

立法會
Legislative Council

LC Paper No. CB(2)2563/01-02(03)

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**Bills Committee on
Fire Services (Amendment) Bill 2001**

Background paper prepared by the Legislative Council Secretariat

Fire Services (Amendment) Bill 2001

Purpose

This paper gives a summary of the issues and concerns raised by Members on a package of proposals to amend the Fire Services Ordinance (FSO) following a review of the Ordinance by the Fire Services Department (FSD).

The legislative proposals

2. The Administration proposed to amend FSO by repealing the provisions in relation to the abatement and prevention of fire hazards, revising the penalty levels, formally empowering FSD officers to carry out fire investigation, extending the deeming provision on the coverage of fire insurance, expanding the meaning of "fire service installation or equipment", refining the disciplinary procedures, reflecting the present rank structures of FSD, and empowering the Chief Executive-in-Council to make subsidiary legislation in relation to the following -

- (a) re-enacting the provisions in the principal Ordinance proposed to be repealed in relation to the abatement and prevention of fire hazards in a new piece of subsidiary legislation dedicated to fire hazards abatement;
- (b) strengthening and enhancing the enforcement powers of FSD officers in the new piece of subsidiary legislation;
- (c) outlawing the supply of liquid fuels to vehicles in locations other than a licensed petrol filling station and the conveyance of fuelled vehicle/motorcycles and parts in an enclosed freight container or enclosed cargo compartment of a goods vehicle in the new piece of subsidiary legislation;

- (d) empowering the Court to make a temporary closure order to close down premises repeatedly used for illicit refuelling activities and providing for necessary safeguards in the new piece of subsidiary legislation; and
- (e) revising the penalty levels in the existing and new subsidiary legislation.

Issues and concerns raised by Members

3. The Administration consulted the Panel on Security on the proposed amendments at its meeting on 3 April 2001. Members had raised the following issues and concerns -

Illegal refuelling

- (a) A member considered that the time limit for the issue of a closing order for a premises where illegal refuelling activities were repeatedly found should be shortened;
- (b) A member considered that in the interest of public safety, provisions against illegal refuelling activities should be stringent;
- (c) A member suggested that illegal refuelling activities should be tackled from the perspective of combating organised crime rather than merely from the perspective of abatement of fire hazards;
- (d) A member considered that while public safety was important and more direct prosecution should be made against operators of illegal refuelling stations, it would be unfair to issue a temporary closure order against owners of premises where illegal refuelling activities were repeatedly found, as this might shift the enforcement responsibility to owners of premises;
- (e) A member considered that prosecution against illegal refuelling activities and improper stowage or conveyance of motorcycles, vehicles or parts containing residual fuel in an enclosed freight container should be made by the Department of Justice rather than FSD; and
- (f) A member considered that enforcement against premises where illegal refuelling activities were repeatedly found should be reinforced, and suggested that owners of such premises should be given the opportunity to defend if he had taken reasonable steps against the illegal activities of the tenants.

Application of FSO

- (g) A member asked whether FSO was binding on the State and another member asked whether firemen were allowed to enter the offices of State organs of the Central People's Government in Hong Kong. The Administration's response is in **Appendix I**.

4. Members may refer to the extract from the minutes of the meeting held on 3 April 2001 (**Appendix II**) for details of the Panel discussion on the subject.

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Legislative Council Secretariat
12 July 2002

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22 May 2001

Clerk to Security Panel
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong
(Attn: Mrs Sharon Tong)

Dear Mrs Tong

**Proposed Amendments to
the Fire Services Ordinance (Cap. 95)**

During the discussion of the above subject at the Security Panel meeting held on 3 April, a member asked if the Fire Services Ordinance (FSO) was binding on the State. As requested, I am writing to provide a written response.

There is no express provision in FSO making it applicable to the Government or offices set up by the Central People's Government in Hong Kong (CPG offices). However, Fire Services Department (FSD) officers have the duty under FSO to, among other things, extinguish fire and protect life and property in case of fire. Section 10 of FSO specifically provides that, on the occasion of a fire or other calamity, they may take such measures as may appear to them to be necessary or expedient for the protection of life and property.

FSD officers have not encountered any problem when carrying out their duties in respect of premises of the Government or CPG offices.

Yours sincerely

(David Wong)
for Secretary for Security

**Extract from minutes of meeting of
LegCo Panel on Security on 3 April 2001**

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III. Proposed amendments to the Fire Services Ordinance
(LC Paper No. CB(2) 1201/00-01(03))

7. At the invitation of the Chairman, Principal Assistant Secretary for Security B (PAS(S)B) briefed Members on the proposed amendments to the Fire Services Ordinance (FSO) (Cap. 95).

