



PROPOSED AMENDMENTS TO BUILDINGS ORDINANCE

THE LAW SOCIETY'S SUBMISSIONS

1. The Development Bureau issued a consultation paper on the “Proposed Amendments to Buildings Ordinance” in December 2024 (“Consultation Paper”) to invite views from members of the general public.
2. In response, the Law Society provides the following submissions.

General Observations:

3. The Buildings Ordinance (Cap. 123) (“Ordinance”) has not been subject to any major amendments since its enactment, save the introduction of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS) in 2012. The Law Society appreciates a comprehensive review of the Ordinance, particularly in the three main areas: streamlining building inspections and repairs, revising methods for handling unauthorized building works, and improving safety in construction practices.
4. The Law Society is, in general, supportive of the Government’s initiative to amend the Ordinance to address the concerns on unauthorized building works (“UBWs”), especially serious UBWs for enhancing community protection and discouraging potential abuse of the current practices.

Specific Views:

In addition to the above, we express views on specific issues as follows:

Definition of “Serious UBWs”

5. Under the Ordinance, all building works (except a small number of exempted works and those designated as minor works under the Minor Works Control System (“MWCS”)) require the prior approval of plans and consent for

commencement by the Building Authority (“BA”) before such works can be carried out. Otherwise, those works will become UBWs¹.

6. Common UBWs include supporting frames of air-conditioners/ cooling towers, canopies, flat roof structures, rooftop structures, subdivision of flats, signboards, structural alterations, drainage misconnections, etc.²
7. We note that the term “serious UBWs” is stated in the footnote on page 23 of the Consultation Paper to “refer to works for which prior approval or consent of the BD should have been obtained in accordance with the BO [Buildings Ordinance] and have contravened the BO”. The Consultation Paper is unclear on what would constitute “serious UBWs” for the footnote quoted above applies to all UBWs. The definition of “serious UBWs” should carry a more significant legal consequence and higher penalties than other UBWs. We suggest that more precise and unambiguous definitions be provided to differentiate between “serious UBWs” and “UBWs”.
8. We further suggest that a list of “serious UBWs” be included in an appendix to the Ordinance. The amended Ordinance (hereinafter “amendment ordinance”) could reserve the right to include additional items to the list from time to time in the event that emerging innovative serious UBWs are not covered by the latest list. Where new items are approved to be added to the appendix, the additions to the appendix can be gazetted to be further approved by the Legislative Council.

Introducing a New Offence and Indictable Offence

9. We note that 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, the Development Bureau proposes 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)**”. We suppose the grace period proposed will be introduced to (i) help address the concerns of purchasers who have entered into binding agreements to acquire properties with serious UBWs before the amendment ordinance becomes effective with completion of their acquisition having been fixed on a date after the effective date of the amendment ordinance; and (ii) exempt the liability of purchasers who have acquired properties with serious UBWs with the intention to remove the UBWs after they have become the owners of the properties. We note that amendments will also be introduced to allow reasonable defences raised by the owners concerned, for example, where a purchaser can prove that he has taken all reasonable steps, including appointing a building professional, e.g. a surveyor, to confirm that there were no UBWs in the property, before he agreed to purchase the property.

¹ <https://www.legco.gov.hk/yr10-11/english/panels/dev/papers/dev0620cb1-2487-3-e.pdf>

² <https://www.bd.gov.hk/en/safety-inspection/ubw/learn-more-about-UBW/index.html>

10. To complement the amendment to allow the engagement of a surveyor to confirm that a target property does not contain any serious UBWs to be raised as a reasonable defence to the new offence, the Government would need to further consider matters as follows: -
- (a) Whether a list of surveyors acceptable to the Government and their respective charges will be provided to the public?
 - (b) Which party (the vendor or the purchaser) will be responsible for engaging the surveyor and who should bear the cost?
 - (c) As different surveyors may have different views on whether certain alterations and modifications in a property constitute ordinary UBWs or serious UBWs, how such differences may be avoided in order that there can be consistent practices?
 - (d) Even if a surveyor's report is produced when a PSPA is signed, should an updated surveyor's report be provided upon completion to ensure that no serious UBWs have been made after the date of the PSPA and the purchaser will not be forced to buy a property with "serious UBWs" on completion date?
 - (e) Since the owner of a property may wish to procure a surveyor's report to confirm there are no serious UBWs in his property before he lists his property for sale but it may take quite some time before an offer is secured from a purchaser, would the amendment ordinance regulate the earliest date a surveyor's report may be issued before the date of the PSPA or the SPA in order that the report can be relied on by the parties to a property transaction for the purpose of the offence?

