

Fire Safety (Buildings) Bill

Administration's Response (1st part) to issues raised by Members at the Bills Committee meeting on 14.3.2001

Enforcement of the Bill

The enforcement mechanism currently adopted under the Fire Safety (Commercial Premises) Ordinance (FS(CP)O) has proved to be effective in upgrading the fire safety standards in old commercial buildings. In implementing the Fire Safety (Buildings) Bill (the Bill), the Fire Services Department (FSD) and the Buildings Department (BD) will make reference to the existing mechanism and take enforcement actions along the following lines -

- (a) In the first ten years, BD and FSD will jointly deal with some 900 pre-1987 composite buildings a year, with priority given to the pre-1973 ones. Upon completion of the improvement programme for composite buildings, about 3000 pre-1987 domestic buildings will be dealt with.
- (b) BD and FSD will mutually agree on monthly inspection schedules and work in tandem to conduct joint initial inspections of buildings. The main purpose of these inspections is to gather information on building conditions and designs, fire service installations and fire safety construction currently in place, the specific occupancies etc. The information gathered will form the basis for determination of the fire safety improvement measures required of the building for issue of statutory fire safety directions.
- (c) Following the initial inspection and prior to the service of fire safety directions, BD/FSD will issue advisory letters to the owners/occupiers of the building concerned to inform them of the general areas in which improvement is required, and to encourage them to employ qualified professionals to assess the improvement works required and, if necessary, put forward proposals for upgrading fire safety measures (including effective fire safety measures in place of those specified in the Bill). Owners/occupiers will also be advised to consult FSD/BD on any aspects related to the improvement works.

- (d) After consideration of the information gathered, and feedback or proposals from the owners/occupiers, if any, FSD/BD will issue a fire safety direction specifying the fire safety improvement measures required and a reasonable period of time, normally ranging from 6 to 12 months depending on the complexity of the necessary improvement works, within which the direction must be complied with. FSD/BD will also advise the owners/occupiers to, as necessary, employ qualified professionals to carry out the improvement works required.
- (e) After the issue of the fire safety directions, FSD/BD will follow up with the owners/occupiers concerned and offer them necessary advice.
- (f) FSD/BD will undertake a flexible and pragmatic approach in handling cases where owners encounter practical difficulties in complying with the fire safety directions. For example, an owner or occupier who is issued with a fire safety direction may apply to the FSD/BD for an extension of compliance time if there is a genuine need and reasonable excuse. The owner/occupier may also propose other effective fire safety measures in place of the original measures specified in the directions. FSD/BD will consider such alternative proposals in a fair and impartial manner and may consult an independent advisory body to be established under Clause 5(10) of the Bill as necessary.
- (g) An owner/occupier will be issued with a letter of compliance if the fire safety direction has been complied with to the satisfaction of FSD/BD. The owner/occupier may also employ qualified professionals to inspect and certify completion of the improvement works. This would help FSD/BD to confirm the compliance.
- (h) If an owner or occupier fails to comply with the requirements in a fire safety direction within the specified period (or extension of time as the case may be) without reasonable excuse, FSD/BD may take prosecution action and apply to a magistrate court for a compliance order in relation to the requirements set out in the fire safety direction concerned.

- (i) If an owner or occupier fails to comply with a compliance order, FSD/BD will carefully consider all the circumstances of the case as to whether all the criteria contained in clause 7(6) of the Bill have been met. FSD/BD will only apply to the District Court for a prohibition order to prohibit the occupation of the relevant building or part of the building if it is satisfied that the use of the prohibition order is absolutely necessary as a last resort to protect people from the substantial risk of fire. Such an application will be subject to close scrutiny by the court which will only issue the order if it is satisfied that all the criteria contained in clause 7(6) of the Bill have been met.
- (j) Prior to and following the implementation of the Bill, the Government will take action to publicise the new legislation. Among other things, it will encourage owners of old buildings to employ qualified professionals to inspect their buildings and put forward proposals to the enforcement authorities for upgrading fire safety measures to the required standards of the Bill so that the improvement works can start as early as possible.

