

C027-E

Make provision for the regulation of the supply, use, conveyance and storage of special effects materials for and incidental to the production of special effects in entertainment programmes; and other related matters.

Enacted by the Legislative Council.

PART I

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Entertainment Special Effects Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice published in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires---

"Appeal Board" (上訴委員會) means an appeal board appointed under section 37;

"Authority" (監督) means the Entertainment Special Effects Licensing Authority established by section 3;

"Chairman" (主席) means the Chairman of appeal boards appointed under section 35 and includes any person appointed as acting Chairman under section 36;

"convey" (運送) includes stow;

"conveyance permit" (運送許可證) means a permit issued under section 22;

"court" (法院) includes a magistrate;

"discharge" or "discharging" (燃放) means the ignition, initiation or firing of a material by flame, heat, light, friction, impact, electric current or any other means with a view to producing a visual or audible effect or a combination of both by a chemical reaction;

"discharge permit" (燃放許可證) means a permit issued under section 11;

"entertainment programme" (娛樂節目) includes---

(a) any film, commercial and television broadcast programme; and

(b) any literary, dramatic, musical and artistic works performed before a live audience or otherwise, and similar production,

but does not include fireworks displays;

"entertainment special effects" (娛樂特別效果) means any visual or audible effect or a combination of both created by means of any special effects materials for the production of an entertainment programme;

"functions" (職能) includes duties and powers;

"licensed special effects operator" (持牌特別效果技術員) means a person who is the

holder of a special effects operator licence;

"licensed supplier" (持牌供應商) means a person who is the holder of a pyrotechnic special effects materials supplier licence;

"material" (物料) includes---

(a) a substance whether in the form of a liquid, vapour or solid;

(b) a mixture of substances; and

(c) an article or device containing one or more such substances;

"net explosive quantity" (爆炸品淨量), in relation to pyrotechnic special effects materials---

(a) means the net weight of the chemical material in a pyrotechnic special effects material designed to produce heat, gas, sound, light, or a combination of these effects resulting from a self-sustaining and self-contained exothermic chemical reaction by combustion, deflagration or detonation;

(b) does not include the packaging, wiring or casing in which such chemical material is contained;

"non-pyrotechnic special effects material" (非煙火特別效果物料) means any material specified as non-pyrotechnic special effect material in any prescribed Special Effects Materials List used or intended to be used to produce entertainment special effects;

"panel" (委員會) means the Appeal Board panel constituted under section 34;

"prescribed" (訂明) means prescribed by regulations made under section 26;

"pyrotechnic special effects material" (煙火特別效果物料) means any material specified as pyrotechnic special effects material in any prescribed Special Effects Materials List used or intended to be used to produce entertainment special effects;

"pyrotechnic special effects materials supplier licence" (煙火特別效果物料供應商牌照) means a licence issued under section 19;

"register" (登記冊) means the register of pyrotechnic special effects materials kept in accordance with section 17;

"registered pyrotechnic special effects material" (已登記煙火特別效果物料) means any pyrotechnic special effects material registered under section 16 or 17;

"Secretary" (局長) means the Secretary for Information Technology and Broadcasting;

"special effects material" (特別效果物料) means any of the material specified in any prescribed Special Effects Materials List used or intended to be used to produce entertainment special effects;

"Special Effects Materials List" (特別效果物料列表) means a prescribed Special Effects Materials List;

"special effects operator" (特別效果技術員) means a person who uses special effects materials for producing entertainment special effects;

"special effects operator licence" (特別效果技術員牌照) means a licence issued under section 6;

"store licence" (貯存所牌照) means a licence issued under section 24;

"this Ordinance" (本條例) includes regulations made under section 26;

"use" (使用), in relation to special effects materials, includes assembling, handling, mixing, compounding, installing and discharging;

"vessel" (船隻) means a vessel within the meaning of section 2 of the Shipping and Port Control Ordinance (Cap. 313).

PART II

Entertainment Special Effects Licensing Authority

3. Establishment of the Authority

For the purposes of this Ordinance, there is established an Entertainment Special Effects Licensing Authority who shall be the Commissioner for Television and Entertainment Licensing.

4. Functions of the Authority

(1) The functions of the Authority shall be---

(a) to regulate the supply, use, conveyance and storage of special effects materials; and

(b) to exercise such powers and perform such duties as are conferred or imposed on him by this Ordinance.

(2) Without prejudice to the generality of subsection (1)(a), the Authority may---

(a) issue licences in respect of special effects operators, suppliers of pyrotechnic special effects materials and the storage of pyrotechnic special effects materials;

(b) issue permits in respect of the discharge of special effects materials and the conveyance of pyrotechnic special effects materials;

(c) maintain a register of pyrotechnic special effects materials;

(d) provide for and approve codes of practice for and in relation to the use, conveyance and storage of special effects materials.

PART III

Licensing of Special Effects Operators

5. Special effects operators to be licensed

(1) Except under and in accordance with this Ordinance, no person shall---

(a) use; or

(b) cause or permit to be used,

any special effects material without a special effects operator licence.

(2) Any person who contravenes subsection (1) commits an offence and is liable---

(a) on a first conviction to a fine at level 6 and to imprisonment for 6 months; and

(b) on a second or subsequent conviction to a fine of \$200,000 and to imprisonment for 12 months.

6. Application for special effects operator licence

(1) A special effects operator licence shall not be issued to a body of persons, whether corporate or unincorporate.

(2) An individual shall not be eligible to be issued with or to hold or continue to hold a special effects operator licence unless---

(a) he has attained the age of 18 years;

(b) he has satisfied the Authority that he is a fit and proper person to be a licensed special effects operator;

(c) he possesses any prescribed qualifications and experience;

(d) he has passed any examinations or assessment prescribed by the Authority; and

(e) he has complied with every other requirement prescribed in this regard by the Authority.

(3) In considering whether an individual is a fit and proper person for the purposes of this section, the Authority shall have regard to the character and conduct of the individual.

(4) An application by a person for a special effects operator licence shall be made to the Authority in such form and manner as the Authority may determine.

(5) Subject to subsection (2), the Authority may, upon payment of a prescribed fee, issue a special effects operator licence subject to such terms and conditions as he thinks fit.

