

**CONTROLLING OFFICER'S REPLY**

**DEVB(PL)304**

**(Question Serial No. 6793)**

Head: (91) Lands Department  
Subhead (No. & title): (-) Not Specified  
Programme: (1) Land Administration  
Controlling Officer: Director of Lands (Ms Bernadette LINN)  
Director of Bureau: Secretary for Development

Question:

The Office of The Ombudsman published a direct investigation report on “Lands Department’s system of regularisation of illegal occupation of Government land and breach of lease conditions” last year. What are the details of the follow-up actions taken by the Lands Department on the criticisms and recommendations and the estimated expenditure?

Asked by: Hon CHAN Tanya (Member Question No. 100)

Reply:

The Lands Department (Lands D) generally accepts the findings of the investigation report on “Lands Department’s system of regularisation of illegal occupation of Government land and breach of lease conditions” released by the Office of The Ombudsman in September last year. Lands D has recently announced measures to strengthen enforcement actions against unlawful occupation of government land and tighten arrangements for processing regularisation applications. A copy of the press release setting out the measures is attached at Annex.

Lands D has no separate breakdown of the expenditure deployed solely for implementing those new measures which are part and parcel of its land control and land administration duties.

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**Lands Department strengthens enforcement actions against unlawful occupation of government land and tightens arrangements for regularisation applications**

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The Lands Department (Lands D) announced today (March 28) that the department will strengthen its enforcement actions against unlawful occupation of government land and tighten its arrangements for processing applications for "regularisation of unlawful occupation of government land" (regularisation applications). The Lands D will take the following measures with immediate effect:

- (1) For cases of unlawful occupation of government land commencing on or after today (i.e. starting from March 28), the Lands D will no longer accept any regularisation applications made by the occupiers. In other words, the department will not allow the occupiers any opportunity to continue the occupation through regularisation applications. Upon identification of the unlawful occupation, the occupier must cease occupying the land concerned and demolish the structures thereon before the date stipulated in the statutory enforcement notice; otherwise the department will consider instituting prosecution.
- (2) As for unlawful occupation of government land that has already commenced before today (i.e. before March 28), if the occupiers submit applications for regularisation before expiry of the period stipulated in the statutory enforcement notices, the Lands D will tighten the arrangements for processing the regularisation applications to prevent these applications from being abused to stall the enforcement actions. The tightened arrangements include:
  - (i) A decision on whether to accept the applications for further processing will be made in a short span of time (the target is within three weeks): Upon receipt of the applications, the District Lands Offices (DLOs) of the department will examine as soon as possible if the basic requirements that have all along been emphasised by the Lands D are met. These requirements include: the government land concerned cannot be leased out separately to other persons (except the applicant) given its location, configuration, size and the like; there are no other uses of the government land in the short term (or even no long-term uses have been identified); the application is for non-domestic purposes; and the uses under application are either always permitted under the relevant outline zoning plan or in respect of which an application can be made to the Town Planning Board. If these basic requirements cannot be met, the Lands D will not further consider the applications and will continue to take enforcement actions.
  - (ii) Advanced payments are required for applications accepted for further processing: if the regularisation applications meet the preliminary requirements as mentioned above, DLOs will first charge an administrative fee and a one-off punitive fee equivalent to 12 months' market rent. DLOs will further process the applications (including consulting the relevant departments

and completing the assessment required) only after the applicants have paid all the fees. The applicants will also have to agree to pay a forbearance fee chargeable on a quarterly basis at market rental rates during the period when their applications are being processed. All the paid fees will not be refunded regardless of whether the applications accepted for processing are ultimately approved or not.

- (iii) If, after consulting the relevant departments and further consideration, the application is finally rejected, DLOs will resume their enforcement actions.
- (iv) If the occupiers erect new structures on the land or extend the area of unlawful occupation on or after today (i.e. starting from March 28), it will be tantamount to an aggravation of the irregularities. In such circumstances, even if the occupation of land is an old case with occupation commencing before March 28, the Lands D will not entertain any regularisation application made by the occupiers.
- (v) Following current practice, during the processing of the application or at the time the short-term tenancy is issued, the Lands D will reserve its rights to recover the forbearance fee with retrospective effect from a date which may be earlier than the date of discovery, in the light of any further evidence on the date of first occupation which may become available eventually.

A spokesman for the Lands D said, "In the past, during the processing of a regularisation application, the department would suspend its enforcement actions without imposing any requirements on the occupier. As it takes time to process an application, this will amount to extending the time of the applicant's occupation at no costs at all, as the applicant could simply cease occupying the land later after his application is rejected by the department or due to his disagreement with the terms of the short-term tenancy offered by the department. The new arrangements require an applicant to pay in advance a punitive fee for his or her act of unauthorised occupation and meanwhile start to pay rents as early as during the processing of the application through payment of a forbearance fee. These arrangements are to ensure that the occupier will have to first pay a price for his act of unauthorised occupation even if he has submitted a regularisation application."

The spokesman added, "It is only a discretionary arrangement for the department to continue allowing the submission of regularisation applications arising from cases of unlawful occupation of government land before today (i.e. before March 28). We consider that a sudden and complete removal of the chance to make a regularisation application without any prior notice will exert pressure on both the department's enforcement work and the applicants. On balance, we think that tightening the arrangements for processing applications on the one hand while imposing a cut-off date for the scope of application on the other (i.e. the Lands D will take enforcement actions against new cases of unlawful occupation which commence from today onwards and will no longer entertain any regularisation applications arising from these new cases) is a more pragmatic approach."

The department also emphasised that regularisation applications will not necessarily be entertained or approved. Experience shows that a majority of such applications are rejected, following which the applicants have to cease occupying the land and bear the consequences.

Furthermore, the department will adjust its enforcement strategies. In addition to handling complaints or referrals in order of priority, the Lands D will from time to time conduct ad hoc operations during which manpower will be deployed specifically to take enforcement actions against unlawful occupation of land involving a relatively large area and the results of these operations will be publicised to enhance effectiveness.

The Lands D reminds members of the public not to occupy government land without authorisation. Unlawful occupation of government land in contravention of Section 6(4) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) is liable to criminal prosecution. In 2014, the Government amended the Ordinance by increasing the penalties for unlawful occupation of government land and introducing a system of daily fines to enhance the deterrent effect. Since February 6, 2015, the day the amendments came into force, 45 cases of unlawful occupation of government land have been successfully prosecuted. At present, the Lands D is taking action to institute prosecution against four cases, while 19 other cases are being examined and prosecution will be instituted as soon as possible upon confirmation of sufficient evidence.

Ends/Tuesday, March 28, 2017  
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