 2018	Council question on support for tenants in inadequate housing
9 December 2020	Council question on housing problems of the grassroots families
28 November 2018 and 5 December 2018	Motion debate on "Studying the enactment of an ordinance on regulating subdivided units"

Council Business Division 1
Legislative Council Secretariat
 20 April 2021