

(譯文)

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香港
中區政府合署
中座及東座6樓
保安局
保安局局長
(經辦人：保安局助理局長B2
陳國衛先生)

陳先生：

《2001年消防(修訂)條例草案》

本人現正研究上述條例草案，以便向議員提供意見。謹請閣下就下述事項作出澄清：

第4條 —— 擬議條文第8A條

- (a) 如某人因為並不知情或並未管有有關文件，而未有按照擬議條文第8A(2)(f)(ii)及8A(2)(g)條所述規定回答問題或出示文件，該人根據條例草案的規定是否需要承擔任何刑事法律責任？
- (b) 根據擬議條文第8A(2)(f)(iii)條，消防處處長可規定任何人就其答案的真實性簽署聲明。該人如明知而故意在其聲明中作出在要項上屬虛假的陳述，可被控觸犯《刑事罪行條例》(第200章)第36條所訂罪行。然而，如有關陳述所載資料並非虛假，但卻在要項上具誤導性，《刑事罪行條例》第36條看似並不適用。在此情況下，該人根據條例草案的規定，將須就向消防處處長提供具誤導性的資料面對何種法律後果(如有)？
- (c) 如某人看來是遵從根據擬議條文第8A(2)(g)條施加的規定而出示任何虛假或具誤導性的文件，是否會招致任何法律後果？
- (d) 在擬議條文第8A(3)條中，除文件外，法律專業保密權應否延展至適用於某人根據擬議條文第8A(2)(f)條可被規定提供的資料？若然，是否應在該條文中清楚訂明此點？
- (e) 第8A(5)條建議訂定的不予披露的責任，何以局限於在根據第(2)(f)款作出的回答中取得的資料？上述責任是否應同時適用於根據第(2)(g)款出示的文件所載的資料？

第4條 —— 擬議條文第8B條

擬議條文第8B條何以局限於和根據第8A(2)(f)(ii)條發問的問題有關的答案？如必須根據擬議條文第8A(2)(g)條出示的文件可能導致出示該文件的人入罪，當局是否有意使該文件在針對該人的刑事法律程序中獲接納為證據？若然，該文件的上述用途如何與《香港人權法案》第十及十一條一致？該兩項條文分別保證任何人均有權接受公正審問及被假定無罪。

第10條 —— 擬議條文第25條

條例草案建議賦權行政長官會同行政會議訂立規例，就消除火警危險的相關事宜訂定條文。本人注意到在立法會參考資料摘要附件所載的擬議《消防(消除火警危險)規例》(下稱“擬議規例”)中，當局增訂了若干附有嚴厲刑罰的新罪行。由於擬議規例旨在訂定若干與消除火警危險有關的重要建議，政府當局會否考慮規定擬議規例須經立法會審批(而非按照現時建議根據香港法例第1章第34條所載規定制定)，以便議員有較多時間研究該規例所載條文？

第20條 —— 相應修訂

在《公眾娛樂場所規例》(第172章，附屬法例)及《消防安全(商業處所)條例》(第502章)所訂有關“消防裝置或設備”的擬議定義中，是否有需要在(d)段的“任何處所”一語之後加入“或地方”，使之與《公眾衛生及市政條例》(第132章)就同一詞語訂定的擬議定義一致？本人注意到在《消防條例》(第95章)中，“處所”的定義已包括了任何地方，因此，在香港法例第95章中就“消防裝置或設備”訂定的擬議定義無須包括關於“地方”的提述。然而，香港法例第172及502章並無訂定上述關於“處所”的定義。

中文本

本人對條例草案中文本的意見已標明在隨附的有關張頁上，以供閣下參閱。

謹請盡早以中、英文作覆。

助理法律顧問

(馮秀娟女士)

連附件

副本致：律政司(經辦人：政府律師潘漢英女士)
法律顧問

2001年10月9日

m2930

- (e) 在沒有正常動力供應時向作(a)至(d)段所述用途的裝置或設備提供後備動力供應；”。

4. 加入條文
現加入——

英文本並沒有提述(a)至(d)段所述用途的裝置或設備。請使中-英文本一致。

“8A. 調查火警的一般權力

(1) 處長或處長書面授權的任何成員可在出示其授權書(如有人要求出示)後,於在任何處所之內或之上發生的火警被撲滅後的一段合理期間內,為調查該火警的成因或其他與該火警有關的事宜進入該處所。