7. Classification of special effects operators

The Authority may---

(a) issue different types of licence in respect of different classes and streams of special effects operators; and

(b) specify in such licences different scope of operation, in accordance with the qualifications and experience of the special effects operators.

8. Exemptions from section 5

Section 5 shall not apply where---

(a) the use of special effects materials is carried out---

(i) by an applicant for a special effects operator licence; and

(ii) in the presence of a public officer or person authorized by the Authority;

and

(iii) for the purpose of assessing the competence of the applicant;

(b) the use of special effects materials is carried out---

(i) by the participants of a training course organized or approved by the

Authority; and

- (ii) in the presence of a public officer or person authorized by the Authority; and
 - (iii) for the purpose of conducting the training course;
- (c) the use of special effects materials is---
- (i) limited to the act of discharge; and
 - (ii) carried out by a person under the supervision of the licensed special effects operator named in the discharge permit referred to in subparagraph (iii); and
 - (iii) authorized by a discharge permit; or
- (d) the circumstances referred to in section 13(1)(c) apply.

9. Transitional arrangements for existing special effects operators

(1) A person who has been provisionally recognized by the Commissioner for Television and Entertainment Licensing by notice in writing as a special effects operator immediately prior to the commencement of this Ordinance shall be deemed, under this section, to have been granted a special effects operator licence issued under section 6, subject to such conditions and restrictions as may be imposed by the Commissioner for Television and Entertainment Licensing by notice in writing to that person, and the licence shall, subject to section 47(3), continue in force until---

- (a) the issue of a licence under section 6(5);
 - (b) the refusal of his application for a licence under section 6; or
 - (c) the expiry of a period of 90 days immediately following the commencement of section 5,
- whichever is the earliest.

(2) Where a person who has been provisionally recognized by the Commissioner for Television and Entertainment Licensing as referred to in subsection (1) makes an application under section 6, the Authority may waive the requirements under section 6(2)(c), (d) or (e).

PART IV

Discharge of Special Effects Materials

10. Restriction on discharge of special effects materials

(1) Notwithstanding section 5 and subject to section 13, no person shall---

- (a) discharge; or
- (b) cause or permit to be discharged,

any special effects materials except under and in accordance with a discharge permit.

(2) Any person who contravenes subsection (1) commits an offence and is liable---

- (a) on a first conviction to a fine at level 6 and to imprisonment for 6 months; and

(b) on a second or subsequent conviction to a fine of \$200,000 and to imprisonment for 12 months.

11. Application for discharge permit

(1) An application for a discharge permit may be made by---

(a) the person who organizes the entertainment programme which involves the use of special effects materials; or

(b) the licensed special effects operator who is responsible for using the special effects materials for such entertainment programme.

(2) An individual is eligible to apply under subsection (1) only if he has attained the age of 18 years.

(3) An application by a person for a discharge permit shall be made to the Authority in such form and manner as the Authority may determine.

(4) If the Authority is satisfied that an application made under subsection (1) complies with the prescribed requirements, he may, upon payment of a prescribed fee, issue a discharge permit subject to such terms and conditions as he thinks fit.

(5) A term or condition specified in a discharge permit may contain qualifications, restrictions or requirements concerning the location, time or period of the application of the term or condition.

12. Classification of discharge permits

The Authority may issue different types of discharge permit in respect of different types of entertainment programmes.

13. Exemptions from section 10

(1) Section 10 shall not apply where---

(a) the discharge of special effects materials is carried out---

(i) by a licensed special effects operator; and

(ii) in the presence of a public officer or person authorized by the Authority; and

(iii) for the purpose of demonstrating or assessing the effects of any such materials, or, where the special effects materials in question are pyrotechnic special effects materials, for the purpose of applying for any such materials to be registered and included in the register;

(b) the special effects materials in question are of deteriorated or damaged pyrotechnic special effects materials and the discharge is carried out---

(i) by a licensed special effects operator; and

(ii) purely for the destruction of such materials; and

(iii) in compliance with the prescribed requirements;

(c) the special effects materials in question are non-pyrotechnic special effects materials and---

(i) the quantity of each of the special effects material in question does not exceed the prescribed quantity; and

(ii) the discharge complies with other prescribed conditions; or

(d) the circumstances referred to in section 8(a) or (b) apply.

(2) Nothing in this section shall be deemed to exempt a licensed special effects operator from the requirement to comply with the terms and conditions of his licence.

PART V

Registration, etc. of Pyrotechnic

Special Effects Materials

Registration

14. Pyrotechnic special effects materials to be registered

(1) Subject to section 15 and unless otherwise approved by the Authority in writing, no person shall supply, convey, store, or use any pyrotechnic special effects material in Hong Kong unless that material has been registered and included in the register under section 16(2) or 17(2).

(2) Any person who contravenes subsection (1) commits an offence and is liable---

(a) on a first conviction to a fine at level 6 and to imprisonment for 6 months; and

(b) on a second or subsequent conviction to a fine of \$200,000 and to imprisonment for 12 months.

(3) It shall be a defence to a charge under subsection (2) for the person charged to prove that he did not know and could not with reasonable diligence have known that the material in question had not been registered or had not been included in the register.

15. Pyrotechnic special effects materials in transit

(1) Section 14 shall not apply to the conveyance of pyrotechnic special effects materials that are in transit.

(2) For the purposes of subsection (1), a pyrotechnic special effects material is in transit if---

(a) it is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and

(b) it remains at all times in or on the vessel, aircraft or vehicle in or on which it is brought into Hong Kong.

16. Application for registration

(1) An application for the registration of a pyrotechnic special effects material shall be made to the Authority---

(a) in such form and manner; and

(b) be accompanied by such documents and particulars, as the Authority may require.

(2) Where the application under subsection (1) is approved, the Authority shall include the pyrotechnic special effects material to which the application relates in a register.

17. Register

(1) The Authority shall cause a register to be kept in such form and containing such information respecting registered pyrotechnic special effects materials as he thinks fit.

(2) Apart from pyrotechnic special effects materials which have been registered and included in the register under section 16(2), the Authority may of his own accord register and enter such pyrotechnic special effects materials in the register as he thinks fit.

(3) The Authority shall make the register available for public inspection subject to such conditions as he thinks fit.

