

LEGISLATIVE COUNCIL BRIEF

Fire Services Ordinance
(Chapter 95)

FIRE SERVICES (AMENDMENT) BILL 2001

FIRE SERVICE (FIRE HAZARD ABATEMENT) REGULATION

INTRODUCTION

At the meeting of the Executive Council on 19 June 2001, the Council ADVISED and the Chief Executive ORDERED that –

- A
- (a) the Fire Services (Amendment) Bill 2001, at Annex A, should be introduced into the Legislative Council; and
- B
- (b) the Fire Service (Fire Hazard Abatement) Regulation, at Annex B, should be approved in principle, to be referred back to Members to be made after the Bill has passed into law,

to improve the regulatory framework to cope with new types of fire hazards.

BACKGROUND AND ARGUMENT

General Background

2. Enacted in 1954, the Fire Services Ordinance (FSO) provides for the constitution, duties and powers of Fire Services Department (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 FSO, there are four pieces of subsidiary legislation* providing specifically for the registration

* Note: The four pieces of subsidiary legislation are the Fire Service (Installation Contractors) Regulations; the Fire Service (Installations and Equipment) Regulations; the Fire Services Department (Reports and Certificates)

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.

Fire Hazards Abatement

4. Currently, the abatement of fire hazards and prevention of their recurrence are provided for in the FSO 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 (sections 9 and 9A –to 9D) have been revised and added following a series of amendments to the FSO in 1964, 1969, 1975, 1982 and 1986. We consider it appropriate to take the opportunity to

streamline these provisions in order to facilitate ease of reference in enforcement action. Given this, and the further consideration of facilitating amendments to be made from time to time to cope with changing needs, we **propose** to repeal these provisions in the FSO 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 will also be taken to update a few provisions and add new ones to strengthen and enhance enforcement against fire hazards (see paragraphs 6 to 11 below).

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 identity in taking enforcement action against offences that create 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 new 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 lead to the issue of FHO and/or 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. We have explored

the possibility of defining improper loading or conveyance of motor vehicles (including motorcycles) and motor vehicles' 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 motor vehicles and motor vehicles' spare parts containing residual fuel in an enclosed freight container or goods compartment should be subject to direct prosecution. In this connection, we also **propose** that officers of FSD, the Police and Customs & Excise Department should be empowered to stop, board, search and detain the vehicles if they have reasonable ground for suspecting that such an offence has been committed.

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 the year 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 for the purpose of the business of supplying the fuel for transfer to a motor vehicle's fuel tank in any premises other than a place so licensed or approved by the FSD under the Dangerous Goods Ordinance should 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 use of their premises, we have devised the following scheme along the line of the current legislative provisions tackling premises repeatedly used for manufacture of dangerous drugs or as vice establishments. We **propose** to prohibit any person from letting or sub-letting any premises with the knowledge that such premises is to be used for illegal vehicle refuelling activities. And we **propose** to empower the court to notify the owner of the premises of the conviction against anyone using the premises for illegal vehicle refuelling activities. On application by the owner, the court may order the termination of the tenancy of such premises. If illegal refuelling activities recur on such premises within 12 months, the court may make a temporary closure order (for six months) to effect complete closure of such premises. To protect the interest of bona fide owners, purchasers and mortgagees of such premises, we also **propose** to provide for the registration at the Land Registry of closure orders and notices of the relevant charges and convictions concerning the premises, and to allow such parties to apply for the closure orders to be suspended or rescinded.

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 sections 9 and 9A to 9D, we note that the average fines imposed by the courts from 1993 to the year 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.

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". 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 within a reasonable period after a fire 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 BILL

18. This Bill aims at amending the FSO and its subsidiary legislation as follows –

- (a) **Clause 3** extends the definition of "fire services installation or equipment" to cover the installation or equipment that facilitates the evacuation from any premises in cases of fire and the provision of stand-by power supply.
- (b) **Clause 4** empowers the Director of Fire Services (the Director) or a member authorized by the Director to investigate into the cause of or other matters relating to a fire.
- (c) **Clause 5** provides for the powers of the Director in relation to the prevention of fire hazards.
- (d) **Clause 7** changes the period for a subordinate officer or member of other ranks of the FSD accused of being absent from duty without leave that will warrant dismissal from 21 days to 14 days in line with an amendment to the Public Service (Administration) Order.

- (e) **Clause 9** extends the coverage of a policy of insurance against fire to cover damage done by the Fire Services Department in the execution of its duty on the occasion of a fire or an incident that may pose an immediate danger of fire.
- (f) **Clause 10** empowers the Chief Executive in Council to make regulations to provide for the following matters –
 - (i) the FHAN;
 - (ii) the FHO and prohibition order;
 - (iii) the offences of obstruction and locking of means of escape, supply of fuel to motor vehicle at premises that do not have licenses to store fuel, and conveyance or stowage of motor vehicle in an enclosed container;
 - (iv) the investigation power of public officers;
 - (v) the protection of innocent parties for the purposes of the termination of tenancy and closure order; and
 - (vi) the termination of tenancy and closure order.
- (g) **Clauses 12, 16 to 19 and the Schedule** amend the fines in the FSO and its subsidiary legislation in line with the reference to the levels of fine in the Criminal Procedure Ordinance.
- (h) **Clauses 14 and 15** introduce new post titles to the FSD.

C 19. The existing provisions which are being amended are at Annex C.

THE REGULATION

20. **Part 2** (clauses 10 to 13) provides for matters relating to a FHO and prohibition order.

21. **Part 3** (clauses 14 to 20) provides for the offences of obstruction and locking of means of escape, supply of fuel for transfer to motor vehicle at

premises that do not have licenses to store fuel, and conveyance or stowage of motor vehicle in an enclosed container.

22. **Part 4** (clauses 21 to 22) provides for the powers to obtain personal particulars and to stop, board and search a vehicle and seize articles carried in, on or by it.

23. **Part 5** (clauses 23 to 37) provides for the protection of innocent parties and closure order.

PUBLIC CONSULTATION

24. FSD has consulted the District Councils and District Fire Safety Committees. Other interested parties have also been consulted, including the Hong Kong Federation of Insurers, the Association of Registered Fire Service Installation Contractors of Hong Kong Limited, the Hong Kong Container Tractor Owner Association Ltd., the Container Transportation Employee General Union, etc. We also briefed the Legislative Council Panel on Security in April 2001.

BASIC LAW IMPLICATIONS

25. The Department of Justice advises that the Bill and the Regulation do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

26. The Department of Justice advises that the Bill and the Regulation are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

27. The Bill will not affect the current binding effect of the FSO.

FINANCIAL AND STAFFING IMPLICATIONS

28. There are no financial and staffing implications arising from the implementation of the legislative amendments.

ECONOMIC IMPLICATIONS

29. The community will benefit as public safety will be better protected by the proposals which enhance enforcement against fire hazards.

LEGISLATIVE TIMETABLE

30. The legislative timetable will be –

Publication in the Gazette	22 June 2001
First Reading and commencement of Second Reading debate	4 July 2001
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

31. A press release will be issued on 22 June 2001. A spokesman will be available to answer press enquiries.

ENQUIRIES

32. For enquiries, please contact Mr David WONG, Principal Assistant Secretary for Security at 2810 3435.

Security Bureau
June 2001

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LEGISLATIVE COUNCIL BRIEF

FIRE SERVICES (AMENDMENT) BILL 2001

FIRE SERVICE (FIRE HAZARD ABATEMENT) REGULATION

ANNEXES

- Annex A Fire Services (Amendment) Bill 2001

- Annex B Fire Service (Fire Hazard Abatement) Regulation

- Annex C Existing provisions of the Fire Services Ordinance being amended

FIRE SERVICES (AMENDMENT) BILL 2001

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A BILL

To

Amend the Fire Services Ordinance and the subsidiary legislation made under the Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Fire Services (Amendment) Ordinance 2001.

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

PART I

FIRE SERVICES ORDINANCE AND THE SUBSIDIARY LEGISLATION
MADE UNDER THE ORDINANCE

Fire Services Ordinance

2. Long title amended

The long title to the Fire Services Ordinance (Cap. 95) is amended by adding ", for the investigation into matters relating to a fire" after "hazards".

3. Interpretation

Section 2 is amended, in the definition of "fire service installation or equipment", by adding -

- "(d) facilitating the evacuation from any premises in case of fire;
- (e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;"

4. Sections added

The following are added -

"8A. General powers of fire investigation

(1) Within a reasonable period after a fire in or on any premises has been extinguished, the Director or any member authorized by the Director in writing on producing, if so required, the document showing the member's authority, may enter the premises for the purpose of investigation into the cause of or other matters relating to the fire.

(2) Having entered the premises, the Director or member -

- (a) may stay in or on the premises for so long as it is reasonably necessary for the purpose referred to in subsection (1);
- (b) may remove and take possession of any article or thing in or on the premises that the Director or member has reasonable cause to believe is necessary for the purpose referred to in subsection (1);
- (c) may deal with the article or thing referred to in paragraph (b) in such a way as appears to

the Director or member to be reasonably necessary for examination or analysis;

- (d) may retain the article or thing referred to in paragraph (b) for so long as it is reasonably necessary for examination or analysis;
- (e) may take such photographs and make such video recordings as the Director or member has reasonable cause to believe is necessary for the purpose in subsection (1);
- (f) may require any person whom the Director or member has reasonable cause to believe is able to give any information relevant to the purpose in subsection (1) -
 - (i) to attend at a place and time specified by the Director or member;
 - (ii) to answer (in the absence of persons other than any person whom the Director or member may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the Director or member thinks fit to ask; and
 - (iii) to sign a declaration of the truth of the person's answer;
- (g) may require the production of, and inspect and take copies of documents that the Director or

member has reasonable cause to believe is necessary for the purpose in subsection (1);

- (h) may require any person to afford the Director or member such facilities and assistance with respect to any article or thing within that person's control or in relation to which that person has responsibilities as the Director or member considers reasonably necessary to exercise any of the powers conferred by this subsection.

(3) Nothing in this section shall be taken to compel the production by any person of a document of which the person would on grounds of legal professional privilege be entitled to withhold production.

(4) On leaving any unoccupied premises that the Director or member entered under this section, the Director or member shall leave them as effectually secured against trespassers as the Director or member found them to be at the time of entry.

(5) If the Director or member who -

- (a) obtains any information from the answer given under subsection (2)(f); or
- (b) in compliance with this section, enters a factory, workshop, workplace or premises used for business purposes,

discloses to any person any information obtained by the Director or member under subsection (2)(f) or in the factory, workshop, workplace or premises with regard to any

manufacturing process or trade secret, the Director or member shall, unless the disclosure is made in the performance of the Director's or member's duty, be guilty of an offence and shall be liable to a fine at level 4.

(6) This section shall not affect the power of the Commissioner of Police under the Fire Investigation Ordinance (Cap. 12).

8B. Answers that may implicate criminal liability

If an answer to a question asked under section 8A(2)(f)(ii) tends to incriminate the person who gave the answer, neither the question nor the answer shall be admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 36 of the Crimes Ordinance (Cap. 200) in respect of the answer given.

8C. Disposal of article or thing removed and possessed by Director or member for purpose of fire investigation

(1) If any article or thing is removed from any premises and possessed by the Director or a member under section 8A(2)(b), a notice in both English and Chinese shall be caused to be affixed by the Director or member at a conspicuous part of the premises -

- (a) setting out details of the article or thing; and
- (b) calling for submission, within 1 month after the day on which the notice was affixed, of

any claim for the return of the article or thing after it has been examined or analysed under section 8A(2)(c).

(2) If a claim is made under subsection (1) for the return of the article or thing, the Director or member may refuse to return it unless satisfied that the claimant is the owner or otherwise entitled to possession of the article or thing.

(3) If the article or thing is not claimed within the period under subsection (1), or if the Director or member refuses to return it under subsection (2), the article or thing may be disposed of in such a way as the Director or member thinks fit.

8D. Disposal of property connected with offences

Section 102 of the Criminal Procedure Ordinance (Cap. 221) shall apply with respect to any property came into the possession of the Director or a member in connection with an offence under this Ordinance as it applies with respect to the property in the possession of a court, magistrate, the police or the Customs and Excise Service."

5. Section substituted

Section 9 is repealed and the following substituted -

"9. Power of Director in respect of abatement and prevention of fire hazards

For the purpose of abating a fire hazard or preventing it from recurring, the Director -

- (a) if satisfied of the existence in or on any premises of any fire hazard, may serve a prescribed notice on a person requiring the person to do such things as may be specified by the Director to abate the fire hazard within the period specified in the notice;
- (b) may, under the prescribed circumstances, cause to be carried out any works in respect of any premises and recover the expenses incurred from any person;
- (c) may remove and take possession of any article or thing under the prescribed circumstances and dispose of it in the prescribed manner;
- (d) may, under the prescribed circumstances, cause to be registered in the Land Registry any information concerning any premises in relation to which a person is charged with, convicted of, acquitted of or successfully appeals against a conviction of an offence under this Ordinance;
- (e) may cause to be publicised by the prescribed means the fact of a conviction of an offence under this Ordinance;
- (f) may apply to a court or magistrate for an order -
 - (i) to close any premises in relation to which a person has been convicted of an offence under this Ordinance in

accordance with the regulation made under section 25(1)(hb)(ii);

- (ii) to prohibit any premises to be used for a particular purpose in accordance with the regulation made under section 25(1)(hb)(iv);
- (iii) that requires a person to abate a fire hazard or prevent it from recurring; or
- (iv) that requires a person to remove any article or thing that obstructs or may obstruct, or locks or may lock any means of escape in any premises;"

6. Sections repealed

Sections 9A, 9B, 9C and 9D are repealed.

7. Liability of subordinate officers and members of other ranks to summary dismissal upon abscondment

Section 13A(1) is amended by repealing "21" and substituting "14".

8. Offences against discipline by subordinate officer and member of other ranks

Section 14(8) is repealed.

