

## **Fire Services (Amendment) Bill 2001**

### **Administration's response to issues raised at the Bills Committee meeting held on 15 July 2002**

#### **An overview relating to fire hazard abatement**

- (a) *the rationale for the existing provisions which would be amended by the Bill and the justifications (including operational experience) for amending each of these provisions.*

— Please see the attached Appendix I.

- (b) *whether direct prosecution against offences as proposed in the Bill would be initiated on the basis of individual circumstances, and if yes, the criteria for initiating such direct prosecution.*

2. Fire hazards are generally dealt with by the issue of a fire hazard abatement notice (FHAN) which requires the person responsible to take abatement action. Non-compliance is an offence subject to prosecution and may lead to the issue of Fire hazard order (FHO) and/or closing order. In 1986, the Fire Services Ordinance (FSO) was amended to provide for direct prosecution against some fire hazards because of their rampant nature, without the need to go through the process of serving a FHAN. The fire hazards covered are -

- obstruction of means of escape
- locking up of means of escape

3. In recent years, new forms of fire hazards have emerged and caused safety concerns. We propose also to subject the following new forms of fire hazards to direct prosecution -

- improper stowage or conveyance of motor vehicles and motor vehicles' spare parts in freight containers
- the storage of any liquid fuel for the business of supplying the fuel for transferring to a motor vehicle's fuel tank in any unlicensed premises

4. Whether prosecution would be initiated would be determined on the basis of individual circumstances. To initiate prosecution, there must be sufficient evidence proving that an offence has been committed which is contrary to the relevant provisions of the legislation. Details of the new offences proposed are as follows -

(i) Improper Conveyance/stowage of motor vehicles in containers

A person commits an offence if the person -

(a) knowingly conveys on land; or

(b) knowingly causes or permits to be conveyed on land, 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, unless the container is open at the top or is well ventilated.

*(cf s.17 of the draft Fire Service (Fire Hazard Abatement) Regulation (FS(FHA)R))*

A person commits an offence if the person -

(a) knowingly stows; or

(b) knowingly causes or permits to be stowed, in a container that is or is to be conveyed on land a motor vehicle, or a part of a motor vehicle, which has fuel in its fuel tank or is otherwise stained with fuel, unless the container is open at the top or is well ventilated.

*(cf s.18 of the draft FS(FHA)R)*

(ii) storage of liquid fuel for the business of supplying the fuel for transferring to a motor vehicle's fuel tank in any unlicensed premises

A person commits an offence if the person has possession or control of liquid fuel in any premises for the business purpose of supplying the liquid fuel for transferring to a motor vehicle's fuel tank, unless the premises is approved for the storage of the liquid fuel under the Dangerous Goods Ordinance (Cap. 295).

*(cf s.19 of the draft FS(FHA)R)*

A person who is the owner, tenant, occupier or person in charge of any premises commits an offence if the person knowingly permits or suffers an offence under s.19 to be committed in or on the

premises.

*(cf s.20 of the draft FS(FHA)R)*

A person commits an offence if the person lets or agrees to let, whether as principal or agent of another person, any premises with the knowledge that an offence under s.19 is to be committed in the premises.

*(cf s.20 of the draft FS(FHA)R)*

(c) ***a comparison between the existing powers of the Director of Fire Services under the Fire Services Ordinance and the powers which would be given to the Director of Fire Services under the various proposed provisions in the Bill.***

5. Please see the attached Appendix II.

(d) ***whether an appeal mechanism would be available.***

6. In respect of the prosecution and conviction of all the offences proposed to be created under the Bill and the draft FS(FHA)R, the normal appeal channels in the criminal justice system will be available.

7. In respect of fire hazard orders or prohibition orders made under ss.10 and 11 of draft FS(FHA)R, appeal channels are provided for in s.13. Such appeal channels are the same as those for similar orders made under s.9 of the existing FSO.

8. As for closure orders made under s.27 of the draft FS(FHA)R, a number of appeal channels are available -

- s.34 provides for the rescission of a closure order after the conviction on which the closure order is based has been quashed
- s.33 provides for the rescission of a closure order on application by a person who became a bona fide purchaser, mortgagee or chargee of the premises after a person was convicted of an offence on which the closure order was based and before a notice relating to that conviction was registered in the Land Registry under s.23

- s.35 provides for the conditional suspension of a closure order on application by the immediate landlord or a mortgagee/chargee of the premises.

(e) *the persons to be held liable for criminal offence under various proposed provisions in the Bill and the rationale for holding these persons liable.*

(i) Improper Conveyance/stowage of motor vehicles in containers

9. The perpetrators of the offences under ss.17, 18 and 22 of the draft FS(FHA)R will be prosecuted. A serious fire hazard is created if motor vehicle parts stained with fuel are stowed inside an enclosed freight container which is conveyed on land, as the moving parts may generate sparks which may in turn ignite the trapped fuel vapours and thus cause an explosion. A person who knowingly stows or conveys vehicle parts in such an improper manner should be held liable. To enforce the law, the Fire Services Department (FSD) officers must be able to stop, board and search a goods or container vehicle, remove any material on board and detain any persons on board. Any person who, without reasonable excuse, resists, obstructs or delays an officer in the exercise of such powers should be held liable.

(ii) storage of liquid fuel for the business of supplying the fuel for transferring to a motor vehicle's fuel tank in any unlicensed premises

10. The perpetrators of the offences under ss.19 and 20 of the draft FS(FHA)R will be prosecuted. To ensure public safety, the business of vehicle refuelling should only take place in premises licensed as petrol filling stations where adequate fire precautionary measures are in place. A business of refuelling motor vehicles in unlicensed premises would cause great safety concerns. The operators, i.e. persons who have possession of liquid fuel for such business purposes, should be held liable. Moreover, an owner or person in charge of any premises should not knowingly permit such unlawful refuelling activities to take place in the premises, and a person, whether as principal or agent, should not let or agree to let any premises with the knowledge that such unlawful refuelling activities are to take place in the premises. Such persons should also be held liable.