Supply

18. Restriction on supply, etc. of pyrotechnic special effects materials

(1) Subject to section 14 and subsections (2) and (3), no person shall---

(a) supply; or

(b) offer; or

(c) expose for supply,

any pyrotechnic special effects materials except under and in accordance with a pyrotechnic special effects materials supplier licence unless otherwise approved by the Authority.

(2) Unless otherwise approved by the Authority, a licensed supplier shall not supply or offer or expose for supply any pyrotechnic special effects materials to any person except---

(a) another licensed supplier; or

(b) a licensed special effects operator.

(3) Notwithstanding subsections (1) and (2), a licensed supplier shall not supply or offer or expose for supply any pyrotechnic special effects materials to the persons referred to in subsection (2)(a) and (b) unless the terms and conditions of their supplier licences or special effects operator licences, as the case may be, permit them to supply or use those pyrotechnic special effects materials.

(4) Any person who contravenes subsection (1) commits an offence and is liable---

(a) on a first conviction to a fine at level 6 and to imprisonment for 6 months; and

(b) on a second or subsequent conviction to a fine of \$200,000 and to imprisonment for 12 months.

(5) Any person who contravenes subsection (2) commits an offence and is liable---

(a) on a first conviction to a fine at level 5 and to imprisonment for 1 month; and

(b) on a second or subsequent conviction to a fine at level 6 and to imprisonment for 3 months.

(6) Any person who contravenes subsection (3) commits an offence and is liable---

(a) on a first conviction to a fine at level 4; and

(b) on a second or subsequent conviction to a fine at level 5 and to imprisonment for 1 month.

19. Application for pyrotechnic special effects materials supplier licence

(1) A person shall not be eligible to be issued a pyrotechnic special effects materials supplier licence under this section unless---

(a) he either---

(i) is a licensed special effects operator whose licence is of a type acceptable to the Authority; or

(ii) has appointed a licensed special effects operator whose licence is of a type acceptable to the Authority to be responsible for the supply, conveyance, storage, use and destruction of pyrotechnic special effects materials incidental to his business as a supplier; and

(b) in the case of a person other than a person who is a body corporate, the person, or, in the case of a partnership any partner thereof, has satisfied the Authority that he is a fit and proper person to carry on business as a licensed supplier;

(c) in the case of a person who is a body corporate, any director or secretary thereof has satisfied the Authority that he is a fit and proper person to be associated with the business of a licensed supplier; and

(d) he has complied with such other requirements as may be prescribed by the Authority.

(2) In considering whether a person is a fit and proper person for the purposes of this section, the Authority shall have regard to the character and conduct of the person.

(3) An application for a licence under this section shall be made to the Authority in such form and manner as the Authority may determine.

(4) Subject to subsection (1), the Authority may, upon payment of a prescribed fee, issue a pyrotechnic special effects materials supplier licence subject to such terms and conditions as he thinks fit.

Labelling

20. Pyrotechnic special effects materials to be labelled, etc.

(1) Subject to this Ordinance, no person shall convey or store any pyrotechnic special effects materials in Hong Kong unless such materials have been labelled and packed in the prescribed manner.

(2) Any person who contravenes subsection (1) commits an offence and is liable

to a fine at level 6 and to imprisonment for 6 months.

Conveyance Permit

21. Permits required for conveyance of pyrotechnic special effects materials

(1) Subject to this Ordinance and unless otherwise exempted by regulations, no person shall convey or cause to be conveyed by land or water within Hong Kong any pyrotechnic special effects materials without a conveyance permit.

(2) Any person who contravenes subsection (1) commits an offence and is liable---

(a) on a first conviction to a fine at level 6 and to imprisonment for 6 months; and
(b) on a second or subsequent conviction to a fine of \$200,000 and to imprisonment for 12 months.

22. Application for conveyance permit

(1) An application for a conveyance permit shall be made to the Authority in such form and manner as the Authority may determine.

(2) Where an application made under subsection (1) is approved, the Authority may, upon payment of a prescribed fee, issue a conveyance permit subject to such terms and conditions as he thinks fit.

(3) A term or condition specified in a conveyance permit may contain qualifications, restrictions or requirements concerning the route, location, time or period of the application of the term or condition.

Store Licence

23. Licences required for storage of pyrotechnic special effects materials

(1) Subject to this Ordinance and unless otherwise approved by the Authority, no person shall store any pyrotechnic special effects materials at any place other than the location in respect of which a store licence has been issued.

(2) Any person who contravenes subsection (1) commits an offence and is liable---

(a) on a first conviction to a fine at level 6 and to imprisonment for 6 months; and
(b) on a second or subsequent conviction to a fine of \$200,000 and to imprisonment for 12 months.

24. Application for store licence

(1) A person shall not be eligible to be issued a store licence under this section unless---

(a) he either---

(i) is a licensed special effects operator whose licence is of a type acceptable to the Authority; or

(ii) has appointed a licensed special effects operator whose licence is of a type acceptable to the Authority to be responsible for the storage of pyrotechnic special effects materials; and

(b) in the case of a person other than a person who is a body corporate, the person,

or, in the case of a partnership any partner thereof, has satisfied the Authority that he is a fit and proper person to be associated with the business of storage of pyrotechnic special effects materials;

(c) in the case of a person who is a body corporate, any director or secretary thereof has satisfied the Authority that he is a fit and proper person to be associated with the business of storage of pyrotechnic special effects materials; and

(d) he has complied with such other requirements as may be prescribed by the Authority.

(2) In considering whether a person is a fit and proper person for the purposes of this section, the Authority shall have regard to the character and conduct of the person.

(3) An application for a licence under this section shall be made to the Authority in such form and manner as the Authority may determine.

(4) Subject to subsection (1), the Authority may, upon payment of a prescribed fee, issue a store licence subject to such terms and conditions as he thinks fit.

25. Classification of store licences

The Authority may issue different types of store licence in respect of different types of store.