8. Referring to paragraphs 10 and 11 of the Administration's paper, Mr CHEUNG Man-kwong questioned whether it was appropriate to wait for 12 months before a closure order was issued for premises where illegal refuelling activities were repeatedly found. He considered that as illegal refuelling activities would pose a serious threat to the safety of the residents living nearby, it was inappropriate to wait for 12 months before a closure order was issued. He pointed out that illegal refuelling activities were repeatedly found at a premise in To Kwa Wan although the Customs and Excise Department (C&ED) had taken enforcement actions against the premise for more than 20 times.

9. PAS(S)B clarified that, under the current proposal, a closure order could be issued once repeated illegal refuelling was found at a place within a period of 12 months. It would not be necessary to wait for 12 months before a closure order was issued. He said that under the existing provisions of FSO, upon the identification of illegal refuelling activities at a particular site, the Fire Services Department (FSD) had to issue a fire hazard abatement notice, reinspect the site upon expiry of a certain time limit and establish non-compliance again before prosecution could be instituted. Protection of the public against fire hazards was one of the major objectives of FSO. However, the existing provisions had rendered enforcement actions against illegal refuelling activities difficult and were not satisfactory. The proposed amendments to FSO would empower the court to issue a temporary closure order to effect complete closure of premises where illegal refuelling activities were repeatedly found within a certain time limit. It would also empower FSD to remove illegal refuelling facilities. He stressed that the proposed arrangement had achieved a proper balance between the interests of the owner of the premises concerned and the protection of the public against fire hazards.

10. Mr Howard YOUNG considered that provisions against illegal refuelling activities should be stringent, as it affected the safety of residents living nearby.

11. In response to Mr Howard YOUNG's question about paragraph 5 of the Administration's paper, PAS(S)B said that amendments were proposed to FSO after an overall review of the FSO. The Administration also proposed to repeal some provisions and re-enact them in a neat and tidy manner in a new piece of subsidiary legislation dedicated to fire hazard abatement.

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12. Mr James TO said that illegal refuelling activities were usually associated with organized crime. The Administration should therefore address the problem from the perspective of combating organized crime rather than merely from the perspective of abatement of fire hazards. Deputy Director of Fire Services (DDFS) responded that FSD had been working closely with C&ED to combat illegal refuelling. Exchange of intelligence was frequently made with C&ED and the Police. PAS(S)B pointed out that the problem of illegal refuelling fell within the purview of a number of policy bureaux. The policy bureaux concerned were taking steps to address the problem within the context of their respective policy areas.

13. As regards the proposed amendments as referred to in paragraph 14 of the Administration's paper, Mr James TO asked whether there had been legal challenges or claims in respect of the investigation findings of FSD. PAS(S)B responded that FSD had carried out investigation into each and every fire to which it had attended. After completion of investigation, FSD would compile an incident report containing a section on the believed cause of fire. Any person or party, such as loss adjudicators and law firms, could obtain a copy of the report with the payment of a specified fee. As there was currently no specific provision in FSO for FSD to carry out investigation into an incident of fire, amendments would be proposed to FSO to empower the Director of Fire Services to take necessary measures to investigate.

14. In explaining the difficulties encountered in the investigation into the incident of a fire, DDFS said that FSD was not empowered under FSO to take statements from witnesses or to request them to provide information in the course of investigation. The proposed amendments sought to formally empower FSD to do so. Chief Fire Officer (Licensing and Control) (CFO(LC)) added that current investigation of fire relied on the cooperation of the public. Where a witness refused to go to FSD for giving statements, FSD would have to visit the witness concerned. PAS(S)B added that where investigation revealed that a fire was due to leakage of gas or electricity, the investigation report would be provided to the Electrical and Mechanical Services Department for follow-up.

15. Mr James TO asked whether firemen were allowed to enter the offices of State organs of the Central People's Government in Hong Kong. He pointed out that there were reports that fire fighting in the Liaison Office of the Central People's Government in HKSAR was delayed because the firemen had to wait for 10 minutes before allowed to enter the premises. PAS(S)B responded that there was no delay in the fighting of the recent fire in the Liaison Office of the Central People's Government in HKSAR. To his knowledge, the fire had already been put out when firemen arrived at the scene. He did not see any particular problems in FSD's operations under FSO. DDFS added that FSD was given necessary powers to carry out firefighting duties. In the case of embassies, prior consent had to be sought before entry into the premises was allowed to carry out fire fighting work.

16. Miss Margaret NG asked whether FSO was binding on the State. Mr James TO requested the Administration to provide a written response.