(iii) failure to furnish personal particulars

11. The perpetrators of the offence under s.21 of the draft FS(FHA)R will be prosecuted. To abate fire hazards, FSD officers need to serve a fire hazard abatement notice under s.3 on, or take prosecution actions under ss.14-20 against, the persons responsible. To enable such enforcement action, FSD officers should be empowered to require such persons to produce proof of identity to FSD officers. Any person who, without reasonable excuse, fails to comply as soon as reasonably possible with such a requirement or furnishes information which the person knows to be false in a material particular should therefore be held liable.

(iv) resisting, obstructing or delaying FSD officers

12. The perpetrators of the offence under the new s.27(1) of the FSO will be prosecuted. To ensure public safety, FSD officers must enforce the provisions of the FSO in an effective manner. Any person who, without reasonable excuse, resists, obstructs, or delays any FSD officer, acting in the discharge of any lawful duty, should be held liable.

**Improper stowage or conveyance of motor vehicles (including motorcycles) and motor vehicles' spare parts containing residual fuel in an enclosed freight container or goods compartment.**

(f) *operation of the proposed provisions against improper stowage or conveyance of motor vehicles and motor vehicles' spare parts containing residual fuel in an enclosed freight container or goods compartment, including the detailed procedures for inspection, enforcement and direct prosecutions as well as the legal responsibilities of the parties involved, i.e., whether the driver and/or the owner of the vehicle and/or owner of the vehicles/vehicles' spare parts would be prosecuted.*

13. To protect public safety, FSD officers will take proactive actions to abate the fire hazard caused by improper conveyance or stowage of vehicle parts in enclosed containers. Under the proposed legislation, FSD officers will be empowered to stop, board and search suspicious vehicles. Operations may be taken by FSD alone, or jointly with other departments such as the Customs and Excise Department, Marine Department and the Police, at vehicle scrap yards, boundary control points, public cargo areas, highway road blocks and other

places to carry out such vehicle inspections. FSD will also act on intelligence and complaints. In undertaking such operations, FSD officers will pay attention to many factors including the following -

- i. petroleum odour emitting from an enclosed container or goods compartment of a motor vehicle,
- ii. packing activity at a public cargo area or vehicle scrap yard involving vehicle parts, and
- iii. a goods vehicle with an enclosed container or compartment leaving a public cargo area or automobile scrap yard where packing activities involving vehicle parts is taking place.

14. Under ss.17 and 18 of the draft FS(FHA)R, a person commits an offence if the person knowingly conveys on land or knowingly causes or permits to be conveyed on land, an enclosed 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; or if the person knowingly stows or knowingly causes or permits to be stowed a container that is or is to be conveyed on land a vehicle, or a part of a motor vehicle, which has fuel in its fuel tank or is otherwise stained with fuel. Whether the driver or the owner of the vehicle, or the owner of the vehicles/vehicle parts would be prosecuted would all depend on the individual circumstances of the case and the evidence available following investigation. It may turn on which party has given the instruction to convey or stow the vehicle parts in an improper manner, and on whether a party involved in the stowage or conveyance has the knowledge of the commission of the prohibited act. The Department of Justice may be consulted as appropriate before any prosecution is initiated.

**(g) *the measure which would be taken to prevent such improper stowage or conveyance.***

15. Inter-departmental efforts to prevent improper stowage or conveyance have been made since 1999. With the assistance of the Transport Department (TD), FSD has made extensive publicity efforts to educate the trade about the necessary safety measures. In 2000, TD revised the Code of Practice on the Loading of Vehicles (the Code of Practice) to enhance safe transportation of motor vehicles and spare parts. FSD has since 1999 made over 170 visits on average yearly and widely distributed the Code of Practice. During the

visits, it was noted that the Code of Practice has been observed by operators. In June 2002, TD reviewed the Code of Practice and confirmed its effectiveness.

16. FSD has also been disseminating the message on proper conveyance and stowage of motor vehicles and spare parts to the public in various fire safety activities and campaigns. After the passage of the Bill and subsidiary legislation, FSD will organise publicity programmes on the new provisions against improper conveyance or stowage of motor vehicles and spare parts.

17. Publicity efforts by the Marine Department (MD) have also been made. In 2000, MD promulgated safety guidelines which have been displayed continuously in all Public Cargo Working Areas. FSD, TD and MD have been making use of regular liaison and special briefing sessions with trade unions and associations to disseminate the safety message and encourage them to provide training and briefing programmes to their members.

18. The Security Bureau will continue with its coordinating efforts among bureaux and departments concerned.

***(h) the quantity of residual fuel to be found in motor vehicles or motor vehicles' spare parts in the freight container in such improper stowage or conveyance which would constitute an offence in the Bill.***

19. Under normal temperature, even if there is only a trace amount of liquid petroleum inside the fuel tank, petroleum vapour is liable to escape from the fuel system of a vehicle or scrapped vehicle into the ambient air inside the freight container or cargo compartment. Unless such a freight container or cargo compartment is well ventilated, the proportion of petroleum vapour and the ambient air may reach the flammable or explosive range and the occurrence of fire or explosion may follow.

20. Technically, inside an enclosed container, vehicle parts each stained with a trace amount of residual fuel may together give rise to a considerable quantity of fuel vapours posing a substantial risk of fire or explosion. Practically, it is impossible to accurately measure the aggregate quantity of residual fuel with which vehicle spare parts being carried inside a freight container are stained. To ensure public safety, enforcement action will

be taken if the vehicle parts are found to be stained with residual fuel and no allowance in the quantity will be given.

