

Proposed Amendments to Buildings Ordinance



Development Bureau

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Proposed Amendments to Buildings Ordinance

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CHAPTER 1: BACKGROUND

1.1. The Buildings Ordinance (Cap. 123) (BO), which was enacted in 1955, regulates the planning, design and construction of buildings and associated works. The main parts of the BO are as follows: control of building works and buildings; inspection and repair of buildings; regulation of building professionals and contractors; offences and penalties under the BO; and appeal arrangements against decisions of the Building Authority. In addition, there are 14 pieces of subsidiary legislation under the BO, covering details of construction, planning, appeal, minor works and fees, etc.

1.2. There has not been any major amendment to the BO since its enactment save the introduction of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS) in 2012. There is a practical need for this review and the review is in response to the concerns of the community in recent years —

- (a) incidents of dilapidated old buildings in recent years (e.g. concrete spalling from external walls of defective buildings causing injuries to passers-by);
- (b) serious unauthorised building works (UBWs) (e.g. large-scale UBWs in a number of buildings revealed by the landslide caused by the heavy rainstorm last year), which pose risks to building and public safety. There are doubts as to whether the penalties for serious UBWs have sufficient deterrent effect;
- (c) there are calls in the community for reviewing the enforcement policy against minor UBWs, so as to take into account both safety considerations and the people's daily lives; and
- (d) the sporadic occurrence of safety incidents at construction sites which aroused concerns over the quality and regulatory system for contractors.

1.3. We consider that it is now an opportune time to conduct a comprehensive review of the BO, so that the provisions are in pace with the times having due regard to the situation of the community and the public, as well as to enable the Buildings Department (BD) to undertake sustainable and effective enforcement and to convey to the community the message that the law must be abided by and that statutory notices or orders must be taken seriously, such as building inspection, window inspection and removal orders. The Government announced in the 2023 Policy Address that proposals to amend the BO would be

put forward within 2024. We have conducted a systemic review focusing on the following three areas -

- (a) expediting the inspection and repair of buildings;
- (b) rationalising the policy for handling UBWs; and
- (c) enhancing building works safety.

GUIDING PRINCIPLES

1.4. We have conducted the review and formulated recommendations in accordance with the following guiding principles —

- (a) first, it is the owners' primary responsibility to maintain and repair their properties. The Government will of course intervene when public safety is at stake, but it cannot take over the owners' responsibility;
- (b) second, to adopt a carrot and stick approach. On one hand, we support owners in complying with statutory orders and notices. On the other hand, we impose legal responsibilities and a punitive system to enhance the deterrent effect and compel owners' compliance with orders and notices, in particular MBIS and MWIS notices;
- (c) third, to strike a balance between leniency and rigour in terms of legal framework, and to adjust enforcement latitude having regard to the type and nature of contravention. Cases relating to the people's daily lives and constitute lower risk will be handled with a suitably relaxed, pragmatic and facilitating approach, while cases constituting serious contraventions and posing higher risks will be combatted vigorously; and
- (d) fourth, the policy principles and objectives should be clear, while enforcement should be pragmatic.

1.5. We consulted the Panel on Development of the Legislative Council on the proposed amendments on 18 December 2024. Members generally agreed with the guiding principles and proposed directions of the review. Details of the proposals are set out in the ensuing chapters. We welcome views from the public from 31 December 2024 to 28 February 2025.

CHAPTER 2: EXPEDITING BUILDING INSPECTION AND REPAIR

2.1. It is the responsibility of owners to maintain their properties in good condition. Property dilapidation not only affects the living environment of residents, but also poses a threat to public safety, especially when the external walls or windows of the buildings are damaged or spalled off, posing danger to passers-by. The Government adopts a two-pronged approach to enhance building safety. On one hand, we encourage and support owners to maintain and repair their properties; on the other hand, the Government proactively intervenes through law enforcement or default works¹ where dilapidated or defective buildings pose public safety hazards.

2.2. It should be emphasised that government intervention cannot replace owners' responsibilities. Public resources are by no means unlimited, and government intervention must be targeted and in the public interest to help owners most in need. For example, BD has been carrying out default works for about 2 000 "three-nil" buildings and buildings of which owners are incapable of organising building inspection under the "Operation Building Bright 2.0" (OBB 2.0). However, over-intervention will bring about moral hazards, and owners who are in fact capable of organising building inspection and repair will also become reliant. The Government should not and cannot take responsibility for the maintenance of all 44 000 private buildings in Hong Kong. The Government's stance is as follows: for owners who are willing to carry out building maintenance properly, the Government will provide financial and technical support. For owners of "three-nil" buildings and other buildings who are unable to organise building maintenance, the Government will carry out default works on behalf of them as necessary, but the owners will have to pay the costs and surcharges. For owners who ignore their responsibilities to maintain their buildings, we must take strict enforcement action.

¹ If the owner fails to comply with the relevant order/notice, BD may arrange for a government contractor to carry out the required inspection, investigation, repair or removal works on behalf of the owner. In case of emergency (e.g. damaged and spalled external walls of buildings), BD may arrange to carry out the required works without notifying the owner. Upon completion of the works, BD may recover the cost of works, supervision charges and impose a surcharge of not exceeding 20% of the total cost from the owner in accordance with section 33 of the BO. Based on the current policy, no surcharge will be imposed for emergency works or default works carried out under Operation Building Bright 2.0.

SUBSIDISING OWNERS TO CARRY OUT INSPECTION AND REPAIR, SUCH AS OBB 2.0

2.3. Based on the above principle, BD launched the MBIS and MWIS in 2012 to urge owners to regularly inspect, maintain and repair their properties. Under the MBIS, BD selects 600 target buildings each year based on risk assessment for issuing notices requiring Owners' Corporations (OCs) or owners to carry out inspection and repair works in respect of common parts and/or individual premises.

2.4. The Government recognises that some owners may have genuine difficulties in fulfilling their responsibility in maintaining their properties due to lack of financial means, technical knowledge and/or organisation ability. Therefore, the Government has since 2018 introduced a number of subsidy schemes in partnership with Urban Renewal Authority (URA) with a total financial commitment of \$19 billion² to provide financial and technical assistance to owners in need. Among them, the major subsidy schemes that subsidise owners to carry out building inspection and repair works include OBB 2.0 and "Building Maintenance Grant Scheme for Needy Owners" (BMGSNO), etc.

2.5. OBB2.0 provides financial assistance to eligible owner-occupiers of domestic or composite buildings to carry out prescribed inspection and repair works under the MBIS³. The coverage of the scheme is extensive, with up to 80% of the private buildings aged 30 years or above in Hong Kong eligible to apply for the scheme, and the subsidies granted are sufficient to cover about 80% of the expenditure on prescribed inspection and repair works. Category 1 buildings under the scheme are those with owners who are prepared to take up the organisation of inspection and repair works for their buildings. For Category 2 buildings which cannot organise amongst themselves, BD will select buildings on a risk basis, to carry out inspection and repair works in default of owners, and seeks to recover the cost from owners concerned afterwards. Approved owners may claim subsidies

² Including "OBB 2.0" (\$6 billion); "Fire Safety Improvement Works Subsidy Scheme" (\$5.5 billion); "Lift Modernisation Subsidy Scheme" (\$4.5 billion); "Building Maintenance Grant Scheme for Needy Persons" (\$2 billion); and "Building Drainage System Repair Subsidy Scheme" (\$1 billion).

³ Eligible elderly owner-occupiers aged 60 or above may receive a full subsidy of the project cost, subject to a ceiling of \$50,000 per flat. The remaining eligible owner-occupiers will receive an 80% subsidy, subject to a ceiling of \$40,000 per flat. In addition, eligible owner-occupiers may receive a 50% subsidy for their privately-owned projections, subject to a ceiling of \$6,000 per unit.

under OBB 2.0 to cover all or part of such cost. As at end-October 2024, there were about 2 000 Category 2 buildings. As for Category 1, applications from about 470 and 720 buildings were received in the first two rounds of OBB 2.0 respectively. For the third round of the scheme after relaxation of the eligibility criteria⁴, applications from about 1 600 buildings were received, representing an increase of more than 30% over the total number of buildings in the first and second rounds.

2.6. BMGSNO subsidises elderly aged 60 or above, recipients of Old Age Living Allowance, etc. to carry out repair and alteration works in the common areas of buildings and self-occupied flats, and has so far benefited about 16 000 elderly, with each elderly receiving a maximum grant of \$80,000.

PROVIDE TECHNICAL SUPPORT TO OWNERS

2.7. Many owners are not familiar with the tender procedures for building inspection and repair, or lack professional knowledge in works. The Government will continue to work with the URA to support owners through a number of measures, including –

- (a) assigning dedicated case officers to follow up all Category 1 buildings under OBB 2.0 to provide technical support to owners (including the “Smart Tender” service mentioned in sub-paragraph (b) below);
- (b) Smart Tender arranges for independent professionals to provide cost estimate for works for owners’ reference when inviting tenders, and allows owners to invite tenders from all registered consultants and contractors through a neutral electronic tender platform, so that they can obtain competitively priced tenders for comparison and minimise the risk of bid-rigging. With a subsidy of \$300 million from the Government, eligible owners can also participate in the Smart Tender at a concessionary rate⁵;

⁴ The third round of OBB2.0 has relaxed the eligibility criteria: (a) lowering the age limit of buildings from 40 years or above to 30 years or above. Buildings aged between 30 and 39 years are required to have outstanding MBIS notice. For buildings aged 40 years or above, they may also participate without a MBIS notice; and (b) to adjust upwards the average rateable value (RV) limit for participating buildings. The average annual RV limit for buildings in the urban areas (including Sha Tin, Kwai Tsing and Tsuen Wan districts) is adjusted upwards from not exceeding \$162,000 to not exceeding \$187,000. The average annual RV limit for buildings in the New Territories (excluding Sha Tin, Kwai Tsing and Tsuen Wan districts) is adjusted upwards from not exceeding \$124,000 to not exceeding \$143,000.

⁵ The current fees for Smart Tender are determined on the basis of the average annual RV of the domestic units in a building and the total number of domestic and non-domestic units, ranging from \$25,000 to \$160,000 per application. Under the Scheme, the concessionary fees payable by owners who participate in the Smart Tender range from 5% to 50% of the existing fees.

- (c) the Building Rehabilitation Platform provides owners with information such as sample documents for procurement of works consultants and contractors, reference unit rates for major repair works items, etc., so as to regularise, standardise and systematise the tender process;
- (d) setting up a Building Rehabilitation Resource Centre to provide owners with one-stop building rehabilitation related information and support services, including remote video consultation service, renting of conference rooms for owners to discuss building rehabilitation issues, etc.; and
- (e) launched the Preventive Maintenance Subsidy Scheme in April this year on a pilot basis to subsidise owners to engage Authorized Persons to draw up maintenance manuals and maintenance plans for their buildings for the next ten years, as well as to motivate owners to build up financial reserves for long-term maintenance.

2.8. Since May this year, the Development Bureau (DEVB) and URA have introduced improvement measures to strengthen monitoring and procurement support for owners and OCs which have participated in OBB 2.0, so as to facilitate timely inspection and repair works. These measures include: (i) the URA acts as a gatekeeper to introduce lists of pre-qualified consultants and contractors, whereby owners of the third round of OBB 2.0 must invite the consultants and contractors on the pre-qualified list to submit tenders; (ii) setting milestones for tendering and works for compliance by owners of the third round of applicants; (iii) the URA will timely step in to issue tender on behalf of the owners if owners fail to issue tender on time; and (iv) providing standardised tender assessment forms and guidelines for owners and OCs to expedite the tender assessment process. In addition, DEVB established a multi-partite collaboration platform in the third quarter of last year. Members include BD, the URA, the Home Affairs Department (as well as the Security Bureau and the Fire Services Department which joined later in respect of compliance with fire safety directions). Briefings were held in the old districts to directly answer owners' questions and concerns on compliance with building and window inspection notices, and tailored assistance was provided to residents.

2.9. The Home Affairs Department and its District Building Management Liaison Teams and District Offices have been providing various forms of assistance to owners in the formation of OCs, including attending owners' meetings for the formation of OCs and advising owners on the relevant procedures, and making referrals to the “Free Legal Advice Service on Building Management”⁶ to make appointments to see volunteer lawyers for preliminary legal advice.

Figures 1 and 2: Earlier briefing sessions held in Kowloon City and Tsuen Wan



2.10. For dilapidated buildings whose owners lack organisation ability, BD has, apart from carrying out default works, regularised the external wall inspection scheme by using drones to inspect the external walls of 360 high-risk buildings annually and carrying out emergency works as necessary. The target buildings also include “three-nil” buildings. Inspection of the external walls of 360 buildings has been completed this year, and 352 buildings require emergency works to remove parts of the external walls that pose safety risks. Among them, 207 buildings had their emergency works completed by the owners themselves, while BD had acted on behalf of the remaining 145 buildings and recover the costs from the owners.