9. Section substituted

Section 21 is repealed and the following substituted -

"21. Damage done at a fire

- (1) Save where subsection (2) applies, a damage done by the Fire Services Department in the execution of its duty on the occasion of a fire or an incident that may pose an immediate danger of fire is taken to be a damage by fire within the meaning of a policy of insurance against fire.
- (2) For the purpose of a policy of insurance against fire that was executed immediately before the commencement of section 9 of the Fire Services (Amendment) Ordinance 2001 (of 2001), a damage done by the Fire Services Department in the execution of its duty on the occasion of a fire is taken to be a damage by fire within the meaning of the policy of insurance against fire."

10. Power to make regulations

Section 25 is amended -

- (a) by renumbering it as section 25(1);
- (b) in subsection (1), by adding -
 - "(hb) the making of an order by a court or magistrate -
 - (i) that requires a person to abate a fire hazard or prevent it from recurring;
 - (ii) that closes any premises in relation to which a person has

been convicted of an offence under this Ordinance;

- (iii) that rescinds or suspends an order under subparagraph (ii);
 - (iv) that prohibits any premises to be used for a particular purpose;
 - (v) that requires a person to remove any article or thing that obstructs or may obstruct, or locks or may lock any means of escape in any premises;
 - (vi) that terminates the tenancy of any premises;
- (hc) the procedure and other matters relating to an order under paragraph (hb);
 - (hd) the prevention of obstruction to and locking of any means of escape in any premises;
 - (he) 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;
 - (hf) 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;

- (hg) the powers of any prescribed public officer to stop, board and search a vehicle and seize, remove and detain articles or things carried in, on or by the vehicle that is related to an offence under this Ordinance;
- (hh) the prohibition of possession or control of a prescribed substance in or on any prescribed premises for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle;
- (hi) the power of the Director to obtain, or to authorize a member in writing to obtain, personal particulars from any person under the prescribed circumstances;
- (hj) the liability of the owner, tenant, occupier or person in charge of any premises who knowingly permits or suffers an offence under this Ordinance to be committed in or on the premises;
- (hk) 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;

- (hl) the prescribing of anything required to be prescribed under this Ordinance;"

- (c) by adding -

"(2) A regulation under this section may provide that the Director may not authorize members of certain ranks to exercise a power or discharge a duty that the Director by any enactment is entitled to exercise or required to discharge.

(3) A regulation made under this section may provide that -

- (a) any contravention of the regulation shall be an offence; and
- (b) any person who contravenes the regulation shall be liable on conviction to a fine not exceeding \$300,000 and to imprisonment for a period not exceeding 1 year, and in the case of a continuing offence, to a daily penalty not exceeding \$30,000."

11. Offences

Section 27(1) is repealed and the following substituted -

"(1) Any person who, without reasonable excuse, resists, obstructs or delays any member acting in the exercise of the member's power, or in the discharge of any duty conferred by this Ordinance, shall be guilty of an offence and shall be liable to a fine at level 3 and to imprisonment for 6 months."

12. Amendment of the level of fine

The provisions in column 2 of the Schedule are amended to the extent and in the manner set out in column 3 of that Schedule.

13. Forms

The Fifth Schedule is amended -

- (a) in Form 1, by repealing "19";
- (b) by repealing Forms 2, 3, 3A and 4.

14. Ranks in the Fire Services Department

The Sixth Schedule is amended, in Part I, by adding after "Deputy Chief Fire Officer" -

"Deputy Chief Ambulance Officer
Senior Assistant Chief Ambulance Officer".

15. Posts specified for the purposes of section 3(2)

The Seventh Schedule is amended by repealing everything under the heading and substituting -

"Senior Engineer
Engineer
Chief Technical Officer

Principal Technical Officer

Senior Mechanical Inspector

Mechanical Inspector

Senior Building Services Inspector

Building Services Inspector

Assistant Building Services Inspector

Electrical Inspector

Special Photographer I

Special Photographer II".

Fire Service (Installation Contractors) Regulations

16. Powers of disciplinary board

Regulation 11(3) and (4) of the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg.) is amended by repealing "of \$500" and substituting "at level 2".

17. Penalties

Regulation 16 is amended by repealing "of \$2,000" and substituting "at level 3".

Fire Service (Installations and Equipment) Regulations

18. Issue of certificates by registered contractors

Regulation 9(2A) and (3) of the Fire Service (Installations and Equipment) Regulations (Cap. 95 sub. leg.) is amended by repealing "of \$5,000" and substituting "at level 5".

19. Penalty

Regulation 12 is amended by repealing "of \$5,000" and substituting "at level 5".

PART II

CONSEQUENTIAL AMENDMENTS

Public Health and Municipal Services Ordinance

20. Interpretation

Section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132) is amended, in the definition of "fire service installation or equipment", by adding -

- "(d) facilitating the evacuation from any premises or place in case of fire;
- (e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;"

Places of Public Entertainment Regulations

21. Interpretation

Regulation 2 of the Places of Public Entertainment Regulations (Cap. 172 sub. leg.) is amended in the definition of "fire service installations and equipment" -

- (a) in paragraph (b), by repealing "or";
- (b) by adding -

- "(d) facilitating the evacuation from any premises in case of fire; or
- (e) providing a stand-by power supply to an installation and equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;"

Fire Safety (Commercial Premises) Ordinance

22. Interpretation

Section 3(1) of the Fire Safety (Commercial Premises) Ordinance (Cap. 502) is amended in the definition of "fire service installation or equipment" -

- (a) in paragraph (c), by adding "or" at the end;
- (b) by adding -
 - "(d) facilitating the evacuation from any premises in case of fire; or
 - (e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;"

PART III

TRANSITIONAL PROVISIONS

23. Interpretation

(1) In this Part, "pre-existing Ordinance" (先前條例) means the Fire Services Ordinance (Cap. 95) that was in force before the commencement of this Ordinance.

(2) Unless the context otherwise requires, words and phrases in this Part shall be construed in accordance with the pre-existing Ordinance.

24. Effect of sections 2, 9, 9A, 9B, 9C and 9D and the Fifth Schedule of pre-existing Ordinance

Sections 2, 9, 9A, 9B, 9C and 9D and the Fifth Schedule of the pre-existing Ordinance shall continue to apply in respect of -

- (a) a fire hazard abatement notice served under section 9(1) of the pre-existing Ordinance;
- (b) a fire hazard order made under section 9(3AA) or (4) of the pre-existing Ordinance;
- (c) a closure order made under section 9(7A) of the pre-existing Ordinance;
- (d) any property removed by the Director in abating or preventing the recurrence of a fire hazard under section 9 of the pre-existing Ordinance;
- (e) a removal order made under section 9C(1) of the pre-existing Ordinance;

- (f) an offence committed under section 9(1C), (3), (4A) or (9), section 9B(1) or (2) or section 9C(4) of the pre-existing Ordinance; and
- (g) a conviction made under section 9(1C), (3), (4A) or (9), section 9B(1) or (2) or section 9C(4) of the pre-existing Ordinance,

before the commencement of this Ordinance, as if this Ordinance has not been enacted.

25. Effect of section 13A of the pre-existing Ordinance

If a subordinate officer or member of other ranks is absent from duty without leave, and the period of absence begins from a day which is a date before the commencement of this Ordinance, section 13A of the pre-existing Ordinance shall continue to apply in respect of the absence of duty, as if this Ordinance has not been enacted.

26. No derogation from section 23 of Interpretation and General Clauses Ordinance

This Part is in addition to and not in derogation from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

SCHEDULE

[s. 15]

AMENDMENT OF LEVEL OF FINE IN FIRE SERVICES ORDINANCE

Item	Provision	Amendment
1.	Section 8(5)	Repeal "of \$5,000" and substitute "at level 4".
2.	Section 11(2)	Repeal "of \$1,000" and substitute "at level 2".
3.	Section 27(2)	Repeal "of \$1,000" and substitute "at level 2".
4.	Section 27(3)	Repeal "of \$5,000" and substitute "at level 4".
5.	Section 28	Repeal "of \$1,000" and substitute "at level 2".

Explanatory Memorandum

This Bill aims at amending the Fire Services Ordinance (Cap. 95) (the "principal Ordinance") and the subsidiary legislation made under the principal Ordinance.

2. Clause 3 extends the definition of "fire service installation or equipment" to cover the installation or equipment that facilitates the evacuation from any premises in cases of fire and the provision of a stand-by power supply.
3. Clause 4 empowers the Director of Fire Services ("the Director") or a member authorized by the Director to investigate into the cause of or other matters relating to a fire.
4. Clause 5 provides for the powers of the Director in relation to the abatement and prevention of fire hazards.

5. Clause 7 changes the period for a subordinate officer or member of other ranks of the Fire Services Department accused of being absent from duty without leave that will warrant dismissal from 21 days to 14 days in line with an amendment to the Public Service (Administration) Order.

6. Clause 9 extends the coverage of a policy of insurance against fire to cover a damage done by the Fire Services Department in the execution of its duty on the occasion of an incident that may pose an immediate danger of fire.

7. Clause 10 empowers the Chief Executive in Council to make regulations to provide for -

- (a) the making of an order by a court or magistrate concerning fire hazards, closing any premises, removing any obstructions to and locking of any means of escape and termination of a tenancy;
- (b) the prevention of obstruction to and locking of any means of escape;
- (c) the regulation of conveyance on land of containers that contain a motor vehicle or a part of a motor vehicle which contains fuel in its fuel tank or is otherwise stained with fuel;
- (d) the regulation of stowage of a motor vehicle or a part of a motor vehicle, which contains fuel in its fuel tank or is otherwise stained with fuel, in a container that is or is to be conveyed on land;
- (e) the power of prescribed public officers to stop, board and search a vehicle and seize, remove and

detain articles or things carried in, on or by the vehicle that is related to an offence;

- (f) the prohibition of possession or control of a prescribed substance in or on premises for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle;
- (g) the power to obtain personal particulars;
- (h) the liability of a person -
 - (i) who is the owner, tenant, occupier or person in charge of premises and knowingly permits or suffers an offence under this Ordinance to be committed in or on the premises;
 - (ii) 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
- (i) the penalty for contravention of an offence under a regulation made under the principal Ordinance.

8. Clauses 12, 16, 17, 18 and 19 and the Schedule amend the fines in the principal Ordinance and its subsidiary legislation in line with the reference to the levels of fine in the Criminal Procedure Ordinance (Cap. 221).

9. Clauses 14 and 15 introduce new post titles to the Fire Services Department.

FIRE SERVICE (FIRE HAZARD ABATEMENT) REGULATION

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FIRE SERVICE (FIRE HAZARD ABATEMENT) REGULATION

(Made by the Chief Executive in Council under section 25
of the Fire Services Ordinance (Cap. 95))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires -

"article or thing" (物件或東西), in sections 14 and 16, in respect of premises, means any article or thing not being an installation, fitting or fixture required by the use or intended use of the premises;

"closure order" (封閉令) means an order made by a magistrate under section 27;

"container" (貨櫃), in sections 17 and 18, means -

- (a) the cargo compartment of a motor vehicle;
- (b) a freight container otherwise than on board a vessel or aircraft; or
- (c) a case, tank or receptacle otherwise than on board a vessel or aircraft and is used for enclosing and transporting a number of packages of cargo or bulk material;

"fire hazard abatement notice" (消除火警危險通知書) means a fire hazard abatement notice in section 3;

"fire hazard order" (火警危險令) means an order made by a magistrate under section 10;

"means of escape" (逃生途徑), in sections 14 and 15, in respect of premises, means such means of escape in case of emergency as may be required for the safety of persons having regard to the use or intended use of the premises;

"motor vehicle" (汽車) includes a motor cycle with or without a side car;

"premises" (處所) includes part of premises;

"prohibition order" (禁止令) means an order made by a magistrate under section 11;

"scheduled member" (表列成員) means a member holding a rank set out in Schedule 2;

"tenancy" (租賃) includes sub-tenancy;

"works" (工程) includes any kind of works and operation to be carried out and action to be taken as required by the Ordinance.

PART 1

FIRE HAZARD ABATEMENT NOTICE

3. Fire hazard abatement notice

(1) The Director may, if satisfied of the existence in or on any premises of any fire hazard, serve a fire hazard abatement

notice in the form of Form 1 in Schedule 1 either personally on or by registered post sent to

-

- (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.

(2) A fire hazard abatement notice may -

- (a) require the person on whom the notice is served to abate the fire hazard within the period specified in the notice;
- (b) require the person on whom the notice is served to carry out such works as may be necessary for the purpose in paragraph (a); and
- (c) if the Director thinks fit, specify any works to be carried out for the purpose in paragraph (a).

4. Director may carry out works in relation to fire hazard abatement notice

(1) Subject to subsection (2), if the person on whom a fire hazard abatement notice is served -

- (a) fails to abate the fire hazard within the period specified in the notice; or

- (b) causes, permits or suffers the fire hazard to recur at any time within a period of 12 months after the date of service of the notice,

the Director may cause to be carried out in or on the premises such works, and cause to be removed and taken possession of such article or thing as appear to the Director to be necessary to abate the fire hazard and to prevent the recurrence of the fire hazard.

(2) The Director may not cause work to carried out under subsection (1) unless the Director is satisfied that the fire hazard to which the fire hazard abatement notice relates -

- (a) constitutes an immediate and substantial danger of fire in or on the premises; or
- (b) is likely, if fire breaks out in or on the premises, to increase substantially the normal risk to life which occurs in the event of a fire.

5. Director may carry out works or do other things otherwise than in relation to fire hazard abatement notice

In addition to the powers given to the Director under section 4, the Director may abate a fire hazard and may do what is necessary to prevent the recurrence of the fire hazard if -

- (a) the person by reason of whose act, default or sufferance the fire hazard in or on any premises arose or continues cannot be found; and
- (b) it is clear that the fire hazard neither arose nor continues by reason of any act, default or

sufferance on the part of the owner, tenant, occupier or person in charge, of the premises in or on which it exists.