**Power of Director of Fire Services**

- (i) *a review on the scope of authorities and powers of the Director in the operation of proposed new section 9 within the context of fire hazards abatement, and the scope of “any person” under the provision, i.e. the power to serve a notice on or recover the expenses incurred from any person under the proposed new sections 9(a) and (b) respectively.*

21. As explained in Appendix I, the existing ss.9-9D are now re-enacted and updated in the new s.9 of the principal Ordinance (which will provide for the principal powers of the Director of Fire Services (D of FS) in the abatement and prevention of fire hazards), and in ss.2-6 and 8-16 of the draft FS(FHA)R (which will provide for details of enforcement against fire hazards). A review of the scope of authorities and powers of the D of FS in the operation of proposed new s.9 can be found in Appendix II.

22. Specifically, the new ss.9(a), 9(b) and 9(c) under cl.5 of the Bill (together with ss.3-5 and 7-8 of the draft FS(FHA)R) are the re-enactment of the provisions in existing ss.9(1), 9(2), 9(3A), 9(11) and 9A of the principal Ordinance. In this regard, no material change in the powers of D of FS has been proposed in the re-enactment. Under these provisions, FSD officers may issue a FHAN on -

- (a) the person by reason of whose act, default or sufferance the fire hazard arose or continues; or
- (b) if the person is the servant or agent of some other person, such other person; or
- (c) if the person or such other person, as the case may be, cannot readily be found or is absent from Hong Kong, the owner, tenant, occupier or person in charge of the premises.

If the fire hazard is not abated as required or recurs within 12 months and there is a substantial risk of fire or risk to life, D of FS may cause to be carried out works to abate the fire hazard and prevent its recurrence and recover the expenses incurred in carrying out the works from the person on whom the FHAN was served. In other words, the scope of “any person” referred to in the



new s.9(b) only covers those on whom a FHAN referred to in the new s.9(a) has been served, and this is clearly set out in s.3 of the draft FS(FHA)R.

**Coverage of insurance against fire**

- (j) *whether the Consumer Council would be consulted on the adequacy of consumer protection as a result of extending the scope of the protection under the proposed section 21 to cover any damage done by the Fire Services Department on the occasion of a fire or an incident that might pose an immediate danger of fire.*

23. The Consumer Council has been consulted. In its reply of 5 August attached at Appendix III, the Consumer Council expressed its support for the expansion of the scope of “damage by fire” to include damage done by the FSD in the execution of its duty on the occasion of a fire or incident that may pose an immediate danger of fire.

**Power to make regulations**

- (k) *the effectiveness of the proposed new section 25(1)(hk) as presently worded and proof of the mens rea 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”.*

24. S.20(2) of the draft FS(FHA)R, which stipulates that a person commits an offence if the person lets or agrees to let, whether as principal or agent of another person, any premises with the knowledge that an offence under section 19 is to be committed in or on the premises, is a regulation proposed to be made under the new s.25(1)(hk) of the principal Ordinance.

25. The *mens rea* of the person who commits the act can be proved by his own confession, the testimonies of witnesses or circumstantial evidence. From FSD’s practical experience, prima facie evidence of the *mens rea* of the person may include the following -

- (a) a landlord of the premises renewing a lease with a tenant with the knowledge that the tenant has just been convicted of the relevant offence during the previous lease; and

- (b) a landlord occupying a portion of the premises and letting the remaining portion for the operation of the illicit refuelling activity.

26. Ss. 23 – 25 of the draft FS(FHA)R provides for a mechanism for a magistrate to notify the owner and, if ascertainable, the tenant, or the agent or the person in charge of the premises in relation to which the offence of illicit refuelling activity is proved to have been committed. Upon receipt of the magistrate's notification, such a person may apply to the magistrate for an order terminating the tenancy of the premises in relation to which a person has been convicted of an offence caused by the illicit refuelling activity. If, after the receipt of the magistrate's notification, the owner, tenant, etc. takes no action to stop the illicit refuelling activity or to make an application to the magistrate for the issue of an order terminating the tenancy of the premises, it may amount to prima facie evidence of the *mens rea* of the person in committing an offence under s.20(2) of the draft FS(FHA)R.

27. According to the standard of proof in criminal cases, the prosecution has to prove beyond a reasonable doubt that the accused has committed all the elements of an offence before a conviction can be obtained. We consider that s.20(2) of the draft FS(FHA)R as presently drafted strikes a fair balance between protecting public safety and safeguarding individual rights.

### **Fire service installation works**

- (l) ***whether provisions requiring certification of fire safety improvement works by registered professional engineers (building services) would be included in the Bill or the Regulations to be made.***

28. Registration of fire service installation contractors and certification of fire safety improvement works are issues being dealt with under a separate, on-going review of the current Fire Service (Installation Contractors) Regulations. One initial proposal is to recognise registered professional engineers (building services) as qualified persons in appropriate classes of registered contractors which may undertake certification work. Consultations among relevant industries, professions and trades are in progress. Any change to the existing registration and certification systems will, as necessary, be implemented in a separate legislative exercise in due course.

### **Liquefied petroleum gas filling station**

(m) *whether refuelling stations specified in the Bill included liquefied petroleum gas filling stations.*

29. The proposed s.25(1)(hh) under cl.10(b) of the Bill provides for regulations to be made for “the prohibition of possession or control of a prescribed substance in or on any prescribed premises for the purpose of a business of transferring the substance to the fuel tank of a motor vehicle”. Detailed controls are set out in s.19 of the draft FS(FHA)R which applies to category 5 substance under the Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg.), i.e. inflammable liquid including petrol and diesel oil. The policy intent behind this provision is to further crack down on the rampant illicit refuelling activities conducted in residential areas which mainly involve dutiable light diesel oil.

30. Liquefied petroleum gas is regulated by the Gas Authority (Electrical and Mechanical Services Department) under the Gas Safety Ordinance (Cap. 51). It is not a dangerous substance regulated under the Dangerous Goods Ordinance (Cap.295) and therefore not covered in the Bill. The current illicit refuelling activities can be attributed to the large difference in price between “red” oil and diesel oil. From FSD’s enforcement experience, illicit refuelling activities involving LPG has not been spotted, apparently owing to its relatively low price.