⁶ The “Free Legal Advice Service on Building Management” is provided by the Home Affairs Department in collaboration with the Law Society of Hong Kong.

Figure 3: Survey of external walls of buildings conducted by BD using drones



MBIS AND MWIS

2.11. The MBIS and MWIS⁷ urge owners to regularly inspect, maintain and repair their properties. Under the MBIS, BD selects 600 target buildings each year based on a risk-based approach⁸ for issuing notices requiring OCs or owners to carry out inspection and repair works in respect of common parts or individual premises. The scope of the MBIS inspection includes: external elements and other physical elements; structural elements; fire safety elements; drainage system; and identification of UBWs in common parts of the building (e.g. external walls, rooftops or podiums, yards or slopes adjoining the building), or in any street facing or abutting the building.

⁷ Under the MBIS, owners of private buildings aged 30 years or above (except domestic buildings not exceeding three storeys) are required, upon receiving statutory notices served by BD, to appoint a registered inspector to carry out prescribed inspections for the common parts, external walls and projections of the buildings and to supervise the required prescribed repair works. Under the MWIS, owners of private buildings aged 10 years or above (except domestic buildings not exceeding three storeys) are required to appoint a qualified person to carry out prescribed inspections and supervise the repair works, if necessary, for all the windows involved upon receiving statutory notices served by BD. BD will take enforcement action against non-compliance with the building and/or window inspection notices. At present, there are about 44 000 private buildings in Hong Kong, of which about 20 000 are aged 30 years or above and are subject to the MBIS.

⁸ Under the building score system, different scores are assigned to buildings having regard to factors such as building age, building condition (especially external walls), building management (higher scores will be given to “three-nil” buildings) and potential risks posed to the public (especially upon receipt of reports on external components of buildings). The revised building score system, which came into effect in July this year after a review, will help BD to more accurately follow the “risk-based” principle in selecting buildings for implementing MBIS.

Figure 4: Scope of the Mandatory Building Inspection Scheme

1) External elements



2) Structural elements



3) Fire safety elements



4) Drainage system



**5) UBWs on the exterior of the building
(e.g. the metal railings on the flat slab and the glass doors
that should have been windows)**



2.12. BD will send the MBIS notice in respect of common parts to the Land Registry for registration. The maximum penalties for non-compliance with MBIS is a fine of \$50,000 and imprisonment for one year, while the maximum penalties for non-compliance with MWIS is a fine of \$25,000 and imprisonment for three months. Besides, BD may impose a fixed penalty of \$1,500 for non-compliance with MWIS notices before prosecution. Since the implementation of the MBIS and MWIS, a total of about 7 800 and 12 700 private buildings have been served with MBIS and MWIS notices respectively. However, the compliance rates are low, especially in respect of the common parts (including external walls of the buildings which are related to pedestrian safety): The compliance rate for MBIS notices was only 41%, which is unsatisfactory. As for MWIS notices, the compliance rate was higher due to the effect of the fixed penalty to expedite compliance, but it was only at 71%. As the building stock continues to age, we need to step up our efforts to urge compliance.

Table 1: Compliance rates for MBIS and MWIS notices

<i>Compliance rate for common parts of building</i>	MBIS notices : 41% MWIS notices : 71%
<i>Compliance rate for individual premises</i>	MBIS notices : 84% MWIS notices : 95%

2.13. In addition, BD will issue building repair/investigation orders and drainage repair orders for buildings in relatively serious dilapidation or danger to public safety. In 2023, the number of orders issued was about 590 and about 260 respectively, with low compliance rates of about 45% and 40% respectively. There is a need to step up penalties to facilitate compliance.

SPECIFIC PROPOSALS

2.14. We will continue to adopt a carrot and stick approach (with both support and a punitive system) to urge owners to comply with various orders and notices. For punitive measures, we propose to increase the penalties under the BO for non-compliance with inspection and repair orders or notices so as to enhance the deterrent effect and urge owners to carry out building inspection and repair works in a timely manner, thereby protecting the safety of residents and the public. The key measures include –

(a) introducing a fixed penalty for non-compliance with MBIS notices:

The current BO only provides for a fixed penalty of \$1,500 for non-compliance with MWIS notices. Past statistics show that fixed penalty has been effective in urging compliance with notices, and the handling process is relatively swift (as BD can immediately impose a fixed penalty on the OCs or owners and does not have to go through multiple steps of evidence collection and court procedures). We propose to introduce a fixed penalty of \$6,000 for non-compliance with MBIS notices to improve effectiveness of enforcement and enhance compliance. Compared with the levels of fixed penalties in other legislation (e.g. fixed penalty for street obstruction under the Public Health and Municipal Services Ordinance) and taking into account the potential safety risks of non-compliance with notices, \$6,000 is relatively moderate. We aim to send a message to the community that non-compliance with the notice will entail immediate consequences, compelling OCs or owners to take prompt action. Besides, the fixed penalty for non-compliance with MWIS notices will be increased to \$3,000. BD may initiate prosecution if the notice is still not complied with after the fixed penalty notice has been issued;

(b) for cases being prosecuted, increasing the penalties for (i) non-compliance with building inspection, window inspection and other notices/orders, and (ii) uncooperative owners obstructing building inspection, investigation or works: We propose to increase the maximum penalties that may be imposed by the court to enhance the deterrent effect, making reference to other legislation. Regarding MBIS notices involving external walls or projections thereof, we propose to quadruple the maximum fine to \$200,000⁹ for public safety reasons. The term of imprisonment will remain at one year. For MBIS notices relating to the

⁹ The recently passed Fire Safety (Buildings) (Amendment) Bill 2024 increased the penalties for non-compliance with fire safety directions and fire safety orders. The maximum fines were increased four-fold to \$100,000 and \$200,000 respectively.

parts not involving an external wall or projection, the maximum fine will be increased from \$50,000 to \$100,000 and the term of imprisonment will remain at one year. For non-compliance with MWIS notices, the maximum fine will be increased from \$25,000 to \$100,000, whereas the term of imprisonment will remain at three months. As for non-compliance with statutory orders such as investigation orders, repair orders and orders to discontinue change of use of buildings (e.g. conversion of industrial buildings to domestic use), the maximum fine is proposed to be increased from \$50,000 to \$300,000 with imprisonment for one year as the orders generally involve more serious situations and the consequences of non-compliance are more serious than non-compliance with MBIS or MWIS notices. In addition, the penalty for uncooperative owners obstructing building inspection or maintenance (e.g. occupation of corridors by individual owners to obstruct inspectors and contractors appointed by OCs to carry out inspection and repair works required for compliance with statutory orders or notices) will be increased from \$10,000 to \$25,000, which is the same as the current level of fine penalty for refusing to contribute to the relevant costs; and

- (c) **introducing a new offence:** The dilapidation of buildings not only poses danger to owners or occupiers, but also endangers passers-by. For example, a series of fallen concrete from the external walls of buildings last year injured passers-by and the consequences were serious. Where there is non-compliance with statutory notices/orders, and the dilapidated external walls or the projections thereof/windows of the building **have caused personal injury or property damage**, the maximum penalties are proposed to be a fine of \$300,000 and imprisonment for one year. The new offence is proposed because there is no provision in the prevailing BO to deal with such situation. We currently have to rely on other legislation (such as the Summary Offences Ordinance) which has little deterrent effect due to the low level of penalties¹⁰.

2.15. For the common parts of a building, where an OC has been formed, BD will only issue statutory notices/orders to the OC rather than individual owners; and in the case of non-compliance with a MBIS or MWIS notice, issue a fixed penalty notice to the OC or take prosecution action where necessary. Nevertheless, under the Building Management Ordinance (Cap. 344), a member of a management committee is not personally liable for the exercise or performance of any power or duty conferred or imposed on an OC if he acts in good faith and in a reasonable manner on behalf of the OC.

¹⁰ According to the Summary Offences Ordinance, if a person drops anything from a building, or allows anything to fall from a building, so as to cause danger or injury to any person in or near a public place, he commits an offence and is liable to a fine at level 3 (\$10,000) and imprisonment for 6 months.

Figure 5: Incident of fallen concrete from the external walls of buildings

2.16. Beyond the BO, we will continue to consider **proposals to better support OCs and owners** on various fronts, including exploring improving existing arrangements, such as whether there is room to relax the eligibility criteria of OBB 2.0 or extend the mechanism of pre-qualification of registered inspectors and contractors under OBB 2.0 to the Smart Tender platform. We are also open to discussing with the community new modes to motivate owners to adopt a more proactive attitude and prepare for future building maintenance. At present, there are two major problems commonly encountered in building maintenance, namely the lack of relevant knowledge and financial reserve. Drawing on the experience of the URA's "eResidence" project¹¹, we will consider encouraging owners and property management companies to formulate maintenance manuals by, for example, amending the sample deed of mutual covenant. We will also make reference to the URA's "Preventive Maintenance Subsidy Scheme" (refer to paragraph 2.7(e) above) and consider how to empower owners to make financial plans for building maintenance.

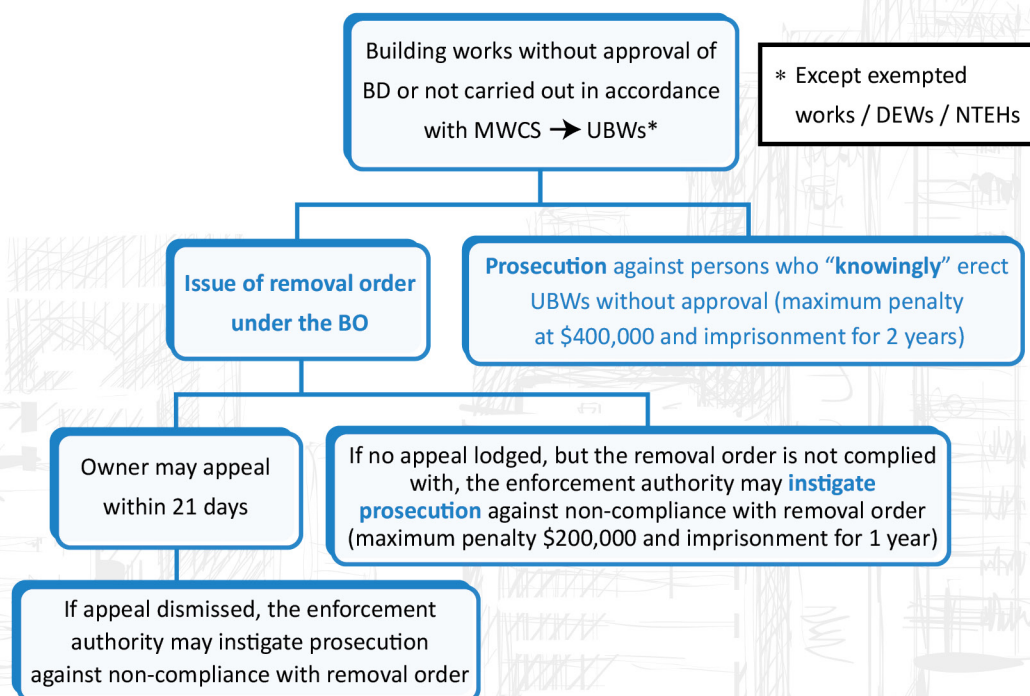
¹¹ The experience of the URA in implementing the "eResidence" project can be found in the URA's blog. (https://www.ura.org.hk/tc/news-centre/managing-director-s-blog/mdblog_20230910) (https://www.ura.org.hk/tc/news-centre/managing-director-s-blog/mdblog_20230827).

CHAPTER 3: RATIONALISING THE POLICY FOR HANDLING UNAUTHORISED BUILDING WORKS

THE EXISTING REGULATORY REGIME FOR BUILDING WORKS

3.1 Under the prevailing BO, with the exception of “Exempted Works”¹², “Designated Exempted Works” (DEWs)¹³ and New Territories Exempted Houses (NTEHs) (commonly known as “New Territories village houses”), all building works must either be submitted to and have obtained prior approval from BD (mainly focusing on the specifications and safety of design, materials and construction) or carried out in accordance with the simplified requirements of the Minor Works Control System (MWCS) introduced in December 2010 (see **Annex A**). Under this system, all building works that contravene the above regulatory requirements are regarded as unauthorised works, or commonly known as UBWs, and are subject to removal orders irrespective of their nature, scale, complexity and safety risk. Separately, BD may instigate prosecution under the BO against persons (including owners, building professionals and contractors) who erect UBWs with the knowledge that the works were without approval.

Table 2: The existing regulatory regime for building works



¹² General interior decoration (except minor works) such as painting, interior plastering, wallpaper works or repair or replacement of sanitary fittings are exempted works under the BO.