**6. Delegation of powers and duties
under section 4 by Director**

The Director may authorize a Deputy Director or a Chief Fire Officer to exercise or discharge the powers and duties conferred on the Director by section 4 but the Director may not authorize any other person to exercise or discharge any of those powers or duties.

**7. Removal of articles or things creating
fire hazards under section 4**

(1) If an article or thing is removed under section 4, a notice in both English and Chinese shall be caused to be affixed by the Director to a conspicuous part of the relevant premises -

- (a) setting out details of the article or thing; and
- (b) calling the submission, within 1 month after the day on which the notice was affixed, of any claim for the return of the article or thing.

(2) If a claim is made under subsection (1) for the return of the article or thing, the Director may refuse to return it unless satisfied that the claimant is the owner or otherwise entitled to possession of the article or thing.

(3) If the article or thing is not claimed within the period under subsection (1)(b), or if the Director refuses to return it under subsection (2), the article or thing -

- (a) may be sold by public auction; or
 - (b) if the Director thinks the circumstances of the case require it, may otherwise be sold; or
 - (c) may be disposed of without sale.
- (4) The proceeds arising from the sale of the article or thing under subsection (3)

-

- (a) shall be retained by the Director and applied in payment of the expenses incurred by the works carried out under section 4; and
- (b) the surplus, if any, shall be paid -
 - (i) to the owner of the article or thing if a claim for the proceeds is made within 12 months of the date of sale; or
 - (ii) into the general revenue if, or to the extent to which, the surplus is not disposed of under subparagraph (i).

8. Recovery of expenses incurred by carrying out works under section 4

(1) Subject to subsection (2), the expenses incurred by the Director in carrying out the works under section 4 -

- (a) shall be a debt due to the Government by the person on whom the relevant fire hazard abatement notice was served; and
- (b) shall be recoverable in the District Court from that person.

(2) It shall be a defence for a person against whom an action is brought under subsection (1) to satisfy the court that -

- (a) the fire hazard to which the fire hazard abatement notice relates -
 - (i) did not constitute an immediate and substantial danger of fire in or on the premises where the fire hazard was found; and
 - (ii) was not likely, if fire had broken out in or on the premises, to increase substantially the normal risk to life which occurs in the event of a fire; or
- (b) the fire hazard was due to the wilful act, default or sufferance of some person other than the person on whom the fire hazard abatement notice was served.

(3) Nothing in this section shall be construed as affecting any right that the person on whom a fire hazard abatement notice has been served may have to a contribution, indemnity or damages from any other person.

9. Offences relating to fire hazard abatement notice

- (1) A person on whom a fire hazard abatement notice is served commits an offence if -
 - (a) the fire hazard to which the notice relates arose or continues by reason of the wilful act, default or sufferance of that person; or
 - (b) that person fails to comply with a requirement of the notice within the period specified in the notice,

and shall (whether or not in respect of whom a fire hazard order has been made) be liable on conviction to a fine at level 6 and, if the offence is the failure to comply with a requirement of the notice within the period specified in the notice, to a further fine of \$10,000 for each day during which the offence continues.

(2) If the person on whom a fire hazard abatement notice is served causes, permits or suffers the fire hazard to recur at any time within a period of 12 months after the date of service of the notice, the person commits an offence and shall be liable on conviction to a fine at level 6 and to a further fine of \$10,000 for each day during which the offence continues.

PART 2

FIRE HAZARD ORDER AND PROHIBITION ORDER

10. Fire hazard order

(1) A magistrate may, at any time a person is convicted of an offence under section 9, make a fire hazard order in the form of Form 2 in Schedule 1 in respect of the person either on an application by the Director or on the magistrate's own initiative.

(2) Notwithstanding subsection (1), whether or not a person on whom a fire hazard abatement notice is served has been convicted of an offence under section 9, a magistrate may make a fire hazard order in respect of that person on application by the Director, if the magistrate is satisfied -

- (a) that the person has failed to comply with a requirement of the notice within the period specified in the notice; or

- (b) that the fire hazard, whether or not abated since the service of the notice, recurs, or is in the opinion of the Director likely to recur.

(3) A fire hazard order may provide for any or any combination of the following matters -

- (a) requires a person to comply with all or any of the requirements of a fire hazard abatement notice in connection with which the order is made, or otherwise to abate the fire hazard within the period specified in the order;
- (b) requires a person to do what may be necessary to prevent the recurrence of the fire hazard within the period specified in the order;
- (c) prohibits the person from causing, permitting or suffering the fire hazard to recur.

(4) If -

- (a) the person in respect of whom a fire hazard order is made so requires;
or
- (b) the magistrate making the order considers it desirable,

the fire hazard order shall specify the works to be executed by the person in respect of whom the order is made for the purpose of abating, or of preventing the recurrence of, the fire hazard to which the order relates.

(5) A fire hazard order is in addition to the penalties imposed in respect of the offences under section 9.

11. Prohibition order

(1) Subject to subsection (2), a magistrate may, on a sworn information by the Director, make a prohibition order in the form of Form 3 in Schedule 1 in respect of any premises to which a fire hazard abatement notice relates prohibiting the use of the premises for the purposes specified in the order.

(2) A magistrate may not make a prohibition order unless the Director proves to the satisfaction of the magistrate -

- (a) that not less than 24 hours have elapsed since a notice in writing stating the intention of the Director to swear an information for the purpose of subsection (1) has been served personally on or sent by registered post to the person on whom a fire hazard abatement notice was served; and
- (b) that the fire hazard to which the fire hazard abatement notice relates continues at the time when the Director swears the information; and
- (c) that the fire hazard -
 - (i) is a result of the structural character of the premises concerned; or
 - (ii) is a result of the location of the premises having regard to the nature of the area in which the premises are situated; and
- (d) that the premises are being used for a purpose -
 - (i) which may materially increase the likelihood of fire or other calamity or

danger to life or property resulting from the outbreak of fire;
or

- (ii) which may materially increase the likelihood of the occurrence of any other calamity in or on the premises.

(3) If a magistrate, on application, is satisfied that any premises in respect of which a prohibition order is in force has been rendered suitable for the use specified in the order, he may, declare that fact and revoke the order.

12. Offences against non-compliance with fire hazard orders or prohibition orders

(1) A person who without reasonable excuse knowingly contravenes a fire hazard order or a prohibition order commits an offence and shall be liable on conviction to a fine of \$200,000 and to a further fine of \$20,000 for each day during which the offence continues.

(2) Without prejudice to subsection (1), if a fire hazard order has not been complied with, the Director -

- (a) subject to section 13(9), may abate the fire hazard; and
- (b) subject to section 13(9), may do whatever may be necessary in execution of the order; and
- (c) may recover in the District Court as a debt due to the Government any expenses reasonably incurred by the execution of the order from the person against whom the order was made.

13. Appeal against fire hazard orders or prohibition orders

(1) Part VII of the Magistrates Ordinance (Cap. 227) applies in relation to proceedings in a magistrate's court under this section subject to the following provisions.

(2) In the event of an appeal against a fire hazard order or a prohibition order, the order shall be suspended pending the determination or abandonment of the appeal.

(3) If the order in subsection (2) has not been quashed in the appeal, the period for compliance with the requirements of the order shall commence to run on the determination or abandonment of the appeal.

(4) Subject to subsection (5), if an appeal in respect of a fire hazard order that provides for the matter under section 10(3)(c), or the matters being provided for includes the matter under section 10(3)(c), or of a fire hazard order that requires the execution of structural works, or of a prohibition order is dismissed or abandoned, then notwithstanding subsections (2) and (3), the appellant shall be liable to a further fine of \$20,000 for each day during the period when the order was not complied with.

(5) The daily fine in subsection (4) shall not be payable if the appellant -

(a) satisfies the court hearing the appeal in the case of an appeal that is dismissed; or

(b) satisfies the court before which proceedings are taken for the recovery of the fine in the case of an appeal that is abandoned,

that there was substantial ground for the appeal and that the appeal was not brought merely for the purpose of delay.

(6) The period in respect of which a daily fine is payable under subsection (4) commences to run on the expiry of the period that would have been permitted for the compliance with the requirements of an order in subsection (4) if there had been no appeal against the order, until the day immediately preceding the day of the dismissal or abandonment of the appeal.

(7) In the case of an appeal that is dismissed, the daily fine (if any) imposed under subsection (4) shall be imposed by the court hearing the appeal.

(8) In the case of an appeal that is abandoned, the daily fine (if any) shall, for the purpose of proceedings for the recovery of the fine, be taken to have been imposed by the court before which the proceedings are taken, but the court may reduce or cancel the amount of the fine if it sees fit.

(9) Subject to subsection (10), in the event of an appeal against a fire hazard order that requires the execution of structural works, no works shall be done pursuant to section 12(2) or under the order until after the determination or abandonment of the appeal.

(10) If the magistrate by which a fire hazard order that requires the execution of structural works was made is of the opinion that the nature of the fire hazard is such as to require immediate abatement, the magistrate may, notwithstanding that an appeal in respect of the order is pending, authorize the Director to abate the fire hazard immediately.

- (11) If the Director abates the fire hazard under subsection (10), then -
- (a) if the appeal is allowed, the Director shall pay to the person against whom the fire hazard order was made the amount of any damage sustained by the person by reason of the abatement of the fire hazard by the Director;
 - (b) if the appeal is dismissed or abandoned, the Director may recover in the District Court as a debt due to the Government from the person the expenses incurred in abating the fire hazard.

PART 3

FIRE HAZARD OFFENCES

14. Obstruction of means of escape

- (1) In relation to any premises, a person commits an offence if the person -
- (a) sets out or leaves or causes to be set out or left; or
 - (b) being the owner, tenant, occupier or person in charge of any premises, permits or suffers to be set out or left,

any article or thing that obstructs or may obstruct the means of escape in the premises.

- (2) A person who commits an offence under this section shall be liable -

- (a) on a first conviction, to a fine at level 6;
- (b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year,

and in any case, to a further fine of \$20,000 for each day during which the offence continues.

(3) In any proceedings under subsection (2), a document purporting to be a certificate signed by the Director stating that the person named in the certificate was on a date specified in the certificate convicted of an offence contrary to this section shall be admitted in evidence on its production.

(4) Unless the contrary is proved, it shall be presumed in respect of the document under subsection (3) -

- (a) that it is a certificate signed by the Director; and
- (b) that the person named in the certificate was on the date specified in the certificate convicted of an offence contrary to this section.

15. Locking of means of escape

(1) A person commits an offence if the person -

- (a) secures or causes to be secured the means of escape in any premises;
or
- (b) being the owner, tenant, occupier or person in charge of any premises, permits or suffers to be secured the means of escape in the premises,

by any lock or other device which in the event of fire or other calamity -

- (c) cannot readily and conveniently be opened from within the premises without the use of a key; or
 - (d) might render escape materially more difficult.
- (2) A person who commits an offence under this section shall be liable -
- (a) on a first conviction, to a fine at level 6;
 - (b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year,

and in any case, to a further fine of \$20,000 for each day during which the offence continues.

(3) In any proceedings under subsection (2), a document purporting to be a certificate signed by the Director stating that the person named in the certificate was on a date specified in the certificate convicted of an offence contrary to this section shall be admitted in evidence on its production.

(4) Unless the contrary is proved, it shall be presumed in respect of the document under subsection (3) -

- (a) that it is a certificate signed by the Director; and
- (b) that the person named in the certificate was on the date specified in the certificate convicted of an offence contrary to this section.

16. Removal of obstruction or lock

(1) If a person is convicted of an offence under section 14 or 15, a magistrate may, on the application of the Director or on the magistrate's own initiative, make a removal order in respect of that person in the form of Form 4 in Schedule 1.

(2) A removal order is in addition to any penalty imposed in respect of an offence under section 14 or 15.

(3) A removal order requires the person in respect of whom it is made -

(a) to remove the article or thing to which that offence relates within the period specified in the order, if that person is convicted of an offence under section 14; or

(b) to remove the lock or other device to which that offence relates within the period specified in the order, if that person is convicted of an offence under section 15.

(4) If a person in respect of whom a removal order is made fails to comply with a requirement of the order within the period specified in the order, the person commits an offence and shall be liable on conviction to a fine of \$200,000 and to a further fine of \$20,000 for each day during which the offence continues.

(5) Whether or not a person in respect of whom a removal order is made has been convicted of an offence under subsection (4), if that person fails to comply with a requirement of the order within the period specified in the order, the Director -

(a) may execute, or cause to be executed any works necessary to give effect to the requirements of the removal order; and

(b) may recover in the District Court any expenses incurred by the execution of the works from the person as a debt due to the Government.

17. Conveyance of motor vehicles in containers

(1) Subject to subsection (2), 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.

(2) It is not an offence under this section if the container referred to in subsection (1) is open at the top or is well ventilated.

(3) A person who commits an offence under this section shall be liable -

- (a) on a first conviction, to a fine at level 6 and to imprisonment for 6 months;
- (b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year.

18. Stowage of motor vehicles in containers

(1) Subject to subsection (2), 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.

(2) It is not an offence under this section if the container referred to in subsection (1) is open at the top or is well ventilated.

(3) A person who commits an offence under this section shall be liable -

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

(b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year.

19. Illegal possession of controlled substance

(1) This section applies to a business of supplying a controlled substance for transferring to a motor vehicle's fuel tank.

(2) A person who has possession or control of a controlled substance in or on any premises for business purpose commits an offence, and shall be liable -

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

(b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year.

(3) Subsection (2) shall have no application if an approval, whether in the form of a licence or otherwise, has been issued, under the Dangerous Goods Ordinance (Cap. 295) by the Director in respect of the storage of the relevant controlled substance in or on the premises under subsection (2).