PART VI

Regulations and Codes of Practice

26. Power to make regulations

(1) With the approval of the Secretary, the Authority may by regulation provide for---

(a) requirements in respect of an application for---

(i) a special effects operator licence;

(ii) a pyrotechnic special effects materials supplier licence;

(iii) a store licence;

(iv) a discharge permit;

(v) a conveyance permit;

(b) the classification of special effects operator licences, store licences and discharge permits;

(c) the procedures and any matter ancillary or related to the registration of pyrotechnic special effects materials, the variation and cancellation thereof;

(d) exemptions from the operation of this Ordinance or any part thereof;

(e) a list of special effects materials, to be called the Special Effects Materials List specifying the pyrotechnic special effects materials and non-pyrotechnic special effects materials;

(f) the control of and the safety precautions which shall be taken in relation to

the supply, conveyance, storage, use and destruction of special effects materials;

(g) the manner in which any pyrotechnic special effects materials shall be packed;

(h) the label to be attached to any drum, tin, case or other package containing pyrotechnic special effects materials and the notices to be affixed to any premises or containers containing pyrotechnic special effects materials and other methods of marking such materials, premises or containers;

(i) information to be furnished to the Authority in respect of special effects materials carried or to be loaded on any vessel, vehicle, train or aircraft, and the nature of such information;

(j) the records and other documents to be kept and maintained, returns to be made and information and particulars to be given by a person applying for or holding a licence or permit;

(k) procedures and particulars to be furnished for the reporting and subsequent actions to be taken in respect of any incident or accident or emergency involving special effects materials for the production of entertainment special effects;

(l) the terms and conditions that may be attached to any licence or permit issued under this Ordinance;

(m) the period for which any licence and permit shall be valid;

(n) the fees payable in respect of any examination or assessment that may be required for the issue or alteration of a special effects operator licence;

(o) the fees payable in respect of the issue, renewal, certification, replacement or alteration of any licence and permit and the exemption thereof; and

(p) the better carrying out of the provisions of this Ordinance.

(2) Unless otherwise expressly provided in this Ordinance, any regulation made under this section may provide that a contravention of any provisions therein shall be an offence and may prescribe penalties for such offence not exceeding a fine at level 6 and imprisonment for 6 months.

27. Approval of codes of practice by the Authority

(1) For the purpose of providing practical guidance in respect of any requirements under this Ordinance, the Authority may---

(a) approve and issue such codes of practice (whether prepared by him or not) as in his opinion are suitable for that purpose; and

(b) approve such codes of practice issued or proposed to be issued otherwise than by him as in his opinion are suitable for that purpose.

(2) A code of practice---

(a) may consist of a code, standard, rule, specification or any other documentary form of practical guidance prepared by the Authority or other body or authority; and

(b) may apply, incorporate or refer to any document that has been formulated or

published by a body or authority either as in force at the time when the document is approved by the Authority or as amended, formulated or published from time to time.

(3) Where a code of practice is approved under subsection (1), the Authority shall, by notice in the Gazette---

(a) identify the code concerned and specify the date on which its approval is to take effect; and

(b) specify for which requirements under this Ordinance the code is so approved.

(4) The Authority may---

(a) from time to time revise the whole or any part of any code of practice prepared by him under this section; and

(b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

and the provisions of subsection (3) shall, with the necessary modifications, apply in relation to any approval or revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(5) The Authority may at any time withdraw his approval from any code of practice approved under this section.

(6) Where under subsection (5) the Authority withdraws his approval from a code of practice approved under this section, he shall, by notice in the Gazette, identify the code concerned and specify the date on which its approval is to cease to have effect.

(7) References in this Ordinance to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(8) The power of the Authority under subsection (1)(b) to approve a code of practice issued or proposed to be issued otherwise than by him shall include power to approve a part of such a code and, accordingly, in this Ordinance, "code of practice" may be read as including a part of such a code.

28. Effect of codes of practice

(1) Failure on the part of any person to observe any provision of a code of practice shall not of itself render that person liable to criminal proceedings of any kind.

(2) However, if, in any legal proceedings, whether civil or criminal and including proceedings for an offence under this Ordinance, the court is satisfied that a provision of a code of practice is relevant to determining a matter that is in issue in the proceedings---

(a) the code of practice is admissible in evidence in the proceedings; and

(b) proof that the person contravened or did not contravene a relevant provision of

the code may be relied on by any party to the proceedings as tending to establish or negate that matter.

(3) In any legal proceedings, a code of practice which appears to a court to be the subject of a notice under section 27(3) shall, in the absence of evidence to the contrary, be taken to be the subject of such notice.

(4) In any legal proceedings, a document that purports to be a copy of a code of practice identified in the Gazette under section 27(3) is, in the absence of evidence to the contrary, to be presumed to be a true copy of the code.

(5) A code of practice is not subsidiary legislation for the purposes of Part V of the Interpretation and General Clauses Ordinance (Cap. 1).

PART VII

Enforcement

29. Power of entry, etc.

(1) Any police officer not below the rank of sergeant, any officer of the Fire Services Department not below the rank of station officer, any officer of the Marine Department not below the rank of Marine Inspector II, any officer of the Authority not below the rank of Explosives Officer II and any gas safety inspector appointed under section 11 of the Gas Safety Ordinance (Cap. 51) may---

(a) enter, inspect and examine any place, building or vessel (other than a ship of war) in which special effects materials are stored, conveyed, used or supplied and every part thereof, at any time, and may make inquiries as to the observance of this Ordinance and all matters and things relating to the safety of the public or of the persons employed in or about such place, building or vessel;

(b) require the occupier of any place or building, or the master of any vessel (other than a ship of war) which such officer is entitled under this section to enter, or a person employed by such occupier or master, to give him samples of any materials therein;

(c) enter and search any place or building in which such officer may have reasonable grounds for suspecting that there may be anything which, under paragraph (e), is liable to seizure;

(d) stop, board and search any vessel, vehicle, train or aircraft (other than a ship of war, military aircraft or military vehicle) in which such officer may have reasonable grounds for suspecting that there may be anything which, under paragraph (e), is liable to seizure; and

(e) seize, remove and detain---

(i) anything with respect to which such officer may have reasonable grounds for suspecting that any offence against this Ordinance has been committed; or

(ii) any other thing, which may appear to such officer likely to be, or to

contain, evidence of any such offence.

