

LCQ9: Law enforcement actions against unlawful government land occupation

Following is a question by the Hon Andrew Lam and a written reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (January 10):

Question:

The Lands Department established a Special Duties Task Force (Task Force) in 2019 to focus on handling the more serious government land occupation cases and assist District Lands Offices in the New Territories in handling the more serious cases of land irregularities and other backlog cases. As at March 2021, the Task Force completed handling a cumulative total of over 800 cases with offenders in five of them being convicted and fined. Some members of the public have criticised that the conviction threshold for the relevant offences is too high and the fines are too low, with some convicted persons being fined only \$1,000. In this connection, will the Government inform this Council:

(1) of the (i) number of unlawful government land occupation cases received by the Government, (ii) number of land control cases still being processed by it at the end of the year, (iii) number of cases in which it completed investigations and made referrals to law enforcement agencies, and (iv) number of cases in which it instituted prosecutions with the unlawful occupiers being convicted and fined, as well as the amounts of fines imposed, in each of the past three years; and

(2) whether it will review the penalties for unlawful government land occupation to enhance the deterrent effect; if so, of the details; if not, the reasons for that?

Reply:

President,

The Lands Department (LandsD) takes enforcement actions against unlawful occupation of government land pursuant to the Land (Miscellaneous Provisions) Ordinance and handles more than 10 000 cases a year. The number of cases is substantial and their form and nature vary significantly (ranging from illegal bicycle parking on streets, abandoned vehicles, addition of shopfront platforms, dumping of wastes/construction wastes, depositing ties of bamboo scaffolds/skips, to the more serious cases of unlawful occupation of a large area of government land for brownfield operations or domestic structures). In view of limited manpower resources, the LandsD has to adopt a pragmatic "risk-based" approach to prioritise its enforcement actions, with priority given to cases of larger scale, more serious contraventions, or cases involving safety or environmental hygiene risks.

When taking land enforcement actions, the LandsD will post a statutory notice in accordance with the law requiring the occupier to cease occupation before a specified deadline. If the situation does not improve upon expiry of the deadline, the LandsD will take further actions, including taking possession of and clearing the property or structures remaining on the land, as well as considering instituting prosecutions against the occupier (if the identity of the occupier can be ascertained with evidence).

To enhance the enforcement efficiency under the "risk-based" approach, the LandsD set up the Special Duties Task Force (Task Force) in mid-2019 to step up targeted enforcement against cases with unlawful occupation of large areas of government land or serious lease breaches involving private agricultural land. As at the end of November 2023, the Task Force completed a cumulative total of over 1 500 cases, with the clearance of more than 44 hectares of unlawfully occupied government land and demolition of over 2 400 unlawful or lease-breaching structures in total. These cases include blackspots targeted by the Task Force and the backlog cases of District Lands Offices (DLOs).

Besides, the LandsD has implemented a number of measures to enhance enforcement work, including: tightening the regularisation application arrangements for unlawful occupation of government land since March 2017, meaning that the department no longer accepts regularisation applications for cases of unlawful occupation of government land commencing on or after March 28, 2017 and the occupiers can no longer avoid ceasing occupation of the land pursuant to the statutory notice through regularisation application; consolidating the enforcement manpower at various DLOs from April 2023 onwards, such that cases of land irregularities in the same district are handled by one single team in an integrated manner; use of drones and mobile devices to enhance the effectiveness of inspections and the overall efficiency of regular land enforcement work.

Our reply to the various parts of the Hon Andrew Lam's question is as follows:

(1) The relevant figures on enforcement against unlawful occupation of government land for the past three years (i.e. from 2021 to 2023) are set out in the Annex.

(2) To enhance the deterrent effect against unlawful occupation of government land, the Government amended the Land (Miscellaneous Provisions) Ordinance in 2015 to significantly increase the penalties and introduce a progressive system of maximum fines for repeated offender as well as a system of daily fine for stronger deterrent effect against such unlawful act. Upon conviction, an offender is liable to a maximum penalty of a fine of \$500,000 and imprisonment for six months on the first occasion (the maximum penalty was a fine of \$10,000 and imprisonment for six months before the amendment), and to a further daily fine of \$50,000 for non-compliance with a statutory notice (new penalty). The offender, if convicted on each subsequent occasion, is liable to a fine of up to \$1,000,000 (new penalty) and imprisonment for six months (new penalty), and to a further daily fine of \$100,000 for non-compliance with the statutory notice (new penalty).

After the amendment came into effect in 2015, the penalties imposed by the court increased accordingly. From the figures collected in the past three years, only five out of the 54 convicted cases were fined \$1,000 (one case involved a small area occupied by an abandoned vehicle; four cases involved various persons in charge of an organisation related to a religious temple which occupied government land), while 23 cases were fined over \$10,000 (the highest being \$137,000). Another three cases was sentenced to imprisonment but the sentences were suspended. As the maximum fines that can be imposed by the court under the law is already significantly higher than the fines actually imposed by the court in recent years, further increasing the penalties allowable under the law at this stage may not be an effective way to enhance deterrence.

Under the existing framework of the Land (Miscellaneous Provisions) Ordinance, it gives allowance for the occupiers to first cease the unlawful occupation of government land themselves (and thus bear the responsibility and expenses of the demolition and clearance work). Prosecution will only be invoked if the occupiers did not cease the occupation before the expiry date stipulated in the Government's statutory notice. It is believed that this "self-rectification" arrangement is one of the reasons accounting for the small number of prosecution cases. Other reasons include that the LandsD has focused its resources on putting an end to such land occupation to clear up the cases and hence less focused on adopting the prosecution strategy, and that gathering of evidence is not successful or the evidence is inadequate to ascertain the identity of the occupier for instituting prosecution.

We understand the public's expectation for proper management of public properties. Despite limited enforcement manpower and difficulties in the collection of evidence to meet the prosecution threshold, the LandsD will review how best to utilise its powers under the existing legislative framework and its manpower to step up enforcement and prosecution work, including the use of technologies (e.g. drones) to enhance its enforcement efficiency, and deploy resources to focus on prosecution of serious cases (such as cases with large area of occupation or those profiteering from use of government land) for stronger deterrence effect.

The Development Bureau and the LandsD will continue to monitor the implementation situation of the Ordinance and whether unlawful occupation of government land has deteriorated. Depending on the effectiveness of the work above, we may consider ways to enhance deterrence where necessary, including streamlining the process of prosecution (e.g. by introducing other easier means for prosecution of such offences).