(2) 處長或成員在進入該處所後——

- (a) 可在一段為第(1)款提述的目的而合理所需的時間內,留在該處所之內或之上;
- (b) 可移走和接管處長或該成員有合理理由相信為第(1)款提述的目的而需要的在該處所之內或之上發現的物品或東西;
- (c) 可以處長或該成員覺得為檢查或化驗而合理所需的方法處理(b)段提述的物件或東西;
- (d) 可在一段為檢查或化驗而合理所需的時間內保留(b)段提述的物件或東西;
- (e) 可拍攝處長或該成員有合理理由相信為第(1)款提述的目的而需要的照片和錄影該等紀錄;
- (f) 可規定任何對處長或該成員有合理理由相信能夠提供第(1)款提述的目的屬有關的資料的人——
- (i) 按照處長或該成員指明的時間與地點出席;
- (ii) 在只有處長或該成員許可出席的人及一名由該被規定出席的人指定的人在場的情況下,回答處長或該成員認為適合發問的問題;及

是否應在此加上“為”一字?

- (e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;”.

4. Sections added

The following are added—

“8A. General powers of fire investigation

(1) Within a reasonable period after a fire in or on any premises has been extinguished, the Director or any member authorized by the Director in writing on producing, if so required, the document showing the member's authority, may enter the premises for the purpose of investigation into the cause of or other matters relating to the fire.

(2) Having entered the premises, the Director or member—

- (a) may stay in or on the premises for so long as it is reasonably necessary for the purpose referred to in subsection (1);
- (b) may remove and take possession of any article or thing found in or on the premises that the Director or member has reasonable cause to believe is necessary for the purpose referred to in subsection (1);
- (c) may deal with the article or thing referred to in paragraph (b) in such a way as appears to the Director or member to be reasonably necessary for examination or analysis;
- (d) may retain the article or thing referred to in paragraph (b) for so long as it is reasonably necessary for examination or analysis;
- (e) may take such photographs and make such video recordings as the Director or member has reasonable cause to believe is necessary for the purpose referred to in subsection (1);
- (f) may require any person whom the Director or member has reasonable cause to believe is able to give any information relevant to the purpose referred to in subsection (1)—
- (i) to attend at a time and place specified by the Director or member;
- (ii) to answer (in the absence of persons other than any person whom the Director or member may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the Director or member thinks fit to ask; and

- (iii) 就該人的答案的真實性簽署聲明；
- (g) 可規定任何人出示處長或該成員有合理理由相信為第(1)款提述的目的而需要的文件，並可加以查閱及製作副本；
- (h) 可規定任何人就受他控制的或他所負責的物件或東西，向處長或該成員提供處長或該成員認為為行使本款授予的權力而合理所需的便利及協助。

(3) 本條不得解作強逼任何人交出該人基於法律專業保密權的理由會有權不交出的文件。

(4) 處長或成員在離開根據本條進入的任何無人佔用的處所時，須令該處所的狀況在防禦侵入者方面的有效程度，一如他在進入時所察覺到的狀況。

(5) 處長或成員——

(a) 如在根據第(2)(f)款作出的回答中取得資料；或

(b) 如遵從本條規定進入工廠、工場、工作地點或用作商業用途的處所，

並向任何人披露他在根據第(2)(f)款或在該工廠、工場、工作地點或處所就製造過程或商業秘密取得的資料，除非他是為執行職責而作此披露，否則他即屬犯罪，可處第4級罰款。

(6) 本條不影響警務處處長在《火警調查條例》(第12章)下的權力。

8B. 可導致刑事法律責任的回答

如回答根據第8A(2)(f)(ii)條發問的問題的答案，可能導致回答該問題的人入罪，則在刑事法律程序中，該問題及答案均不得接納為針對該人的證據；但檢控《刑事罪行條例》(第200章)第36條就該答案所訂的罪行的法律程序除外。

中文本的草擬方式似乎未能反映英文本的意思，此中文本應否修正為“但就該答案而根據《刑事罪行條例》(第200章)第36條所訂罪行進行的法律程序除外”？

(iii) to sign a declaration of the truth of the person's answer;

(g) may require the production of, and inspect and take copies of documents that the Director or member has reasonable cause to believe is necessary for the purpose referred to in subsection (1);

(h) may require any person to afford the Director or member such facilities and assistance with respect to any article or thing within that person's control or in relation to which that person has responsibilities as the Director or member considers reasonably necessary to exercise any of the powers conferred by this subsection.