¹³ The Minor Works Control System provides for 30 items of DEWs, such as drying racks of smaller dimensions and not too high above the ground level, etc. The works are not subject to the approval of BD or the simplified requirements of the Minor Works Control System.

3.2 Having regard to the low safety risk as well as to facilitate the public, BD has set up three Validation Schemes in urban areas under the MWCS to allow minor unauthorised works that were built before specified dates, that constitute lower risks and less serious contraventions, and are related to people's daily lives (such as drying racks, supporting frames for air-conditioners and canopies) to be retained and not subject to removal after being validated by prescribed building professionals and/or prescribed registered contractors as safe. Details of the three Schemes are as follows:

Table 3: The three Validation Schemes in the urban area

	Specified date	Scope
Household Minor Works Validation Scheme	31 December 2010	Household minor installation works meeting the specified dimensions, including supporting frames for air-conditioners, drying racks and small canopies. Only one-off validation is required.
Signboard Validation Scheme	2 September 2013	Smaller signboards of lower risk and meeting the specified dimensions / location. As signboards are of a higher risk than items under the other two schemes, they are required to undergo a safety check every five years.
Minor Amenity Facilities Validation Scheme	1 September 2020	Minor amenity facilities meeting the specified dimensions, including canopies, retractable awnings, solid fence walls and external mesh fence or metal railings. Only one-off validation is required.

ENFORCEMENT SITUATION

3.3 Due to the large number of UBWs, in order to optimise the utilisation of limited manpower resources to achieve the greatest enforcement efficiency, BD has to prioritise its enforcement actions under a pragmatic “risk-based” approach. BD’s enforcement priorities include UBWs under construction or newly completed, UBWs posing obvious hazard or imminent danger, or causing serious hygiene or environmental nuisance, etc. BD will issue removal orders to the owners and register the orders with the Land Registry. If the owner fails to rectify the situation within the specified period without reasonable excuse, BD will consider prosecuting the owner. In the past three years, BD issued on average 5 600 and 3 600 removal orders against minor and serious UBWs respectively each year, and the compliance rate of removal orders against serious UBWs was only 55%. The compliance rate of removal orders against minor UBWs was higher but still at 74% only. During the same period, BD initiated an average of 3 800 prosecutions against non-compliance of expired removal orders each year. As at October 2024, there were about 36 000 non-complied and expired removal orders (involving over 67 100 UBWs, since one removal order may cover multiple UBWs in the same building/unit). Categories are as follows:



Table 4: Categorisation of UBWs involved in non-complied and expired removal orders

Relatively more serious UBWs (involving works that have not been approved by BD)		
1. Flat roof structure	7 568	11.3%
2. Roof top structure	6 241	9.3%
3. Lane / yard structure	5 753	8.6%
4. Basement	108	0.2%
5. Structural alterations (including structural wall, column, retaining structure, etc.)	57	0.1%
6. Others (including alterations affecting fire escape staircase or fire resistance, etc.)	4 744	7.1%
Subtotal:	24 471	36.4%
Relatively minor UBWs (involving “Exempted Works” or “Designated Exempted Works” but violating other provisions under the BO such as fire safety requirements; or works not carried out in accordance with the simplified requirements of the MWCS)		
7. Door / gate	8 261	12.3%
8. Drying rack	5 180	7.7%
9. Canopy	3 754	5.6%
10. Signboard	1 608	2.4%
11. Supporting frame for building installations	1 506	2.2%
12. Retractable awning	931	1.4%
13. Others (including alterations to non- structural walls, thickening of the screeding, supporting frames for photovoltaic system, shopfront bulkhead, etc.)	21 465	32.0%
Subtotal:	42 705	63.6%
Total:	67 176	100%

3.4 Although BD has adopted a pragmatic approach in tackling UBWs under the “risk-based” approach, under the prevailing BO, structures ranging from unauthorised basements or rooftop floors to retractable awnings on streets are considered as UBWs as long as they do not comply with the BO and related regulations, irrespective of scale and level of risk. The maximum penalties are the same for non-compliance of expired removal orders (a maximum fine of \$200,000 and imprisonment for one year, with a daily fine of \$20,000). There are views in the community that some small UBWs are essential to the people’s daily lives and pose lower safety risks. Enforcement actions may cause nuisance to the public. On the other hand, the prevailing penalties are ineffective in deterring serious UBWs. In the past three years, the average fine imposed by the court for non-compliance with removal orders was only about \$7,000 (as compared with the existing maximum penalties under the BO, i.e. a maximum fine of \$200,000 and imprisonment for one year); and the average fine for those convicted of knowingly erecting UBWs was only about \$5,000 (as compared with the existing maximum penalty under the BO, i.e. a maximum fine of \$400,000 and imprisonment for two years). Imprisonment was rarely imposed.

3.5 At present, there are about 400 professional and technical staff in BD who are responsible for handling UBWs, yet they have to take up other duties at the same time. **Table 4** shows that despite the relatively high compliance rate of removal orders against relatively minor UBWs, due to the large number of UBWs, the number of relatively minor UBWs with non-complied and expired removal orders accounted for 64% of the total number of UBWs, which has consumed a lot of efforts of BD. From the perspective of public resource utilisation, the large number of UBWs diverts BD’s enforcement resources, preventing it from focusing on UBWs that pose higher risks and/or constitute serious contraventions. This is not in the public interest.

3.6 BD often faces enforcement difficulties under the existing BO when handling relatively serious UBWs, which have greatly undermined the effectiveness of the BO and BD’s enforcement efforts. For example –

- (a) owners of UBWs can easily appeal against removal orders issued by BD. Since enforcement has to be put on hold during appeal, the system is often abused to deliberately delay enforcement;
- (b) at present, the prosecution threshold for the prosecution to prove that the owner has erected the UBW is very high. Evidence must be produced to prove that the owner has “knowingly” violated the law and erected the UBW. However, the owner can evade liability by arguing that the UBWs were handled entirely by professionals, and the prosecution often could not

successfully prove the case. In the past three years, only one out of the 11 convicted cases could the owner be convicted. As a result, BD could only issue removal orders and could not prosecute the owners if they complied with the orders. Despite that individual owners had gained considerable financial or personal benefits from the construction of large-scale UBWs, it was often difficult to prosecute them and they would not be held liable. There are views in the community questioning the current practice of not holding a person legally responsible after the UBW is removed, which seems to be condoning the offenders; and

- (c) when the UBWs were already in existence when the owner purchased the property, and the owner knew about them but still purchased and benefited from the UBWs, he could currently easily circumvent prosecution on the grounds that the UBWs were “not knowingly erected by him”.



SPECIFIC PROPOSALS

3.7 In order to strike a balance between the daily needs of the people and the low risk of “minor UBWs”, as well as to optimise the use of limited enforcement resources to combat serious UBWs, we will adopt a pragmatic and facilitating approach in handling “minor UBWs” on one hand, and focus enforcement resources on enhancing enforcement effectiveness against “serious UBWs” on the other hand. Specifically, we will classify UBWs under the prevailing framework into two categories for handling.

(A) “MINOR UBWS” RELATING TO PEOPLE’S DAILY LIVES

3.8 We suggest that –

- (a) with regard to pre-existing UBWs which are minor in nature, taking into account the relatively small scale and lower risk of the structures as well as their relevance to people’s daily lives, we will handle them sympathetically, reasonably and lawfully as follows –
 - (i) adding **more** works items relating to people’s daily lives and of low risk as **DEW items**, and relaxing the requirements for existing items. **Such pre-existing works will no longer be regarded as UBWs for issuing removal orders.** Examples include retractable awnings and drying racks below a specified height, etc.; and
 - (ii) **consolidating the three existing Validation Schemes (Table 3) into an integrated scheme, and extending the scope of validation to allow owners to validate “minor UBWs” erected before the commencement of the amendment ordinance and specified in the law.** In other words, we will extend the specified dates of the three Validation Schemes and include more existing, common types of minor UBWs that originally did not meet the validation criteria (e.g. canopies, supporting frames for air-conditioners, enclosed balconies, “street shadow buildings”¹⁴, carpark shelters, signboards, etc., which meet the specified dimensions). Such minor UBWs can be retained **after one-off or regular validation** by prescribed building professionals or

¹⁴ The Building (Planning) Regulations introduced the requirement of “projected building area” in 1969 for all types of buildings on sites abutting a street in order to ensure that the street receives sufficient direct light. This requirement might result in the upper floors of a building being set back and tilted at an angle of 76 degrees from the street level (hereafter referred to as “Street Shadow Law”). The relevant regulation was repealed in 1987. UBWs relating to the “Street Shadow Law” generally involve flat roof structures on the upper floors of buildings. According to past enforcement experience, such UBWs were usually built a long time ago or involve owners in the earlier years.

prescribed registered contractors (all but signboards are subject to one-off validation only). Such type of pre-existing works will not be regarded as UBWs for issuing removal orders.

Owners are required to appoint prescribed building professionals and/or prescribed registered contractors¹⁵ to inspect and validate the “minor UBWs” that meet the validation criteria to ensure compliance with the safety requirements and relevant specifications, and to carry out strengthening or alteration works by registered contractors in accordance with the requirements of the MWCS as appropriate. At present, there are about 2 000 prescribed building professionals and nearly 18 000 prescribed registered contractors in the industry who can carry out validation. Depending on the scale of the validation works and whether strengthening works are required, the fees generally range from a few thousand dollars to tens of thousands of dollars.

We propose to introduce a grace period of three years upon the implementation of the integrated validation scheme to urge for early participation by owners during the three years, during which no enforcement action will be taken (except for “minor UBWs” constituting imminent danger). After the three-year period, BD will progressively take enforcement action against unvalidated “minor UBWs” (see sub-paragraph (c) below).

Among the pre-existing relatively minor UBWs which have not been removed after the expiry date of removal orders as shown in **Table 4** above, doors/gates belonging to item 7 (if they do not affect the means

¹⁵ Under the current arrangement, the prescribed building professionals and prescribed registered contractors qualified to carry out validation are as follows:

Appointed Person	Corresponding class of minor works in respect of the "minor UBWs"		
	Class I	Class II	Class III
Prescribed building professionals (PBP)			
Authorized person (AP)	√	√	√
Registered structural engineer (RSE)	√	√	√
Registered inspector (RI)	-	√	√
Prescribed registered contractors (PRC)			
Registered general building contractor (RGBC)	-	√	√
Registered minor works contractor (RMWC) (Company)	-	√	√
RMWC (Individual)	-	-	√

of escape) and drying racks, canopies, signboards, supporting frames and retractable awnings belonging to items 8-12 (if they comply with the dimensional or height specifications proposed for the new or relaxed DEW items in sub-paragraph (a)(i) above or are validated under the integrated validation scheme as proposed in sub-paragraph (a)(ii) above, such pre-existing works (as detailed in **Annex A**) will no longer be regarded as UBWs for the purpose of enforcing the removal orders issued;

Figures 6 and 7: “Street shadow building” (the arrows in red are pointing at UBWs, which are canopies erected at places that have been set back)



(b) for new building works, after the commencement of the amendment ordinance, **BD’s approval will not be required** for carrying out the newly added and relaxed **DEW items** mentioned in sub-paragraph (a)(i) above. **Nor is it necessary to follow the simplified procedures of the MWCS.** We will also add new “minor works” items or relax the requirements of existing items (as detailed in **Annex A**) so that works relating to people’s daily lives and are of low risks (including erection or alteration of supporting frames for air-conditioners and poles projecting from external walls) can be carried out under simplified procedures. Although these works are relatively minor in nature, they should be carried out by prescribed building professionals and/or prescribed registered contractors in accordance with the requirements to avoid causing public danger as they may be projected over the streets; and

(c) on enforcement –

(i) **introducing fixed penalty:** For new “minor works” not carried out in accordance with the amendment ordinance or pre-existing unvalidated “minor UBWs”, BD may issue removal orders. We propose to introduce a fixed penalty of \$10,000 for non-compliance with removal orders. As

UBWs in general pose safety risks, this penalty should be higher than the proposed fixed penalty of \$6,000 for non-compliance with MBIS notices; and

- (ii) **introducing new penalty for subsequent convictions:** If a removal order is still not complied with after a fixed penalty is imposed, BD may initiate prosecution. The maximum penalties for first conviction will remain at \$200,000 and imprisonment for one year. We propose to add a new provision to increase the maximum penalties to a fine of \$400,000 and imprisonment for one year on subsequent convictions (i.e. involving the same UBW by the same owner at the same location) to enhance the deterrent effect.