(2) Any officer referred to in subsection (1) may---

- (a) break open any outer or inner door of any place or building which he is empowered to enter and search;
- (b) forcibly enter any vessel, vehicle, train or aircraft which he is empowered to stop, board and search and every part thereof;
- (c) remove by force any material obstruction to, or any person obstructing any arrest, detention, entry, search, inspection, seizure or removal which he is empowered to make;
- (d) detain any person found in any place or building which he is empowered to enter and search until such place or building has been searched; and
- (e) detain any vessel, vehicle, train or aircraft which he is empowered to stop, board and search and any person on board such vessel, vehicle, train or aircraft and prevent any person from approaching or boarding such vessel, vehicle, train or aircraft until such vessel, vehicle, train or aircraft has been searched.

(3) Without prejudice to any power of entry or search conferred by any other enactment, no officer referred to in subsection (1) shall enter or search any part of any premises used solely for dwelling purposes except---

- (a) by virtue of a warrant issued by a magistrate, where such magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Ordinance has been, is being or is about to be committed in such part of the premises or there is in such part of the premises anything likely to be or to contain evidence of such offence; or
- (b) without warrant, where such officer is of the opinion having regard to the circumstances that the purpose of the entry or the search would be defeated by application for such warrant.

(4) Any officer referred to in subsection (1) may prevent or stop any use of special effects materials, notwithstanding that a discharge permit has been granted in respect of the occasion, when the circumstances under which such use is determined by him to be likely to endanger life or cause serious injury to property.

30. Inspection of special effects materials, etc.

(1) The Authority and any public officer referred to in section 29(1) may require any person holding a licence or permit issued under this Ordinance to produce---

- (a) any special effects materials to which the licence or permit, as the case may be, are related;
- (b) any equipment relating to the production of entertainment special effects;
- (c) any document or record kept in respect of the licence or permit.

(2) Any person who fails to comply with any of the requirements under subsection

(1) commits an offence and is liable to a fine at level 2.

31. Removal of special effects materials in contravention of regulations

Where any special effects materials are used, conveyed, stored or are otherwise dealt with contrary to any regulations made under section 26, any officer referred to in section 29(1) may cause such special effects materials to be removed, at the expense of the owner thereof, to a place that is in conformity with the regulations, and all expenses incurred in such removal, including the cost of any transportation and storage, shall be recoverable as a civil debt due to the Government.

32. Disposal of pyrotechnic special effects materials

(1) Where any pyrotechnic special effects materials have been seized, whether pursuant to section 29 or otherwise, any officer of the Authority not below the rank of Explosives Officer II or any police officer not below the rank of inspector or any officer of the Explosives Ordnance Disposal Bureau of the police force may dispose of such materials or may cause such materials to be disposed of if such officer is of the opinion that the materials are very likely to give rise to an imminent explosion of a nature likely to endanger life or cause serious injury to property.

(2) Where any pyrotechnic special effects materials seized pursuant to section 29 have been disposed of pursuant to subsection (1), the owner or any person in charge of the materials is not entitled to claim the return of the materials, or the cost of replacement or damages or any consequential loss.

PART VIII

Appeals

33. Appeal against decision of the Authority

(1) Where a person is aggrieved by---

(a) a term or condition imposed or a requirement made or a direction given by the Authority under this Ordinance; or

(b) a refusal by the Authority to give a consent, approval or permission under this Ordinance; or

(c) a revocation or suspension by the Authority of a consent, approval or permission given under this Ordinance,

the person may appeal against the decision to an Appeal Board by serving on the Secretary a notice of appeal in writing---

(i) not later than 28 days after the notice of that decision was served on the person; and

(ii) specifying the substance of his grievance and reasons for the appeal.

(2) Within 14 days after the receipt of a notice of appeal, the Secretary shall forward it to the Chairman unless, before the expiration of that period, the appellant has withdrawn the notice.

(3) A decision that is appealed against under subsection (1) shall not be suspended in its operation unless the Authority decides otherwise.

34. Appeal Board panel

(1) The Secretary shall appoint, to be members of an Appeal Board panel, such persons as are specified in Schedule 1.

(2) A public officer is not eligible for appointment to the panel.

(3) Subject to subsection (4), a member of the panel shall hold office for 3 years but shall be eligible for reappointment.

(4) A member of the panel may resign at any time by notice in writing delivered to the Secretary and the Secretary may, at any time and for any reason, revoke the appointment of any person as a member of the panel.

(5) An appointment under subsection (1) shall be notified in the Gazette.

35. Chairman of appeal boards

(1) The Secretary shall appoint as Chairman of appeal boards a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336).

(2) Subject to subsection (4), the Chairman shall be appointed for a term of 3 years but may be reappointed.

(3) An appointment under subsection (1) shall be notified in the Gazette.

(4) The Chairman and any person appointed under section 36 may resign at any time by notice in writing delivered to the Secretary.

36. Acting Chairman

If the Chairman is, because of illness or any other reason, unable to perform his duties for any period or for any particular appeal, the Secretary may appoint another person who is qualified under section 35 to act as Chairman during that period.

37. Appeal Board

(1) Within 21 days after receipt of a notice of appeal forwarded by the Secretary, the Chairman shall appoint an Appeal Board to hear the appeal to which the notice relates.

(2) The Appeal Board shall consist of such persons as are specified in Schedule 2.

(3) The Chairman and members of the Appeal Board shall be remunerated out of money provided by the Legislative Council for the purpose at such rate as the Secretary for the Treasury may determine from time to time or in any particular case.

38. Amendments of Schedules 1 and 2

The Secretary may, by order published in the Gazette, amend Schedules 1 and 2.

39. Determination of appeal

(1) The Appeal Board shall conduct a hearing into the grounds for the Authority's

decision to which the appeal before it relates.

(2) The Chairman and 3 other members shall constitute a quorum at meetings of the Appeal Board.

(3) Only members who have attended all meetings of the Appeal Board held for the purpose of the appeal may take part in the determination of the Appeal Board.

(4) Where the Chairman or a member of the Appeal Board is in any way directly or indirectly interested in an appeal---

(a) in the case of the Chairman, he shall disclose the nature of his interest to the Secretary and the Secretary shall appoint an acting Chairman to hear the appeal;

(b) in the case of a member---

(i) he shall disclose the nature of his interest at a meeting of the Appeal Board;

(ii) the disclosure shall be recorded in the minutes of the Appeal Board; and

(iii) he shall not, without the permission of the Chairman, take any part in any deliberation or determination of the Appeal Board in respect of that appeal.

