

**Paper for Bills Committee
on Fire Safety (Buildings) Bill**

**Summary of Administration's responses to the
queries/comments raised by Legal Service Division
(Revised as on 26 October 2001)**

Clauses and issues	LSD's queries/comments	Administration's responses
<p><u>Clause 3</u> -</p> <p>The Chinese term of "domestic purposes" as "住用用途"</p>	<ul style="list-style-type: none">● For the Chinese term "住用用途", would it mean "作為居住用的用途"? Could this repetitious meaning be avoided, say, by using the term "住宅用途"?● The term "住宅用途" is the Chinese expression used for the term "domestic purposes" in the "The English-Chinese Glossary of Legal Terms" (see p. 302). Should the term used in the Glossary be adopted? Further, I do not think that the English term "domestic" means "用" in Chinese.● (Further comments) In the Chinese version of the definition "非住用用途", it means "指用作住用用途以外的用途". There are four "用" in this definition because "domestic purposes" has been rendered as "住用用途". Would this definition be too verbose?	<ul style="list-style-type: none">● The term "domestic"(住用) is adopted in the Fire Safety (Commercial Premises) Ordinance (Cap. 502), while the term "domestic purposes" (住用用途) is adopted in the Buildings Ordinance (Cap. 123). It is preferable to adopt a consistent Chinese term in the Bill.● The term “住用用途” is also adopted in the definition of “商業建築物” in section 3 of the Fire Safety (Commercial Premises) Ordinance (Cap.502). It is preferable to adopt a consistent Chinese term in the Bill.
<p><u>Clause 7</u> -</p> <p>District Court may make orders prohibiting occupation of a building</p>	<ul style="list-style-type: none">● How is the original proposal that the prohibition order would be applicable to the non-domestic parts of a composite building only but not to the domestic parts thereof or to domestic buildings inconsistent with Article 22 of the Hong Kong Bill of Rights? Article 22 is <u>to protect all</u> persons and not meant to deprive any person of his rights.	<ul style="list-style-type: none">● Article 22 of the Hong Kong Bill of Right Ordinance (Cap 383) ('BOR') guarantees the right to equality before and equal protection of the law. It proscribes differential treatment based on, inter alia, the different status of the persons concerned unless it is based on reasonable and objective criteria.

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	<ul style="list-style-type: none"><li data-bbox="427 416 1196 667">● In the case of a composite building, if the owners of the domestic parts of that building have complied with the requirements in Schedule 2 but the owners of the non-domestic parts have not complied with the requirements in Schedule 1, will a prohibition order be applicable to the relevant building as a whole or just the non-domestic parts?	<ul style="list-style-type: none"><li data-bbox="1225 416 2119 740">● The policy intention of a prohibition order provision is to protect owners/occupiers of both the domestic and non-domestic parts by prohibiting occupation of premises which might present substantial fire risks and hence to protect public safety. If the prohibition order provision were to apply to non-domestic parts of composite buildings only, but not domestic parts of composite buildings nor pure domestic buildings, the statutory protection will only be offered to certain owners/occupiers of certain buildings but not others.<li data-bbox="1225 783 2119 1222">● Under clause 7(6)(e) of the Bill, the District Court will only exercise its discretion to make a prohibition order <u>if it is satisfied that there could be substantial fire risks if the relevant building or part of a building is occupied</u>. If due to a failure to comply with fire safety directions or fire safety compliance orders regarding a composite buildings, and as a result, the Court is satisfied that there could be substantial fire risks if the premises were continued to be occupied, there is no reasonable and objective justification to support a provision which authorises the Court to issue a prohibition order in respect of the non-domestic part only of a building, while it is unable to do the same with the domestic part of the same building.

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	<ul style="list-style-type: none">● If the prohibition order is applicable to the whole building, the owners of the domestic parts of that building will then be arbitrarily deprived of their property rights. Would this be held to be inconsistent with Articles 6 and 29 of the Basic Law which state that the HKSAR shall protect the right of private ownership of property and that the homes and other premises of Hong Kong residents shall be inviolable.● Article 105 of the Basic Law provides that,"(T)he HKSAR shall, in accordance with law, protect the rights of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property."	<ul style="list-style-type: none">● The court's power to issue prohibition orders is consistent with the provision of the Basic Law in relation to protection of residents' homes and other premises, Article 29. Under Clause 5(2) of the Bill, a separate fire safety direction will be served on each owner in respect of the part he exclusively occupies or on each co-owner in respect of the part he does not exclusively occupy. It is possible for the court to issue a prohibition order in respect of a certain part of a building only or to issue prohibition orders in respect of the whole building if circumstances so warrant. There would be no arbitrary interference of a residents' home/premises in violation of Article 29 of the Basic Law. The power will only be exercised in circumstances where the issue of a prohibition order is rational and proportionate to protect a legitimate purpose, viz. public safety.● The issue of prohibition orders is also consistent with Articles 6 and 105 of the Basic Law in relation to protection of property rights, in that it is in accordance with law, accessible, sufficiently certain and not arbitrary, and justified subject to the "fair balance" test established in human rights jurisprudence. The Bill has struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The means employed are proportional to the aim sought to be realised, as reflected in clauses 2, 5(8), 7(6), 13 and 14.