(B) “SERIOUS UBWS” THAT ENDANGER PUBLIC SAFETY OR CONSTITUTE SERIOUS VIOLATIONS OF THE LAW

3.9 As for “serious UBWs”¹⁶ endangering public safety or constituting serious contraventions (such as enclosing rooftop structures, building unauthorised basements, erecting flat roof/lane structures, damage to structural walls, etc.), there is a general consensus in the community that they should not be tolerated from the perspectives of safeguarding public safety and policy fairness, and must be subject to enforcement. This message should be clearly conveyed through legislation and enforcement. There is a suggestion that owners be allowed to retain their UBWs after they have been certified as safe by paying a fine or land premium. In terms of policy fairness, this is unfair to owners who are law-abiding, who do not have the financial means or who have removed their UBWs upon receipt of a removal order from BD. It will also send a wrong message to the community that violations of the law can be legalised through monetary means, which is a *de facto* encouragement to breaching the law. From the perspective of building and public safety, the building safety of “serious UBWs” may not necessarily be ascertainable solely by means of post-work inspection. As there were no records of the building materials used in the unauthorised works, nor did the materials undergo any statutory tests, and that there was a lack of quality control in the course of the works, it is not possible to confirm that the statutory standards under the BO have been complied with by the unauthorised works solely based on the analysis outcome of the limited sampling conducted post-work.

¹⁶ “Serious UBWs” refer to works for which prior approval or consent of the BD should have been obtained in accordance with the BO, and have contravened the BO.

Figure 8: Example of “serious UBWs” (last year’s rainstorm revealed some large-scale UBWs in certain houses, such as the unauthorised swimming pool shown in the photo below, with landslides occurring on the surrounding slope)



3.10 To this end, targeting these “serious UBWs”, we put forward the following proposals to enhance the effectiveness of enforcement and provide BD with additional enforcement tools to combat and deter erection of such more effectively –

- (a) **increasing penalties for non-compliance with removal orders and introducing a penalty for subsequent convictions:** From a maximum penalty of \$200,000 and imprisonment for one year to \$300,000 and imprisonment for two years, and to \$600,000 and imprisonment for two years in the case of subsequent convictions (i.e. involving the same UBW by the same owner at the same location);
- (b) **lowering the prosecution threshold and raising the penalties for the offence of erecting UBWs:**
 - (i) under the prevailing provision of the BO, it is an offence for any person (such as an owner, building professional or contractor) to **“knowingly” erect an UBW without the approval of BD**. We propose to lower the prosecution threshold by removing the word “knowingly”. In other words, BD may initiate prosecution as long as there is a reasonable doubt that an owner and/or a professional is involved in the works for which plans should be submitted to BD but were commenced without obtaining approval from BD. It is not necessary to prove that the owner and/or professional “knew” that the works were unauthorised works. However, BD still needs to adduce sufficient evidence to prove that the owner and/

or professional was involved in the unauthorised works before instituting prosecution. We will add a provision in the amendment bill to allow reasonable defenses raised by the owner concerned to be accepted by the court, such as the owner having taken all reasonable steps to avoid the erection of the UBWs, e.g. appointed a building professional and instructed him to obtain BD's approval before commencing the works; and

- (ii) **increasing the penalties:** To increase the maximum penalties under subparagraph (i) from \$400,000 and imprisonment for two years to \$2,000,000 and imprisonment for two years. For very serious UBWs (especially those causing significant increase in floor area and posing greater safety risks), when prosecuting such cases, it is suggested that we can invite the court to take into account factors for sentencing, such as the size of the UBWs in question, the location of the property or the rateable value of the property, etc., such that the difference in value between, say, a luxury detached house and a rooftop UBW in an old building can be reflected in the sentence;
- (c) **introducing a new offence and indictable offence:** In order to plug the loophole that some owners could evade liability by arguing that the UBWs were already in existence when they purchased the property, we propose to introduce a new offence so that an **owner commits an offence if a "serious UBW" is found in a property purchased after a certain specified period after the commencement of the amendment ordinance (i.e. a prospective date)**¹⁷. Irrespective of whether the UBW was erected by the owner, the owner has to bear the legal responsibilities for allowing the "serious UBW" to exist (for example, assuming that the amendment ordinance takes effect at the end of 2026, and the owner purchasing a property with a "serious UBW" in 2027 may commit this new offence). On summary conviction by the Magistrates' Court, the maximum penalties are proposed to be a fine of \$300,000 and imprisonment for two years. In addition, we propose to introduce an indictable offence in order to refer very serious UBW cases to the District Court or a higher court for adjudication, which may impose higher penalties. We propose that the maximum fine should be higher than that on summary conviction (proposed to be \$300,000) or the existing maximum fine under the BO (\$1,000,000). We will add a provision in the amendment ordinance to allow reasonable defenses raised by the owners concerned to be accepted by the court, such as proof that they have taken all reasonable steps, including appointing a

¹⁷ We propose that the new offence should take effect after a certain specified period after the commencement of the amendment ordinance so as not to affect property transactions in progress at that time.

building professional to confirm that there were no UBWs in the property, before purchasing the property.

For properties with “serious UBWs”, owners who are currently holding the property or who purchased the property before the certain specified period of time will not be subject to the proposed new offence, i.e. if these owners have not been involved in the erection of the UBWs concerned, they will not be prosecuted solely on the grounds of the existence of the “serious UBWs”, but they will still be subject to the issuance of removal orders and be prosecuted if they fail to comply with the orders.

Purchasing a property is a major investment. We consider it the responsibility of property owners to ascertain clearly whether there are UBWs in their properties when purchasing a property, such as appointing professionals to inspect the property and the relevant plans, etc. We will step up public education and publicity;

- (d) **aiding an offence is tantamount to committing an offence:** We propose to amend the existing provision so that a person who **knowingly assists** an owner in committing the new offence in sub-paragraph (c) above (e.g. a solicitor or estate agent involved in the transaction of the property concerned) will be deemed guilty of the same offence, subject to the same legal responsibilities and can be imposed the same penalties for that offence. This offence applies to a person who assists an owner to purchase a property with a “serious UBW” **after a certain specified period after the commencement of the amendment ordinance**. For example, assuming that the amendment ordinance takes effect at the end of 2026, the person assisting an owner in purchasing a property with a “serious UBW” in 2027 will be deemed guilty of committing the new offence in sub-paragraph (c) above. As an example, if it is stated in the provisional sales and purchase agreement that there are “serious UBWs” in the property and there is evidence showing that the purchaser’s estate agent has failed to exercise due diligence in advising the purchaser of the existence of “serious UBWs”; or if the property is “encumbered” as a result of non-compliance with a removal order, and there is evidence showing that the solicitor has failed to exercise due diligence in advising the purchaser of the existence of “serious UBWs” (e.g. an unauthorised basement) which he knew of at the time of land search and assisted in the completion of the property transaction, he may be liable to the above liabilities. We will discuss with the Hong Kong Institute of Surveyors, the Law Society of Hong Kong and the Estate Agents Authority, etc. to formulate relevant professional or code

of conduct for reference by the building profession, solicitors and estate agents. Similarly, the above proposal will only apply to assistance in the completion of a property transaction after a certain specified period of time (i.e. a prospective date); and

- (e) **empowering the Building Authority to request for interviews, conduct searches and seize documents under warrant, etc., and introducing a new offence against refusal of interviews:** To address the fact that BD currently does not have the statutory power to request interviews with owners and relevant persons and to conduct searches for the purpose of seizing documents for investigation, we propose to enhance BD's capability in collecting evidence.

3.11 The list of recommendations about UBW matters are tabulated at **Annex B**.

Appeal Mechanism

3.12 At present, a person served with a statutory order/notice under the BO may lodge appeals to the Appeal Tribunal (Buildings)¹⁸, and BD has to suspend enforcement while the appeal is being processed. The Appeal Tribunal currently handles an average of over 300 appeals a year. The average processing time for each appeal is about 14 months. Of these cases, about half of them could not proceed with the appeal process due to reasons such as failure to provide sufficient documents. Of the remaining half, 30% of the cases were withdrawn by the appellants themselves before the hearing, while the vast majority of the remaining cases were unsubstantiated. From 2021 to the present, over 90% of the hearing stage cases were dismissed at preliminary hearing after the Appeal Tribunal ruled that there was no justification for a full hearing. We consider that there is room for **improving the procedures for handling appeals** to prevent abuse of the appeal mechanism for delaying BD's enforcement actions. We propose to consider written determination for simple appeal cases while continuing to conduct hearing in determining more complicated cases, so as to streamline procedures and expedite the process to ensure timely compliance with statutory orders/notices.

¹⁸ The Appeal Tribunal (Buildings) is constituted under section 48 of the BO and consists of a Chairman and not less than 2 members to hear and determine appeals. The Chairman of the Appeal Tribunal shall be a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336). Other members include relevant professionals, academics and district personalities. The majority of the persons consisting the Appeal Tribunal shall be persons other than public officers.

New Territories Village Houses

3.13 As for New Territories village houses, these houses are located in the rural areas with a relatively small population, which is different from the dense urban environment. In view of the history and unique situation of New Territories village houses, as a special arrangement, the Government launched a one-off Reporting Scheme in 2012 for UBWs already erected. Under the Reporting Scheme, owners may report to BD UBWs erected before 28 June 2011 and posed lower risks or constituted less serious contravention of the law, namely UBWs other than “first-round-targets”, including ground floor extensions, enclosed balconies, and enclosed roof-top areas not exceeding 50% of the total area. The reported cases will still be regarded as UBWs but will not be subject to immediate enforcement unless they pose immediate danger. Hence, the purpose of the Reporting Scheme was not to legalise or exempt such UBWs from enforcement, but to enable BD to focus its resources on prioritising the handling of “first-round-target” UBWs of a serious nature. The reporting period ended in December 2012, when BD received a total of about 25 600 reports of UBWs. Details of the Reporting Scheme is at **Annex C**.



Figures 9 and 10: Examples of UBWs that can be reported under the Reporting Scheme (the left shows a signboard mounted on the external wall; the right shows an unenclosed rooftop structure)



3.14 In response to the views of villagers and Legislative Council members that the reporting period was too short, we propose to **re-launch the administrative scheme** to allow owners who at that time did not report their UBWs to do so. Nevertheless, all the original arrangements under the scheme will be maintained, including that the scheme is only applicable to UBWs erected before 28 June 2011, and that safety inspection is required every five years for reported UBWs. At present, it is estimated that there are about 44 000 eligible but not yet reported UBWs in New Territories village houses, accounting for about one quarter of the total number of UBWs other than “first-round-targets” and involving about 18 500 village houses.

CHAPTER 4: ENHANCING BUILDING WORKS SAFETY

4.1. Generally speaking, building works should be carried out and supervised by building professionals (including authorized persons, structural engineers, geotechnical engineers and inspectors) and contractors registered under the BO, who play a crucial role in upholding the safety and quality of building works. To ensure that building professionals and contractors have adequate professional experience and knowledge to carry out their work and duties, the BO regulates in the following three aspects –

- (a) registration system: BD imposes stringent requirements on the qualifications of registered building professionals and registered contractors, and BD may also re-assess whether they are still fit for the duties in their registration renewal;
- (b) disciplinary system: BD may take disciplinary action against registered building professionals or registered contractors for misconduct; and
- (c) prosecution system: When a registered building professional or a registered contractor contravenes an offence relating to building works under the BO, the person may be liable to criminal prosecution by BD.

4.2. Regarding the registration system, under the BO, building professionals and contractors are required to possess the relevant qualifications, experience and competence, management structure and access to plant and resources (in the case of a body corporate), or should pass interviews conducted by the relevant registration committees constituted under the BO before they can be included in the registers and perform the statutory duties under the BO (such as submitting plans for approval, commencing works and supervising construction sites, etc.). The numbers of registered inspectors, registered building professionals and registered contractors as at October 2024 are shown in **Table 5** below.

Table 5: Numbers of Registered Inspectors, Registered Building Professionals and Registered Contractors

	Number
Registered Inspectors	614
Registered Building Professionals	
(a) Authorized Persons	1 516
(b) Registered Structural Engineers	436
(c) Registered Geotechnical Engineers	106
Registered Contractors	
(a) General Building Contractors	814
(b) Specialist Contractors	729
(c) Registered Minor Works Contractors (Company)	9 472
(d) Registered Minor Works Contractors (Individual)	7 292

4.3. Under the BO, a registered general building contractor (RGBC) or a registered specialist contractor (RSC) is required to supervise the building works in accordance with a supervision plan¹⁹ submitted to the Building Authority (BA) prior to commencement of the works and to fully comply with the BO, and each registered contractor should appoint at least one person to act on his behalf under BO in discharging the relevant supervisory responsibility. This appointed person is usually referred to as the authorized signatory (AS)²⁰ of the registered contractor. The contractor is also required to appoint at least one technical director (TD) to carry out duties including access to plant, provision of technical and financial support for the works, and supervision of the AS and other staff. The TD must be at least a holder of a diploma in a relevant discipline (e.g. Architecture, Engineering, etc.) and have experience in the construction industry and management of contractors.