(3) Nothing in this section shall be taken to compel the production by any person of a document of which the person would on grounds of legal professional privilege be entitled to withhold production.

(4) On leaving any unoccupied premises that the Director or member entered under this section, the Director or member shall leave them as effectually secured against trespassers as the Director or member found them to be at the time of entry.

(5) If the Director or member who—

(a) obtains any information from the answer given under subsection (2)(f); or

(b) in compliance with this section, enters a factory, workshop, workplace or premises used for business purposes,

discloses to any person any information obtained by the Director or member under subsection (2)(f) or in the factory, workshop, workplace or premises with regard to any manufacturing process or trade secret, the Director or member shall, unless the disclosure is made in the performance of the Director's or member's duty, be guilty of an offence and shall be liable to a fine at level 4.

(6) This section shall not affect the power of the Commissioner of Police under the Fire Investigation Ordinance (Cap. 12).

8B. Answers that may implicate criminal liability

If an answer to a question asked under section 8A(2)(f)(ii) tends to incriminate the person who gave the answer, neither the question nor the answer shall be admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 36 of the Crimes Ordinance (Cap. 200) in respect of the answer given.

- (b) 可在訂明的情況下，安排就任何處所進行任何工程，並向任何人討回所招致的費用；
- (c) 可在訂明的情況下，移走和接管任何物件或東西，並以訂明的方式將之處置；
- (d) 可在訂明的情況下，安排將關於與某人就本條例所訂罪行被檢控、被定罪、被判無罪，或成功上訴推翻該罪行的定罪有關的處所的資料，在土地註冊處註冊；
- (e) 可安排以訂明的方法公布就本條例所訂罪行的定罪；
- (f) 可向法院或裁判法院申請具有以下效力的命令——
 - (i) 按照根據第 25(1)(hb)(ii) 條所訂的規例封閉與某人被裁定犯本條例所訂罪行有關的處所；
 - (ii) 按照根據第 25(1)(hb)(iv) 條所訂的規例禁止將處所作特定的用途；
 - (iii) 規定任何人消除火警危險或防止其再度出現；或
 - (iv) 規定任何人移走阻塞或可能阻塞處所的逃生途徑，或鎖上或可能鎖上處所的逃生途徑的物件或東西。

由於英文本提述“in any premises”，中文本原
 本修正為“任何處所內”，請參照現行香港法例第95章第
 98條類似的中文本。
 相應的英文本並沒有提述“具有以下效力
 的”，請使中-英文本一致。

6. 廢除條文

第 9A、9B、9C 及 9D 條現予廢除。

7. 部屬人員或員佐級成員潛逃時
可被即時革職

第 13A(1) 條現予修訂，廢除“21”而代以“14”。

8. 部屬人員或員佐級成員犯違紀行為

第 14(8)條現予廢除。

- (b) may, under the prescribed circumstances, cause to be carried out any works in respect of any premises and recover the expenses incurred from any person;
- (c) may, under the prescribed circumstances, remove and take possession of any article or thing and dispose of it in the prescribed manner;
- (d) may, under the prescribed circumstances, cause to be registered in the Land Registry any information concerning any premises in relation to which a person is charged with, convicted of, acquitted of or successfully appeals against a conviction of an offence under this Ordinance;
- (e) may cause to be publicised by the prescribed means the fact of a conviction of an offence under this Ordinance;
- (f) may apply to a court or magistrate for an order—
 - (i) to close any premises in relation to which a person has been convicted of an offence under this Ordinance in accordance with the regulation made under section 25(1)(hb)(ii);
 - (ii) to prohibit any premises to be used for a particular purpose in accordance with the regulation made under section 25(1)(hb)(iv);
 - (iii) that requires a person to abate a fire hazard or prevent it from recurring; or
 - (iv) that requires a person to remove any article or thing that obstructs or may obstruct, or locks or may lock any means of escape in any premises.”