(5) Where the Chairman does not permit a member of the Appeal Board who has made a disclosure under subsection (4) to take part in the deliberation or determination of the Appeal Board in respect of the appeal, the member shall not be counted for the purpose of forming a quorum at any meeting of the Appeal Board.

(6) If the number of members who may take part in the deliberation and determination of the Appeal Board falls below the number required for a quorum by subsection (2), the Chairman shall dissolve the Appeal Board and appoint another Appeal Board.

(7) For the purpose of subsection (1), the Appeal Board hearing an appeal shall have all the powers of the Authority in respect of the decision of the Authority against which the appeal is made, and shall determine the appeal by an order in writing---

(a) confirming or revoking;

(b) varying in such manner as it thinks fit; or

(c) substituting its own decision for, such decision.

(8) The Authority shall do all such things as are necessary to give effect to an order under subsection (7).

(9) The Appeal Board may, in an order under subsection (7), give such directions as it thinks fit with respect to the costs of the hearing of the appeal to which the order relates and the costs of the Authority or of the appellant.

(10) Any costs awarded or imposed by virtue of any directions referred to in subsection (9) are recoverable as a civil debt.

40. Conduct of hearing

(1) Subject to this Part, the procedure of any hearing shall be determined by the Appeal Board.

(2) In conducting a hearing, the Appeal Board may receive such evidence as it thinks fit and neither the provisions of the Evidence Ordinance (Cap. 8) nor any other rule of law relating to the admissibility of evidence shall apply in relation to the hearing.

(3) A counsel, solicitor or legal officer may be present at a hearing to advise the Chairman on any matter.

41. Summons, etc.

(1) The Appeal Board may, for the purposes of a hearing, by notice in writing under the signature of the Chairman and served on a person, require---

- (a) the attendance of the person before the Appeal Board; and
- (b) the production to the Appeal Board of relevant documents specified in the notice which are in the possession or under the control of the person.

(2) Any person who, without reasonable excuse, fails to comply with a summons or requirement issued or made under subsection (1) commits an offence and is liable to a fine at level 2.

42. Representation

(1) The appellant at a hearing may be represented at the hearing by---

- (a) a counsel or solicitor; or
- (b) an agent.

(2) The Authority may be represented at a hearing by a counsel, solicitor, agent or legal officer.

(3) A counsel, solicitor, agent or legal officer appearing before the Appeal Board at a hearing shall have the same liabilities, protection and immunity as a counsel has in appearing for a party in proceedings before the District Court.

43. Evidence

(1) A person appearing before the Appeal Board to give evidence at a hearing shall, where required by the Appeal Board, take an oath.

(2) The Chairman may---

- (a) administer an oath to a person appearing before the Appeal Board to give evidence at a hearing; and
- (b) require a person to answer any question relevant to the appeal before it.

(3) A person appearing before the Appeal Board to give evidence at a hearing shall have the same liabilities, protection and immunity as a witness has in proceedings before the District Court.

44. Effect of determination

Where the Appeal Board determines an appeal under section 39, the determination

shall take effect on the date specified by the Appeal Board in its order under that section.

45. Majority decision

(1) The determination under section 39 by the Appeal Board of an appeal shall be that of the majority of the members of the Appeal Board who may take part in the determination of the appeal, including the Chairman.

(2) Question of law shall be determined by the Chairman.

(3) In the case of an equality of votes, the Chairman shall have a casting as well as a deliberative vote.

46. Notification to appellant

The Secretary shall, as soon as practicable after an order has been made under section 39 in respect of an appeal, serve a copy of that order on the appellant.

PART IX

Miscellaneous

47. General provisions as to licences and permits

(1) A licence or permit issued under this Ordinance shall be for such period and may be subject to such terms and conditions as the Authority thinks fit.

(2) A licence or permit issued under this Ordinance shall be in such form as the Authority may determine.

(3) Where a licence or permit issued under this Ordinance is in force and the Authority considers it necessary, the Authority may, by notice in writing to the holder of the licence or permit, as the case may be---

(a) impose new or amended terms or conditions subject to the observance of which, as from a date specified in the notice, the licence or permit shall continue in force;

(b) revoke the licence or permit as from a date specified in the notice if the holder fails to observe any such terms or conditions;

(c) revoke the licence or permit as from a date specified in the notice; or

(d) suspend the licence or permit for a period of time specified in the notice.

(4) For the purposes of subsection (3)(c) and (d), the Authority, in determining whether it is necessary to revoke or suspend a licence or permit, as the case may be, shall have regard to the following---

(a) any contravention of any provision of this Ordinance or any code of practice issued or approved under this Ordinance by the holder of such licence or permit; or

(b) the fact that the holder of the licence or permit no longer complies with any of the prescribed requirements subject to which the licence or permit was issued.

(5) Subject to this Ordinance, the Authority may renew a licence or permit issued under this Ordinance upon---

(a) the expiry of the licence or permit;

(b) application; and

(c) payment of a prescribed fee,

with or without modifications to the terms and conditions, if any, previously imposed.

(6) Where the Authority is satisfied that a licence or permit issued under this Ordinance has been destroyed, lost or stolen, he may upon---

(a) application in such form as he may determine; and

(b) payment of a prescribed fee,
issue a replacement licence or permit.

(7) Where the Authority is satisfied that alteration to any particulars on a licence or permit is necessary, he may upon---

(a) application in such form as he may determine; and

(b) payment of a prescribed fee,
make such alteration.

(8) The Authority may, upon application and payment of a prescribed fee by the holder of a licence or permit issued under this Ordinance, issue a certified copy of that licence or permit, as the case may be, to the holder.

(9) Where the Authority refuses an application for a licence or permit or renewal of the same, he shall notify the applicant in writing of the reasons for refusal.

(10) For the purposes of subsections (3) and (4), a reference to a licence or permit shall include a reference to a licence or permit deemed to have been granted under this Ordinance.