¹⁹ The BD implemented the Supervision Plan System in 1997, which provides for quality supervision and site safety in accordance with the Technical Memorandum for Supervision Plans and the Code of Practice for Site Supervision. Under the Supervision Plan System, representatives of each functional stream and Technically Competent Persons involved in the works are required to carry out their respective supervisory duties to ensure that the construction and building works comply with the requirements of the relevant regulations and codes of practice.

²⁰ For each works project, the BA will only accept one AS to act on behalf of the registered contractor.

4.4. In addition, registered building professionals and registered contractors are required to appoint Technically Competent Persons (TCPs) for projects in accordance with the Technical Memorandum (TM) issued under the BO. Apart from stipulating the minimum qualifications and experience of the TCPs, the roles and number of TCPs required for different types of works, the TM also sets out the site safety supervision and quality supervision systems, such as the requirement for preparing and executing supervision plans to ensure building safety and quality of works.

4.5. Regarding the supervision of works quality, construction and safety, registered building professionals and registered contractors have an overall responsibility under the BO to properly supervise and make timely rectification of building works to ensure that all stages of the works are carried out in accordance with the BO and its subsidiary regulations, the approved plans of the works, and any orders or conditions imposed by BD in accordance with the law (including compliance with the required standards) and to ensure that the works are carried out safely. The TCPs shall carry out the supervisory duties and specific tasks prescribed in the supervision plan prepared by the registered building professionals and registered contractors and submitted to BD, and undertake the responsibilities specified in the TM for Supervision Plans and the Code of Practice for Site Supervision. If the registered building professionals, registered contractors and TCPs find any irregularities in works, they are required to initiate the relevant procedures and rectify the irregularities in a timely manner.

4.6. At present, BD takes action against building works involving injuries, deaths or other serious incidents through a three-pronged approach, including: (i) disciplinary actions against registered contractors and registered building professionals concerned if they are found guilty of negligence or misconduct²¹; (ii) re-assessment of the competence and fitness of the relevant contractors or building professionals in determining whether to approve the registration renewal applications²²; and/or (iii) criminal prosecution if building works-related offences

²¹ If a registered contractor or registered building professional is convicted by the court of an offence in relation to building works, or is guilty of negligence or misconduct in relation to building works, BD may refer the case to a disciplinary board in accordance with the provisions of the BO. If the disciplinary board is satisfied after inquiry that a person has been convicted of the offence or is guilty of negligence or misconduct, etc., it may impose punitive measures under the BO.

²² In respect of registered contractors, if a registered contractor is involved in site safety, technical or management deficiencies, or has a record of conviction involving offences concerning serious labour safety, BD may refer the application to the Contractors Registration Committee for interview and assessment under section 8C(4) of the BO to provide advice to assist BD in considering whether to accept or reject the application.

under the BO is committed²³. If an incident occurs on a construction site, BD and the Labour Department (LD) may consider initiating prosecution in accordance with the BO and the Factories and Industrial Undertakings Ordinance and/or the Occupational Safety and Health Ordinance (OSHO) respectively. BD is mainly concerned with whether the building works are carried out in accordance with the prescribed requirements and in a safe manner, while LD considers whether the proprietor and the duty holders have complied with the requirements to ensure safety and health of their employees by providing them with industrial plants and systems of work that are safe and not hazardous to health.

Figure 11: A fatal work accident at a construction site at Anderson Road, Sau Mau Ping in 2022



4.7. As far as the registration and disciplinary systems are concerned, BD currently encounters the following limitations –

- (a) at present, if a contractor's application for registration or renewal is accepted under the BO, the registration must be for a period of three years, and the BA has no power to adjust having regard to the actual circumstances;
- (b) there is also no express provision in the BO empowering the BA to impose conditions in approving a registration renewal application for a specified term, for instance, requiring a contractor to implement improvement measures to enhance safety and other performance when approving a renewal application;

²³ Examples include carrying out building works without approval by BD, carrying out building works in a dangerous manner that causes injury to any person or damage to property, etc.

- (c) in addition, the Disciplinary Board currently is not empowered to impose more than one disciplinary sanction²⁴. The sanction does not create sufficient deterrence on contractors with unsatisfactory performance or who have contravened the BO; and
- (d) a total of five disciplinary cases were fined in 2021 to 2023, with an average fine of about \$17,000. The penalty level is apparently inadequate.

4.8. In terms of criminal prosecution, BD also faces a number of constraints, such as –

- (a) while registered contractors are required to keep relevant supervision records and documents (e.g. site supervision records) of building works in accordance with the relevant regulation under the BO²⁵, there is no provision stipulating the legal liability for non-compliance, contractors can take the opportunity to circumvent and do not produce such documents;
- (b) the BO does not empower BD to request interviews with the persons concerned and to compel production of records that should have been kept, which often results in the inability to collect sufficient evidence for prosecution or conviction;
- (c) even if BD succeeds in obtaining the records, they may still be inadmissible as evidence in court because of the high evidentiary threshold (for example, documents have to be those specified in the BO); and
- (d) for the above reasons, it is often difficult to prove that registered contractors, registered building professionals and other relevant persons are directly concerned with or have knowledge of the works involved in the incidents.

4.9. As far as penalties are concerned, the maximum penalties under the prosecution provisions of the BO for cases involving death or injury are \$1,000,000 and imprisonment for three years. However, between 2021 and 2023, the average fine for successful convictions under the relevant offence provisions for fatal incidents in construction sites was only about \$28,000, which is on the low side.

²⁴ The disciplinary board may, in accordance with the BO, (i) order the removal of the registered contractor or registered building professional from the register permanently or for a specified period of time, (ii) impose a maximum fine of \$250,000, or (iii) order a reprimand.

²⁵ Under Regulation 41 of the Building (Administration) Regulations (Cap. 123A), the appointed registered contractor “are required to keep records of activities and information relevant to the supervision of building works or street works of the site”.

4.10. The Code of Practice for Site Supervision and the TM have been drawn up by the Government in the early years to clearly define the roles and responsibilities of different parties involved in building works. In the event of safety or quality incidents, these persons can be held liable according to the division of work. However, there are views that there is no legal basis for the above arrangements, and that the relevant provisions of the BO may not be able to comprehensively cover all levels of persons involved in the works (namely TCPs, AS and TD), and may not be able to clearly establish statutory rights and responsibilities.

Figure 12: Code of Practice for Site Supervision and TM



SPECIFIC PROPOSALS

4.11. Our proposal is to enhance the monitoring of quality and safety of construction site works on one hand, including the regulatory regime for the persons concerned; and to strengthen enforcement and the punitive mechanism against major building safety incidents to enhance the deterrent effect on the other hand. Regarding enforcement and the punitive mechanism, we propose to strengthen the enforcement power of BD and increase the penalties –

- (a) with regard to registered building professionals or registered contractors involved in the works, **we propose to increase the penalty level for the offence of carrying out building works or authorising or permitting building works to be carried out where such works are carried out in a manner that causes or is likely to cause injury, death or damage to property.** On summary conviction, the maximum fine of \$1,000,000 will be increased to \$3,000,000, while the term of imprisonment will remain at three years. For persons directly concerned with works involving **serious injury or death**, we propose that **an indictable offence be introduced** by making reference to the OSHO with a maximum fine of \$10,000,000, which is on a par with that under the OSHO. The term of imprisonment will remain at three years; and
- (b) **empowering the BA to request interviews, conduct searches and seize documents with warrant, and introducing new offences for refusing to attend interviews or failing to produce site supervision documents, etc. to BD:** This will help ensure that BD has sufficient power to collect evidence to establish the obligations and liabilities of the relevant registered contractors and/or persons, as well as to prove direct connection with and knowledge of the works involved. We will also cover more types of document admissible in court.

4.12. We also **propose to enhance the registration and disciplinary systems** –

- (a) regarding the processing of registration applications or renewal applications by registered contractors under the BO, we propose to **extend the registration period** from the current three years **to a maximum of five years** in response to the industry's aspiration for a longer operation period to encourage long-term investment and healthy development of the industry. This is also in line with the term of registration or registration renewal of registered building professionals. On the other hand, if the contractor

concerned has **caused serious injury or death incidents as a result of breach of duty**, we propose to empower the BA to consider **shortening the renewal period** in order to strengthen monitoring. If a registered contractor's renewal application is rejected, the contractor concerned will not be allowed to apply for re-registration in the Register within a certain period of time (e.g. within 12 months), and will not be allowed to submit any fresh registration application in the same capacity during the period.

We also propose that the BA be empowered to **impose conditions** (e.g. requiring implementation of a more stringent site supervision system) on registration renewal having regard to the contractor's individual circumstances (in particular their past performance), so as to enhance the existing registration system; and

- (b) under the disciplinary system, the disciplinary boards of both registered building professionals and registered contractors comprise members of three disciplinary board panels/groups, namely (i) the Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board Panel; (ii) Registered Contractors' Disciplinary Board Panel; and (iii) a group of lay persons. To **expedite the constitution and hearing** of the disciplinary boards, we propose to increase the composition of the Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board Panel²⁶ from not more than 25 to not more than 40 members. In addition, in view of the limited number of members from individual professional disciplines, we propose to simplify the composition of the disciplinary boards of registered contractors by removing the existing requirement of having representatives from all the five professional disciplines.

We also propose to **increase the maximum fine for disciplinary sanction** from \$250,000 to \$400,000, and to allow the disciplinary board to impose more than one sanction for each charge (in addition to a fine, consideration may also be given to order a reprimand and/or remove the contractor from the register at the same time) so as to enhance the deterrent effect.

²⁶ The Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board Panel requires a maximum of five members for each professional body, while the Registered Contractors' Disciplinary Board Panel has no such restriction. It is proposed to increase the limit of five to eight members for each professional body for the former disciplinary board panel.

4.13. In terms of **improving the supervisory mechanism**, we propose the **following** –

- (a) at present, while the BO sets out the detailed requirements and regulations for registered building professionals and registered contractors, there is no express provision clearly defining the roles and responsibilities of other key personnel involved in building works, namely the TCPs responsible for finalising the details of works and keeping records of the works, as well as the ASs and the TDs acting on behalf of registered contractors. We propose to delineate the above clearly in the BO and further clarify the details in the relevant technical memorandum in order to **establish their legal responsibilities in relation to building works**; and
- (b) the current regulatory regime does not require registration of TCPs. Having said that, the Construction Industry Council (CIC) has put in place a voluntary registration system with a list of TCPs. In view of the important role of TCPs in implementing the details of works supervision, we propose that in future, when **preparing supervision plans, it will be necessary to confirm that CIC-registered TCPs have been appointed** to ensure proper implementation of the supervision plans. This will also benefit the development of the profession of TCPs.

4.14. There have been suggestions that a separate registration system for ASs should be established. However, we note that the industry has different views on this issue. On the one hand, there are views that an independent registration can enhance the professional recognition of ASs and the development of the industry. On the other hand, as an AS can only act on behalf of one registered contractor, some members of the industry are concerned about whether an AS can act on behalf of more than one registered contractor after independent registration, and if so, whether they will be unable to focus on the work of a particular contractor in order to fulfill their duty of “continuous supervision of the carrying out of works” on behalf of that contractor. We are prepared to listen to the views of the industry on this issue.

CHAPTER 5: INVITATION OF VIEWS

5.1 Members of the public are invited to provide their views on the issues set out in this consultation paper (please refer to **Annex D**) on or before 28 February 2025, in particular on the following matters -

- (a) to provide suggestions on how the Government could better support owners to maintain and repair their buildings, based on the principle that building maintenance and repair is the primary responsibility of owners (i.e. paragraph 2.16 in Chapter 2);
- (b) do you agree with the Government's principle of adopting a carrot and stick approach to enhance support to owners on the one hand, and introducing fixed penalty, increasing penalties and creating a new offence to compel compliance with MBIS and MWIS notices on the other hand (i.e. paragraphs 2.3-2.9 and 2.16 of Chapter 2 as well as paragraph 2.14(a)-(c));
- (c) do you agree that the Government should rationalise the policy on UBWs by striking a balance between leniency and rigour, and adjusting enforcement latitude having regard to the type and nature of contravention (i.e. paragraph 3.7 of Chapter 3);
- (d) do you agree that the Government should adopt a pragmatic and facilitating approach (i.e. the proposals in paragraph 3.8 of Chapter 3) to deal with "minor UBWs" related to people's daily lives and constitute lower risks;
- (e) targeting cases constituting serious contraventions and posing higher risks, do you agree to improve effectiveness of enforcement through the proposals in paragraphs 3.9-10 of Chapter 3, so as to combat "serious UBWs" vigorously;
- (f) for UBWs in NTEHs, do you agree to reopen the one-off administrative Reporting Scheme with all the old arrangements maintained (i.e. paragraphs 3.13-14 of Chapter 3);
- (g) do you agree with the proposals in paragraph 4.11 of Chapter 4 to strengthen the enforcement powers of BD, to introduce an indictable offence and increase the penalties for persons directly concerned with works involving serious injury or death, making it on a par with that of the OSHO; and

- (h) do you agree with the proposals in paragraphs 4.12-13 of Chapter 4 to enhance the registration and disciplinary systems and to enhance the regulatory regime for building works.