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	<ul style="list-style-type: none"> ● If a prohibition order is made against domestic premises, occupants might become homeless. Will there be compensation or other accommodation for them? Should the court be empowered to consider this question of "the availability of other accommodation" apart from the five considerations under clause 7(6) before granting a prohibition order? ● If it is the policy intent that the Court "should take into account the property rights of the owners" and that "occupants rendered homeless by Government's statutory actions will be offered alternative housing accommodation by the Housing Department", would it be better to express the policy intent in clearer terms? 	<ul style="list-style-type: none"> ● In general, temporary dispossession is not regarded as deprivation. In view that the prohibition order is revocable and that financial assistance would be made available under a revised loan scheme, it is unlikely that the prohibition order would amount to deprivation of property and result in payment of compensation under Article 105 of the Basic Law. ● Before granting the Order under clause 7(6), the court is bound to consider the property rights of the owners. In this connection, the proportionality requirement has already been adequately addressed in clause 7(6)(d), under which the court is required to be satisfied that it is reasonable and necessary in the circumstances to make the order. ● Occupants rendered homeless by Government's statutory actions will be offered alternative housing accommodation by the Housing Department. ● The provision of alternative housing is a remedy to alleviate the hardship caused by a prohibition order. The availability of such a remedy is relevant in assessing whether the means employed is proportional to the aim sought to be realised. In determining under clause 7(6)(d) whether it is satisfied that it is reasonable and necessary in the circumstances to make the order, the court would take into account the availability of alternative housing in view of the property right guarantee under Articles 6 and 105 of the Basic Law. We consider that the current drafting is in order.

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	<ul style="list-style-type: none"> ● When introducing the Fire Safety (Commercial Premises) (Amendment) Bill 1998, Clause 7A reads as "... the District Court may make an order prohibiting the occupation of the specified commercial building". ● During the discussion at the Bills Committee, Members pointed out that "as a matter of fairness, prohibition orders should apply only to owners or occupiers of a specified commercial building who failed to comply with the requirements. A prohibition order should not affect those who abided by the requirements." (See paragraph 4 of the Minutes of the meeting held on 2 March 1998 (PLC Paper No. CB(2)1419.) ● The Administration accepted the Members' comments and when it introduced a CSA, it explained in a letter from the Administration to Assistant Legal Adviser to the Bill dated 13 March 1998 that "Should the circumstances warrant the application of a prohibition order to the whole of a building, the authorities will make several applications to the District Court for the different units and parts of the building concerned." ● The section now reads as "the District Court may make an order prohibiting the occupation of <u>the unit or part</u>". ● Why is there a different treatment in this Bill? 	<ul style="list-style-type: none"> ● The enforcement authorities, the Fire Services Department and the Buildings Department, will implement the Fire Safety (Buildings) Bill when enacted by the Legislative Council in the same fair way they implement the current Fire Safety (Commercial Premises) Ordinance. Specifically, the application for and the making of a prohibition order will be on the basis of a unit or part of a building where there are more than one owner or occupier in the building. A prohibition order will be considered only when a building owner or occupier fails to comply with a fire safety direction or a fire safety compliance order. Clause 7 of the Bill enables this policy approach. The reference to "the relevant building" covers a situation where the whole building is owned by one person and is subject to one fire safety direction or fire safety compliance order (cf. clause 5(1)).

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<p><u>Clause 8(1)(a)(iii)</u> -</p> <p>Would the phrase "at any time and for any reason" be regarded as arbitrary?</p>	<ul style="list-style-type: none"> ● The relevant enforcement authority may cancel a permission granted under subparagraph (ii) <u>at any time and for any reason</u>. Would this be regarded as arbitrary and should advance notice and with reasons therefor be given before a permission is cancelled? ● Since "as a matter of good practice, the enforcement authority would cancel the permission in writing and give reasons", would the Administration consider amending the wordings to, say, "by notice in writing with reasons therefor"? ● Based on the principle of fairness, should reasons be given for the Administration's decisions? Further, would "for public safety" itself is a reason? 	<ul style="list-style-type: none"> ● This provision is identical to s.8A(1)(a)(iii) of the Fire Safety (Commercial Premises) Ordinance (Cap 502). It allows the enforcement authority to immediately revoke or cancel the permission granted under circumstances as the existence of undue or substantial fire risk, unreasonable delay in implementing measures necessary for the discharge or revocation of the prohibition order, misuses of the permission, etc. As a matter of good practice, the enforcement authority would cancel the permission in writing and give reasons. ● The authority requires the power to take prompt action to stop persons previously given permission from entering the building concerned in case of contingency that may result in danger in life. The current drafting has provided flexibility to the enforcement authority while giving sufficient safeguard against any abuse of power. ● As a matter of good practice, the enforcement authorities will give reasons for the cancellation of the permission. Such reasons would naturally be based on public safety grounds which are the underlying cause for the issue of the prohibition order in the first place. The question of arbitrary power does not seem to arise on the matter given that the sole purpose of granting permission to enter the premises is for implementing measures necessary for the discharge of the prohibition order, i.e. to achieve the objective of the Bill to improve fire safety of buildings.

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<p>Clause 14 - Registration of notice of fire safety compliance order, etc. against composite building in the Land Registry but not against commercial buildings</p>	<p>This Clause empowers the enforcement authority to register a fire safety compliance order or a prohibition order against the land register of the relevant property in the Land Registry. The Fire Safety (Commercial Premises) Ordinance (Cap. 502) does not contain similar provisions. Would this be regarded as different treatment for commercial buildings on the one part, and composite (commercial/domestic) buildings and domestic buildings on the other part?</p>	<p>The registration would provide an <u>added</u> incentive for owners to comply with the requirement under the Bill. At present we are satisfied with the progress of implementation of the Fire Safety (Commercial Premises) Ordinance and do not consider it necessary to add a similar incentive in that Ordinance.</p>

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