Enforcement difficulties

2. We anticipate a number of difficulties in the enforcement of the Bill-

- (a) *Multi-ownership buildings without an Owners' Corporation (OC) to co-ordinate the improvement works in common parts of the buildings*

The availability of an OC will no doubt facilitate the co-ordination and carrying out of improvement works in the common parts of a building. The Home Affairs Department (HAD) has been promoting and assisting in the formation of OCs to improve management of buildings. The Building Management (Amendment) Ordinance which came into effect in August last year not only provides further measures to facilitate OC formation, but also empowers the Secretary for Home Affairs to compel the OC of a building having serious management and maintenance problems to appoint a management agent, or, in the absence of an OC, to apply to the Lands Tribunal for an order requiring the owners to form an OC and to appoint a management agent. This would greatly

facilitate the implementation of the upgrading programme of the Bill. In enforcing the Bill, FSD/BD will seek the assistance of the HAD and its District Offices in liaising with owners if necessary. Apart from encouraging owners to form OCs, FSD/BD will, if necessary, arrange and attend forums for owners and occupiers to explain the improvement requirements and the assistance available to them, and will make other proactive efforts to help owners and occupiers to comply with the statutory directions.

(b) *Difficulties in complying with the improvement requirements due to substantial spatial and structural constraints*

We understand that some of the buildings covered by the Bill are of old designs and owners may find it difficult to fully comply with the statutory improvement requirements because of substantial physical constraints. In this regard, FSD and BD have undertaken to implement the Bill in a flexible and pragmatic manner. Owners who have genuine difficulties in following the requirements may propose alternative measures which can achieve the equivalent fire protection standards for FSD/BD's consideration.

(c) *Delay of improvement works caused by irresponsible or missing owners*

In respect of improvement works in the common parts of a building, given that all owners remain co-owners of the whole building, the responsibility to pay for the required works is a matter for the owners to determine among themselves by reference to the Deed of Mutual Covenant or other related documents. To prevent delay of improvement works caused by irresponsible or missing owners not paying their fair share, the Secretary for Planning and Lands has proposed to amend the Building Management Ordinance to empower OC to apply for loans from the merged loan fund (see paragraph 7 below). The security for such loans should be a charge against those owners' titles.

(d) *Un-cooperative and reluctant attitude of some owners or occupiers*

Some of the owners or occupiers who are served with fire safety directions may take an evasive and procrastinated attitude and only pay attention to the upgrading works shortly before the expiry of the specified period. FSD/BD will adopt a flexible and pragmatic approach towards extenuating cases where it appears to be reasonable to permit more time for the completion of improvement works. Ultimately, legal action would be considered if there is no alternative means to secure their cooperation.

Steps taken by the enforcement authority before an order prohibiting occupation of a building or part of a building is issued

3. The enforcement procedures set out in paragraph 1 above are relevant.

4. As reflected in clause 7(6) of the Bill, the policy intent of issuing a prohibition order is to prevent occupation of premises which might present substantial fire risks and hence to protect public safety. A few possible examples are given as follows -

- (a) Failure to provide adequate fire safety measures inside a unit to protect the occupiers (e.g. a prohibition order may prohibit the occupation of a non-domestic unit without the provision of the necessary automatic sprinkler system).
- (b) Failure to protect the exit routes and staircases which are the only means of escape in case of fire (e.g. a prohibition order may prohibit the occupation of a unit which fails to provide a proper fire door - which happens to be the unit's main door - to protect the common staircases outside).

Appeal channel available to aggrieved owners/occupiers of the buildings concerned

5. The Bill has built in a number of channels for appeals and communications between FSD/BD and the affected occupiers/owners -

- (a) Under clause 5(5) of the Bill, FSD/BD is empowered to amend a fire safety direction. FSD/BD will be happy to discuss with owners/occupiers who may propose viable alternative measures in place of those specified in the fire

safety direction, and consider amending the direction as appropriate.

- (b) Under clause 5(8) of the Bill, an owner or occupier who, without reasonable excuse, fails to comply with a fire safety direction commits an offence. In enforcing the fire safety directions, BD/FSD will maintain close liaison with the owners or occupiers. Prosecution will only be considered if the owners/occupiers could offer no reasonable excuse for their failure. Any owner or occupier who thinks that he is aggrieved by prosecution may also rely on the reasonable excuse provision in clause 5(8) to defend his case in the court.
- (c) Clause 5(10) of the Bill provides for the establishment of a committee to assist the relevant enforcement authority in determining alternative measures in place of any of the requirements in Schedule 1 or 2. Subject to the passage of the Bill, a 'Fire Safety Advisory Committee' will be set up to hear problematic cases, to examine alternative measures proposed by owners/occupiers and render impartial advice. This advisory committee will serve as another communication channel available to aggrieved owners/occupiers.
- (d) Pursuant to clause 6(1) of the Bill, a Magistrate may make a fire safety compliance order if the occupier/owner is found guilty of an offence of not complying with the fire safety direction. If an appeal against the conviction of the original offence is made pursuant to the appeal procedures under the Magistrates Ordinance (Cap 227) and is successful, the compliance order must also be set aside.
- (e) Pursuant to clause 6(5) of the Bill, the applicable owner or occupier is entitled to be heard on the hearing of an application for a fire safety compliance order made by an enforcement authority. Pursuant to clause 6(4), a Magistrate may, on application of the applicable owner or occupier, revoke or vary a fire safety compliance order.
- (f) A prohibition order made under clause 7 of the Bill involves the civil jurisdiction of the District Court. The persons affected may appeal in accordance with the appeal