6. Sections repealed

Sections 9A, 9B, 9C and 9D are repealed.

7. Liability of subordinate officers and members
of other ranks to summary dismissal upon
abscondment

Section 13A(1) is amended by repealing “21” and substituting “14”.

8. Offences against discipline by subordinate
officer and member of other ranks

Section 14(8) is repealed.

相應的中文本並沒有反映
 “any means of escape”的意
 思，請修正中文本，在
 “逃生途徑”之前加上
 “任何”，或修正英文
 本為“the means of
 escape”而“the means
 of escape”正是現行
 香港法例第95章第
 98條的用語。

9. 取代條文

第21條現予廢除，代以——

“21. 火警造成的損毀

(1) 除第(2)款適用的情況外，消防處在火警發生時或引致即時火警危險事故發生時執行其職責所造成的損毀，須視作任何火險保單所指的火警所導致的損毀。

(2) 就在緊接《2001年消防(修訂)條例》(2001年第 號)第9條生效之前簽立的火險保單而言，消防處在火警發生時執行其職責所造成的損毀，須視作該火險保單所指的火警所導致的損毀。”。

10. 訂立規例的權力

第25條現予修訂——

- (a) 將該條重編為第25(1)條；
- (b) 在第(1)款中，加入——

“(hb) 法院或裁判法院作出命令，飭令—— 加上“飭令”？

- (i) 任何人消除火警危險或防止火警危險再度出現；
 - (ii) 封閉與某人被裁定犯本條例所訂罪行有關的處所；
 - (iii) 撤銷或暫停執行第(ii)節所指的命令；
 - (iv) 禁止將處所作特定的用途；
 - (v) 任何人移走阻塞或可能阻塞處所的逃生途徑，或鎖上或可能鎖上處所的逃生途徑的物件或東西；
 - (vi) 終止處所的租賃；
- (hc) (hb) 段所指的命令的程序和其他與其有關的事宜；
 (hd) 防止阻塞和鎖上處所的逃生途徑；
 (he) 對在陸上運送裝載汽車或汽車的一部分(其油缸內載有燃油或以其他方式沾有燃油)的貨櫃作出規管；

是否應刪除“飭令”而在此加上“規定”以反映英文文本中“require”的意思？

是否應該將“處所”修正為“任何處所內”，以反映英文本“in any premises”的意思？

是否應在“逃生途徑”之前加上“任何”以反映英文本“any means of escape”的意思？

既然英文本沒有“飭令”相應的提述，為何有需要在中文本加上“飭令”？

9. Section substituted

Section 21 is repealed and the following substituted—

“21. Damage done at a fire

(1) Save where subsection (2) applies, a damage done by the Fire Services Department in the discharge of its duty on the occasion of a fire or an incident that may pose an immediate danger of fire is taken to be a damage by fire within the meaning of a policy of insurance against fire.

(2) For the purpose of a policy of insurance against fire that was executed immediately before the commencement of section 9 of the Fire Services (Amendment) Ordinance 2001 (of 2001), a damage done by the Fire Services Department in the discharge of its duty on the occasion of a fire is taken to be a damage by fire within the meaning of the policy of insurance against fire.”.

10. Power to make regulations

Section 25 is amended—

- (a) by renumbering it as section 25(1);
- (b) in subsection (1), by adding—

“(hb) the making of an order by a court or magistrate—

- (i) that requires a person to abate a fire hazard or prevent it from recurring;
- (ii) that closes any premises in relation to which a person has been convicted of an offence under this Ordinance;
- (iii) that rescinds or suspends an order under subparagraph (ii);
- (iv) that prohibits any premises to be used for a particular purpose;
- (v) that requires a person to remove any article or thing that obstructs or may obstruct, or locks or may lock any means of escape in any premises;