48. Breach of terms and conditions

Notwithstanding any other liability which may arise under the provisions of this Ordinance or otherwise, any person who is in breach of any term or condition specified in any licence or permit issued under this Ordinance commits an offence and is liable---

(a) on a first conviction to a fine at level 5 and to imprisonment for 1 month; and

(b) on a second or subsequent conviction to a fine at level 6 and to imprisonment for 3 months.

49. Onus of proving limits of what is practicable, etc.

In any proceedings for an offence against this Ordinance consisting of a failure to comply with a requirement under this Ordinance to do something so far as is practicable or so far as is reasonably practicable, or to use the best practicable means to do something, the onus is on the accused to prove that it was not practicable or not reasonably practicable to do more than was in fact done to comply with the requirement, or that he has used the best practicable means to comply with the requirement, or done the appropriate thing to comply with the requirement.

50. Liability of holder of licence or permit for offences committed by his employees

and agents

(1) Subject to this section, where it is proved to the satisfaction of a court that an offence against this Ordinance has been committed by any employee or agent of any person holding any licence or permit issued under this Ordinance, such person shall, unless---

(a) the offence was committed without his knowledge or consent; and

(b) he had exercised all due diligence to prevent the commission of the offence, also be held to be liable for such offence and to the penalty provided therefor.

(2) No such person shall be sentenced to imprisonment (except in default of payment of a fine) for any offence under this section.

(3) Nothing in this section shall be deemed to exempt the employee or agent from the penalties provided for the offence committed by such employee or agent.

(4) In any proceedings against the person in relation to which subsection (1) is alleged to apply, it shall, in relation to the offence against this Ordinance concerned committed by the employee or agent concerned of the person, be presumed, in the absence of evidence to the contrary, that---

(a) the offence was committed with the knowledge and consent of the person; and

(b) the person did not exercise all due diligence to prevent the commission of the offence.

51. Liability for offences by body corporate, etc.

(1) Where an offence under this Ordinance has been committed by a body corporate, any person who at the time of commission of the offence was a director or an officer concerned in the management of the body corporate shall also be guilty of such offence unless he proves that the offence was committed without his consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where an offence committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any other partner of the partnership, that other partner shall be guilty of the offence and liable to be proceeded against and punished accordingly.

52. Forfeiture

(1) A court may order to be forfeited to the Government any materials and any containers thereof with respect to which an offence against this Ordinance has been committed, irrespective of whether any person has been charged with such offence.

(2) Nothing in this section shall be deemed to derogate from the powers of any officer of the Authority or any police officer under section 32.

53. Obstruction of officers, etc.

Any person who, without reasonable excuse---

(a) obstructs or delays a public officer in the exercise of any of the powers conferred upon him under this Ordinance; or

(b) wilfully or recklessly gives false information or withholds information, as to the source from which any of the pyrotechnic special effects materials were obtained or as to the conveyance, storage, packaging, labelling or use of any pyrotechnic special effects materials,

commits an offence and is liable to a fine at level 6 and to imprisonment for 6 months.

54. Interpretation of explosive quantity in pyrotechnic special effects material

For the purpose of this Ordinance, any reference to the quantity of any pyrotechnic special effects material shall be construed as a reference to the net explosive quantity.

55. Limitation of time for proceedings in respect of offences

Proceedings for the prosecution of an offence against this Ordinance shall be instituted within---

(a) 6 months from the discovery of such offence by the Authority; or

(b) 6 years after the commission of such offence,

whichever is the earlier.

56. No liability in the case of bona fide exercise of functions under this Ordinance

No liability shall be incurred by any person in respect of anything done by him bona fide in the exercise or purported exercise of any functions conferred or imposed by or under this Ordinance.

57. Delegation of powers

The Authority may authorize in writing any public officer to exercise any power vested in him or to perform any duty imposed upon him by virtue of any of the provisions of this Ordinance.

58. Saving for other enactments

The provisions of this Ordinance are in addition to and do not derogate from the provisions of the Gas Safety Ordinance (Cap. 51) and the Dangerous Goods Ordinance (Cap. 295).

59. Transitional

(1) Subject to subsection (2), a person who has been granted a discharge permit, removal permit or storage licence under the Dangerous Goods Ordinance (Cap. 295), which is in force immediately before the commencement of this Ordinance shall be deemed to have been granted a discharge permit under section 11, a conveyance permit under section 22 or a store licence under section 24 as appropriate and the licence or permit shall, subject to section 47(3), continue in force until the expiration date specified therein.

(2) Subsection (1) shall apply only where the person would, but for this section, be liable to be prosecuted for a contravention of section 10, 21 or 23.

Consequential Amendments

Gas Safety Ordinance

60. Application

Section 3 of the Gas Safety Ordinance (Cap. 51) is amended by adding---

"(3) This Ordinance shall not apply to the use of liquefied petroleum gas for and incidental to the production of entertainment special effects within the meaning of the Entertainment Special Effects Ordinance (of 2000).".

Dangerous Goods Ordinance

61. Interpretation

Section 2 of the Dangerous Goods Ordinance (Cap. 295) is amended by repealing the definition of "manufacture" and substituting---

"manufacture" (製造)---

(a) includes process, compress, liquefy or otherwise alter the nature or form of any substance;

(b) does not include assembling, mixing, compounding or installing for the preparation of materials within the meaning of pyrotechnic special effects material under the Entertainment Special Effects Ordinance (of 2000) if the process is authorized by a discharge permit issued under that Ordinance;"

Dangerous Goods (Application and Exemption) Regulations

62. Classification of dangerous goods

Regulation 3 of the Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg.) is amended---

(a) in paragraph (1), by repealing "paragraph (2)" and substituting "paragraphs (2) and (2A)";

(b) by adding---

"(2A) Subject to the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.) and the Dangerous Goods (Government Explosives Depots) Regulations (Cap. 295 sub. leg.), any substances and articles specified in the Schedule which are materials within the meaning of pyrotechnic special effects material under the Entertainment Special Effects Ordinance (of 2000) (but not the manufacture of such substances and articles) are exempt from the application of this Ordinance.".

Dangerous Goods (Shipping) Regulations

63. Permits required for carriage of dangerous goods in type III vessels

Regulation 12 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.) is amended by adding---

"(5) Nothing in this regulation shall apply to the conveyance of any dangerous goods in category 1 which are materials within the meaning of pyrotechnic special effects material under the Entertainment Special Effects Ordinance (of 2000) if and only if such conveyance is in accordance with the requirements specified in regulations made under section 26 of the Entertainment Special Effects Ordinance (of 2000).

