

For discussion
on 3 February 2009

**Legislative Council
Panel on Security**

**Delegation of Authority for the issuance of
Fire Hazard Abatement Notices**

Purpose

This paper seeks to inform Members of the delegation of authority to issue fire hazard abatement notices (FHANs) by the Director of Fire Services (DFS) to his officers.

Background

Issue of FHANs

2. At present, the abatement of fire hazards and prevention of their recurrence are provided for under the Fire Services (Fire Hazard Abatement) Regulation (Cap 95F) (the Regulation). Under section 3 of the Regulation, if there exists in or on any premises a fire hazard, DFS is empowered to issue a FHAN to the person by reason of whose act, default or sufferance the fire hazard arose or continues. The FHAN may require the person to abate the fire hazard within a specified period and/or carry out such works as may be necessary for abating the fire hazard. Any person who fails to comply with the requirements of a FHAN commits an offence and is liable to a fine on conviction.

Delegation of authority to issue a FHAN

3. Pursuant to the power provided under section 6(2) of the Fire Services Ordinance (Cap 95) (the Ordinance), DFS has authorised Fire Services officers at the rank of Station Officer and above to issue FHANs on his behalf. This delegation of authority is set out in writing in the Fire Services Department General Orders (FSDGO). Further provisions specifying which of these officers should exercise the delegated power in particular circumstances are set out in the Command Procedural Instructions (CPIs) issued by Chief Fire Officer (Fire Safety) and Chief Fire Officer (Licensing & Certification). These Senior

Commanders have been authorised by the FSDGO to issue instructions for prescribing procedures in further detail.

4. The abatement of fire hazards and prevention of their recurrence were previously provided for under sections 9 and 9A to 9D of the Ordinance. Regarding the delegation of power for the issuance of FHANs, the FSDGO and the Department's other internal instructions, guidelines, etc made reference to section 9(1)(a).

5. In 2003, for ease of reference in taking enforcement action and to facilitate future updating of procedures, sections 9 and 9A to 9D of the Ordinance were repealed by the Fire Services (Amendment) Ordinance 2003 and re-enacted in the Regulation. The legislative provisions relating to the issuance of FHANs have remained the same in substance before and after the legislative amendment. DFS decided that there would be no change to his delegation of authority for the issuance of FHANs under the Regulation. This was made clear to all Senior Commanders of the Department when the draft Amendment Bill and the draft Regulation were discussed.

6. In view of the commencement of operation of the Regulation on 1 January 2004, the Department amended all of its internal instructions and guidelines, e.g. the CPIs, in December 2003 so as to update the relevant statutory references therein, including the reference to section 3 of the Regulation as the provision under which FHANs are issued. The Department also prepared draft amendments to the relevant sections of the FSDGO in December 2003, which were finally effected on 2 January 2009. Following the amendment, the FSDGO now refer to section 3 of the Regulation as the provision under which FHANs are issued.

Legal effect of FHANs issued between 1 January 2004 and 1 January 2009

7. We have sought the advice from the Department of Justice on the validity of the FHANs issued between 1 January 2004 and 1 January 2009, during which time the FSDGO made reference to a repealed provision (i.e. section 9(1)(a) of the Ordinance). According to the legal advice, the above FHANs are valid. Despite the legislative amendments in 2004, DFS has always intended that the delegation made before the legislative amendments would remain the same after the amendments, and such intention has always been clear to officers in the Department. The Department, which operates under the daily direction and administration of DFS, has always operated on the basis that the delegation remains unchanged. The officers issuing FHANs have always been authorised by DFS to do so.

8. During the relevant period from 1 January 2004 to 1 January 2009, the Department issued a total of 20 023 FHANs, and 19 955 of them have already been complied with. There were 68 cases of prosecution taken against persons who failed to comply with the requirements of the FHANs issued.

Updating of FSDGO

9. Generally speaking, when the Department prepares for the enactment of new legislation or amendment to existing legislation under its purview, a comprehensive list of tasks to be executed would be prepared which includes amongst others, consequential amendments to the FSDGO. Where necessary, the Department would conduct an internal consultation on the proposed amendment to the FSDGO. Advice from other bureaux and departments, for example the Department of Justice, may also be sought. Amendments to the FSDGO would take effect after their approval by DFS. Action will also be taken to amend other relevant guidelines and internal instruction to provide detailed rules and procedures for the daily operations.

The Way Forward

10. FSD accepts that for good administration the FSDGO should be updated as timely as practicable. In order to avoid the recurrence of a similar situation in future, the Department has recently set up an Inter-Command Working Group to monitor closely the amendment and updating of the FSDGO, and to ensure that future amendments are made in a timely manner. Where legal provisions are amended, reference in the FSDGO to the legal provisions would be updated at the same time as the commencement of the amended legal provisions. In addition, for future legislative amendment exercises to be conducted, the Department would provide the Security Bureau with a copy of the checklist of follow-up action to be taken including the timeframe for amending the FSDGO, and advise the Bureau when the necessary amendments have been completed.

Security Bureau
Fire Services Department
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