(4) In proceedings under subsection (2), it is presumed in the absence of evidence to the contrary that a person has

possession or control of a controlled substance in or on any premises for business purpose if

-

- (a) that person sells, offers for sale or supplies a controlled substance in or on the premises; and
- (b) that person does so in circumstances that gives rise to a reasonable belief that the controlled substance is to be transferred to the fuel tank of a motor vehicle.

(5) In this section, "controlled substance" (受管制物質) means a substance that is a category 5 substance under the Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg.).

20. Liability of owners, tenant etc.

(1) 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 section 19 to be committed in or on the premises.

(2) 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.

(3) A person who commits an offence under this section shall be liable on conviction to a fine at level 6 and to imprisonment for 6 months.

PART 4

INVESTIGATION POWERS

21. Power to obtain personal particulars

(1) The Director, or a member authorized by the Director in writing on producing, if so required, the document showing the member's authority, may require -

- (a) any person on whom a fire hazard abatement notice is served; or
- (b) any person whom the Director or the member has reasonable grounds for suspecting as being the person by reason of whose wilful act, default or sufferance that a fire hazard arose or continues; or
- (c) any person whom the Director or the member has reasonable grounds for suspecting has committed or is about to commit or intends to commit an offence under this Regulation,

to give correct particulars of the person's name and address and produce the person's proof of identity to the Director or the member.

(2) The reference in subsection (1) to a person's proof of identity is construed in accordance with the definition of "proof of identity" in section 17B(1) of the Immigration Ordinance (Cap. 115).

- (3) A person who -
 - (a) without reasonable excuse, fails to comply as soon as reasonably possible with a requirement of the

Director or the member made under subsection (1); or

- (b) furnishes particulars which the person knows to be false in a material particular in connection with a requirement under subsection (1),

commits an offence and shall be liable on conviction to a fine at level 4.

**22. Power to stop, board and search a motor vehicle
and seize articles in relation to offences
against sections 17 and 18**

(1) An authorized officer may stop and board a motor vehicle, and search the motor vehicle and anything carried in, on or by it if the authorized officer has reasonable grounds for suspecting that an offence against section 17 or 18 has been, is about to be or is intended to be committed in respect of the motor vehicle or anything carried in, on or by it.

(2) An authorized officer may seize, remove and detain a motor vehicle or anything carried in, on or by it -

- (a) with respect to which the authorized officer has reasonable grounds for suspecting that an offence against section 17 or 18 has been, is about to be or is intended to be committed; or
- (b) which appears to the authorized officer likely to be, or to contain, evidence of the offence.

(3) An authorized officer may -

- (a) forcibly board a motor vehicle that the authorized officer is empowered to stop, board and search; and

- (b) remove by force any material or any person obstructing the authorized officer in exercising power under this section; and
- (c) detain any person on board the motor vehicle and prevent any person from approaching or boarding the vehicle until the motor vehicle or anything carried in, on or by it has been searched.

(4) A person who, without reasonable excuse, resists, obstructs or delays an authorized officer in the exercise of the power conferred by this section commits an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(5) In this section -

"authorized officer" (獲授權人員) means -

- (a) a scheduled member; or
- (b) a member of the Customs and Excise Service in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); or
- (c) a police officer.

PART 5

PROTECTION OF INNOCENT PARTIES FOR THE PURPOSES OF TERMINATION OF TENANCY AND CLOSURE ORDER

Division 1 - Protection of innocent parties for the purposes of termination of tenancy and closure order

23. Notification to Land Registrar of charges, convictions etc. for the protection of innocent parties

(1) If a charge under section 19 or 20 is preferred against a person or is withdrawn, the Director shall, as soon as reasonably practicable, cause to be registered in the Land Registry a notice in writing stating the fact and the date on which it occurred and setting out the specified information.

(2) If a person is acquitted or convicted by a magistrate of, or successfully appeals against a conviction for, an offence under section 19 or 20, the magistrate or the appellant court (as the case may be) shall, as soon as reasonably practicable, send a notice in writing to the Director stating the fact and the date on which it occurred and setting out the specified information.

(3) On receipt of the notice under subsection (2), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

(4) In this section, "specified information" (指明的資料) means the address of the premises, in relation to which an offence under section 19 or 20 is or was alleged or proved to have been committed, and if the alleged offence or the proved offence related to part of a premises, the location of that part.

24. Publication of fact of conviction for the purpose of application for closure order

(1) If a person is convicted of an offence under section 19 or 20, a scheduled member not below the rank of Assistant Divisional Officer may within 2 weeks after the conviction -

- (a) sign a notice in English and another notice in Chinese -
 - (i) stating that a person has been convicted of the offence in relation to the premises and state the nature and date of the offence, but it shall not disclose the name, address and other personal particulars of the person convicted of the offence; and
 - (ii) stating that if, within a period beginning 4 months after the date of that conviction and ending 16 months after that date, any person commits an offence under section 19 or 20 in relation to the premises, a closure order will be made in respect of the premises to which that second offence relates; and
 - (iii) setting out the sections referred to in subparagraph (ii); and
- (b) affix the notices in paragraph (a) to a conspicuous part of the premises in relation to which the offence is proved to have committed; and
- (c) arrange to publish the notice in Chinese in one newspaper published in Hong Kong in the Chinese language, and the notice in English in one newspaper so published in the English language.

(2) For the purpose of the application for a closure order, a certificate purporting to be signed by a scheduled member not

below the rank of Assistant Divisional Officer stating that the officer has affixed a notice in accordance with subsection (1) shall, unless the contrary is proved, be presumed to be -

- (a) signed by the officer; and
- (b) evidence of the facts stated in the certificate relating to that affixing.

**25. Notification to owner etc. of convictions
for the purpose of application for
termination of tenancy**

If a person is convicted by a magistrate of an offence under section 19 or 20, a magistrate may order that a notice of the fact shall be served either personally on or sent by registered post to -

- (a) the owner and, if ascertainable, the tenant, of the premises in relation to which the offence is proved to have been committed; or
- (b) if the person in paragraph (a) cannot be found or is absent from Hong Kong or is under disability, the agent of the person (if any); or
- (c) if the person is a body corporate, the chairman, president, manager, secretary, or other similar officer of the body.

Division 2 - Termination of tenancy and closure order

26. Termination of tenancy

- (1) A magistrate may, on application -

- (a) by a person to whom a notice was served under section 25; or
- (b) in the case of a body corporate, by the body or by a person on behalf of the body,

make an order terminating the tenancy of the premises in relation to which a person has been convicted of an offence under section 19 or 20, and the tenancy shall terminate as from the date of the order for all purposes.

(2) A tenant under the tenancy so terminated and an occupier of the premises under the tenancy may be treated as trespassers on the termination of the tenancy.

(3) An order under subsection (1) shall be sufficient authority to a member or police officer -

- (a) to enter into the premises specified in the order; and
- (b) to evict from the premises any person who may under subsection (2) be treated as a trespasser; and
- (c) to remove from the premises anything belonging to or in the possession of the person treated as a trespasser.

(4) A member or police officer may use such force as is necessary to exercise the power conferred under subsection (3).

(5) The powers under this section shall be in addition to and not in derogation of any powers conferred by or under any other law.

27. Making of closure order

(1) This section applies to an offence under section 19 and 20. An offence to which this section applies is referred to in this section as a "relevant offence".

(2) A magistrate may, either on an application by the Director or on the magistrate's own initiative, make a closure order in respect of any premises in relation to which a person is convicted of any relevant offence if the magistrate is satisfied -

- (a) that the relevant offence was committed within a period beginning 4 months after and ending 16 months after an immediately preceding conviction of either the same person or otherwise for any relevant offence in respect of the same premises (whether or not a closure order was made in respect of the preceding conviction); and
- (b) that a notice under section 24 in respect of the immediately preceding conviction has been affixed and published in accordance with that section.

(3) The magistrate making the closure order -

- (a) shall have the same power to sentence or otherwise deal with the convicted person as if a closure order were not being made; and
- (b) shall leave the closure order out of account in determining the appropriate sentence or other manner of dealing with the convicted person.

28. Closure order

A closure order -

- (a) shall identify the premises to which it applies; and
- (b) shall state that the premises are to be closed for 6 months; and
- (c) shall state that a person commits an offence if the person -
 - (i) enters the premises; or
 - (ii) is in the premises after they have been closed; or
 - (iii) without reasonable excuse, interferes with anything used to close the premises; and
- (d) shall state that any person who is a mortgagee or chargee of the premises or who would, if the premises were not closed -
 - (i) be entitled or permitted to occupy or possess the premises; or
 - (ii) be the immediate landlord of the occupier of the premises,

may apply to suspend the closure order under section 35.

29. Registration of closure order

(1) The magistrate making the closure order under section 27 shall, as soon as reasonably practicable, send a copy of the order signed by the magistrate to the Director.

(2) On receipt of the copy of the order, the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

30. Issue of warrant

The magistrate making the closure order in respect of any premises -

- (a) shall issue a warrant to any bailiff, commanding the bailiff to close the premises and to fix a copy of the closure order to a conspicuous part of the premises; and
- (b) may direct that the warrant is not to be executed until after a specified period not exceeding 3 days.

31. Power of bailiff

(1) A bailiff by executing a warrant issued under section 30, and any person assisting the bailiff, may -

- (a) enter (by force if necessary) any place in order to effect the closure;
- (b) evict persons from the premises;
- (c) use such reasonable force and take such reasonable measures as are necessary to effect the closure.

(2) A person who obstructs a bailiff or a person who assists the bailiff in the exercise of any function under subsection (1) commits an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

32. Interfering premises subject to closure order

- (1) A person commits an offence if the person without reasonable excuse -
- (a) interferes with any lock, bar or other thing used to close the premises subject to a closure order; or
 - (b) enters or is in the premises that have been closed under a closure order.

(2) Subsection (1) does not apply -

- (a) to a public officer in the course of carrying out the officer's duty;
- (b) to a person who has permission in writing to enter from a magistrate.

(3) A person who is convicted of an offence under this section shall be liable to a fine at level 3 and to imprisonment for 6 months.

33. Application for rescission of closure order

(1) If a closure order has been made in respect of any premises, a person to whom this section applies may apply in writing to a magistrate for the closure order to be rescinded.

(2) This section applies to a person who became a bona fide purchaser, mortgagee or chargee for valuable consideration of an interest in the premises -

- (a) after another person had been convicted of an offence or had been charged with an offence for which that another person was subsequently convicted, and that conviction being the conviction on which the closure order was based; and
- (b) before a notice relating to that conviction or charge was registered in accordance with section 23.

(3) An application under this section -

- (a) shall state the name, address and business or occupation of the applicant; and
- (b) if the applicant is an individual, shall be accompanied by a copy of a document which is proof of his identity for the purposes of section 17B(1) of the Immigration Ordinance (Cap. 115).

(4) On receipt of an application under this section, the magistrate shall -

- (a) appoint a date for the hearing of the application; and
- (b) send a copy of the application and of the accompanying document of identity to the Director; and
- (c) inform the Director of the date of the hearing.

(5) After hearing an application under this section and any representations made by or on behalf of the Director, the magistrate may rescind the closure order -

- (a) if satisfied that, at the time the applicant became a bona fide purchaser, mortgagee or chargee for valuable consideration of an interest in the premises, the applicant did not know of the charge or conviction (as the case may be) in relation to which a notice had not been registered in accordance with section 23; and
- (b) if satisfied that, having regard to all the circumstances of the case, it would be unjust for the applicant to be affected by the closure order.

(6) The magistrate who rescinds a closure order under subsection (5) shall, as soon as reasonably practicable, send a notice in writing signed by the magistrate stating that fact to the Director.

(7) On receipt of the notice under subsection (6), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

34. Rescission of closure order on successful appeal against conviction

(1) If a person (first-mentioned person) successfully appeals against a conviction (first-mentioned conviction) on which a closure order is based, the appellate court shall rescind the order unless -

- (a) the first-mentioned person or any other person was convicted in the same proceedings of an offence of which the first-mentioned person remains convicted and, as a result, the closure order could have been made without reference to the first-mentioned conviction; or
- (b) the appellate court substitutes a verdict of guilty of another offence on which the closure order could, if the person had originally been convicted of that offence, have been based.

(2) The court that rescinds a closure order under subsection (1) shall, as soon as reasonably practicable, send a notice in writing sealed with the seal of the court stating that fact to the Director.

(3) On receipt of the notice under subsection (2), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

35. Application for suspension order

(1) If a closure order has been made in respect of any premises, a person who is a mortgagee or chargee of the premises or who would, if the premises were not closed -

- (a) be entitled or permitted to occupy or possess the premises; or
- (b) be the immediate landlord of the occupier of the premises,

may apply in writing to a magistrate for the closure order to be suspended.

- (2) An application under this section -
 - (a) shall state the name, address and business or occupation of the person who is proposed to be the occupier of the premises, during the suspension of the closure order; and
 - (b) shall state the purpose for which it is proposed the premises be used, during the suspension of the closure order; and
 - (c) if the proposed occupier is an individual, shall be accompanied by a copy of a document which is proof of the individual's identity for the purposes of section 17B(1) of the Immigration Ordinance (Cap. 115).

- (3) On receipt of an application under this section, the magistrate shall -
 - (a) appoint a date for the hearing of the application; and
 - (b) send a copy of the application and of the accompanying document of identity to the Director; and
 - (c) inform the Director of the date of the hearing.

(4) After hearing an application under this section and any representations made by or on behalf of the Director, the magistrate may make an order suspending the closure order for a period of at least 2 years but not exceeding 3 years if the magistrate is satisfied that the proposed use of the premises is unlikely to pose an undue risk of fire.

- (5) The magistrate making a suspension order under subsection (4) -
- (a) shall attach a condition to the order to the effect that the premises are, during the suspension, to be used only for the purpose proposed and, when occupied, to be occupied by the person proposed; and
 - (b) may attach any other conditions to the order as the magistrate thinks fit, including a condition that a person gives security, in such a manner and such amount as may be specified, that will be forfeited as a result of a breach of the condition referred to in paragraph (a).