- (vi) that terminates the tenancy of any premises;
- (hc) the procedure and other matters relating to an order under paragraph (hb);
- (hd) the prevention of obstruction to and locking of any means of escape in any premises;

(he) the regulation of the conveyance on land of a container that contains a motor vehicle or a part of a motor vehicle, which has fuel in its fuel tank or is otherwise stained with fuel;

請參照以上就擬議的條9(f)(iv)條(第C1091頁)的意見。

- (hf) 對將汽車或汽車的一部分(其油缸內載有燃油或以其他方式沾有燃油)存放於在陸上運送或將在陸上運送的貨櫃作出規管;
- (hg) 任何訂明公職人員截停、登上及搜查車輛並檢取、移走及扣押該車輛之內或之上或藉其運載的與本條例所訂罪行有關的物件或東西的權力;
- (hh) 禁止為提供訂明物質以供轉注入汽車的油缸的業務而在訂明處所之內或之上管有或控制該物質;
- (hi) 處長在訂明的情況下向某人取得個人詳情或書面授權成員這樣做的權力;
- (hj) 任何處所的擁有人、租客、佔用人或負責人對明知而許可或容受有人在該處所之內或之上犯本條例所訂罪行的法律責任;
- (hk) 任何人對在明知將會有人在某處所之內或之上犯本條例所訂罪行的情況下(不論以主事人或他人的代理人的身分)將該處所出租或同意將該處所出租的法律責任;
- (hl) 訂明根據本條例規定須予訂明的任何事情;”;

應在此
使用“任何人”
以反映
“any person”
的意思(c) 加入——

“(2) 根據本條訂立的規例，可規定處長不得授權屬某職級的成員行使處長藉任何成文法則而有權行使的權力，或執行任何成文法則規定處長執行的任何職責。

(3) 根據本條訂立的規例可規定——

- (a) 凡違反規例的任何條文，即屬犯罪；及
- (b) 任何人違反規例，一經定罪，可處罰款不超過 \$300,000 及監禁不超過 1 年，如屬持續的罪行，則可另就每一日處罰款不超過 \$30,000。”。

以“不得”作為
“may not”的中文本
是否適當?“不可”
是否更適合?

- (hf) the regulation of the stowage of a motor vehicle or a part of a motor vehicle; which has fuel in its fuel tank or is otherwise stained with fuel, in a container that is or is to be conveyed on land;
- (hg) the powers of any prescribed public officer to stop, board and search a vehicle and seize, remove and detain articles or things carried in, on or by the vehicle that is related to an offence under this Ordinance;
- (hh) the prohibition of possession or control of a prescribed substance in or on any prescribed premises for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle;
- (hi) the power of the Director to obtain, or to authorize a member in writing to obtain, personal particulars from any person under the prescribed circumstances;
- (hj) the liability of the owner, tenant, occupier or person in charge of any premises who knowingly permits or suffers an offence under this Ordinance to be committed in or on the premises;
- (hk) the liability of a person who lets, or agrees to let, whether as principal or agent of another person, any premises with the knowledge that an offence under this Ordinance is to be committed in or on the premises;
- (hl) the prescribing of anything required to be prescribed under this Ordinance;”;

(c) by adding—

“(2) A regulation made under this section may provide that the Director may not authorize members of certain ranks to exercise a power or discharge a duty that the Director by any enactment is entitled to exercise or required to discharge.

(3) A regulation made under this section may provide that—

- (a) any contravention of the provisions of the regulation shall be an offence; and
- (b) any person who contravenes the regulation shall be liable on conviction to a fine not exceeding \$300,000 and to imprisonment for a period not exceeding 1 year, and in the case of a continuing offence, to a daily penalty not exceeding \$30,000.”.

