

For information
3 April 2001

Legislative Council Panel on Security

Proposed Amendments to the Fire Services Ordinance (Chapter 95)

Introduction

This paper seeks to inform Members of a package of proposals to amend the Fire Services Ordinance (FSO) following a review by the Fire Services Department (FSD).

Background

2. Enacted in 1954, the FSO provides for the constitution, duties and powers of FSD, the regulation of the discipline of its members, the establishment and control of its welfare fund as well as the abatement of fire hazards. Under the principal Ordinance, there are four pieces of subsidiary legislation¹ providing specifically for the registration of fire service installation (FSI) contractors; control over the sale, supply, installation, repair, inspection and maintenance of FSI or equipment; the making and issue of reports and certificates by FSD; and the administration of the FSD Welfare Fund. Revision to the FSO and its subsidiary legislation has been made from time to time to cope with the changing needs.

3. In 1999 FSD embarked on an overall review of the FSO with a view to examining the adequacy of the existing provisions and the means to enhance the effectiveness of the current regulatory framework on fire hazard prevention and abatement. The review has been completed and a package of measures proposed. The key ones are detailed below.

¹ Fire Service (Installation Contractors) Regulations; Fire Service (Installations and Equipment) Regulations; Fire Services Department (Reports and Certificates) Regulations; and Fire Services Department (Welfare Fund) Regulation.

Fire Hazards Abatement

4. Currently, the abatement of fire hazards and prevention of their recurrence are provided for in the principal Ordinance in relation to the following -

- (a) the issue of a fire hazard abatement notice (FHAN) by FSD;
- (b) the acquisition of personal particulars for issuing a FHAN;
- (c) the issue of a fire hazard order (FHO, i.e. an abatement order and/or prohibition order to prohibit the recurrence of the fire hazard), a closing order (to prohibit the use of premises for specific purposes), or a removal order (to remove obstruction to means of escape), and related appeals;
- (d) the execution of such work as deemed necessary by FSD to abate fire hazard (known as physical abatement of fire hazards) and the recovery of expenses incurred;
- (e) the direct prosecution of cases of obstruction to, or locking up of, means of escape; and
- (f) the penalties for the relevant offences.

5. The relevant provisions have been revised and added following a series of amendments to the FSO in 1964, 1969, 1975, 1982 and 1986 and are now stipulated in sections 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) and 9A – 9D. The manner in which these sections are numbered and the sequence in which they appear have at times caused confusions and difficulties in making reference to them. To facilitate enforcement action and amendments to be made from time to time to cope with the changing needs, we *propose* to repeal these sections in the principal Ordinance and to re-enact them in a neat and tidy manner in a new piece of subsidiary legislation dedicated to fire hazards abatement. The opportunity would also be taken to update a few provisions and add new ones to strengthen and enhance enforcement against fire hazards (see paragraphs 6-11 following).

Acquisition of Personal Particulars in FHAN Action etc

6. Currently, FSD officers are empowered to require a person to give his or her correct personal particulars for the purpose of issuing a FHAN

provided that a notice in writing has been served upon such person for at least 24 hours. This provision has proved to be ineffective, as it requires a notice to be served on a person whose identity is not known to FSD Officers. 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 24 hours, is clearly not acceptable. To expedite the enforcement work, we *propose* to empower FSD officers to demand instant production of a person's proof of identify in taking enforcement action against fire hazards.

7. At present, a person can claim the return of his or her properties that have been removed by FSD officers in the course of physical abatement of fire hazards. We *propose* to formally set out the relevant procedures in the subsidiary legislation to be introduced.

New Forms of Fire Hazards

8. Fire hazards are generally dealt with by the issue of a FHAN which requires the person responsible to take abatement action. Non-compliance is an offence subject to prosecution and may further lead to issue of FHO and closing order. In 1986, the FSO was amended to provide for direct prosecution against some fire hazards because of their rampant nature (i.e. the obstruction to, and locking up of, means of escape), without the need to go through the process of serving a FHAN. In recent years, new forms of fire hazards have emerged and caused safety concerns.

9. 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. At a Panel meeting on 15 June 2000, Members were informed that the Administration would, in the context of the review of the FSO, explore the possibility of defining improper loading or conveyance of motorcycles/vehicles and related spare parts in freight containers as a fire hazard, to enable FSD to play a proactive role in the inspection and enforcement work for enhancing the safe transportation of such goods. We consider that the approach is feasible and *propose* that improper stowage or conveyance of motorcycles/vehicles and related spare parts containing residual fuel in an enclosed freight container or goods compartment should be subject to direct prosecution.