### **Fire hazard abatement**

(n) *statistics in respect of the issue of fire hazard abatement notices and subsequent prosecutions, statistics on incidents of fire reported after the issue of fire hazard abatement notices and the deterrent effects of the penalties imposed.*

31. Statistics in respect of FHANs issued, prosecutions instituted and FHO issued in the last six years are tabulated below:

Table I – Prosecution subsequent to the issue of FHAN

<b>Year</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
FHAN issued	4675	7582	15153	16061	13995	21298
Subsequent prosecution instituted against <b>non-compliance with FHAN</b>	47	63	80	187	359	42
Highest Fine(\$)	20000	13400	18000	16100	10000	6000
Lowest Fine (\$)	1000	1500	10	50	0 <sup>1</sup>	500
Average Fine (\$)	4920	1385	3902	1570	1400	2355
Subsequent prosecution instituted against <b>recurrence of fire hazard</b> within 12 months	2	11	12	13	16	4
Highest Fine(\$)	7000	7500	15000	10000	12000	6000
Lowest Fine (\$)	1000	3000	1500	0 <sup>2</sup>	1500	500
Average Fine (\$)	4000	3691	5250	4084	4200	3625

(Note:

1. The defendant was absolutely discharged after conviction as the defendant was one of the co-owners of the same unit of which the other owner had been convicted and fined for the same offence.
2. The penalty imposed by the Magistrate was to require the defendant to sign a bail of \$1000 for 12 months.)

Table II – Prosecution relating to the issue of FHO

<b>Year</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
FHO issued	5	11	5	7	21	9
Subsequent prosecution to breaching of FHO	1	2	3	2	2	4
Highest Fine(\$)	15000	12300	25000	3000	3000	10000
Lowest Fine (\$)	15000	10700	4000	100	200	3000
Average Fine (\$)	15000	11500	14787	1550	1600	6500

Table III – Direct Prosecution

Year	1996	1997	1998	1999	2000	2001
Prosecution instituted against Obstruction / Locking of Means of Escape	73	142	133	202	147	122
Highest Fine(\$)	20000	20000	15400	12200	20000	13000
Lowest Fine (\$)	300	400	200	200	200	100
Average Fine (\$)	4966	5024	3720	3645	3888	4595

32. Under the provisions of the current Fire Services Ordinance, a Fire Hazard Order could be issued where a FHAN has been served on a person and -

- i) that person is convicted of an offence of non-compliance with the FHAN;
- ii) that person fails to comply with any of the requirements of the FHAN within the time specified; or
- iii) the fire hazard recurs or is likely to recur.

FSD has not kept any separate statistics on incidents of fire reported in premises after the issue of FHAN/FHO. Nevertheless, fire reports compiled by FSD would cover the cause of fire, fire damage and casualties. According to the fire reports for 2000 and 2001, there was no incident of fire in which the cause of the fire or casualties was related to a subject matter of a FHAN/FHO previously issued in respect of the premises concerned.

33. As to the deterrent effect of the penalty imposed, our observations have been summarised in our reply to *part (o)* below.

*(o) justifications for the proposed increase in the level of fines.*

34. Most of the penalty provisions of the FSO and its subsidiary legislation were enacted in or before 1986. The deterrent effect may not be sufficient in today's circumstances and may have been eroded by inflation over time (more than 200% since 1986). For instance, the fines for the offences in the existing Fire Service (Installation Contractors) Regulations and Fire Service (Installations and Equipment) Regulations were set at extremely low levels i.e. \$2,000 and \$5,000 respectively. In the case of fire hazard abatement under

ss.9 and 9A to 9D, we note that the average fines imposed by the courts from 1993 to the year 2001 were about 18% of the maximum fines of the respective offences (ranging from \$25,000 to \$50,000) with no imprisonment terms ever imposed. We consider that the average fines meted out are insufficient to create an adequate deterrent effect. To preserve and enhance the deterrent effect and to facilitate future revision, we thus propose a general four to five-fold increase in the levels of fines (in a few deserving cases, up to ten-fold) and a direct link with the generic levels of fines prescribed under Schedule 8 of the Criminal Procedure Ordinance.

**Overseas experience**

(p) *overseas legislation on storage of dangerous goods in domestic premises.*

35. We are seeking relevant information from authorities overseas and will provide a response as soon as possible.

Security Bureau  
October 2002

**Part (a) - Proposed Amendments to the Fire Services Ordinance (FSO)**

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
2	3	To expand the definition of ‘fire service installation or equipment’.	<p>Since the last amendment to the definition of fire service installation or equipment in 1971, new forms of installations have been introduced to facilitate the evacuation from any premises and the provision of emergency power supply in cases of fire and they are required to be provided in buildings nowadays. The definition of “fire service installation or equipment” should be amended to ensure coverage of these new installations or equipment under FSO.</p>
----	4	(i) To add a new “Section 8A – General Powers of Fire Investigation”	<p>The Fire Services Department (FSD) carries out an investigation into each and every fire to which it has attended. After completion of the investigation, FSD would compile an incident report which would include a section on the “Believed Cause of Fire”. This report would be released to the Police, other government departments, loss adjudicators, law firms and the general public upon requests. It would also be produced in courts (mainly for death inquests) as evidence. Most importantly, understanding the cause of a fire can help prevent another like incident.</p> <p>Currently, there is no specific provision in FSO for conducting investigation into an incident of fire. Without appropriate powers, FSD officers may be denied entry to the premises and answers to questions put to relevant parties after a fire has been extinguished. To facilitate the discharge of such public duties, the fire investigation by FSD officers should be put on a statutory basis.</p> <p>The new s.8A will provide for relevant powers for the Director or a member authorised by the Director to enter the premises to collect</p>