5.2 The channels for submission of views are set out below:

Email address : bo_consultation@devb.gov.hk

Mail address : 17/F, West Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong
Development Bureau (Planning and Lands Branch)

Online form : https://www.devb.gov.hk/en/issues_in_focus/proposals-to-amend-the-buildings-ordinance/online-form-for-sending-us-your-views/index.html

5.3 We will treat the submissions received as public information, and may reproduce and publish the submissions in whole or in part and in any form for the purposes of this consultation and any directly related purposes without seeking permission of or providing acknowledgement to the senders. If the senders request anonymity in the submissions, we will remove their names and other personal data when publishing their views.

Development Bureau
December 2024



Annex A: Proposed Amendments to Add New and Relaxed Items under the “Minor Works Control System” and the “Designated Exempted Works” System

MWCS (CURRENTLY 187 ITEMS)

5.1 Under the MWCS, relevant persons may follow the simplified requirements to appoint Prescribed Building Professionals²⁷ or Prescribed Registered Contractors²⁸ to carry out small-scale building works legally and safely without the need to obtain prior approval and consent from the Buildings Department (BD). “Minor works” (MW) are categorised into the following three classes according to their nature, scale, complexity and safety risks:

(a) Class I (currently 58 items):

More complicated minor works such as addition of internal staircases between two floors, repair of columns or load-bearing walls and removal of large-size unauthorised rooftop structures. The works have to be designed and supervised by a Prescribed Building Professional and carried out by a Prescribed Registered Contractor. Should submit documents before commencement and after completion of works.

(b) Class II (currently 68 items):

Minor works of lower complexity and safety risk, such as repair of non-load-bearing external walls, laying or repair of external wall rendering or wall tiles and erection of medium-size signboards on external walls. The works have to be carried out by a Prescribed Registered Contractor. Should submit documents before commencement and after completion of works.

(c) Class III (currently 61 items):

Mainly for common household minor works, such as installation of supporting frames for air-conditioner units, drying racks and canopies. The works have to be carried out by a Prescribed Registered Contractor. No need to submit documents before commencement of works but need to submit after completion of works.

²⁷ Prescribed Building Professional means an Authorized Person/a Registered Inspector and, depending on the works items, a Registered Structural Engineer/Registered Geotechnical Engineer.

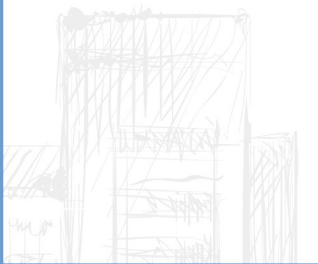
²⁸ Prescribed Registered Contractor means a Registered General Building Contractor, a Registered Specialist Contractor in respect of the relevant specialist works items, or a Registered Minor Works Contractor who are qualified to carry out the minor works belonging to the class, type and category for which they are registered.

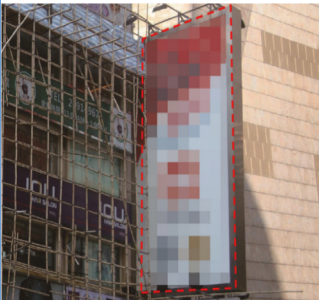
Proposed Amendments	No.	Remarks	
New MW Item	7	1. Class II : Pole projecting from external wall ^{Note 1} • <i>Erection or alteration of poles <u>projecting not more than 2m</u> from an external wall of a building</i>	
		2. Class III : Pole projecting from external wall ^{Note 1} • <i>Erection or alteration of poles <u>projecting not more than 1m</u> from an external wall of a building</i>	
		3. Class I : Unauthorised structure not in line with a repealed building set-back requirement ^{Note 1} • <i>Strengthening of structure not in line with a repealed building set-back requirement and not required them to be removed. [Regulation 16 of Building (Planning) Regulations (repealed in 1987)]</i>	
		4. Class I : Enclosure of a non-green balcony ^{29 Note 1} • <i>Erection of structure used for enclosing a balcony shown on an approved plan</i>	

²⁹ "Green balconies" meeting specific conditions, including non-enclosure, are exempted from the calculation of gross floor area for residential developments. Therefore, if such balcony is enclosed, BD will issue a removal order.

Proposed Amendments	No.	Remarks	
		5. Class I : Grease trap on-grade or on a slab • <i>Erection or alteration of any grease trap on-grade or on a slab (other than cantilevered slab)</i> • <i>The capacity of the tank is not more than 4.5m³</i>	
		6. Class I : Fire services pump set suspending inside a building • <i>Erection or alteration of any supporting frame for suspending a fire services pump set (including ancillary fittings) inside a building.</i>	
		7. Class I : Carpark shelter ^{Note 1} • <i>Erection of shelter erected on an open car-parking space shown on an approved plan</i>	



Proposed Amendments	No.	Remarks	
Relaxed MW Item	9	1. Supporting frames for air-conditioning (A/C) unit under MW item 2.49 <i>Existing requirements for erection or alteration of supporting frames for A/C unit under MW item 2.49:</i> • Projecting from the external wall: $\leq 600\text{mm}$; • Design weight capacity of the supporting frame: $\leq 150\text{kg}$; and • Distance from ground: $> 3\text{m}$ (those below 3m are DEWs) ⇒ Relax projection limit to $\leq 750\text{mm}$ ⇒ Relax distance from ground to more than 8m (those below 8m are DEWs)	
		2. Supporting frames for A/C unit under MW item 3.27 <i>Existing requirements for erection or alteration of supporting frames for A/C unit under MW item 3.27:</i> • Projecting from the external wall: $\leq 600\text{mm}$; • Design weight capacity of the supporting frame: $\leq 100\text{kg}$; and • Distance from ground: $> 3\text{m}$ (those below 3m are DEWs) ⇒ Relax projection limit to $\leq 750\text{mm}$ ⇒ Relax distance from ground to more than 8m (those below 8m are DEWs)	
		3. Removal of mesh fence or metal railing (on roof) under MW item 3.65 <i>Existing requirements under MW item 3.65:</i> • Height of the structure, including any feature at its top: $\leq 2.5\text{m}$ • If the lower part is a solid fence wall, the height of the wall: $\leq 1.1\text{m}$ ⇒ Regarding the second requirement, relax the solid fence wall height to $\leq 1.5\text{m}$	

Proposed Amendments	No.	Remarks	
		4. Projecting signboard under MW item 3.16 <i>Existing requirements for erection, alteration or removal of projecting signboard under MW item 3.16:</i> • Display area: $\leq 1\text{m}^2$ • Projects from external wall: $\leq 1\text{m}$ • Signboard thickness: $\leq 300\text{mm}$ • Distance from ground: $\leq 6\text{m}$ ⇒ Relax display area limit to $\leq 2\text{m}^2$ ⇒ Relax projection limit to $\leq 1.5\text{m}$ ⇒ Relax distance from ground to $\leq 8\text{m}$	
		5. Wall signboard under MW item 3.17 <i>Existing requirements for erection, alteration or removal of wall signboard under MW item 3.17:</i> • Display area: $\leq 5\text{m}^2$ • Distance from ground: $\leq 6\text{m}$ ⇒ Relax distance from ground to $\leq 8\text{m}$.	
		6. Excavation works under MW item 1.12 <i>Existing requirements for the carrying out of excavation works under MW item 1.12:</i> • Excavation works associated with the carrying out of any other MW or DEW • Depth of excavation: $> 1.5\text{m}$ but $\leq 3\text{m}$ ⇒ Relax scope of works to allow building works not associated with the carrying out of any other MW or DEW	
		7. Excavation works under MW item 2.11 <i>Existing requirements for the carrying out of excavation works under MW item 2.11:</i> • Excavation works associated with the carrying out of any other MW or DEW • Depth of excavation: $> 0.3\text{m}$ but $\leq 1.5\text{m}$ ⇒ Relax scope of works to allow building works not associated with the carrying out of any other MW or DEW	

Proposed Amendments	No.	Remarks	
		8. Spread footing under MW item 1.11 <i>Existing requirements for the construction or alteration of any spread footing under MW item 1.11:</i> • Spread footing associated with the carrying out of any other MW or DEW • Depth of excavation: $\leq 3\text{m}$ • No slope steeper than 15 degrees • Overall gradient: ≤ 15 degrees ⇒ Relax scope of works to allow building works not associated with the carrying out of any other MW or DEW	
		9. Spread footing under MW item 2.10 <i>Existing requirements for the construction or alteration of any spread footing under MW item 2.10:</i> • Spread footing associated with the carrying out of any other MW or DEW • Depth of excavation: $\leq 1.5\text{m}$ • No slope steeper than 15 degrees • Overall gradient: ≤ 5 degrees ⇒ Relax scope of works to allow building works not associated with the carrying out of any other MW or DEW	

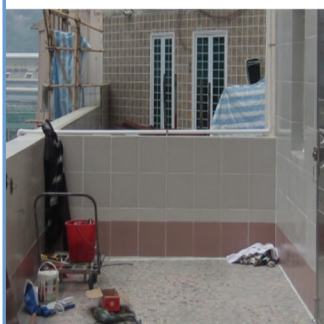
Note 1 Pre-existing works that can be validated through the integrated validation scheme.

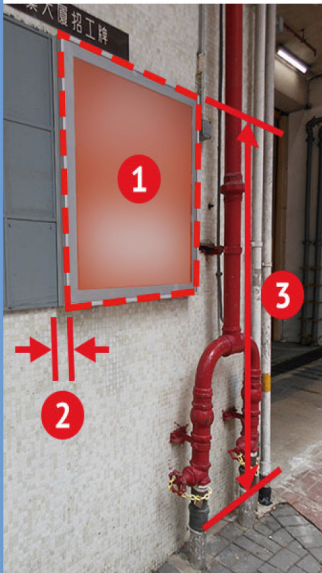
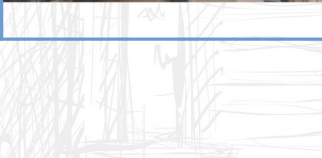
DEW (CURRENTLY 30 ITEMS):

They can be carried out without prior approval and consent from BD, and are not required to be carried out in accordance with the simplified requirements of MWCS and submit documents. For example, small-size drying racks that are not too high above the ground.

Proposed Amendments	No.	Remarks	
New DEW Item	6	1. Retractable awning (Existing MW items 2.43 and 3.43 to be proposed as a new DEW) • 2.43: erection, alteration or repair of any retractable awning for an opening on an external wall of a building of (i) not more than 5.5m (H) from roof/ground, and (ii) the projection from wall is not more than 500mm when retracted, not more than 2m when fully extended over a roof, and not more than 2.5m in any other case; • 3.43: removal of any retractable awning projecting from an external wall of a building or from a fence wall	
		2. Outdoor signboard fixed on grade (other than the construction of a spread footing) - Existing MW items 2.21 and 3.22 to be proposed as a new DEW • 2.21: erection or alteration of outdoor signboard fixed on-grade of not more than 2m (H), display area of not more than 10m² and signboard thickness of not more than 600mm • 3.22: removal of any outdoor signboard fixed on-grade of not more than 3m (H) and display area of not more than 1m²	
		3. Outdoor signboard with a spreading footing - Currently, MW item 2.22 refers to erection or alteration of any outdoor signboard with a spreading footing of not more than 3m (H), display area of not more than 1m ² and involving excavation of a depth of not more than 500mm. We propose to designate a portion of works as new DEW (i.e. works involving excavation of a depth not more than 300 mm. Works more than 300 mm but not more than 500 mm will continue to be MW)	

