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**Paper for the House Committee Meeting
of the Legislative Council
on 6 July 2001**

**Legal Service Division Report on
Fire Services (Amendment) Bill 2001**

Object(s) of the Bill

The main purpose of the Bill is to amend the Fire Services Ordinance (Cap. 95) -

- (a) to provide for the powers of the Director of Fire Services in relation to investigation of matters relating to a fire and abatement and prevention of fire hazards;
- (b) to empower the Chief Executive in Council to make regulations providing for the regulation of new types of fire hazards and the making of a court order concerning fire hazards; and
- (c) to amend the level of fines for offences under the Fire Services Ordinance and its subsidiary legislation.

LegCo Brief Reference

- 2. SBCR6/2361/98 Pt.7 issued by the Security Bureau in June 2001.

Date of First Reading

- 3. 4 July 2001.

Background

4. The current regulatory framework on abatement of fire hazards and prevention of their recurrence is provided in sections 9, 9A to 9D of the Fire Services Ordinance (Cap. 95) ("the Ordinance"). Under the existing regulatory framework, the Director of Fire Services ("the Director") may, if he is satisfied that a fire hazard exists in or on any premises, serve a fire hazard abatement notice on a person causing the fire hazard. He may also apply to a magistrate for a fire hazard order, a closing order to prohibit the use of the premises for specific purposes, or a removal order to remove obstruction to means of escape. Any person who fails to comply with a fire hazard abatement notice, a fire hazard order, a closing order or a removal order commits an offence. Under the Ordinance, it is also an offence for a person to obstruct or lock up the means of escape.

5. The relevant provisions on fire hazard abatement and prevention were last revised in 1986. In 1999, the Fire Services Department embarked on an overall review of the Ordinance with a view to examining the adequacy of the existing provisions and the means to enhance the effectiveness of the current regulatory framework. The review has been completed and a package of measures was proposed.

Comments

6. The Bill seeks to implement the proposed measures following the review of the Ordinance. The Bill proposes to repeal sections 9, 9A to 9D of the Ordinance and to re-enact them in a new regulation made by the Chief Executive in Council under section 25 of the Ordinance. The regulation which will deal with all matters relating to abatement of fire hazards is subsidiary legislation subject to section 34 of Cap. 1. A copy of the new Fire Service (Fire Hazard Abatement) Regulation ("the proposed Regulation"), which, according to the Administration, has been approved in principle by the Chief Executive in Council, is at Annex B to the LegCo Brief. Amendments to section 25 of the Ordinance are also proposed to empower the Chief Executive in Council to make the proposed Regulation.

7. To cope with new forms of fire hazards, the Bill proposes to empower the Chief Executive in Council to make regulations to provide for the following matters -

- (a) 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;
- (b) 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;

- (c) the prohibition of possession or control of certain liquid fuel in or on any premises for the purposes of a business of supplying the fuel for transferring to the fuel tank of a motor vehicle;
- (d) the liability of the owner, tenant, occupier or person in charge of any premises who knowingly permits or suffers an offence under the Ordinance to be committed in or on the premises;
- (e) 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; and
- (f) the making of an order by a court or magistrate concerning closing any premises and termination of a tenancy.

6. 8. Under the proposed Regulation, illegal refuelling and improper stowage or conveyance of motor vehicles or parts containing residual fuel in an enclosed freight container are offences and the maximum penalty for these offences is a fine at level 6 (\$100,000) and imprisonment for 6 months on a first conviction and a fine of \$200,000 and to imprisonment for one year on a subsequent conviction. An owner, tenant, occupier, or person in charge of any premises commits an offence if he knowingly permits or suffers the premises to be used for illegal refuelling activities and is liable on conviction to a fine at level 6 and to imprisonment for 6 months. A person who lets or agrees to let any premises with the knowledge that the premises is to be used for illegal refuelling activities is also liable to the same level of penalty upon conviction. The Regulation also empowers the court to order termination of the tenancy of such premises and to make a closure order if refuelling activities recur in such premises within 12 months. For Members' information, some of the measures proposed to tackle illegal refuelling activities are similar to those currently adopted to tackle dangerous drugs and vice activities under the Dangerous Drugs Ordinance (Cap. 134) and the Crimes Ordinance (Cap. 200) respectively.

9. To facilitate the Director to investigate into an incident of fire, the Bill proposes to add an express provision to the Ordinance to confer on the Director certain powers necessary for fire investigation. These powers include the power to enter any premises within a reasonable period after a fire, the power to remove or take possession of any article or thing found in or on the premises for examination or analysis and the power to require any person to give information or produce documents.

10. As most of the penalty provisions of the Ordinance and its subsidiary legislation were enacted in or before 1986, the Administration considers it necessary to increase the fines for certain existing offences to maintain their deterrent effect. It is proposed that the existing fines for certain offences which range from \$500 to \$5,000 will be increased to a fine ranging from level 2 (\$5,000) to level 5 (\$50,000). As for

offences relating to fire hazard abatement notice and fire hazard order which will be re-enacted in the proposed Regulation, the level of fines is proposed to be increased by four times to \$100,000 and \$200,000 respectively.

11. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Public Consultation

12. According to the LegCo Brief, the Administration has consulted the District Councils, the District Fire Safety Committees and other interested parties, including the Association of Registered Fire Service Installation Contractors of Hong Kong Limited, the Hong Kong Container Tractor Owner Association Ltd. and the Container Transportation Employee General Union.

Consultation with the LegCo Panel

13. The Administration briefed the LegCo Panel on Security on the proposed amendments at its meeting on 3 April 2001. At the meeting, members of the Panel expressed various views on the proposal to tackle illegal refuelling activities. One member was of the view that the problem of illegal refuelling activities should be addressed from the perspective of organized crime rather than merely from the perspective of abatement of fire hazards. Another member was concerned whether it would be fair to issue a closure order to owners of premises where illegal refuelling activities were repeatedly found as this would involve a shifting of the Government's enforcement responsibility to owners of premises. Members may wish to refer to the minutes of that meeting (CB(2)1691/00-01) for details.

Conclusion

14. As the Bill introduces a number of important amendments to the current regulatory framework on fire hazard abatement, it is recommended that a Bills Committee be set up to examine the Bill in detail.

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