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
		<p>(ii) To add a new “Section 8B – Answers that may implicate criminal liability”</p> <p>(iii) To add new ss. 8C and 8D.</p>	<p>and take possession of evidence for forensic analysis; to require a person to attend a place to give information; to require a person to produce any document or article in connection with the fire investigation; etc.</p> <p>To protect trade secrets, sanction against FSD officers unlawfully disclosing any information collected in fire investigation should be imposed.</p> <p>The new section 8B replaces the common law privilege against self-incrimination with a statutory prohibition by providing that neither the question nor the answers which tend to incriminate the person who gave the answers shall be admissible in evidence against that person in criminal proceedings. The purpose is to safeguard the right of the person that he is not to be compelled to testify against himself or to confess guilt in the determination of a criminal charge against him as guaranteed under Article 14(3)(g) of the International Covenant on Civil and Political Rights and Article 11(2)(g) of the Hong Kong Bill of Rights.</p> <p>Currently, there is no provision for the disposal of articles or properties obtained in connection with fire investigation. In some cases, after completion of examination or analysis, articles or properties are not claimed by owners but there is no authority for FSD officers to properly dispose of such unclaimed articles or properties. These two new sections specify how the article or property obtained in connection with fire investigation could be returned or otherwise disposed of by FSD officers, or, in respect of property in connection with offences, by the court in accordance with s102 of the Criminal Procedures Ordinance (Cap 221).</p>



Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
Long title	2	To amend the Long Title to specify that FSO is also to make provision “for the investigation into matters relating to a fire”.	To reflect the expanded scope of FSO consequential to the addition of the new ss.8A to 8D.
9-9D	5, 6	To repeal the existing ss 9-9D, and re-enact and update the relevant provisions in a new s9 entitled “Power of Director in respect of abatement and prevention of fire hazards” in the principal ordinance and in various sections in a new Fire Service (Fire Hazard Abatement) Regulation.	<p>Currently, the abatement of fire hazards and prevention of their recurrence are provided for in the principal Ordinance. Relevant provisions, as revised and added following a series of amendments to the Fire Services Ordinance in 1964, 1969, 1975, 1982 and 1986, are stipulated in ss. 9(1), 9(1A)-9(1C), 9(2)-9(3), 9(3AA)-9(3AB), 9(3A)-9(3B), 9(4), 9(4A), 9(5)-9(7), 9(7A), 9(8)-9(11), 9A, 9B, 9C and 9D in FSO.</p> <p>However, the manner in which these sections are numbered and the sequences in which they appear have at times caused confusions and difficulties in making reference to them in daily operations.</p> <p>To make easier reference in enforcement action and facilitate amendments to be made from time to time to cope with the changing needs, we propose to repeal these provisions in the principal Ordinance and to re-enact them in a neat and tidy manner in the principal Ordinance and in a new piece of subsidiary legislation dedicated to fire hazards abatement. Opportunity would also be taken to update a few provisions and add new ones to strengthen and enhance enforcement against fire hazards (including new forms of fire hazards).</p> <p>The original ss. 9-9D are to be re-enacted and updated in a new s.9 of the principal Ordinance (which will provide for the principal powers</p>

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
			<p>of D of FS in the abatement and prevention of fire hazards), and in ss.2-6 and 8-16 of the new Fire Service (Fire Hazard Abatement) Regulation (which will provide for details of enforcement against fire hazards).</p> <p>As regards the strengthening and enhancement of enforcement against fire hazards, the gist of the proposed new provisions are as follows –</p> <p><u>S.7 of FS(FHA)R – Removal of articles creating fire hazards</u></p> <p>Under the existing s.9(11) of FSO, any property removed by FSD officers during physical abatement of fire hazards may be sold by public auction. But there are no clear procedures governing the owner’s claim for the return of his or her properties. The relevant procedures should be clearly set out in statutory provisions.</p> <p><u>S.21 of FS(FHA)R – Power to obtain personal particulars</u></p> <p>Currently, FSD officers are empowered to require a person to give his or her correct personal particulars for the purpose of issuing a Fire Hazard Abatement Notice. In this regard, notice in writing must be served upon such person for at least 24 hours to demand production of the relevant personal particulars.</p> <p>This provision has proved to be ineffective, as it requires a notice to be served on a person whose identity may be unknown to FSD officers. Fire hazards abatement action will be delayed if the responsible person’s identity is not available. Delaying fire hazards abatement action for want of production of the responsible person’s identity, and hence permitting a fire hazard to remain for more than</p>

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
			<p>24 hours, is clearly not acceptable. To expedite the enforcement against fire hazard offences, FSD officers should be empowered to demand instant production of a person's proof of identity in taking enforcement action.</p> <p><u>Ss. 17, 18 and 22 of FS(FHA)R – Improper stowage and conveyance of motor vehicles and parts in containers</u></p> <p>In February 1997, March 1998 and May 1999, three explosion incidents involving freight containers carrying used motorcycles and parts took place, causing a total of one death and four injuries. In order to enhance the safety of transportation of such goods, improper stowage or conveyance of motor vehicles and motor vehicles' spare parts containing residual fuel in an enclosed freight container or goods compartment should be treated as a serious fire hazard and made an offence. FSD officers should be given the powers to stop, board, search and detain a motor vehicle and seize articles if they have reasonable ground for suspecting such an offence has been committed.</p> <p><u>Ss. 19, 20, 27 &amp; 28 of FS(FHA)R – Illegal refuelling stations and closure order</u></p> <p>Another fire hazard that causes serious fire safety concern in recent years is illegal vehicle refuelling stations, notably those set up in residential areas. Such illegal activities are already treated as fire hazards but enforcement action has proved not satisfactory, as FSD must, after the issue of a fire hazard abatement notice, re-inspect the site and establish non-compliance upon expiry of the time limit before prosecution can be taken. Frequent change of operators has also made it difficult to pin down any one operator for prosecution or</p>