(6) The magistrate may enforce payment of any sum of money that is forfeited as a result of a breach of any condition attached to a suspension order in the same manner as if it were a judgment debt and any money recovered shall be paid into the general revenue.

(7) If a closure order is suspended and is not revived under section 36, the order shall cease to have effect at the end of the period for which it was suspended.

(8) The magistrate making a suspension order shall, as soon as reasonably practicable, send a copy of the order signed by the magistrate to the Director.

(9) on receipt of the copy of the order under subsection (8), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

(10) A person -

- (a) referred to in subsection (1)(a) or (b); or
- (b) liable to be penalized in the event of a breach of a condition attached to the suspension order under subsection (5),

may, apply in writing to a magistrate, and as far as is practicable be made to the magistrate who made the suspension order, for a variation of any condition attached to the order.

36. Revival of closure order

(1) If a closure order has been suspended under section 35, a scheduled member not below the rank of Assistant Divisional Officer may apply in writing to the magistrate making the order for the closure order to be revived on the basis that there is a breach of a condition attached to the suspension order.

(2) On receipt of an application made under subsection (1), the magistrate shall -

- (a) appoint a date for the hearing of the application; and
- (b) issue a summons to the occupier of the premises, the immediate landlord of the occupier of the premises, and any person liable to be penalised in the event of a breach of a condition attached to the suspension order, requiring them to appear before the magistrate on the hearing of the application.

(3) An application under this section is, for the purposes of section 8 of the Magistrates Ordinance (Cap. 227), a complaint, but -

- (a) if the place of abode of the immediate landlord of the occupier of the premises is not known, a summons to the immediate landlord may be served by leaving it with any person at the premises; and
- (b) if the identity of the immediate landlord is not known, a summons may be issued to the immediate landlord by reference to that status, without naming the immediate landlord.

(4) After hearing of an application under subsection (1), the magistrate may, if satisfied that a condition of the suspension order has been breached, take any or all of the following action -

- (a) make an order reviving the closure order;
- (b) make such modifications to the closure order as considered necessary by the magistrate.

(5) The magistrate making an order under subsection (4) shall, as soon as reasonably practicable, send a copy of the order signed by the magistrate to the Director.

(6) On receipt of the copy of the order under subsection (5), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

(7) If the magistrate makes an order under subsection (4), the period during which the closure order was suspended shall not count as part of the period for which the closure order is in force.

**37. Registration of notices and orders
relating to premises**

A notice or copy of an order sent to the Land Registry by the Director under this Part shall be taken to be an instrument affecting land, but a failure to register such a notice or copy of an order shall not, except as is provided in section 33, affect its validity as against any person.

SCHEDULE 1

[ss. 3, 10, 11 & 16]

FORMS FOR NOTICES AND ORDERS UNDER THIS REGULATION

FORM 1

[s. 3]

FIRE SERVICE (FIRE HAZARD ABATEMENT) REGULATION

(Section 3)

Fire Hazard Abatement Notice

TO
.....(name and address of person by reason of whose own or whose servant's or agent's act, default or sufferance the fire hazard arose or continues, or owner, tenant, occupier or person in charge of the premises at which the fire hazard exists, as the case may be).

1. TAKE NOTICE that under section 3 of the Fire Service (Fire Hazard Abatement) Regulation the Director of Fire Services, being satisfied of the existence at (premises where fire hazard exists) of a fire hazard being (describe the fire hazard), does hereby require you within (specify the time) from the service of this notice, to abate the fire hazard and for that purpose to (specify works to be executed).

2. If you make default in complying with the requirements of this notice you are liable to prosecution for an offence under

section 9 of the Fire Service (Fire Hazard Abatement) Regulation. Upon conviction, a court may impose a maximum fine at level 6 and a further fine of \$10,000 for each day during which the offence continues. Application may also be made for an order against you requiring the abatement of the fire hazard or prohibiting its recurrence or both and for recovering the costs which may be incurred thereby.

Dated this day of,

(Signed)
Director of Fire Services.

FIRE SERVICE (FIRE HAZARD ABATEMENT) REGULATION

(Section 10)

Fire Hazard Order

To A.B. of
(or to the owner, tenant, occupier or person in charge of) (describe premises)
situate (insert such
description of the situation as may be sufficient to identify the premises).

WHEREAS the said A.B. (or, the owner, tenant, occupier or person in charge of the
said premises, namely)
has this day appeared before me/us, (describing
the court), to answer the matter of a complaint made by etc.
that at etc.

(follow the words of complaint in summons):
(or, in the case where the party charged does not appear, say, in place of the foregoing).

WHEREAS it has been now proved to my/our satisfaction that a summons has been
duly served requiring the said A.B. (or the owner, tenant, occupier or person in charge

of the said premises) to appear this day before me/us to answer the matter of a complaint made by etc. that at etc. (following the words of complaint in summons):

(Any of the following orders may be made or a combination of any of them, as the case seems to require.)

Now on proof here had before me/us that the fire hazard so complained of does exist at the said premises (*add, where the order is made on the person causing the fire hazard* - and that the fire hazard is caused by the act, default or sufferance of A.B.), I/we, in pursuance of section 10 of the Fire Service (Fire Hazard Abatement) Regulation, do order the said A.B. (or, the said owner, tenant, occupier or person in charge) within (specify the time) from the service of this order to abate (here specify the fire hazard to be abated and the manner, whether by compliance with the requirements of the relevant fire hazard abatement notice, or otherwise).

Order 1

And I/we being satisfied that, notwithstanding that the said fire hazard may be temporarily abated under this order, the fire hazard is likely to recur, do therefore prohibit the said A.B. (or, the said owner, tenant, occupier or person in charge) from allowing the recurrence

Order 2

of the said fire hazard (and for that purpose I/we direct the said A.B. (or, the said owner, tenant, occupier or person in charge) [here specify any works to be executed]).

Now on proof here had before me/us that at or recently before the time of making the said complaint, to wit, on the fire hazard so complained of did exist at the said premises, but that the fire hazard has since been abated (*add where the order is made on the person who caused the fire hazard* - and that the fire hazard was caused by the act, default or sufferance of A.B.), yet, notwithstanding the abatement, I/we, being satisfied that it is likely that the same fire hazard will recur at the said premises, do therefore prohibit (*continue as in Order 2*).

Order 3

Dated this day of,

(Signed)

Magistrate

FIRE SERVICE (FIRE HAZARD ABATEMENT) REGULATION

(Section 11)

Prohibition Order

TO

..... (name and address of person served with a fire hazard abatement notice under section 3 of the Fire Services (Fire Hazard Abatement) Regulation being a person upon whom a fire hazard abatement notice under section 3 was served on (date of service) in respect of premises situate at.....

.....

(insert such description of the situation as may be sufficient to identify the premises).

TAKE NOTICE that the Director of Fire Services has this day appeared before me/us and by information sworn on oath has proved to my/our satisfaction that -

- (a) you have been given notice in writing by the Director of Fire Services as required by section 11(2)(a) of the Regulation of his intention to swear the information; and
- (b) the fire hazard continues and the cause of the fire hazard is the structural character of the premises or their location having regard to the nature of the area in which they are situated; and

- (c) the premises are being used for a purpose which may materially increase the likelihood of fire or other calamity or danger to life or property resulting from the outbreak of fire or the occurrence of any other calamity in or on the premises.

NOW THEREFORE I/We in pursuance of section 11 of the Regulation do hereby PROHIBIT the use of the premises for the purpose specified as follows:

.....
.....
.....

(describe use, purpose and prohibition).

Dated this day of,

(Signed)

Magistrate

FIRE SERVICE (FIRE HAZARD ABATEMENT) REGULATION

(Section 16)

Removal Order

TO
(name and address) being the owner, tenant, occupier or person in charge of premises situated at having been convicted of the offence of (describe offence) under [section [14/15] of the Fire Service (Fire Hazard Abatement) Regulation] on (date of conviction) at Court.

TAKE NOTICE that under section 16 of the Fire Service (Fire Hazard Abatement) Regulation I/we do require you within (specify time) from the service of this order to remove (specify articles to be removed).

IF you make default in complying with the requirements of this order you are liable to prosecution for an offence under section 16(4) of the Fire Service (Fire Hazard Abatement) Regulation. On conviction, you may be liable to a maximum fine of \$200,000, and you may also be liable to a further fine of \$20,000 for each day during which the offence continues. The Director of Fire Services may also carry out any work necessary to give effect

to the requirements of this order and take proceedings to recover from you the costs, which may be incurred thereby.

Dated this day of,

(Signed)

Magistrate

(Signed)

Magistrate

SCHEDULE 2

[s. 2]

SCHEDULE MEMBERS

Director of Fire Services

Deputy Director of Fire Services

Chief Fire Officer

Deputy Chief Fire Officer

Senior Divisional Officer

Divisional Officer

Assistant Divisional Officer

Senior Station Officer

Station Officer

Principal Fireman

Senior Fireman

Fireman

Clerk to the Executive Council

COUNCIL CHAMBER

Explanatory Note

The purpose of this Regulation is to provide for matters relating to -

- (a) the fire hazard abatement notice; and
- (b) the fire hazard order and prohibition order; and
- (c) the fire hazard offences; and
- (d) the investigation powers; and
- (e) the protection of innocent parties; and
- (f) the closure order.

2. Part 1 (sections 3 to 9) provides for matters relating to a fire hazard abatement notice as follows -

- (a) section 3 provides that if the Director of Fire Services ("the Director") is satisfied that there is in existence a fire hazard in or on any premises, the Director may serve a fire hazard abatement notice on a person requiring that person to abate the fire hazard;
- (b) sections 4 and 5 provide that the Director may carry out works to abate a fire hazard or prevent it from recurring;
- (c) section 6 provides that the power to carry out works to abate a fire hazard or prevent it from recurring may only be delegated to a Deputy Director of Fire Services or a Chief Fire Officer but not other public officers;
- (d) section 7 provides that the Director may remove any article that may create a fire hazard;

- (e) section 8 provides for the recovery of expenses incurred in carrying out works by the Director to abate a fire hazard and prevent it from recurring;
- (f) section 9 provides for the offences for non-compliance with the requirement of a fire hazard abatement notice.

3. Part 2 (sections 10 to 13) provides for matters relating to a fire hazard order and prohibition order as follows -

- (a) section 10 provides that a magistrate may make a fire hazard order for either or both of the following purposes -
 - (i) to require a person on whom a fire hazard abatement notice is served to comply with the requirement of a fire hazard abatement notice;
 - (ii) to prohibit a person from causing, permitting or suffering the fire hazard to recur;
- (b) section 11 provides that a magistrate may make a prohibition order to prohibit any premises to be used for a particular purpose;
- (c) section 12 provides for the offences of contravention of a fire hazard order or a prohibition order;
- (d) section 13 provides for the appeals against a fire hazard order or a prohibition order.

4. Part 3 (sections 14 to 20) provides for the fire hazard offences as follows -

- (a) sections 14 and 15 provide that it is an offence to obstruct or lock a means of escape;
- (b) section 16 provides for the power of the magistrate to make orders to remove any article or things that obstruct or lock or other devices that secures the means of escape;
- (c) section 17 provides that it is an offence to convey 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;
- (d) section 18 provides that it is an offence to stow 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;
- (e) section 19 provides that it is an offence to possess a controlled substance in or on any premises for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle, unless an approval, whether in the form of a licence or otherwise, is issued under the Dangerous Goods Ordinance (Cap. 295) in respect of the storage of the controlled substance in or on the premises;
- (f) section 20 provides that -

- (i) a person who is the owner, tenant, occupier or person in charge of any premises in relation to which an offence under section 19 is committed commits an offence if the person knowingly permits or suffers the offence to be committed in or on the premises; and
- (ii) a person who lets or agrees to let any premises with the knowledge that an offence under section 19 is to be committed in or on the premises commits an offence.

5. Part 4 (sections 21 and 22) provides for the powers to obtain personal particulars and to stop, board and search a vehicle and seize articles carried in, on or by it.

6. Part 5 (sections 23 to 38) provides for the protection of innocent parties termination of tenancy and closure order as follows -

- (a) section 23 provides that -
 - (i) if a charge under section 19 or 20 is preferred against a person or withdrawn, a notice in writing may be registered by the Director in the Land Registry in respect of the premises involved; and
 - (ii) if a person is acquitted or convicted, or successfully appeals against a conviction for an offence under section 19 or 20, a notice of that fact shall be registered

by the Director in the Land Registry in respect of the premises involved;

- (b) section 24 provides that if a person is convicted of an offence under section 19 or 20, a notice stating that fact shall be affixed to a conspicuous part of the relevant premises and published in newspapers;
- (c) section 25 provides that if a person is convicted of an offence under section 19 or 20 by a magistrate, a notice of that fact may be sent to the owner and tenant of the relevant premises;
- (d) section 26 provides that on application of the owner or tenant, a magistrate may make an order to terminate the tenancy of the relevant premises;
- (e) sections 27 and 28 provide for the making of a closure order in respect of any premises involved in an offence under section 19 or 20 to close the premises for 6 months;
- (f) section 29 provides that a closure order shall be registered by the Director in the Land Registry;
- (g) sections 30, 31 and 32 provide for the enforcement of the closure order;
- (h) sections 33 and 34 provide for the application and making of an order by a magistrate to rescind a closure order;
- (i) section 35 provides for the application and making of an order by a magistrate to suspend a closure order;

- (j) section 36 provides for the revival of a closure order that is suspended.

Chapter: 95	Title:	FIRE SERVICES ORDINANCE	Gazette Number:
	Heading:	Long title	Version Date: 30/06/1997

To make better provision as to the constitution, duties and powers of the Fire Services Department and as to the discipline of members thereof and to make provision for the prevention of fire hazards and for a welfare fund; and to regulate the registration of fire service installation contractors and to provide for the control of the sale, supply, installation, repair, maintenance and inspection of fire service installations or equipment; and for purposes connected with the matters aforesaid.