Proposed Amendments	No.	Remarks	
	4.	Removal of radio base station for telecommunication services on roof under MW items 2.12 and 3.8 to be proposed as new DEW 2.12: removal of radio base station in the form of an enclosure or equipment cabinet together with its supporting structure on the roof, with length and width of the station not more than 4.5m and height of the station not more than 2.3m 3.8: removal of radio base station in the form of an enclosure or equipment cabinet together with its supporting structure on the roof, with length and width of the station not more than 4.5m and height of the station not more than 2m	
	5.	Supporting structure or metal casing for a building services installation (BSI) on-grade or on roof under MW item 3.50 (except photovoltaic (PV) panels) to be proposed as new DEW 3.50: erection or alteration of the supporting structure or metal casing for BSI within the following specifications: (a) For the supporting structure: ➤ Design weight capacity for a BSI $\leq 200\text{kg}$; and $\leq 100\text{kg/m}^2$ of the ground area or slab area ➤ Height of the supporting structure $\leq 2.5\text{m}$ for an antenna or transceiver; or $\leq 1.5\text{m}$ for other BSI (b) For the casing: ➤ Weight $\leq 10\%$ of the weight of the BSI ➤ Distance between inner surface of casing and installation $\leq 200\text{mm}$ in all directions	
	6.	Removal of unauthorised structure on grade or on a slab under MW item 3.32 to be proposed as new DEW item 3.32: removal of unauthorised single storey structure within the following specification: ➤ Height of the structure: $\leq 2.5\text{m}$ ➤ Span of structural element of the structure: $\leq 4.5\text{m}$ ➤ Roofed over area: $\leq 20\text{m}^2$ Further requirements for the new DEW ➤ If the structure is located on the roof, the building should be a domestic building not more than 3 storeys above ground; ➤ The roof on which the structure is located is at a height of not more than 8.5 m from the adjoining ground; and ➤ No part of the structure projects beyond the external wall of building	

Proposed Amendments	No.	Remarks	
Relaxed DEW Item	12	1. Solid fence wall on roof under DEW item 20 <i>Existing requirements for erection, alteration, repair or removal of a solid fence wall on roof:</i> • Height of the wall: $\leq 500\text{mm}$ • Thickness of the wall: $\leq 100\text{mm}$ ⇒ Relax the height of the wall in case of erection or alteration to $\leq 1.1\text{m}$; and relax to $\leq 1.5\text{m}$ in case of repair or removal	
		2. Removal of mesh fence or metal railing on roof under DEW item 18 <i>Existing requirements for removal of mesh fence or metal railing on roof:</i> • Height of the fence or railing, including any feature at its top: $\leq 1.1\text{m}$ • The lower part of the fence or railing, excluding any pedestal: not a solid fence wall ⇒ Relax the height limit to $\leq 1.5\text{m}$	
		3. Outdoor planter, pond or fountain on-grade under DEW item 24 <i>Existing requirements for erection, alteration, repair or removal of an outdoor planter, pond or fountain on-grade:</i> • Height from ground $\leq 600\text{mm}$ for erection or alteration; and $\leq 1.1\text{m}$ for repair or removal • Excavation depth: $\leq 300\text{mm}$ ⇒ Relax height from ground for erection or alteration also to $\leq 1.1\text{m}$	
		4. Pole (such as lamp pole) on roof under DEW item 19 <i>Existing requirements for erection, alteration, repair or removal of a pole on roof:</i> • Height of the pole, including any feature at its top: $\leq 1.1\text{m}$ • If more than one pole on the roof, $\geq 2.5\text{m}$ away from each other ⇒ Relax height limit to $\leq 2.5\text{m}$	

Proposed Amendments	No.	Remarks	
	5.	Ventilation duct or associated supporting frame on-grade or on roof under DEW item 22 <i>Existing requirements for erection, alteration, repair or removal of a ventilation duct or associated supporting frame:</i> Distance between the highest point of the duct or frame and the adjoining ground or adjoining roof: $\leq 900\text{mm}$ ⇒ Relax the distance limit between the highest point of any external metal ventilation duct, or associated supporting frame and the adjoining ground or adjoining roof to 1.5 m	
	6.	Erection/alteration of signboard fixed to the external wall of a building under DEW item 10 <i>Existing requirements for erection or alteration of signboard fixed to the external wall of a building:</i> - Display area: $\leq 1\text{m}^2$ - Projects $\leq 150\text{ mm}$ - Distance from ground: $\leq 3\text{m}$ ⇒ Relax display area to $\leq 5\text{m}^2$; ⇒ Relax distance from ground to $\leq 8\text{m}$	
	7.	Removal of signboard fixed to the external wall of a building under DEW item 11 <i>Existing requirements for removal of signboard fixed to the external wall of a building:</i> - Display area: $\leq 1\text{m}^2$ - Projection from the wall: $\leq 600\text{mm}$ - Distance from ground: $\leq 3\text{m}$ ⇒ Relax distance from ground to $\leq 8\text{m}$	
	8.	Supporting frame under DEW item 13 <i>Existing requirements for erection or alteration of supporting frame:</i> - Projection from the external wall: $\leq 600\text{mm}$ - Design weight capacity of the supporting frame: $\leq 100\text{kg}$ - Distance from ground: $\leq 3\text{m}$ ⇒ Relax distance from ground to $\leq 8\text{m}$	
	9.	Canopy projecting from the external wall of a building under DEW item 14 <i>Existing requirements for erection, alteration or removal of canopy projecting from the external wall of a building:</i> - Projection from an external wall: $\leq 500\text{mm}$ - Distance from ground: $\leq 3\text{m}$ ⇒ Relax distance from ground to $\leq 8\text{m}$	

Proposed Amendments	No.	Remarks	
		10. Drying rack projecting from the external wall of a building under DEW item 15 <i>Existing requirements for erection, alteration or removal of drying rack projecting from the external wall of a building:</i> • Projection from an external wall: $\leq 750\text{mm}$ • Distance from ground: $\leq 3\text{m}$ ⇒ Relax distance from ground to $\leq 8\text{m}$	
		11. External metal ventilation duct or associated supporting frame under DEW item 23 <i>Existing requirements for erection, alteration or removal of external metal ventilation duct or associated supporting frame:</i> • Distance from ground: $\leq 3\text{m}$; and (i) If projects from an external wall • Projection from an external wall: $\leq 750\text{mm}$ (ii) If located on a balcony, verandah or canopy (other than a cantilevered slab) • Largest cross-sectional dimension: $\leq 750\text{mm}$ • Distance from the duct or frame and the balcony, verandah or canopy $\leq 900\text{mm}$ (iii) If hung underneath the soffit of a balcony, verandah or canopy (other than a cantilevered slab) • Largest cross-sectional dimension: $\leq 750\text{mm}$ ⇒ Relax distance from ground to $\leq 8\text{m}$ (for external metal ventilation duct or associated supporting frame projecting from external wall)	
		12. Metal window security grille or metal wind guards under DEW item 27 <i>Existing requirements for erection, alteration, repair or removal of metal window security grille, or metal wind guard, for an opening on an external wall of a building:</i> • Projection from the wall: $\leq 300\text{mm}$ • Distance from ground: $\leq 3\text{m}$ • Edge distance between the projection image of the grille or guard and the opening: $\leq 300\text{mm}$ ⇒ Relax distance from ground to $\leq 8\text{m}$	

Note 2 For details of individual items, please refer to the website of BD (MW: <https://www.bd.gov.hk/en/building-works/minor-works/minor-works-items/index.html>; DEW: <https://www.bd.gov.hk/en/building-works/minor-works/designated-exempted-works/index.html>)

Annex B: Table of Proposed Recommendations Concerning Unauthorised Building Works (UBWs)

Existing Mechanism	Proposed Amendments to Buildings Ordinance
(a) Exempted Works and Designated Exempted Works (DEW)	
These works can be carried out without prior approval and consent from the Buildings Department (BD) nor required to follow the simplified requirements of Minor Works Control System (MWCS). Common household renovation works, such as painting, internal plastering or wall-paper works, and the following 30 DEW items that comply with specified size or height restrictions: (i) works related to signboards (e.g. wall signboards); (ii) works related to domestic units/external wall (e.g. supporting frames for air-conditioning units or light fittings, canopies and drying racks); (iii) works related to roof/external area (e.g. solid fence walls, poles and metal gates); and (iv) works related to interior area (e.g. formation of an opening in a floor slab).	Add DEW items, or relax the requirements of specified dimensions and height, etc. of existing items, so that works related to people's daily lives and are of relatively low safety risk can be carried out in future without prior approval and consent from BD (e.g. retractable awnings and drying racks within specified dimensions and below specified heights).
(b) Minor Works (MW)	
MW are classified into three classes according to their nature, scale, complexity and safety risk. Under the MWCS, relevant persons may follow the simplified requirements and appoint Prescribed Building Professionals or Prescribed Registered Contractors to carry out small-scale building works legally and safely by submitting documents to BD but without obtaining prior approval and consent from BD. <u>MW items</u> There are 187 MW items with specified dimensions and height restrictions, including (i) common minor works (e.g. installation of supporting frames and signboards); (ii) structural alteration or removal works; (iii) roof or external works (e.g. canopies and drying racks with projection from the external wall and distance from ground greater than that permitted under DEW); and (iv) subdivided flat or interior works (e.g. erection of internal staircases or partition walls inside flats).	<u>MW items</u> Add MW items or relax the dimensions and height requirements for exiting items (including supporting frames for air-conditioning units with larger projection limit from the external wall and distance from ground; and poles projecting from the external wall), so that more works can be carried out following the simplified procedures. <u>Validation Schemes</u> In respect of the pre-existing MW before the commencement of the amendment ordinance, consolidate the three existing validation schemes into one integrated scheme and extend the scope of validation, allowing owners to retain specified "minor UBWs" that were erected before the commencement of the amendment ordinance (such as canopies meeting the specified dimensions; supporting frames for air-conditioning; enclosed balconies; unauthorized structure

Existing Mechanism	Proposed Amendments to Buildings Ordinance
<u>Validation Schemes</u> Currently, there are three validation schemes, and minor UBWs that were built before the appointed date without prior approval from BD and <u>meet the specified dimensions of MW items</u> can be retained after being validated by Prescribed Building Professionals or Prescribed Registered Contractors. These items include (i) household minor works (e.g. supporting frame for air-conditioning units, drying racks and small scale canopies); (ii) signboards; and (iii) amenity features (e.g. retractable awnings). Except for signboards, which require periodic validation (every five years), other works of relatively smaller scale and lower potential safety risks can be retained after one-off validation. <u>Enforcement Action</u> For UBWs that were not built in accordance with the requirements of the MWCS or fail to be validated, BD may issue removal orders. The maximum penalty for non-compliance with the removal order is a fine of \$200,000 and imprisonment for one year.	not in line with a repealed building set-back requirement; carpark shelters; and signboards, etc.) after validation (all but signboards are subject to one-off validation only), and BD will not issue removal orders. BD will set a grace period of three years, during which no enforcement action will be taken unless the UBW poses an immediate danger, so that owners have time to participate in the validation scheme. After the grace period, BD will progressively take enforcement action against unvalidated minor UBWs. <u>Enforcement Action</u> (i) For new “minor UBWs” built without following the requirements under the MWCS or pre-existing “minor UBWs” that failed to be validated, BD may issue removal orders. We suggest introducing the fixed penalty mechanism, simplify the enforcement procedures, and impose a fixed penalty of \$10,000 for non-compliance with removal orders; and (ii) In respect of non-compliance with removal orders after imposing fixed penalty, BD may initiate prosecution. The maximum penalty for first conviction will remain at a fine of \$200,000 and imprisonment for one year. New provision will be added to increase the maximum penalty for subsequent conviction to a fine of \$400,000 and imprisonment for one year.
(c) Works that require prior approval and consent from the Building Authority (BA)	
Prior approval of building plans and consent from the BA is required, in accordance with section 14(1) of the Buildings Ordinance, for commencing or carrying out works with higher risk or of larger scale/complicated in nature. Without approval, such unauthorised works will be regarded as “serious UBWs” (e.g. enclosed rooftop structures; unauthorised basement; rooftop/lane structures), which should not be tolerated from the perspective of upholding public safety and policy fairness. <u>Enforcement Action</u> (i) BD may issue removal order against UBWs which are carried out without obtaining prior approval and consent	<u>Enforcement Action</u> It is recommended to, in respect of “serious UBWs” - (i) Increase the maximum penalty for non-compliance with a removal order from the current fine of \$200,000 and imprisonment for one year to \$300,000 and imprisonment for two years. In addition, new provision will be introduced to increase the maximum penalty for subsequent conviction to a fine of \$600,000 and imprisonment for two years; (ii) Remove the word “knowingly” from the existing offence provision regarding knowingly, without approval from BD, erecting UBWs in order to lower the

Existing Mechanism	Proposed Amendments to Buildings Ordinance
from the BA. The maximum penalty for non-compliance with the removal order is a fine of \$200,000 and imprisonment for one year; and (ii) Currently, the maximum penalty for knowingly erecting UBWs without approval from BD is a fine of \$400,000 and imprisonment for two years.	prosecution threshold. In other words, BD may initiate prosecution if there is reasonable doubt that the owner and/or the professional is involved in the commencement of unauthorised works without submitting building plans to BD and obtaining approval. In addition, the maximum penalty is suggested to be increased from a fine of \$400,000 and imprisonment for two years to a fine of \$2,000,000 and imprisonment for two years; and (iii) Introduce new offence and indictable offence. If an owner purchases a property with "serious UBWs" after a certain specified period after the commencement of the amendment ordinance, the owner will be held liable regardless of whether the UBW was erected by the owner (i.e. the owner is not able to be relieved of liability simply by complying with the removal order)³⁰. The maximum penalty for summary conviction is a fine of \$300,000 and imprisonment for two years. The maximum penalty for conviction on indictment is suggested to be higher than that on summary conviction or the current maximum fine under the Buildings Ordinance (\$1,000,000). In addition, any person who knowingly assist the owner in committing the new offence after a certain specified period after the commencement of the amendment ordinance will be deemed as having committed the same offence³¹.