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
			<p>issue of a Fire Hazard Order or closing order. To tackle this problem, the storage of any liquid fuel in any unlicensed premises for the purpose of the business of supplying the fuel for transfer to a motor vehicle's fuel tank should be made an offence. To tackle the problem of frequent change of illicit operators and to make property owners more vigilant about the use of their premises, landlords should be prohibited from letting any premises with the knowledge that such premises is to be used for illegal vehicle refuelling activities, and the court should be empowered to make a closure order on those premises repeatedly used for illegal refuelling activities within 12 months beginning 4 months after and ending 16 months after an immediately preceding conviction.</p> <p><u>Ss. 23-26, 29-37 of the draft FS(FHA)R – Matters relating to the notification of an offence, termination of tenancies and suspension and rescission of closure order</u></p> <p>To protect the interests of bona fide owners, purchasers and mortgagees of premises, provisions should be made for the notification/ publication/ registration of the relevant charges and convictions concerning the premises, the landlords' termination of tenancies connected with illegal refuelling activities, the registration of closure orders, and the application by affected parties for suspending or rescinding the closure orders.</p>
13A(1)	7	To amend the specified period of absence warranting summary dismissal from 21 days to 14 days.	To align with relevant provisions in the Public Service (Administration) Order (PSAO). The period of absence from duty without leave that may warrant dismissal of an officer under s.10(3) of the PSAO has recently been changed from 21 days to 14 days.

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
14(8)	8	To repeal section 14(8).	To align with relevant provisions in PSAO. S.14(8) prohibits a subordinate officer or member of other ranks who is under interdiction from leaving Hong Kong without the Director's permission. Similar provisions in s.17 of the PSAO has been repealed in view of the Hong Kong Bill of Rights Ordinance (Cap.383).
21	9	To extend the statutory coverage of a policy of fire insurance and provide for transitional arrangements.	<p>According to the existing s.21 of FSO, any damage done by FSD in the execution of its duties on the occasion of a fire shall be deemed to be damaged by fire within the meaning of any policy of insurance against fire.</p> <p>However, the damage done by FSD officers on an occasion that may pose an immediate danger of fire falls outside the scope of the protection. For instance, FSD officers may have to break into a unit where gas leakage is suspected to carry out rescue and to prevent a fire from happening. In such cases, the public are not able to make any fire insurance claim.</p> <p>The scope of the protection under section 21 should be extended to cover also the damage done by FSD officers on an occasion that may pose an immediate danger of fire.</p>

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
25	10	To re-number the original s.25 as s.25(1), and add new ss.25(1)(hb) to (hl), s.25(2) and s.25(3).	<p>To expand the regulation making power of the CE-in-Council to enable –</p> <ul style="list-style-type: none"> <li>➤ the enactment of a new piece of subsidiary legislation (the draft FS(FHA)R) dedicated to fire hazard abatement,</li> <li>➤ the preservation of the current restrictions on delegation of powers in fire hazard abatement in the new FS(FHA)R, and</li> <li>➤ the provision of offences and the maximum penalty (fine not exceeding \$300,000 and the imprisonment not longer than 1 year) in regulations.</li> </ul>
27(1)	11	To revise s27(1)	<p>In daily operations, FSD officers may sometimes be delayed unreasonably by members of the public and this causes concern about protecting public safety. To ensure effective enforcement of FSO, any act of delaying FSD officers in the discharge of duties should be prohibited and any reasonable excuse should be allowed as a defence against allegation of obstructing, resisting or delaying FSD officers.</p>
<p>8(5), 11(2), 27(1),(2)&amp;(3) and 28</p> <p>Reg. 11(3) &amp; Reg. 11(4) of Fire Service (Installation Contractors) Regulations</p>	<p>11,12</p> <p>16</p>	<p>To amend the level of fine of various offences in the Fire Services Ordinance.</p> <p>To increase the fine from \$500 to a fine at Level 2.</p>	<p>Most of the penalty provisions of the FSO and its subsidiary legislation were enacted in or before 1986. The deterrent effect may not be sufficient in today's circumstances and may have been eroded by inflation over time. For instance, the fines for the offences in the existing Fire Service (Installation Contractors) Regulations and Fire Service (Installations and Equipment) Regulations were set at extremely low levels i.e. \$2,000 and \$5,000 respectively. For enforcement action under ss.9 and 9A-9D, the average fines imposed by the courts from 1993 to 2000 were about 18% of the maximum fines of the relevant offences (ranging from \$25,000 to \$50,000). No</p>

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
Reg. 16 of Fire Service (Installation Contractors) Regulations  Reg. 9(2A) & Reg. 9(3) of Fire Service (Installations and Equipment) Regulations  Reg. 12 of Fire Service (Installations and Equipment) Regulations	17   18   19	To increase the fine from \$2,000 to a fine at Level 3.  To increase the fine from \$5,000 to a fine at Level 5.  To increase the fine from \$5,000 to a fine at Level 5.	imprisonment terms were ever imposed. Apparently, the average fines meted out are insufficient to create an adequate deterrent effect.  To preserve and enhance the deterrent effect and to facilitate future revision, a general four to five-fold increase in the levels of fines (in a few deserving cases, up to ten-fold) should be made and a direct link with the generic levels of fines prescribed under Schedule 8 of the Criminal Procedure Ordinance (Cap.221) should be established.
Fifth Schedule (Forms)	13	To repeal Form 2 (Fire Hazard Abatement Notice), Form 3 (Fire Hazard Order), Form 3A (Closing Order) and Form 4 (Removal Order)	Such forms will become obsolete following the proposed repeal of ss.9A-9D and they will be re-introduced as Forms 1, 2, 3 and 4 in Schedule 1 of the draft FS(FHA)R.
Sixth Schedule (Senior Officers)	14	To add the ranks of Deputy Chief Ambulance Officer and Senior Assistant Chief Ambulance Officer.	To update the rank structure to reflect the current FSD organization.