10. Another fire hazard that causes serious fire safety concern in recent years is illegal vehicle refuelling stations, notably those set up in residential areas. Over storage or mishandling of illicit fuel may cause fire and explosion; there were 11 reports of fire so caused in 2000. Such illegal activities are already treated as fire hazards but enforcement action has proved not

satisfactory, as FSD must, after the issue of a FHAN, re-inspect the site and establish non-compliance upon expiry of the time limit before prosecution can be taken. Frequent change of operators has made it difficult to pin down any one operator for prosecution or issue of a FHO or closing order. To tackle this problem, we *propose* that the storage of any liquid fuel, together with the provision or installation of fuel dispensing equipment for the purpose of supplying such liquid fuel to any vehicle in any premises other than a licensed petrol filling station should also be subject to direct prosecution.

11. To tackle the problem of frequent change of illicit operators and to make property owners more vigilant about the illegal use of their premises, we are considering a *proposal* to empower the court to make a temporary closure order (say, for six months) to effect complete closure of those premises repeatedly used for illegal refuelling activities (say, recurrence within 12 months), along the lines of the current legislative provisions tackling premises repeatedly used for manufacturing dangerous drugs or as vice establishments. To protect the interests of bona fide owners, purchasers or mortgagees of such premises, appropriate provisions would be required for bringing to their notice the occurrence of such illegal activities and allowing them to lodge an appeal against issue of such closure orders.

Deterrent Effect of Penalties

12. 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. In the case of fire hazard abatement under ss.9 and 9A-9D, we note that the average fines imposed by the courts from 1993 to 2000 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 *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, Cap.221.

Investigation Power of Director of Fire Services

13. 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, as well as produced in courts (mainly death inquests) as evidence.

14. Currently, there is no specific provision in the FSO for the conduct of an investigation into an incident of fire. To facilitate the discharge of his public duties, we *propose* to formally empower the Director of Fire Services to take necessary measures to investigate into the cause of a fire, such as to enter into premises to collect evidence for forensic analysis and to require any person to give information or produce any document or article.

Coverage of Insurance Against Fire

15. According to section 21 of the 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. However, the damage done by FSD on an occasion that may pose an immediate danger of fire, e.g. gas leakage where FSD officers may have to break into domestic units to carry out rescue and fire fighting work, falls outside the scope of the protection. In other words, the public will not be able to make any claim under a fire insurance policy in such circumstances.

16. We understand that an insurance policy is a mutual agreement between the insured and the insurer and they are always free to agree on the type and extent of protection to be provided. However, in the interest of the public, we consider a legislative amendment appropriate and *propose* to extend the scope of the protection under section 21 to cover any damage done by FSD on an occasion that may pose an immediate danger of fire.

Miscellaneous Provisions

17. We *propose* to revise and update various provisions in the FSO with a view to, among other things, expanding the definition of ‘fire service installation or equipment’ to cover new forms of installations required to be provided in buildings nowadays, refining the procedures for disciplinary proceedings and reflecting the changes in the rank structure of FSD over time.

The Legislative Proposals

18. In summary, we would propose a package of amendments to the principal Ordinance and subsidiary legislation, including the following -

Principal Ordinance

- (a) to repeal the provisions in relation to the abatement and prevention of fire hazards (paragraph 5)
- (b) to revise the penalty levels (paragraphs 12) ;
- (c) to formally empower FSD officers to carry out fire investigation (paragraphs 13-14);
- (d) to extend the deeming provision on the coverage of fire insurance (paragraphs 15-16);
- (e) to expand the meaning of ‘fire service installation or equipment’, to refine the disciplinary procedures, to reflect the present rank structures of FSD, etc (paragraph 17);
- (f) to empower the Chief Executive-in-Council to make subsidiary legislation in relation to the sub-paragraphs following;

Subsidiary Legislation

- (g) to re-enact the repealed provisions in the principal Ordinance in relation to the abatement and prevention of fire hazards in a new piece of subsidiary legislation dedicated to fire hazards abatement (paragraphs 5);
- (h) in the new piece of subsidiary legislation, to strengthen and enhance the enforcement powers of FSD officers (paragraphs 6-7);
- (i) in the new piece of subsidiary legislation, to outlaw the supply of liquid fuels to vehicles in locations other than a licensed petrol filling station and the conveyance of fuelled vehicle/motorcycles and parts in an enclosed freight container or enclosed cargo compartment of a goods vehicle (paragraphs 8-10);
- (j) in the new piece of subsidiary legislation, to empower the court to make a temporary closure order to close down premises repeatedly used for illicit refuelling activities and to

provide for necessary safeguards (paragraph 11); and

- (k) to revise the penalty levels in the existing and new subsidiary legislation (paragraph 12).

Public Consultation

19. FSD has started a consultation exercise in respect of the above proposals with the District Councils and District Fire Safety Committees since February 2001. The exercise is expected to be completed in June 2001. Other interested parties are also being consulted, including the Hong Kong Federation of Insurers and the Association of Registered Fire Service Installation Contractors of Hong Kong Limited. We will take the comments received into account in finalising the proposals.

Legislative Timetable

20. Amendment legislation to implement the proposals is now under preparation. Subject to drafting progress, we aim to introduce the amendment bill within the 2000-2001 legislative session.

Security Bureau
March 2001

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