(Amended 42 of 1961 s.2; 1 of 1964 s.2; 45 of 1971 s.2)

[13 August 1954]

(Originally 32 of 1954)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number: 76 of 1999
Section: 2	Heading: Interpretation	Version Date: 01/07/1997

Remarks:

Adaptation amendments retroactively made - see 76 of 1999 s.3

In this Ordinance, unless the context otherwise requires-
"calamity" (災難) means an occurrence by which life or property is endangered; (Added 1 of 1961 s.2)

"Director" (處長) means the Director of Fire Services; (Replaced 42 of 1961 s.2)

"fire hazard" (火警危險) means-

(a)-(b) (Repealed 4 of 1985 s.2)

(c) any removal from any building of any fire service installation or equipment which was provided in such building in accordance with plans certified by the Director for the purposes of section 16 of the Buildings Ordinance (Cap 123);

(d) the presence in any building of any fire service installation or equipment which from lack of proper maintenance or for any other reason is not in efficient working order; (Amended 56 of 1969 s.2)

(e) inadequate means of egress from any premises in a building to street level outside the building or using such means of egress for a purpose which gives rise to any circumstance described in paragraph (f); (Added 56 of 1969 s.2. Amended 29 of 1975 s.2)

(f) any other matter or circumstance which materially increases the likelihood of fire or other calamity or the danger to life or property that would result from the outbreak of fire or the occurrence of any other calamity, or which would materially hamper the Fire Services Department in the discharge of its duties in the event of fire or other calamity; (Added 1 of 1964 s.3)

"fire service installation or equipment" (消防裝置或設備) means any installation or equipment manufactured, used or designed to be used for the purposes of-

(a) extinguishing, attacking, preventing or limiting a fire;

(b) giving warning of a fire;

(c) providing access to any premises or place for the purpose of extinguishing, attacking, preventing or limiting a fire; (Added 45 of 1971 s.3)

"government regulations" (政府規例) means the administrative rules known as the Government Regulations and any other administrative rules or instruments regulating the public service; (Replaced 76 of 1999 s.3)

"member" (成員) means a person holding any rank in the Fire Services Department set out in the Sixth Schedule; (Replaced 29 of 1975 s.2)

"member of other ranks" (員佐級成員) means a member holding a rank set out in Part III of the Sixth Schedule; (Added 29 of 1975 s.2)

"occupier" (佔用人) means in the case of domestic buildings a person resident therein and in the case of other buildings means a person carrying on an occupation full-time in such building; (Added 29 of 1975 s.2)

"owner" (擁有人)-

(a) in respect of any premises, has the meaning assigned to it by section 2 of the Buildings Ordinance (Cap 123); and

(b) in respect of any fire service installation or equipment, includes the occupier or the owner of the premises in or on which the fire service installation or equipment is installed or kept; (Replaced 45 of 1971 s.3)

"premises" (處所) includes any place, but excludes any vessel; (Added 1 of 1964 s.3. Amended 55 of

1981 s.2)

"Public Service (Administration) Order" (《公務人員(管理)命令》) means-

- (a) the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997);
- (b) the Public Service (Disciplinary) Regulation made under section 21 of that Order (and together with that Order published as S.S. No. 5 to Gazette No. 2/1997); and
- (c) any other regulation made or any direction given under that Order, as amended from time to time; (Added 76 of 1999 s.3)

"senior officer" (高級人員) means a member holding a rank set out in Part I of the Sixth Schedule; (Replaced 29 of 1975 s.2)

"subordinate officer" (部屬人員) means a member holding a rank set out in Part II of the Sixth Schedule; (Replaced 29 of 1975 s.2)

"tenant" (租客) includes sub-tenant; (Added 54 of 1986 s.2)

"vessel" (船隻) includes-

- (a) any ship (not being a ship of war or a ship having the status of a ship of war), junk, boat, dynamically supported craft, seaplane or any other description of vessel used in navigation; and
 - (b) any other description of vessel not used in navigation or not constructed or adapted for use in navigation. (Added 55 of 1981 s.2. Amended 41 of 1992 s.2)
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Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number: 76 of 1999
Section: 9	Heading: Abatement of fire hazards	Version Date: 01/07/1997

Remarks:

Adaptation amendments retroactively made - see 76 of 1999 s.3

- (1) (a) The Director, if satisfied of the existence in or on any premises of any fire hazard, may serve-
- (i) upon the person by reason of whose act, default or sufferance the fire hazard arose or continues; or
 - (ii) if such person is the servant or agent of some other person, upon such other person; or
 - (iii) if such person or such other person, as the case may be, cannot readily be found or is absent from Hong Kong, upon the owner, tenant, occupier or person in charge of the premises in or on which such fire hazard exists, (Amended 76 of 1999 s.3)
- a notice in the form of Form 2 in the Fifth Schedule (in this section referred to as a fire hazard abatement notice) requiring him to abate the fire hazard within the period specified in the notice, and to do all such things as may be necessary for that purpose, and the notice may, if the Director thinks fit, specify any works to be executed for the purpose aforesaid. (Amended 56 of 1969 s.3; 54 of 1986 s.3)
- (b) (Repealed 54 of 1986 s.3)
- (c) Any notice served under this section may be served by registered post. (Added 56 of 1969 s.3)
- (1A) The Director may, by notice in writing served either personally or by registered post, require-
- (a) any person upon whom he serves a notice under subsection (1); or
 - (b) any person whom he reasonably suspects of being the person by reason of whose act, default or sufferance the fire hazard arose, or continues,
- to give correct particulars of his name and address and produce proof of his identity to the Director before the expiry of such time being not less than 24 hours as may be specified in the notice. (Added 54 of 1986 s.3)
- (1B) The reference in subsection (1A) to a person's identity shall be construed in accordance with the definition of "proof of identity" in section 17B of the Immigration Ordinance (Cap 115). (Added 54 of 1986 s.3)
- (1C) Any person who-
- (a) without reasonable excuse, fails to comply with a requirement under subsection (1A) before the expiry of the time specified in the notice; or
 - (b) furnishes particulars which he knows to be false in connection with a requirement under subsection (1A),
- shall be guilty of an offence and shall be liable to a fine of \$5000. (Added 54 of 1986 s.3)
- (2) Where the person by reason of whose act, default or sufferance a fire hazard arose or continues cannot be found and it is clear that the fire hazard neither arose nor continues by reason of any act, default or sufferance on the part of the owner, tenant, occupier or person in charge of the premises in or on which it exists, the Director may abate the hazard and may do what is necessary to prevent a recurrence thereof. (Amended 54 of 1986 s.3)
- (3) Where a fire hazard abatement notice is served on any person pursuant to subsection (1), then, if either-
- (a) the fire hazard to which the notice relates arose by reason of the wilful act or default of that person; or
 - (b) that person fails to comply with any of the requirements of the notice within the time specified therein,
- he shall (whether or not an order under subsection (4) has been made in respect of him) be guilty of an offence and shall be liable to a fine of \$25000 and, where the offence is the failure to comply with any of

the requirements of a notice within the time specified therein, to a fine of \$2500 for each day during which the offence continues. (Amended 25 of 1982 s.3)

(3AA) Where at any time any person is convicted of an offence under subsection (3), the magistrate may of his own motion or upon the application of the Director, make an order in respect of that person in Form 3 in the Fifth Schedule (in this section referred to as a "fire hazard order"). (Added 54 of 1986 s.3)

(3AB) A fire hazard order shall be in addition to any penalty imposed in respect of an offence under subsection (3). (Added 54 of 1986 s.3)

(3A) Where a fire hazard abatement notice is served on any person under subsection (1) and-

(a) that person-

(i) fails to abate the fire hazard within the time specified in the notice; or
(ii) causes, permits or suffers the fire hazard to recur at any time within a period of 12 months after the date of service of the notice; and

(b) the Director is satisfied that the fire hazard to which the notice relates-

(i) constitutes an immediate and substantial danger of fire in or on the premises; or
(ii) is likely, if fire breaks out in or on the premises, to increase substantially the normal risk to life which occurs in the event of a fire,

the Director may cause to be carried out in or on the premises such work as appears to him to be necessary to abate the fire hazard and to prevent a recurrence thereof. (Replaced 54 of 1986 s.3)

(3B) Notwithstanding section 6, the Director may authorize the Deputy Director or any Chief Fire Officer to exercise the powers and duties conferred on him by subsection (3A) but he shall not be empowered to authorize any other person to exercise any of those powers or duties. (Added 56 of 1969 s.3)

(4) Where a fire hazard abatement notice is served on any person under subsection (1) and-

(a) whether or not that person has been convicted of an offence under subsection (3) he fails to comply with any of the requirements of the notice within the time specified therein; or

(b) the fire hazard, whether or not abated since the service of the notice, recurs, or is in the opinion of the Director likely to recur,

the Director may make a complaint to a magistrate's court and the magistrate hearing the complaint may make a fire hazard order in Form 3 in the Fifth Schedule. (Replaced 54 of 1986 s.3)

(4A) Where any person upon whom a fire hazard abatement notice is served under subsection (1) causes, permits or suffers the fire hazard to recur at any time within a period of 12 months after the date of service of the notice, he shall be guilty of an offence and shall be liable on conviction to a fine of \$25000 and to a fine of \$2500 for each day during which the offence continues. (Added 54 of 1986 s.3)

(5) A fire hazard order may be-

(a) an abatement order, that is to say, an order which requires a person to comply with all or any of the requirements of a fire hazard abatement notice in connection with which the order is made, or otherwise to abate the fire hazard or to do what may be necessary to prevent the recurrence of the fire hazard within the period specified in the order; or

(b) a prohibition order, that is to say, an order which prohibits the recurrence of the fire hazard; or

(c) (Repealed 54 of 1986 s.3)

(d) a combination of such orders.

(6) (Repealed 54 of 1986 s.3)

(7) An abatement order or a prohibition order shall, if the person in respect of whom the order is made so requires or if the court making the order considers it desirable, specify the works to be executed by such person for the purpose of abating, or of preventing the recurrence of, the fire hazard to which the order relates.

(7A) Where a fire hazard abatement notice is served on any person under subsection (1) and it is proved to the satisfaction of a magistrate's court on the sworn information of the Director that-

(a) not less than 24 hours notice in writing served either personally or by registered post of intention to swear the information was given by the Director to the person upon whom a notice was served under subsection (1); and

(b) the fire hazard continues and the cause of the fire hazard is the structural character of the

premises concerned or the location of the premises having regard to the nature of the area in which the premises are situated; and

- (c) the premises are being used for a purpose which may materially increase the likelihood of fire or other calamity or danger to life or property resulting from the outbreak of fire or the occurrence of any other calamity in or on the premises,

the magistrate may make an order in Form 3A in the Fifth Schedule (in this section referred to as a "closing order") prohibiting the use of the premises for the purpose specified therein. (Added 54 of 1986 s.3)

(8) A magistrate's court if satisfied that any premises in respect of which a closing order is in force has been rendered suitable for the use specified in the order may declare that it is so satisfied and revoke the closing order. (Amended 56 of 1969 s.3)

(9) (a) Any person who without reasonable excuse knowingly contravenes a fire hazard order or a closing order shall be guilty of an offence and shall be liable to a fine of \$50000 and to a fine of \$5000 for each day during which the offence continues. (Amended 25 of 1982 s. 3; 54 of 1986 s.3)

- (b) Without prejudice to paragraph (a), where a fire hazard order has not been complied with the Director may, subject to subsection (10)(c), abate the fire hazard and may do whatever may be necessary in execution of the order, and may recover any expenses reasonably incurred thereby from the person against whom the order was made.

(10) Part VII of the Magistrates Ordinance (Cap 227) shall apply in relation to proceedings in a magistrate's court under this section subject to the following provisions-

(a) in the event of an appeal against a fire hazard order or a closing order, the order shall be suspended pending the determination or abandonment of the appeal and, in the case of an order other than an order quashed in the appeal, the time for compliance with the requirements thereof shall not commence to run until the determination or abandonment of the appeal; (Amended 54 of 1986 s.3)

(b) in the case of a fire hazard order which is or includes a prohibition order or requires structural works or a closing order, if the appeal is dismissed or abandoned, then, notwithstanding paragraph (a), the appellant shall be liable to a fine of \$5000 for each day, during which the order was not complied with, after the expiry of the time that would have been permitted for compliance with the requirements of the order if there had been no appeal against the order, until the day immediately preceding the day of the dismissal or abandonment of the appeal, unless he satisfies the court hearing the appeal in the case of an appeal which is dismissed, or the court before which proceedings are taken for the recovery of the fine in the case of an appeal which was abandoned, that there was substantial ground for the appeal and that the appeal was not brought merely for the purpose of delay; and in the case of an appeal which is dismissed, the fine (if any) imposed under this paragraph shall be imposed by the court hearing the appeal, and in the case of an appeal which was abandoned the maximum fine of \$5000 for each day aforesaid shall, for the purpose of proceedings for the recovery thereof, be deemed to have been imposed by the court before which such proceedings are taken but so, however, that the court may reduce or cancel the amount of the fine if it sees fit; (Amended 54 of 1986 s.3)

(c) in the event of an appeal against a fire hazard order which requires the execution of structural work, no work, save as hereinafter mentioned, shall be done pursuant to subsection (9)(b) under the order until after the determination or abandonment of the appeal:

Provided that, if the court by which the order was made is of opinion that the nature of the fire hazard is such as to require immediate abatement, the court may, notwithstanding that the appeal is pending, authorize the Director immediately to abate the hazard, so, however, that-

- (i) if the appeal is allowed, the Director shall pay to the person against whom the order was made the amount of any damage by him by reason of the abatement

- of the hazard by the Director; and
- (ii) if the appeal is dismissed or abandoned the Director may recover from such person the expenses incurred by him in abating the hazard.
- (11) (a) Any property removed by the Director in abating, or doing what is necessary to prevent the recurrence of, a fire hazard may be sold by public auction, or, if the Director thinks the circumstances of the case require it, may otherwise be sold, or may be disposed of without sale.
- (b) The money arising from the sale of any property under this subsection may be retained by the Director and applied in payment of the expenses incurred by him in connection with the abatement of the fire hazard and the surplus, if any, shall be paid-
- (i) to the owner of such property if he applies therefor within 12 months of the date of sale; or
 - (ii) into the general revenue of Hong Kong if, or to the extent to which, the surplus is not disposed of under sub-paragraph (i).
- (Amended 76 of 1999 s.3)
- (Added 1 of 1964 s.4. Amended 29 of 1975 s.7)
-

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number: 76 of 1999
Section: 9A	Heading: Recovery of expenses incurred in carrying out work under section 9(3A)	Version Date: 01/07/1997

Remarks:

Adaptation amendments retroactively made - see 76 of 1999 s.3

(1) The expenses incurred by the Director in carrying out work under section 9(3A) shall be a debt due to the Government and, subject to subsection (2) of this section, shall be recoverable in the District Court from the person upon whom the fire hazard abatement notice was served. (Amended 76 of 1999 s. 3)

(2) It shall be a defence for any person against whom an action is brought under subsection (1) to satisfy the court that-

- (a) the fire hazard to which the fire hazard abatement notice relates-
 - (i) did not constitute an immediate and substantial danger of fire in or on the premises where the fire hazard was found; and
 - (ii) was not likely, if fire had broken out in or on the premises, to increase substantially the normal risk to life which occurs in the event of a fire; or (Amended 29 of 1975 s.8)
- (b) the fire hazard was due to the act or omission of some person other than the person upon whom the fire hazard abatement notice was served.