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17. Mr IP Kwok-him asked why a temporary closure order of six months was proposed. PAS(S)B responded that the period of six months was determined having regard to the need to strike a balance between the deterrent effect of the order and the interests of owners.

18. In response to Mr IP Kwok-him's question about the proposal in paragraph 9 of the Administration's paper, PAS(S)B said that direct prosecution could not currently be instituted against the improper stowage or conveyance of motorcycles and related spare parts containing residual fuel in an enclosed freight container or goods compartment. The proposed amendments would make it possible for direct prosecution to be instituted.

19. In response to Mr IP Kwok-him's question about overnight storage of fuel in goods vehicles, CFO(LC) said that amendments were being proposed under the Dangerous Goods (Amendment) Bill 2000 to step up regulation of the storage of fuel, which belonged to dangerous goods of Category 5, to tackle illicit refuelling activities. PAS(S)B said that FSD was aware of the black spots and had frequently taken operations at these sites.

20. In response to Mrs Selina CHOW's question about paragraph 10 of the Administration's paper, PAS(S)B said that operators of illegal refuelling stations would be prosecuted.

21. Mrs Selina CHOW said that while the safety of the public was important and more direct prosecution should be made against operators of illegal refuelling stations, it would be unfair to issue a temporary closure order to owners of premises where illegal refuelling activities were repeatedly found, as this would be a shifting of the Administration's enforcement responsibility to the owners of premises. She pointed out that a similar issue had been discussed in depth by the then Bills Committee on Copyright Bill and it was finally agreed that such a responsibility would not be imposed on the owners of premises. She expressed doubt about whether the proposal could reduce the fire hazard arising from illegal refuelling. She asked whether there were many premises where illegal refuelling activities were repeatedly found after enforcement actions had been taken. Miss Margaret NG said that she would object to the proposed amendments, if responsibility was imposed on a person who should not be held responsible.

22. PAS(S)B noted the views of Mrs Selina CHOW. He said that each piece of draft legislation was examined by the Department of Justice (D of J) before introduction to ensure consistency with the Hong Kong Bill of Rights Ordinance. He pointed out that repeated illegal refuelling activities had been found in districts such as To Kwa Wan, Yuen Long, Tuen Mun and Tsing Yi. The owners of the premises concerned had a responsibility to avoid posing a threat to the safety of neighbours. The proposed amendments had achieved a balance between public safety and the interests of owners. He added that once a closure order was issued, the Land Registry would be notified so that any new owner of the premises would be aware of the previous use of the premise for illegal refuelling. CFO(LC) added that where illegal refuelling activities were found at a particular site, the owner of the premises would be authorized to terminate the lease with the tenant. A temporary closure order would be issued only as a last resort.

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23. Referring to paragraphs 8 and 10 of the Administration's paper, Miss Margaret NG asked about the types of activities where direct prosecution were made and the persons responsible for such direct prosecution. DDFS said that direct prosecution were made by FSD officers under existing FSO in respect of obstruction to and locking up of means of escape. Where there was any doubt, legal advice would be sought from D of J. Under the proposed amendments, direct prosecution would be extended to cover illegal refuelling and improper stowage or conveyance of motorcycles, vehicles or parts containing residual fuel in an enclosed freight container. Miss Margaret NG considered that prosecutions should be made by D of J rather than officers of FSD. She added that the issue of who should be responsible for prosecution had been discussed at a number of meetings of the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services (AJLS Panel). She suggested that the Administration should study the relevant minutes of AJLS Panel.

24. Mr Albert HO said that he doubted about the Administration's determination to combat illegal activities, as illegal refuelling activities had been repeatedly found on a piece of Government land in Western District. PAS(S)B responded that since 1999, the Lands Department (LD) had stepped up enforcement against the use of Government land for illegal refuelling activities and terminated two tenancies. LD had also imposed additional clauses in new tenancies to require the submission of security schemes against the use of land for illegal refuelling and to strengthen the power to cancel a tenancy expeditiously upon discovery of illegal activities. Mr Albert HO pointed out that although the Government land in Western District had been used for illegal refuelling for a long time, the lease had not been revoked.

25. Mr Albert HO said that owners of premises where repeated illegal refuelling was found should be given the opportunity to defend, if reasonable steps had been taken by the owners against the illegal activities of the tenants. PAS(S)B responded that sufficient safeguard would be provided for owners in the proposed legislative amendments.

26. In response to Miss CHAN Yuen-han's question about the measures to be adopted in combating illegal refuelling activities, PAS(S)B said that besides the proposed introduction of a temporary closure order, FSO would be amended so that the storage of any liquid fuel and the installation of fuel dispensing equipment in any premises other than a licensed petrol filling station would be subject to direct prosecution.

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Legislative Council Secretariat
8 May 2001