Section in FSO (unless otherwise specified)	Clause in the Bill	Proposed amendments	Rationale/Justification
Seventh Schedule (Posts specified for the purposes of section 3(2))	15	To add new posts which are specified for the purpose of Section 3(2).	To update the list to reflect the current FSD organization.
Section 2(1) of Public Health and Municipal Services Ordinance (Cap 132)  Reg. 2 of Places of Public Entertainment Regulations (Cap 172)  Section 3(1) of Fire Safety (Commercial Premises) Ordinance (Cap 502)	20  21  22	To amend the definition of “fire service installation or equipment”  To amend the definition of “fire service installation or equipment”  To amend the definition of “fire service installation or equipment”.	Consequential amendments to align with the new definition proposed in clause 3
-----	23-27	To provide for transitional arrangements.	To preserve the legal effect of actions taken before commencement of the Bill pursuant to existing FSO provisions which would be amended or repealed by the Bill.



## Appendix II

### Part (c) – Comparison between the powers of the Fire Services Department provided under the existing Fire Services Ordinance (FSO) and those proposed in the Bill

Nature of Power	Power under the Existing FSO	Section in existing FSO	Additional Power in the Bill	Clause in the Bill/ section in draft FS(FHA)R
Definition of “fire service installations or equipment”	“fire service installation or equipment” means only those installations or equipment manufactured, used or designed to be used for extinguishing, attacking, preventing or limiting a fire, giving warning of a fire, or providing access to any premises for extinguishing or preventing a fire. The installation, maintenance, inspection and repair of these installations and equipment are controlled under the FSO and its subsidiary legislation, and FSD is responsible for implementing the controls.	s. 2	<p>To expand the definition to include also the installation or equipment for facilitating evacuation from any premises in cases of fire and the provision of emergency power supply.</p> <p>Such an expansion of definition will extend the current controls relating to fire service installation or equipment to cover the new types of installations.</p>	cl. 3 of the Bill
General Powers of Fire Investigation	Currently FSD carries out investigation into the cause of each and every fire its officers have attended. There is no explicit provision in the FSO for such investigations.	--	<p>To empower the Director of Fire Services or a member authorized by the Director to investigate a fire. In this connection, the Director or the authorized member may exercise the following powers –</p> <ul style="list-style-type: none"> <li>➤ power of entry into premises for fire investigation;</li> <li>➤ power to collect or take possession of things as evidence or for forensic analysis;</li> <li>➤ power of requiring any person to attend a place to give information, or to produce any document or article.</li> </ul>	New s.8A under cl.4 of the Bill

Nature of Power	Power under the Existing FSO	Section in existing FSO	Additional Power in the Bill	Clause in the Bill/ section in draft FS(FHA)R
			<p>To balance the new powers, the following provisions are proposed to be added:</p> <ul style="list-style-type: none"> <li>➤ it will be an offence for FSD officers to unlawfully disclose any information collected in fire investigation.</li> <li>➤ self-incriminating answers given in the investigations will not be admissible in evidence against the person giving the answer in criminal proceedings other than proceedings for an offence under section 36 of the Crimes Ordinance (Cap. 200).</li> <li>➤ the power of the Police under the Fire Investigation Ordinance (Cap. 12) will not be prejudiced by this Bill.</li> </ul> <p>Powers to dispose of articles removed during fire investigation and properties connected with offences are also proposed to be added.</p>	<p>New s.8B under cl.4 of the Bill</p> <p>New ss.8C &amp; 8D under cl.4 of the Bill</p>
<p>Fire Hazard Abatement Action and Direct Prosecution</p>	<p>The Director is empowered to initiate fire hazard abatement action against the following fire hazards :</p> <p>(a) removal of FSI from any building;</p> <p>(b) FSI is lacking in maintenance;</p> <p>(c) inadequate means of egress;</p>		<p>Under the Bill, the existing provisions for the principal powers of D of FS in the abatement and prevention of fire hazards are proposed to be re-enacted in the new s.9. The details on the operation and exercise of the powers are proposed to be re-enacted in a dedicated Fire Service (Fire Hazard</p>	

Nature of Power	Power under the Existing FSO	Section in existing FSO	Additional Power in the Bill	Clause in the Bill/ section in draft FS(FHA)R
	<p>(d) any matter or circumstance which materially increase the likelihood of fire or danger to life or property that would result from the outbreak of fire.</p> <p>The Director may serve a Fire Hazard Abatement Notice (FHAN) on the person concerned for abating the fire hazard.</p> <p>When the situation warrants, the Director may physically abate the hazard.</p> <p>The related expenses of physical abatement of fire hazard incurred by the Director can be recovered from the person on whom a FHAN is served.</p> <p>Any properties removed by the Director in abating a fire hazard may be sold by public auction, or may otherwise be sold, or may be disposed of without sale.</p>	<p>s.9(1)</p> <p>s.9(2) &amp; s.9(3A)</p> <p>s.9A</p> <p>s.9(11)</p>	<p>Abatement) Regulation so that the relevant provisions could be arranged in a neat and tidy manner to facilitate ease of reference in enforcement action.</p> <p>The existing power relating to fire hazard abatement action will remain unchanged.</p> <p>The existing provision relating to physical abatement of fire hazard is to be re-enacted in the draft FS(FHA)R with no material change.</p> <p>The existing provision relating to recovery of expenses for physical abatement action by the Director is to be re-enacted in the draft FS(FHA)R with no material change.</p> <p>Apart from re-enacting the existing provisions, a new provision will be added to set out the procedures for a person to claim the return of properties removed during physical abatement of fire hazard.</p>	<p>New s.9(a) under cl.5 of the Bill &amp; s.3 of the draft FS(FHA)R</p> <p>New ss.9(b) &amp; 9(c) under cl.5 of the Bill and ss.4 &amp; 5 of the draft FS(FHA)R</p> <p>New s.9(b) under cl.5 of the Bill and s.8 of the draft FS(FHA)R</p> <p>New s.9(c) under cl.5 of the Bill and s.7 of the draft FS(FHA)R</p>