(6) Nothing in this regulation shall apply to the conveyance of liquefied petroleum gas in a cylinder having a water capacity of less than 130 litres or a combination of cylinders having a combined water capacity of less than 130 litres if and only if the conveyance of such liquefied petroleum gas is for and incidental to the production of entertainment special effects within the meaning of the Entertainment Special Effects Ordinance (of 2000).".

64. Restrictions on carriage of passengers on type III vessels carrying dangerous goods

Regulation 14 is amended---

(a) in paragraph (1), by repealing "paragraph (2)" and substituting "paragraphs (2) and (3)";

(b) by adding---

"(3) Notwithstanding anything contained in paragraph (1), passengers may be conveyed in any type III vessel at the same time as dangerous goods are carried if and only if---

(a) such vessel is exempted from the application of regulation 12 by virtue of regulation 12(4), (5) or (6); and

(b) such passengers are each holder of a valid special effects operator licence issued under the Entertainment Special Effects Ordinance (of 2000); and

(c) such goods are carried for and incidental to the production of entertainment special effects within the meaning of the Entertainment Special Effects Ordinance (of 2000).".

65. Special restrictions relating to type III vessels conveying explosives and certain inflammables

Regulation 17 is amended---

(a) by renumbering it as regulation 17(1);

(b) by adding---

"(2) Nothing in paragraph (1)(a) and (e)(i) and (ii) shall apply to any type III vessel which has been exempted from the application of regulation 12 by virtue of regulation 12(4) or (5).".

Merchant Shipping (Miscellaneous Craft) Regulations

66. Prohibition of dangerous goods

Regulation 34(1) of the Merchant Shipping (Miscellaneous Craft) Regulations (Cap. 313 sub. leg.) is amended---

(a) by repealing "has been issued in respect of the vessel by the Director." at the end;

(b) in subparagraph (a), by adding "has been issued in respect of the vessel by the Director" after "products in bulk";

(c) in subparagraph (b), by repealing everything after "dangerous goods" and substituting---

"---

(i) a permit for the carriage of those goods has been issued in respect of the vessel by the Director; or

(ii) the vessel has been exempted from the application of regulation 12 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.) by virtue of regulation 12(4), (5) or (6) of the same Regulations."

SCHEDULE 1 [ss. 34 & 38]

Members of Appeal Board Panel

The Appeal Board panel shall consist of---

(a) not more than 9 persons nominated by The Hong Kong Institution of Engineers, of whom---

(i) not more than 3 shall be qualified as corporate members under the Civil Discipline;

(ii) not more than 3 shall be qualified as corporate members under the Geotechnical Discipline; and

(iii) not more than 3 shall be qualified as corporate members under the Gas Discipline; and

(b) not more than 6 licensed special effects operators or persons who are experienced in the use of special effects materials; and

(c) not more than 3 persons who are executive producers in film or television production; and

(d) not more than 3 persons nominated by the Hong Kong Film Directors' Guild.

SCHEDULE 2 [ss. 37 & 38]

Composition of Appeal Board

An Appeal Board shall consist of---

(a) the Chairman; and

(b) 4 persons who are members of the panel, of whom---

(i) one shall be a licensed special effects operator or a person experienced in the use of special effects materials; and

(ii) 2 shall be from amongst the nominees of The Hong Kong Institution of Engineers; and

(iii) one shall be an executive producer in film or television production, or from amongst the nominees of the Hong Kong Film Directors' Guild.

Explanatory Memorandum

This Bill establishes a regulatory framework for the supply, use, conveyance and storage of special effects materials for the production of special effects in entertainment programmes.

2. Clause 3 provides for a licensing authority.

3. Clause 4 details the functions of the Entertainment Special Effects Licensing Authority ("the Authority").

4. Clauses 5 to 7 provide for the licensing requirement and procedure in respect of the issue of special effects operator licences.

5. Certain circumstances under which a person is not required to obtain a special effects operator licence before he uses special effects materials are set out in clause 8.

6. Clause 9 allows certain existing special effects operators to continue using special effects materials without a licence for the transitional period.

7. Clause 10 creates an offence of discharging special effects materials without a discharge permit.

8. Clauses 11 and 12 detail the application procedure for the issue of discharge permits.

9. Clause 13 provides for exemptions from the requirement to obtain a discharge permit before special effects materials can be discharged.

10. Clauses 14 to 16 deal with the registration of pyrotechnic special effects materials and the exemption therefrom.

11. Clause 17 requires the Authority to keep a register of pyrotechnic special effects materials.

12. Clause 18 requires a supplier of pyrotechnic special effects materials to be licensed and to supply materials to specified types of person only.

13. Clause 19 sets out procedures for obtaining a supplier licence.

14. Clause 20 deals with the requirements that may be imposed on the conveyance and storage of pyrotechnic special effects materials.

15. Clauses 21 and 22 deal with conveyance permits and the related application procedure.

16. Clauses 23 to 25 deal with store licences, their classification and the related application procedure.

17. Clause 26 empowers the Authority to make regulations with the approval of the

Secretary for Information Technology and Broadcasting.

18. Clause 27 enables the Authority to approve and issue codes of practice for the purpose of providing practical guidance in respect of the requirements under the Bill.

19. Clause 28 clarifies the legal effect of codes of practice.

20. Clauses 29 to 32 deal with the various powers which the Authority and specified public officers may exercise including the power to enter premises, inspect documents and records and dispose of pyrotechnic special effects materials under certain circumstances.

21. Clauses 33 to 46 set up the mechanism for appeals. An Appeal Board panel will be set up (clause 34) and an Appeal Board will be appointed from amongst members of the Appeal Board panel to determine an appeal (clause 37).

22. Clause 47 sets out the general provisions applicable to both licences and permits issued under the Bill.

23. Clause 48 specifies the penalties for breach of terms and conditions specified in licences and permits.

24. Clauses 49 to 59 deal with miscellaneous issues including the scope of liability of employers, bodies corporate and public officers.

25. Clauses 60 to 66 provide for consequential amendments to other Ordinances.