

The Buildings Department's Internal Guidelines on Imposition of a Surcharge on Works carried out in default of Owners (Defaulted Works) under the Buildings Ordinance (BO) - A Summary

Building Safety and Maintenance Enforcement under the BO

The Buildings Department (BD) implements building safety and maintenance enforcement programmes. For this purpose, the BD serves orders/notices on owners of buildings requesting inspection, investigation, repair or removal works to be carried out under various sections of the BO. If the owners fail to comply with the orders/notices, the BD may cause the required inspection, investigation, repair or removal works to be carried out by the BD contractor (BDC) under the supervision of its default works consultant (DWC). In case of emergency, the BD may cause the necessary works to be carried out without notice to the owners. Upon completion of the works, the BD will recover from the owners the cost of works and supervision charges and impose a surcharge of not exceeding 20% on the cost due under section 33¹ of the BO.

Imposition of Surcharge

2. The imposition of a surcharge on defaulted works serves to encourage owners to be more willing to properly maintain and repair their buildings and comply with the statutory orders or notices issued by the BD in a timely manner. The surcharge will also cover the cost incurred by the BD other than the cost of works themselves and the associated supervision charge, i.e. cost incurred in the effort made by the BD in arranging for the defaulted works such as the tendering for outsourced consultants and contractors as well as the management thereof.

Guidelines on Imposition of Surcharge

3. While the amount of surcharge is capped at 20% of the total cost, the BD will impose surcharge at different rates in different cases having regard to the circumstances of each case as follows:

Emergency Works

- (a) For the carrying out of emergency works where no statutory order or notice under the BO has been issued, **no surcharge** will be imposed.

¹ Section 33 of the BO was amended by the Buildings Legislation (Amendment) Ordinance 2012 to extend the power of the BD to impose a surcharge of not exceeding 20% on the cost incurred and recoverable by the BD for any inspection, investigation or works carried out, services provided, or abortive visits made under the BO. The amended legislation came into operation on 20 July 2012.

Partially Defaulted Works

- (b) Where the service of the DWC and/or the BDC has been engaged to carry out the works required under the order/notice but the owner chooses to take back the work before the commencement of the defaulted works by the BDC on site and eventually the owner has complied with the order/notice, **no surcharge** will be imposed.

Defaulted Works Initiated before 20 July 2012

- (c) Where the notification letter on the BD's decision to carry out the works required under an order/notice in default of the owner was issued before 20 July 2012, **no surcharge** will be imposed. If the owner was subsequently notified of the imposition of a surcharge after 20 July 2012 but prior to the commencement of the required works, the defaulted works would no longer be regarded as initiated before 20 July 2012, i.e. the surcharge will not be waived on this ground.

Other Defaulted Works

- (d) Where the owner has proved that genuine practical difficulties were encountered in complying with the order/notice due to tenant's refusal to grant access, obstruction of access to common parts of a building by uncooperative persons, and unsuccessful attempt in organizing the required works in the common parts of a building, etc., a **surcharge of 10%** of the total cost will be imposed.
- (e) Where the owner is old, infirm or with disability or mental illness and also has genuine practical difficulties (as specified in item (d) above), **no surcharge** will be imposed.
- (f) For defaulted works carried out under the Operation Building Bright, **no surcharge** will be imposed. This is to avoid double-charging as the funding of the Operation has already provided for the staff costs incurred by the BD in arranging the defaulted works.
- (g) For all other cases, a **surcharge of 20%** of the total cost will be imposed.

Supporting Documents for Different Circumstances

4. Regarding item 3(e) above, an owner at the age of 70 or above² at the date of service of the related order/notice shall be regarded as "old". In addition, medical certificate or

² An eligibility criterion stipulated for the Higher Old Age Allowance under the Social Security Allowance Scheme of the Social Welfare Department.

reference from the Social Welfare Department will be accepted as proof of infirmity, disability or mental illness.

5. As regards the practical difficulties specified in items 3(d) and 3(e) above, the owners concerned should submit documentary evidence to support their applications.

6. While these guidelines have laid down the general framework and criteria for imposing different amounts of surcharge, BD staff will bear in mind that the scenarios covered are not exhaustive and that each case must be considered on its own merits. If other special circumstances or factors should be considered, BD staff are advised to consult their supervisors as necessary.

Buildings Department
January 2014