《消防(裝置承辦商)規例》

16. 紀律委員會的權力

《消防(裝置承辦商)規例》(第95章, 附屬法例)第11(3)及(4)條現予修訂, 廢除“罰款\$500”而代以“第2級罰款”。

17. 罰則

第16條現予修訂, 廢除“罰款\$2,000”而代以“第3級罰款”。

《消防(裝置及設備)規例》

18. 註冊承辦商發出證明書

《消防(裝置及設備)規例》(第95章, 附屬法例)第9(2A)及(3)條現予修訂, 廢除“罰款\$5,000”而代以“第5級罰款”。

19. 罰則

第12條現予修訂, 廢除“罰款\$5,000”而代以“第5級罰款”。

第II部

相應修訂

《公眾衛生及市政條例》

20. 釋義

《公眾衛生及市政條例》(第132章)第2(1)條現予修訂, 在“消防裝置或設備”的定義中, 加入——

“(d) 在火警發生時利便自任何處所或地方疏散;

(e) 在沒有正常動力供應時向作(a)至(d)段所述用途的裝置或設備提供後備動力供應;”。

請參照以上第1084頁就“消防裝置或設備”的定義提出的意見

Fire Service (Installation Contractors) Regulations

16. Powers of disciplinary board

Regulation 11(3) and (4) of the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg.) is amended by repealing “of \$500” and substituting “at level 2”.

17. Penalties

Regulation 16 is amended by repealing “of \$2,000” and substituting “at level 3”.

Fire Service (Installations and Equipment) Regulations

18. Issue of certificates by registered contractors

Regulation 9(2A) and (3) of the Fire Service (Installations and Equipment) Regulations (Cap. 95 sub. leg.) is amended by repealing “of \$5,000” and substituting “at level 5”.

19. Penalty

Regulation 12 is amended by repealing “of \$5,000” and substituting “at level 5”.

PART II

CONSEQUENTIAL AMENDMENTS

Public Health and Municipal Services Ordinance

20. Interpretation

Section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132) is amended, in the definition of “fire service installation or equipment”, by adding—

“(d) facilitating the evacuation from any premises or place in case of fire;
(e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;”.

《公眾娛樂場所規例》

21. 釋義

《公眾娛樂場所規例》(第172章, 附屬法例)第2條現予修訂, 在“消防裝置及設備”的定義中——

(a) 在(b)段中, 廢除“或”;

(b) 加入——

“(d) 在火警發生時利便自任何處所疏散; 或

(e) 在沒有正常動力供應時向作(a)至(d)段所述用途的裝置及設備提供後備動力供應;”。

請參照以上第1084頁
就“消防裝置或設備”的
《消防安全(商業處所)條例》定義提出的意見。

22. 釋義

《消防安全(商業處所)條例》(第502章)第3(1)條現予修訂, 在“消防裝置或設備”的定義中——

(a) 在(c)段中, 在末處加入“或”;

(b) 加入——

“(d) 在火警發生時利便自任何處所疏散; 或

(e) 在沒有正常動力供應時向作(a)至(d)段所述用途的裝置或設備提供後備動力供應;”。

請參照以上第1084頁
就“消防裝置或設備”
的定義提出的意見

第 III 部

過渡性條文

23. 釋義

(1) 在本部中, “先前條例”(pre-existing Ordinance)指在本條例生效之前實施的《消防條例》(第95章)。

(2) 除文意另有所指外, 在本部中的字句須按照先前條例解釋。

Places of Public Entertainment Regulations

21. Interpretation

Regulation 2 of the Places of Public Entertainment Regulations (Cap. 172 sub. leg.) is amended in the definition of “fire service installations and equipment”——

(a) in paragraph (b), by repealing “or”;

(b) by adding——

“(d) facilitating the evacuation from any premises in case of fire; or

(e) providing a stand-by power supply to an installation and equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;”.

Fire Safety (Commercial Premises) Ordinance

22. Interpretation

Section 3(1) of the Fire Safety (Commercial Premises) Ordinance (Cap. 502) is amended in the definition of “fire service installation or equipment”——

(a) in paragraph (c), by adding “or” at the end;

(b) by adding——

“(d) facilitating the evacuation from any premises in case of fire; or

(e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;”.

PART III

TRANSITIONAL PROVISIONS

23. Interpretation

(1) In this Part, “pre-existing Ordinance” (先前條例) means the Fire Services Ordinance (Cap. 95) that was in force before the commencement of this Ordinance.

(2) Unless the context otherwise requires, words and phrases in this Part shall be construed in accordance with the pre-existing Ordinance.