Nature of Power	Power under the Existing FSO	Section in existing FSO	Additional Power in the Bill	Clause in the Bill/ section in draft FS(FHA)R
	<p>When the person on whom a FHAN is served is convicted of non-compliance with the FHAN, or he fails to comply with the FHAN, or the Director is of the opinion that the fire hazard is likely to recur, the Director may apply to a Magistrate for a Fire Hazard Order (FHO).</p> <p>The FHO may be an abatement order or a prohibition order, or a combination of both.</p> <p>When a FHAN is served, and it is proved to the satisfaction of a magistrate’s court on the sworn information of the Director that the fire hazard continues and the cause of fire hazard is of a structural character of the premises concerned and the premises are being used for a purpose which may materially increase the likelihood of fire, the magistrate may make a “closing order” prohibiting the use for the premises for the purpose specified therein.</p> <p>The Director is empowered to obtain personal particulars in connection with fire hazard abatement action by serving a written notice for not less than 24 hours to the person concerned.</p>	<p>ss.9(3AA), 9(3AB) &amp; 9(4)</p> <p>s.9(5)</p> <p>ss.9(7A) &amp; 9(8)</p> <p>ss.9(1A), 9(1B) &amp; 9(1C)</p>	<p>Provisions on FHO are proposed to be re-enacted in the FS(FHA)R with no material change.</p> <p>Under the Bill, while the existing powers exercisable under a FHO will remain unchanged, the FHO will no longer be classified into an abatement order or a prohibition order.</p> <p>This “closing order” is proposed to be re-named as “prohibition order” under the Bill with details remaining unchanged. The re-naming is to avoid confusion with the “closure order” made under s.27 of the draft FS(FHA)R.</p> <p>Power of demanding personal particulars is proposed to be strengthened such that the Director can demand instant production of the required personal particulars in connection with any offence under the new FS(FHA)R.</p>	<p>New s.9(f)(iii) under cl.5 of the Bill and s.10 of the draft FS(FHA)R</p> <p>s.10(3) of the draft FS(FHA)R</p> <p>New s.9(f)(ii) under cl.5 of the Bill and s.11 of the draft FS(FHA)R</p> <p>s.21 of the draft FS(FHA)R</p>

Nature of Power	Power under the Existing FSO	Section in existing FSO	Additional Power in the Bill	Clause in the Bill/ section in draft FS(FHA)R
	<p>The offences of obstruction and locking of means of escape respectively are created and the Director is empowered to remove obstruction or lock.</p>	<p>ss.9B, 9C &amp; 9D</p>	<p>Under the proposed amendment, the original offences and the existing power of removal are preserved. The causing of the following two new forms of fire hazards are proposed to be made an offence and subject to prosecution:</p> <ul style="list-style-type: none"> <li>➤ improper conveyance and stowage, in a container, of motor vehicle or a part of it which has fuel in its fuel tank or is otherwise stained with fuel;</li> <li>➤ the business of supplying liquid fuel for transferring to a motor vehicle's fuel tank in unlicensed premises.</li> </ul> <p>In relation to improper conveyance or stowage of vehicle/vehicle parts, powers to stop, board, search a motor vehicle and seize articles are proposed to be added.</p> <p>In relation to illicit refuelling activities, it is proposed that the court will be empowered to make a temporary closure order if illegal refuelling activities recur on the premises within 12 months (beginning 4 months after and ending 16 months after an immediately preceding conviction). To protect the interest of bona fide owners, purchasers and mortgagees of such premises, provisions are proposed for the notification/ publication/ registration of relevant charges and offences, landlords'</p>	<p>New s.9(f)(iv) under cl.5 of the Bill and ss.14,15 &amp; 16 of the draft FS(FHA)R</p> <p>ss.17 &amp; 18 of the draft FS(FHA)R</p> <p>s.19 of the draft FS(FHA)R</p> <p>s.22 of the draft FS(FHA)R</p> <p>New ss.9(d), 9(e) and 9(f)(i) under cl.5 of the Bill and ss.26-36 of the draft FS(FHA)R</p>

<b>Nature of Power</b>	<b>Power under the Existing FSO</b>	<b>Section in existing FSO</b>	<b>Additional Power in the Bill</b>	<b>Clause in the Bill/ section in draft FS(FHA)R</b>
			termination of tenancies, the registration of closure orders and the application by affected parties for rescission or suspension of closure orders.	



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5 August 2002

Secretary for Security  
Security Bureau  
Government Secretariat  
Lower Albert Road  
Hong Kong

Attn: Mr. David WONG

Dear Mr. Wong,

**Fire Services (Amendment) Bill 2001**

Thank you for your letter of 29 July 2002 seeking the Council's comments regarding the proposed section 21 (clause 9 of the above Bill) concerning the statutory expansion of the scope of a damage by fire within the meaning of a policy of insurance against fire.

The Council supports an expansion of the scope of damage as outlined in the briefing paper accompanying the Bill, to include damage done by the Fire Services Department in the execution of its duty, on the occasion of a fire or incident that may pose an immediate danger of fire.

The amendment will clarify the extent of coverage of fire insurance policies as far as the meaning of damage is concerned, and as a result will result in a consumer benefit. Consumers purchase fire insurance policies to cover themselves for damage that arises through fire related damage. Damage done by the Fire Services Department in the course of executing duty in good faith, where there is a belief that there may be a potential for fire, is a situation over which consumers have no control. In particular, the damage is directly related to the purpose for which fire insurance policies are purchased. Accordingly, such damage should not be excluded from the coverage of fire insurance policies.

P.2/We...

We note that the Hong Kong Federation of Insurers has stated it will not recommend to its members any premium increment as a result of the change. It has rightly pointed out that the level of premiums is a matter for individual members to consider. The Council expects that competition between insurance companies will be the means by which companies determine levels of premium.

In any event, the Council would not expect insurance policies to be increased as a result of the amendment. The reason being that there is no indication from the industry that the damage that is now occurring, and is not covered, is currently of such a magnitude and will continue into the future, that it will cause a material increase in costs.

Yours sincerely



Mrs CHAN WONG-Shui  
Chief Executive

c.c. DS(S)2 - f.i.