(3) Nothing in this section shall be construed as affecting any right which the person upon whom a fire hazard abatement notice has been served may have to a contribution, indemnity or damages from any other person.

(Added 56 of 1969 s.4)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number:
Section: 9B	Heading: Obstruction and locking of means of escape	Version Date: 30/06/1997

(1) Any person-

- (a) who sets out or leaves or causes to be set out or left; or
- (b) who being the owner, tenant, occupier or person in charge of any premises permits or suffers to be set out or left,

any matter or thing which obstructs or may obstruct the means of escape in any premises shall be guilty of an offence.

(2) Any person-

- (a) who secures or causes to be secured; or
- (b) who being the owner, tenant, occupier or person in charge of any premises permits or suffers to be secured,

the means of escape in any premises by any lock or other device which in the event of fire or other calamity-

- (i) cannot readily and conveniently be opened from within the premises without the use of a key; or
- (ii) might render escape materially more difficult,

shall be guilty of an offence.

(3) Any person who is guilty of an offence under subsection (1) or (2) shall be liable-

- (a) on first conviction to a fine of \$25000;
- (b) on second or subsequent conviction, to a fine of \$50000 and imprisonment for 1 year; and
- (c) in any case to a fine of \$5000 for each day during which the offence continues.

(4) In any proceedings under subsection (3), a document purporting to be a certificate signed by the Director stating that the person named in the certificate was on a date specified in the certificate convicted of an offence contrary to subsection (3) shall be admitted in evidence on its production without further proof, and until the contrary is proved it shall be presumed that-

- (a) the person who signed the certificate was the Director; and
- (b) the person named in the certificate was on the date specified therein convicted of an offence contrary to subsection (3).

(Added 54 of 1986 s.4)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number: 76 of 1999
Section: 9C	Heading: Removal of obstruction or lock	Version Date: 01/07/1997

Remarks:

Adaptation amendments retroactively made - see 76 of 1999 s.3

(1) Where at any time any person is convicted of an offence under section 9B, the court may of its own motion or upon the application of the Director, make an order in respect of that person in Form 4 in the Fifth Schedule (in this section referred to as a "removal order").

(2) A removal order shall be in addition to any penalty imposed in respect of an offence under section 9B.

(3) A removal order shall require the person in respect of whom it is made within the time specified in the order-

- (a) where that person is convicted of an offence under section 9B(1), to remove the matter or thing to which that offence relates; or
- (b) where that person is convicted of an offence under section 9B(2), to remove the lock or other device to which that offence relates.

(4) If the person in respect of whom a removal order is made fails to comply with any requirement thereof, within the time specified therein-

- (a) such person shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 and to a fine of \$5000 for each day during which the offence continues; and
- (b) the Director may execute, or cause to be executed any work necessary to give effect to the requirements of the removal order and may recover in the District Court any expenses incurred thereby from such person as a debt due to the Government. (Amended 76 of 1999 s.3)

(Added 54 of 1986 s.4)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number:
Section: 9D	Heading: Interpretation in sections 9B and 9C	Version Date: 30/06/1997

In sections 9B and 9C-

"matter or thing" (物料或東西) in relation to any premises, means any matter or thing not being an installation, fitting or fixture required by the use or intended use of the premises; and

"means of escape" (逃生途徑) in relation to any premises, means such means of escape in case of emergency as may be required for the safety of persons having regard to the use or intended use of the premises.

(Added 54 of 1986 s.4)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number:
Section: 13A	Heading: Liability of subordinate officers and members of other ranks to summary dismissal upon abscondment	Version Date: 30/06/1997

(1) Where a subordinate officer or member of other ranks is absent from duty without leave for a period exceeding 21 days and the Director is satisfied that-

- (a) the subordinate officer or member of other ranks cannot be traced; or
- (b) on being required by notice in writing (sent to an address or addresses through which it may be reasonably expected to reach him) to give, within the period specified in the notice, an excuse for his absence, the subordinate officer or member of other ranks has failed to give any excuse or to give an excuse that is acceptable,

the Director may dispense with an investigation and summarily dismiss the subordinate officer or member of other ranks.

(2) Where a subordinate officer or member of other ranks is summarily dismissed by the Director pursuant to subsection (1), he may appeal against such dismissal in accordance with the Fourth Schedule.

(Added 55 of 1981 s.4)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number: 76 of 1999
Section: 14	Heading: Offences against discipline by subordinate officer and member of other ranks	Version Date: 01/07/1997

Remarks:

Adaptation amendments retroactively made - see 76 of 1999 s. 3

(1) The Director may interdict a subordinate officer or member of other ranks from the exercise of the powers and functions of his office whenever-

- (a) he is charged with an offence against discipline; or
- (b) an investigation is being undertaken into any conduct which may amount to the commission of an offence against discipline and the Director considers that it is contrary to the public interest for the subordinate officer or member of other ranks to continue to exercise the powers and functions of his office.

(2) A subordinate officer or member of other ranks who is interdicted under subsection (1)(b) shall be entitled until such time as he is charged with a disciplinary offence to the full amount of the emoluments of his office which he would have received if he had not been interdicted.

(3) A subordinate officer or member of other ranks who-

- (a) is interdicted under subsection (1)(a); or
- (b) having been interdicted under subsection (1)(b), is charged with a disciplinary offence,

shall receive such proportion of the emoluments of his office, not being less than one-half, as the Director thinks fit.

(4) Whenever it is alleged that a subordinate officer or member of other ranks has committed a disciplinary offence, investigation shall be made into the allegation in the manner provided for by Part I of the Second Schedule and punishment may be awarded in accordance with the provisions of the Third Schedule.

(5) Notwithstanding section 6(2), the Director shall not authorize any other member to exercise the power of dismissal conferred on him by the Third Schedule.

(6) If proceedings against a subordinate officer or member of other ranks do not result in any punishment he shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted.

(7) If a punishment other than dismissal is awarded, any subordinate officer or member of other ranks may be paid such proportion of the emoluments withheld as a result of his interdiction as the Chief Executive thinks fit where the punishment is imposed by the Chief Executive or as the Director thinks fit in every other case. (Amended 76 of 1999 s.3)

(8) A subordinate officer or member of other ranks who is under interdiction may not leave Hong Kong without the permission of the Director.

(Replaced 50 of 1978 s.3)

Chapter: 95

Title: FIRE SERVICES
ORDINANCE

Gazette Number:

Section: **21**

Heading: **Damage done at a fire**

Version Date: 30/06/1997

Any damage done by the Fire Services Department in the execution of its duties on the occasion of a fire shall be deemed to be damage by fire within the meaning of any policy of insurance against fire.

(Amended 42 of 1961 s.2)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number: L.N. 289 of 1999
Section: 25	Heading: Power to make regulations	Version Date: 19/11/1999

Remarks:

Adaptation amendments retroactively made - see 76 of 1999 s.3

The Chief Executive in Council may by regulation provide for- (Amended 76 of 1999 s.3)

- (a) discipline and punishment of subordinate officers and members of other ranks; (Amended 29 of 1975 s.17)
 - (b) the control, administration and investment of the Fire Services Department Welfare Fund; (Amended 42 of 1961 s.2; 58 of 1999 s.2)
 - (c) description of uniforms and equipment to be provided;
 - (d) such other matters as may be necessary or expedient for rendering the Fire Services Department efficient in the discharge of its duties; (Amended 42 of 1961 s.2)
 - (e) the making and issue of reports and certificates regarding-
 - (i) fires or other calamities attended by the Fire Services Department; (Amended 42 of 1961 s.2)
 - (ii) premises, vessels or other property damaged by fire;
 - (iii) matters relating to fire risks or fire precautions in or connected with any premises, vessel or other property, and fees to be charged in relation thereto; (Added 1 of 1961 s.8)
 - (f) the registration and de-registration of fire service installation contractors and fees to be charged in relation thereto; (Added 45 of 1971 s.4. Amended 34 of 1986 s.2)
 - (g) the appointment, powers and procedure of a disciplinary board in relation to fire service installation contractors; (Added 45 of 1971 s.4)
 - (h) the control of the sale, supply, installation, repair, maintenance and inspection of fire service installations or equipment; (Added 45 of 1971 s.4)
 - (ha) fees or charges payable in respect of carrying into effect the provisions of the Ordinance (other than provisions relating to the discharge of any duty imposed by law on the Fire Services Department), whether similar or not to any matter mentioned in this section; (Added 34 of 1986 s.2. Amended L.N. 63 of 1992)
 - (i) generally, for the carrying into effect of the provisions of the Ordinance in relation to any matter, whether similar or not to those in this section mentioned, as to which it may be convenient to make regulations.
-

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number:
Section: 27	Heading: Offences	Version Date: 30/06/1997

(1) Any person who resists or obstructs any member acting in the execution of his duty shall be guilty of an offence and shall be liable to a fine of \$2000 and to imprisonment for 6 months. (Amended 29 of 1975 s.19; 25 of 1982 s.5)

(2) Any member who-

(a) deserts;

(b) on the occasion of a fire or other calamity wilfully disobeys a lawful command of a member whom it is his duty to obey, (Amended 29 of 1975 s.19)

shall be guilty of an offence and shall be liable to a fine of \$1000 and to imprisonment for 6 months. (Amended 25 of 1982 s.5)

(3) Any person who, not being a member, wears, without permission of the Director, the uniform of the Fire Services Department, or any dress having the appearance or bearing any of the distinctive marks of that uniform, shall be guilty of an offence and shall be liable to a fine of \$5000 and to imprisonment for 6 months. (Amended 42 of 1961 s.2; 29 of 1975 s.19)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number: 76 of 1999
Schedule: 5	Heading: Long title	Version Date: 01/07/1997

Remarks:
Adaptation amendments retroactively made - see 76 of 1999 s.3

[section 8(2)]

FORM 1

FIRE SERVICES ORDINANCE

(Section 8(2))

Warrant to effect entry in premises

WHEREAS application has been made by or on behalf of the Director of Fire Services to me, C.D., a magistrate of Hong Kong, for authority to enter certain premises (here insert description of premises), and whereas I, C.D., and satisfied by information on oath that there is reasonable ground for entry to such premises and that (here insert ground on which warrant is issued):

NOW, THEREFORE, I, the said C.D., do hereby authorize the Director of Fire Services or any person authorized by the Director of Fire Services in writing in that behalf to enter the said premises, if need be by force, taking with him such persons as may be necessary.

Dated this day of, 19

[L.S.]

(Signed)

Magistrate.

(Added 1 of 1964 s.8. Amended 47 of 1997 s.10; 76 of 1999 s.3)

FORM 2

[section 9(1)(a)]

FIRE SERVICES ORDINANCE

(Section 9(1)(a))

Fire Hazard Abatement Notice

TO (name and address of person by reason of whose own or whose servant's or agent's act, default or sufferance the fire hazard arose or continues, or owner, tenant, occupier or person in charge of the premises at which the fire hazard exists, as the case may be).

1. TAKE NOTICE that under section 9 of the Fire Services Ordinance the Director of Fire

To A.B. of (or to the owner, tenant, occupier or person in charge of) (describe premises) situate (insert such description of the situation as may be sufficient to identify the premises).

WHEREAS the said A.B. (or, the owner, tenant, occupier or person in charge of the said premises, namely) has this day appeared before me/us, (describing the court), to answer the matter of a complaint made by etc. that at etc. (follow the words of complaint in summons):

[(or, in the case where the party charged does not appear, say, in place of the foregoing)

WHEREAS it has been now proved to my/our satisfaction that a summons has been duly served requiring the said A.B. (or the owner, tenant, occupier or person in charge of the said premises) to appear this day before me/us to answer the matter of a complaint made by etc. that at etc. (following the words of complaint in summons):] (Any of the following orders may be made or a combination of any of them, as the case seems to require).

Now on proof here had before me/us that the fire hazard so complained of does exist at the said premises (add, where the order is made on the person causing the fire hazard-and that the fire hazard is caused by the act, default or sufferance of A.B.), I/we, in pursuance of section 9 of the Fire Services Ordinance, do order the said A.B. (or, the said owner, tenant, occupier or person in charge) within (specify the time) from the service of this order to abate (here specify the fire hazard to be abated and the manner, whether by compliance with the requirements of the relevant fire hazard abatement notice, or otherwise).