procedures under the District Court Ordinance (Cap 336). Under clauses 8(2) & (5) of the Bill, the prohibition order will not take effect until the appeal has been concluded.

- (g) Pursuant to clause 12, an owner/occupier may request FSD/BD to issue a certificate that the requirements of the fire safety direction or fire safety compliance order have been complied with, so that the District Court may revoke the prohibition order. In considering such requests, FSD/BD will ensure full exchange of views with the owner/occupier concerned.
- (h) If the request made under clause 12 fails, the owner or occupier may, pursuant to clause 13(1), apply to the District Court for the revocation of a prohibition order.

Provision of services to owners/occupiers of buildings which have been issued with a prohibition order

- 6. The services available include the following -
 - (a) Housing Department will provide alternative accommodation to persons whose accommodation is subject to a prohibition order until the prohibition order is revoked or discharged.
 - (b) FSD/BD will continue to provide free consultative services to the affected owners and occupiers in regard to the measures necessary for the discharge or revocation of the prohibition order.
 - (c) FSD/BD will continue to liaise closely with the affected owners and occupiers and make the best use of HAD's building management services to render assistance to them.
 - (d) Under Clause 8(1)(a)(ii) of the Bill, the enforcement authority may, subject to such conditions as he thinks fit, by notice in writing permit any person to occupy the relevant building or part of a building for the purpose of implementing measures for the discharge or revocation of the prohibition order.

Assistance given to owners/occupiers with financial difficulties in complying with the fire safety measures as required by the Bill

7. The Administration proposes to merge the existing Fire Safety Improvement Loan Scheme and Building Safety Improvement Loan Scheme to form a \$700 million fund and to extend the ambit to meet all practical requirements to improving fire safety, building safety and maintenance of private buildings. Eligible owners affected by the Bill could have recourse to a non-means-tested loan. The terms and conditions of the proposed merged loan fund will be formulated on the basis of those of the existing ones. Owners in hardship, e.g. elderly and other persons with very low income, will be given more flexible repayment terms.

Other Government initiatives

8. The Task Force under the Planning and Lands Bureau has proposed a package of initiatives to promote building safety and timely maintenance of buildings, including improvements to fire safety. A number of initiatives are particularly relevant to assist FSD/BD in the implementation of the Bill. These include -

- (a) On professional support, the Director of Buildings will designate building co-ordinators, each for a pool of buildings, to serve as district-based contacts and to provide "one-stop" service for owners. In addition, BD will compile a comprehensive layman's guide on building safety and general maintenance for publication this year. The scope of the one-stop service and the layman's guide will cover improvement works to comply with the directions issued under the Bill.
- (b) On management issues, the Director of Home Affairs has started to re-structure and expand her headquarters and to re-constitute outreach teams in District Offices to provide assistance to owners and owners' corporations, respond to enquiries and mediate in case of disputes. The Building Management Resource Centres will assist in referring enquiries and complaints. These efforts will help with the implementation of the Bill.
- (c) Through public education and outreach efforts, owners of existing buildings would be encouraged to set up and

contribute to maintenance reserve funds for future major repairs and improvements, including those required by the Bill.

- (d) A voluntary privately-initiated scheme is proposed to provide independent rating of buildings by professional institutes, associations of banks, insurance agencies and building management companies. BD will co-ordinate with other departments to set the safety and maintenance benchmarks for assessment, taking into account the requirements of the Bill.
- (e) On financial assistance, see paragraph 7 above.
- (f) In November 2000, BD launched a pilot Co-ordinated Maintenance of Buildings Scheme to help owners and OCs in maintaining their buildings. BD will co-ordinate, with other departments, all building-related enforcement efficiently and cost-effectively to minimise hassle to owners and OCs. Some 150 composite and residential buildings have been included initially. At the end of 2001, BD will assess the effectiveness of the pilot scheme for its extension or modification. The Scheme will cover the enforcement of the Bill, if and when passed.