Exemptions

11. However, there are instances where purchasers may be unable to engage a building professional for a property inspection before completing the purchase. For example, if a property is subject to a tenancy, the tenant may refuse entry to the property for inspection purposes, in which case the purchaser cannot arrange a survey to assess whether the property has "serious UBWs" before completion. Another example is in an auction sale of property which typically operates on tight timelines, potential purchasers may not have sufficient time to arrange for a survey on the property before the sale is finalised, which can restrict their ability to assess the property for any "serious UBWs" before making a purchase decision. In the above circumstances, the purchasers did not intentionally buy a property with UBWs, it was just too late when the UBWs were discovered after the purchase.

12. There are also circumstances where vendors have valid reasons to sell their properties but they do not have the time or the financial means to fix the UBWs in their properties before they do so. For instance, an owner of a property with UBWs may need to relocate to another country for an opportunity to work abroad or for other reasons. The owner has no time to demolish the UBWs, and a buyer is interested in the property knowing there are UBWs and agrees to demolish them after purchase, or a property is due for redevelopment, and the vendor wants to move out of the property before it is demolished, while a purchaser wants to acquire it for investment purpose. A third example would be an elderly couple living in an old apartment with UBWs, and they have insufficient financial resources or energy to demolish the UBWs. The couple wants to move to an elderly home after selling their apartment to a purchaser, who agrees to demolish the UBWs after the purchase. In these three examples, the vendor and the purchaser do not intend to leave the UBWs unattended. They merely try to find a potential solution to address the issue for the mutual benefit of both parties.
13. There are also passive transfers where the transferees did not purchase the property with “serious UBWs”. Those properties may have been transferred to them as:
 - (a) inherited properties
 - (b) gifts
 - (c) distribution in species upon winding up of a company of which they are members; or
 - (d) mortgagee

Is it the intention of the amendment ordinance to catch the above transferees of properties by the new proposed offence?

14. Considering the above, we suggest a list of exempted property transactions with “serious UBWs” be provided. The Government may consider requiring purchasers who intend to purchase properties with “serious UBWs” to undertake to remove the “serious UBWs” within a certain period after completion. We suggest the undertaking can be included in the sale and purchase agreement. The Buildings Department can be engaged to give special permission to the purchaser to buy the property subject to such an undertaking. To avoid non-compliance with the undertaking, the amendment ordinance can make the undertaking an encumbrance on the title of the property which would be registered on the relevant land register when the sale and purchase agreement is registered with the Land Registry. The amendment ordinance can also make it an offence for the purchaser to breach the undertaking. The enforcement of such undertaking can be further strengthened by providing for re-entry into the property by the Government if the undertaking is not complied with within a certain time (grace period included) after completion of the purchase of the property by the purchaser.

15. We also suggest that reports compiled by surveyors and other competent building professionals should be considered eligible for registration with the Land Registry.

Aiding an offence is tantamount to committing an offence

16. Page 26 of the Consultation Paper states that *“a person who knowingly assists an owner in committing the new offence in sub-paragraph (c) above [please see para. 9 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”*.
17. Solicitors are typically retained to provide legal advice and prepare legal documentation for property transactions. They should not be responsible for determining whether a transaction should proceed or not. Solicitors are not specifically trained to identify UBWs in a property. They can only rely on professional reports or documents registered on the register. Their role also does not involve physically inspecting a property to confirm whether there are “serious UBWs” in a property.
18. The Law Society is against the proposal that solicitors be put on the list of people who may be subject to prosecution of a criminal offence simply because they acted for parties to a property transaction. The above policy, if adopted, would significantly discourage solicitors from acting for purchasers in property transactions in light of the risks involved and given that minor defects in a property may turn out to be serious UBWs unknown to solicitors. Even if solicitors may eventually prove themselves to be innocent in a prosecution, they would have to spend time and money to defend against prosecution for a criminal offence that they currently do not have to face. This is not a policy favourable to the general public or the property market.
19. Also, would banks and financiers offering mortgage facilities to purchasers buying a property known to have “serious UBWs” be considered as aiding an owner in committing the new offence mentioned in paragraph 9 above?

Other issues

20. We also urge the Government to consider the following issues and address them in the amendment ordinance: -
 - (a) UBWs in common areas in a building in respect of which no designated ownership shares have been allocated to any owner of the building, for example, signboards which could cause serious injuries to the public when they collapse. Would buying a property in such a building be an offence if the UBWs in common areas are serious UBWs?

- (b) Clarification that building works that are considered UBWs will not include building works allowed and approved by the Building Authority under the Ordinance but are in contravention of the Government lease or land grant from the Government (short term tenancies granted by the Government included) for any issue related to these building works would be lease conditions issues only and should be dealt with by the Lands Department.
- (c) The change of use of buildings and the building works thereto under section 25 of the Ordinance.
- (d) Merger of two or more units to form one single unit or division of one single unit into two or more units.

Concluding Remark

21. To conclude, the issues raised in the Consultation Paper involved significant policy considerations and technical points which we hope the Government could consider carefully.

**The Law Society of Hong Kong
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