Abatement order

And I/we being satisfied that, notwithstanding that the said fire hazard may be temporarily abated under this order, the fire hazard is likely to recur, do therefore prohibit the said A.B. (or, the said owner, tenant, occupier or person in charge) from allowing the recurrence of the said fire hazard (and for that purpose I/we direct the said A.B. (or, the said owner, tenant, occupier or person in charge) [here specify any works to be executed]).

Prohibition Order No. 1.

Now on proof here had before me/us that at or recently before the time of making the said complaint, to wit, on the fire hazard so complained of did exist at the said premises, but that the fire hazard has since been abated (add where the order is made on the person who caused the fire hazard-and that the fire hazard was caused by the act, default or sufferance of A.B.), yet, notwithstanding the abatement, I/we, being satisfied that it is likely that the same fire hazard will recur at the said premises, do therefore prohibit (continue as in Prohibition Order No. 1).

Prohibition Order No.2.

Dated this day of, 19

[L.S.]

Services, being satisfied of the existence at (premises where fire hazard exists) of a fire hazard being (describe the fire hazard) does hereby require you within (specify the time) from the service of this notice, to abate the fire hazard and for that purpose to(specify works to be executed).

2. If you make default in complying with the requirements of this notice you are liable to prosecution for an offence under section 9(3) of the Fire Services Ordinance. Upon conviction, a court may impose a maximum fine of \$25000 and \$2500 for each day during which the offence continues. Application may also be made for an order against you requiring the abatement of the fire hazard or prohibiting its recurrence or both and for recovering the costs which may be incurred thereby.

Dated this day of , 19

(Signed)
Director of Fire Services.
(Replaced 54 of 1986 s.5)

FORM 3

[section 9(4)]

FIRE SERVICES ORDINANCE

(Section 9(4))

Fire Hazard Order

(Signed)

Magistrate.

(Added 1 of 1964 s.8. Amended L.N. 69 of 1970; 54 of 1986 s.5; 47 of 1997 s.10)

FORM 3A

[section 9(7A)]

FIRE SERVICES ORDINANCE

(Section 9(7A))

Closing Order

TO
..... (name and address of person served with a fire hazard abatement notice under section 9(1)) being a person upon whom a fire hazard abatement notice under section 9(1)(a) was served on (date of service) in respect of premises situate at (insert such description of the situation as may be sufficient to identify the premises).

TAKE NOTICE that the Director of Fire Services has this day appeared before me/us and by information sworn on oath has proved to my/our satisfaction that-

- (a) you have been given notice in writing by the Director of Fire Services as required by section 9(7A) of his intention to swear the information; and
- (b) the fire hazard continues and the cause of the fire hazard is the structural character of the premises or their location having regard to the nature of the area in which they are situate; and
- (c) the premises are being used for a purpose which may materially increase the likelihood of fire or other calamity or danger to life or property resulting from the outbreak of fire or the occurrence of any other calamity in or on the premises.

NOW THEREFORE I/We in pursuance of section 9(7A) do hereby PROHIBIT the use of the premises for the purpose specified as follows:

.....
.....
.....
(describe use, purpose and prohibition).

Dated this day of , 19

(Signed)

Magistrate.

(Added 54 of 1986 s.5)

FORM 4

[section 9C(1)]

FIRE SERVICES ORDINANCE

(Section 9C(1))

Removal Order

TO.....
(name and address) being the owner, tenant, occupier or person in charge of premises situated at having been convicted of the offence of (describe offence) under section (9B(1) OR 9B(2)) of the Fire Services Ordinance on (date of conviction) at Court.

TAKE NOTICE that under section (9C(3)(a) OR 9C(3)(b)) of the Fire Services Ordinance I/we do require you within (specify time) from the service of this order to remove(the matter or thing to which that offence relates OR the lock or other device to which that offence relates).

IF you make default in complying with the requirements of this order you are liable to prosecution for an offence under section 9C(4) of the Fire Services Ordinance. Upon conviction, a court may impose a maximum fine of \$50000 and \$5000 for each day during which the offence continues. The Director of Fire Services may also carry out any work necessary to give effect to the requirements of this order and take proceedings to recover from you the costs which may be incurred thereby.

Dated this day of, 19

(Signed)
Magistrate.

(Added 54 of 1986 s.5)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number:
Schedule: 6	Heading: RANKS IN THE FIRE SERVICES DEPARTMENT	Version Date: 30/06/1997

[sections 2 & 26]

PART I-SENIOR OFFICERS

Director of Fire Services
Deputy Director of Fire Services
Chief Fire Officer
Chief Ambulance Officer
Deputy Chief Fire Officer
Assistant Chief Ambulance Officer
Senior Divisional Officer
Divisional Officer
Superintendent (Ambulance)

(Part I replaced 55 of 1981 s.6)

PART II-SUBORDINATE OFFICERS

Assistant Divisional Officer
Senior Ambulance Officer
Senior Station Officer (Added 55 of 1981 s.6)
Station Officer
Ambulance Officer

PART III-MEMBERS OF OTHER RANKS

Principal Fireman
Principal Ambulanceman
Senior Fireman
Senior Ambulanceman
Fireman
Ambulanceman

(Sixth Schedule added 29 of 1975 s.26)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number:
Schedule: 7	Heading: POSTS SPECIFIED FOR THE PURPOSES OF SECTION 3(2)	Version Date: 30/06/1997

[sections 3(2) & 26]

Senior Fire Services Ventilation Officer
Fire Services Ventilation Officer
Building Services Inspector II
Electrical Inspector Class II
Special Photographer I
Special Photographer II

(Seventh Schedule replaced 4 of 1986 s.7)

Chapter: 95A	Title: FIRE SERVICE (INSTALLATION CONTRACTORS) REGULATIONS	Gazette Number: 25 of 1998 s.2
Regulation: 11	Heading: Powers of disciplinary board	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2

(1) For the purposes of an inquiry the disciplinary board shall have the following powers-

- (a) to hear and examine witnesses on oath;
- (b) to summon any person to attend any hearing of the disciplinary board to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession subject to all just exceptions;
- (c) to order the inspection of premises in which any fire service installation or equipment has been installed, maintained, repaired or inspected; or
- (d) to enter upon and view such premises.

(2) A witness summons shall be in such form as the chairman of the disciplinary board shall direct and shall be signed by the chairman.

(3) Any person who being summoned to attend as a witness or to produce any document or any other thing at a hearing of the disciplinary board refuses or neglects to do so or to answer any questions put to him by or with the concurrence of the disciplinary board shall be guilty of an offence and shall be liable on conviction to a fine of \$500 and to imprisonment for 3 months:

Provided that no person shall be bound to incriminate himself and every witness shall in respect of any evidence given by him before the disciplinary board be entitled to the same privileges to which he would be entitled if giving evidence in civil proceedings before the Court of First Instance. (25 of 1998 s.2)

(4) Any person who behaves in an insulting manner or uses any threatening or insulting expression to or in the presence of the disciplinary board shall be guilty of an offence and shall be liable on conviction to a fine of \$500 and to imprisonment for 3 months.

Chapter: 95A	Title: FIRE SERVICE (INSTALLATION CONTRACTORS) REGULATIONS	Gazette Number:
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Regulation: 16	Heading: Penalties	Version Date: 30/06/1997
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Any person guilty of an offence under regulation 13 or 14 shall be liable on conviction to a fine of \$2000.

Chapter: 95B	Title: FIRE SERVICE (INSTALLATIONS AND EQUIPMENT) REGULATIONS	Gazette Number:
Regulation: 9	Heading: Issue of certificates by registered contractors	Version Date: 30/06/1997

(1) Whenever a registered contractor installs, maintains, repairs or inspects any fire service installation or equipment in any premises, he shall within 14 days after completion of the work issue to the person on whose instructions the work was undertaken a certificate and forward a copy thereof to the Director.

(2) A certificate issued under paragraph (1) shall state-

- (a) the address of the premises in which the work was carried out;
- (b) a description of the fire service installation or equipment concerned;
- (ba) the date of the completion of the work; (L.N. 269 of 1978)
- (c) the nature of the work carried out; and
- (d) whether or not the fire service installation or equipment is in efficient working order.

(2A) A certificate issued under paragraph (1) shall be signed by the person authorized to do so under regulation 3A of the Fire Service (Installation Contractors) Regulations (Cap 95 sub. leg.) and any person who signs a certificate which is false or misleading in any material particular commits an offence and is liable on conviction to a fine of \$5000. (L.N. 269 of 1978; L.N. 191 of 1981)

(3) Any registered contractor who-

- (a) contravenes paragraph (1); or
- (b) issues or forwards a certificate thereunder, or a copy thereof, which is false or misleading in a material particular,

commits an offence and is liable on conviction to a fine of \$5000:

Provided that where the certificate was signed by a person other than the registered contractor, the registered contractor shall not be convicted of an offence under subparagraph (b) if he proves that he exercised all due diligence to prevent the commission of the offence. (L.N. 269 of 1978; L.N. 191 of 1981)

Chapter: 95B	Title: FIRE SERVICE (INSTALLATIONS AND EQUIPMENT) REGULATIONS	Gazette Number:
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Regulation: 12	Heading: Penalty	Version Date: 30/06/1997
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Any person who contravenes any of the provisions of regulation 5, 6, 7 or 8 shall be guilty of an offence and shall be liable on conviction to a fine of \$5000.

(L.N. 191 of 1981)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number:
Section: 8	Heading: General powers of entry	Version Date: 30/06/1997

(1) Subject to this section, the Director or any person authorized by him in writing on producing, if so required, the writing showing his authority, shall have a right to enter any premises at all reasonable hours for the purpose of-

- (a) ascertaining whether there is, or has been, on or in connection with the premises, any contravention of any of the provisions of this Ordinance;
- (b) obtaining information required for fire-fighting purposes with respect to the character of the premises, the available water supplies and the means of access thereto, and other material circumstances;
- (c) ascertaining whether or not there exists any fire hazard;
- (d) the performance by the Director or by the Fire Services Department of his or its powers or duties under any enactment:

Provided that the Director, or any person authorized by him in writing, shall not exercise the right of entry conferred by this subsection in respect of such premises as are not a place of public entertainment or public assembly, factory, workshop or workplace nor premises otherwise used for business purposes, unless 24 hours' notice in writing of the intended entry has been given to the occupier.

(2) If it is shown to the satisfaction of a magistrate on sworn information in writing-

- (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
- (b) that there is reasonable ground for entry into the premises for any purpose specified in subsection (1); and
- (c) the notice of the intention to apply for the warrant has been given to the occupier of the premises, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry,

the magistrate may by warrant in the form of Form 1 in the Fifth Schedule authorize the Director, or any person authorized by the Director in writing in that behalf, to enter the premises, if need be by force. (Amended 29 of 1975 s.6; 47 of 1997 s.10)

(3) The Director or any person entering any premises by virtue of this section, or of a warrant issued hereunder, may take with him such persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectually secured against trespassers as he found them to be at the time of entry.

(4) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.

(5) If any person who, in compliance with this section or a warrant issued hereunder, enters a factory, workshop, workplace or premises used for business purposes discloses to any person any information obtained by him in the factory, workshop or workplace or premises used for business purposes with regard to any manufacturing process or trade secret, he shall, unless such disclosure was made in the performance of his duty, be guilty of an offence and shall be liable to a fine of \$5000. (Amended 25 of 1982 s.2)

(Added 1 of 1964 s.4)

Chapter: 95	Title: FIRE SERVICES ORDINANCE	Gazette Number:
Section: 11	Heading: Power to fix fire hydrant and emergency water supply location plates	Version Date: 30/06/1997

(1) Upon giving 7 days' notice in writing to the owner of any property situate in the vicinity of a fire hydrant or emergency water supply, the Director may cause a plate indicating the location of such fire hydrant or water supply to be fixed to such part of the property as may, in the opinion of the Director, be best suited to indicate such location. (Amended 42 of 1961 s.2)

(2) Any person who refuses to allow the fixing of any such plate as is referred to in subsection (1) or obstructs any person in the course of the fixing thereof or removes or defaces any such plate after it has been so fixed shall be guilty of an offence and shall be liable to a fine of \$1000.

(Added 1 of 1961 s.5)

Chapter: 95

Title: FIRE SERVICES
ORDINANCE

Gazette Number:

Section: 27

Heading: **Offences**

Version Date: 30/06/1997

(1) Any person who resists or obstructs any member acting in the execution of his duty shall be guilty of an offence and shall be liable to a fine of \$2000 and to imprisonment for 6 months. (Amended 29 of 1975 s.19; 25 of 1982 s.5)

(2) Any member who-

(a) deserts;

(b) on the occasion of a fire or other calamity wilfully disobeys a lawful command of a member whom it is his duty to obey, (Amended 29 of 1975 s.19)

shall be guilty of an offence and shall be liable to a fine of \$1000 and to imprisonment for 6 months. (Amended 25 of 1982 s.5)

(3) Any person who, not being a member, wears, without permission of the Director, the uniform of the Fire Services Department, or any dress having the appearance or bearing any of the distinctive marks of that uniform, shall be guilty of an offence and shall be liable to a fine of \$5000 and to imprisonment for 6 months. (Amended 42 of 1961 s.2; 29 of 1975 s.19)

Chapter: 95

Title: FIRE SERVICES
ORDINANCE

Gazette Number:

Section: **28**

Heading: **False alarms of fire**

Version Date: 30/06/1997

Any person who gives or causes to be given an alarm of fire or other calamity which he knows to be false to the Fire Services Department or to any member shall be guilty of an offence and shall be liable to a fine of \$1000 and to imprisonment for 6 months.

(Added 17 of 1959 s.2. Amended 42 of 1961 s.2; 29 of 1975 s.20)