³⁰ For example, assuming the amendment ordinance takes effect in 2026, an owner who purchases a property with "serious UBWs" after a certain period specified in the amendment ordinance (in 2027) will be held liable when the UBWs are discovered.

³¹ For example, assuming the amendment ordinance takes effect in 2026, a person who assists an owner to purchase a property with "serious UBWs" after a certain period specified in the amendment ordinance (in 2027) will be held liable and deemed guilty of committing the aforementioned new offence.

Annex C: Reporting Scheme for Unauthorised Building Works in New Territories Exempted Houses

The Reporting Scheme for unauthorised building works (UBWs) in New Territories Exempted Houses (NTEHs) was a one-off administrative scheme. The Reporting Scheme was applicable to NTEHs, which are designed and built in compliance with the exemption criteria in respect of the height and roofed-over area, etc. stipulated in the Buildings Ordinance (Application to the New Territories) Ordinance. For example, the building should be of not more than 3 storeys and of a height of not more than 8.23 m (about 27 feet) and with a roofed-over area not exceeding 65.03 m² (about 700 square feet). For NTEHs exempted under the Buildings Ordinance (Application to the New Territories) Ordinance, they are not subject to the regulation of certain provisions and regulations under the Buildings Ordinance.

2. Under the Reporting Scheme in 2012, owners of UBWs in NTEHs could report to the Buildings Department (BD) pre-existing UBWs (a total of 11 categories, see table below) that were erected before 28 June 2011, were not first-round targets and against which no enforcement was taken by BD before the aforesaid date. The owner could submit information to BD, including photos, description, size and completion date of the UBWs concerned, and to conduct safety inspection of the structures concerned every five years. The purpose of the Reporting Scheme was not to legalise or exempt such UBWs from enforcement, but to enable BD to focus its resources on prioritising the handling of “first-round-target” UBWs of a serious nature. The Reporting Scheme ended in December 2012. At that time, BD acknowledged a total of 12 800 applications involving about 25 600 UBWs with safety certification submitted by qualified personnel.

11 Categories of UBWs that could be reported under the Reporting Scheme

1	Enclosed balcony constructed of steel or aluminum structural elements, metal plates or glass
2	Enclosed rooftop structures constructed of reinforced concrete, masonry or other materials, with a coverage of not more than 50% of the roofed-over area of the main building
3	Unenclosed rooftop structures constructed of steel or aluminum structural elements
4	Ground floor extension constructed of reinforced concrete, masonry or other materials, whether or not the extension has internal access to the main building
5	Partition wall exceeding 150mm in thickness erected between the balconies of two adjoining NTEHs
6	Canopy projecting from the external wall of the main building, except the green and amenity facilities allowed to be provided
7	Ground floor canopy with pillars
8	Metal supporting rack for air-conditioning unit and lightweight air-conditioner hood projecting from the external wall of the main building, except the green and amenity facilities allowed to be provided
9	Signboard projecting from the external wall of the main building
10	Wall signboard mounted on the external wall of the main building, except the green and amenity facilities allowed to be provided
11	Signboard erected on the rooftop

Annex D: Major Proposals to Amend the Buildings Ordinance (BO)

(A) EXPEDITING BUILDING INSPECTION AND REPAIR

1. To introduce a fixed penalty for non-compliance with Mandatory Building Inspection Scheme Notices (MBIS notices) (a fine of \$6,000).
2. To increase the maximum penalties for non-compliance with MBIS notices. For parts concerning external walls and the projections of a building, the maximum penalty is increased from a fine of \$50,000 and imprisonment for 1 year to a fine of \$200,000 and imprisonment for 1 year, and with a daily fine of \$20,000 for each day during which the offence continues. For parts other than external walls and the projections of a building (such as corridors and lobby of the interior of the building), the maximum penalty is increased from a fine of \$50,000 to a fine of \$100,000 with the term of imprisonment remaining at 1 year, and with a daily fine of \$10,000 for each day during which the offence continues.
3. To increase the fixed penalty level for non-compliance with Mandatory Window Inspection Scheme Notices (MWIS notices) (increased from a fine of \$1,500 to a fine of \$3,000).
4. To increase the maximum penalty for non-compliance with MWIS notices (the maximum penalty is increased from a fine of \$25,000 to a fine of \$100,000 with the term of imprisonment remaining at 3 months, and with a daily fine of \$10,000 for each day during which the offence continues).
5. To introduce a new offence of non-compliance with statutory notices/orders and where the defective external walls and its projections/windows of buildings has caused personal injury or property damage (with a maximum fine of \$300,000 and imprisonment for 1 year, and with a daily fine of \$30,000 for each day during which the offence of non-compliance with statutory notices/orders continues).
6. To enhance deterrence against uncooperative owners for –
 - (a) obstructing owners' corporations in carrying out inspection, investigation or repair (the maximum penalty is increased from a fine of \$10,000 to a fine of \$25,000 with the term of imprisonment remaining at 6 months); and
 - (b) refusing to contribute to the costs (retaining the maximum penalty of a fine of \$25,000 with no imprisonment term).

7. To increase the maximum penalty for non-compliance with other statutory orders (such as investigation orders, repair orders, orders for terminating change of building use (e.g. converting industrial buildings for residential use))(the maximum penalty is increased from a fine of \$50,000 to \$300,000, with the term of imprisonment remaining at 1 year, and with a daily fine of \$30,000 for each day during which the offence continues).

(B) RATIONALISING THE POLICY ON HANDLING UNAUTHORISED BUILDING WORKS (UBWS)

I. “Minor UBWs” related to people’s daily lives

8. For pre-existing and minor UBWs –

- (a) To add new “Designated Exempted Works” items or relax the requirements for existing items (such as retractable awnings and drying racks below a specified height); and
- (b) To consolidate the existing three validation schemes into one integrated scheme, allowing owners to retain “minor UBWs” that were erected before the commencement of the amendment ordinance and specified in the law, such as canopies, supporting frames for air-conditioning, enclosed balconies, “street-shadow buildings”, carpark shelters, and signboards, etc. meeting the specified dimensions, after one-off or regular validation by Prescribed Building Professionals or Prescribed Registered Contractors (all but signboards are subject to one-off validation only). No removal orders will be issued. We suggest to introduce a grace period during the first three years of implementation of the integrated scheme, after which enforcement action will be taken progressively against unvalidated “minor UBWs”.

9. For new building works –

- (a) The carrying out of “Designated Exempted Works” as mentioned in paragraph 8(a) will not be subject to regulation after the commencement of the amendment ordinance; and
- (b) To add items of “minor works” or relax the requirements for existing items, including erection or alteration of supporting frames for air-conditioning and poles projecting from external walls, so that more minor works related to people’s daily lives can be carried out using simplified procedures.

10. In respect of non-compliance with removal orders –

- (a) To introduce a fixed penalty (a fine of \$10,000); and

- (b) To introduce a penalty for subsequent convictions: if the removal order is still not complied with after the issue of fixed penalty, the maximum penalty for first conviction remains at a fine of \$200,000 and imprisonment for 1 year, and with a daily fine of \$20,000 for each day during which the offence continues; for subsequent convictions, the maximum penalty is increased to a fine of \$400,000 and imprisonment for 1 year; and with a daily fine of \$20,000 for each day during which the offence continues.

II. “Serious UBWs” that endanger public safety or constitute serious violations of the law

11. To increase the penalty for non-compliance with removal orders and to introduce a penalty for subsequent convictions (the maximum penalty for first conviction is increased from a fine of \$200,000 and imprisonment for 1 year to a fine of \$300,000 and imprisonment for 2 years; for subsequent convictions, the maximum penalty will be a fine of \$600,000 and imprisonment for 2 years. A daily fine of \$30,000 for each day during which the offence continues).

12. In respect of the existing offence of erecting such UBWs –

(a) To lower the prosecution threshold: At present, it is an offence to “knowingly” erect UBWs without approval of the Buildings Department (BD). The word “knowingly” is proposed to be removed from the provision. In other words, in future, if a professional employed by the owner should submit plans to BD but commences work without obtaining approval, BD may initiate prosecution as long as there is reasonable doubt involving the owner and/or the professional; and

(b) To increase the penalty: The maximum penalty is increased from a fine of \$400,000 to \$2,000,000 with the term of imprisonment remaining at 2 years, with a daily fine of \$100,000 for each day during which the offence continues.

13. To introduce a new offence and indictable offence. If a property purchased by an owner after a certain specified period after the commencement of the amendment ordinance is found with a “serious UBW”, such owner will be held liable for purchasing the property after the specified period and continue to hold the property (regardless of whether the UBW was erected by the current owner) -

- (a) the maximum penalty on summary conviction is a fine of \$300,000 and imprisonment for 2 years on first conviction; and a fine of \$600,000 and imprisonment for 2 years on subsequent convictions; with a daily fine of \$30,000 for each day during which the offence continues; or
- (b) the maximum penalty for conviction on indictment shall be higher than the proposed \$300,000 for the aforementioned summary conviction or the current maximum fine under the BO (\$1,000,000).

For example, assuming that the amendment ordinance takes effect at the end of 2026, the owner who purchases and continue to hold a property with a “serious UBW” in 2027 will be held liable.

14. To amend the existing provision to the effect that a person who **knowingly assists** the owner in committing the new offence mentioned in paragraph 13 above (i.e. assisting the owner in purchasing a property with a serious UBW **after a certain specified period after the commencement of the amendment ordinance**) will be deemed guilty of and held liable to the same offence and the same penalties for that offence.

For example, assuming that the amendment ordinance takes effect at the end of 2026, the person assisting an owner in purchasing a property with a “serious UBW” after in 2027 will be deemed guilty of committing the new offence in paragraph 13 above.

15. To empower the Building Authority (BA) to request for interviews, conduct searches and seize documents under warrant, and to introduce a new offence for refusing to attend interviews (with a maximum fine of \$100,000).

Others

16. To expedite the processing of appeals against statutory orders/notices through written determination of simple appeal cases.
17. To reopen the Reporting Scheme for UBWs in New Territories Exempted Houses, which ended in December 2012, to allow owners who at that time did not report their UBWs to do so. All the old arrangements under the scheme will be maintained, including that the scheme is only applicable to UBWs erected before 28 June 2011, and that regular safety inspection is required for reported UBWs.

(C) ENHANCING CONSTRUCTION SAFETY

18. To increase the maximum penalty for carrying building works in a dangerous manner by registered building professionals or registered contractors that causes or is likely to cause injury, death or damage to property; and to introduce an indictable offence to handle cases causing serious injury or death due to breach of duty -
 - (a) the maximum penalty on summary conviction is increased from a fine of \$1,000,000 to \$3,000,000 with the term of imprisonment remaining at 3 years; or
 - (b) the maximum penalty for conviction on indictment will be a fine of \$10,000,000 and imprisonment for 3 years.
19. To increase the enforcement powers of the BA by empowering the BA to request for interviews, conduct searches and seize documents under warrant, and to introduce new offences for refusing to attend interviews or failing to produce site supervision documents, etc. (with a maximum fine of \$100,000).
20. To amend the existing provisions to empower the BA to determine the period for registration or renewal (extended from the current 3 years to a maximum of 5 years); and to empower the BA to approve the renewal application with conditions, such as imposing conditions on site safety during the renewal.
21. To amend the existing provisions to increase the number of members of the disciplinary board panel and simplify the composition of the Registered Contractors' Disciplinary Board; to increase the maximum disciplinary fine (from \$250,000 to \$400,000); and to empower the disciplinary board to impose more than one sanction (in addition to a fine, consideration may also be given to order a reprimand and/or remove the contractor from the register at the same time).
22. The roles and responsibilities of key personnel involved in buildings works, namely Technically Competent Persons, Authorized Signatories and Technical Directors on behalf of Registered Contractors, will be clearly delineated in the BO and relevant technical memorandum.
23. Registered contractors and registered building professionals are required to confirm that they have appointed Technically Competent Persons registered with the Construction Industry Council when preparing the Supervision Plan.





Development Bureau

The Government of the Hong Kong Special Administrative Region
of the People's Republic of China