

Fire Services (Amendment) Bill 2001

**Administration's response to issues raised at
the Bills Committee meeting held on 12 November 2002**

- (a) *To revert to the Bills Committee or the Panel on Security where appropriate with a revised draft Regulation after further consultation with the tractor owners and drivers.*

On 18 November the Administration met with representatives of the trade (who attended the Bills Committee meeting on 12 November) to further exchange views on the draft Regulation. The dialogue was open, frank and comprehensive. The representatives explained the mode of operation of the container trade and elaborated their views and queries on the draft Regulation which could be summarised as follows -

- (a) what the exact meaning of “knowingly” in sections 17 and 18 of the draft Regulation is;
- (b) it appears on the face of sections 17 and 18 of the draft Regulation that there is obvious liability on the part of drivers but the possible liabilities on the part of cargo owners, freight forwarders and other relevant parties might not be that clear;
- (c) the need for regulating the conveyance of motor vehicles, which is intrinsically safe, under sections 17 and 18 of the draft Regulation should be further examined; and
- (d) guidelines should be published to facilitate compliance with the new law by the trade (particularly regarding the liabilities of different parties).

2. The Administration's response is summarised as follows -

- (a) We explained the legal meaning of “knowingly” and how the authorities would enforce the relevant provisions in future. In a nutshell, the authorities are adamant to crack down on any driver who chooses to ignore public

safety and convey closed containers with clear knowledge that there are vehicle parts stained with fuel inside, but not law-abiding drivers who, following the usual practice of the trade, have no knowledge whatever of the actual contents of the containers. The draft Regulation does not impose a duty on the part of the drivers to open the containers and check the contents;

- (b) It has all along been our policy intent to tackle all parties who are responsible for conveyance or stowage of containers in an improper manner. The possible liability is not confined to drivers but is extended to cover cargo owners and other relevant parties. In this regard, attention has to be drawn to s.17(1)(b) and s.18(1)(b) of the draft Regulation which covers any parties who “knowingly causes or permits to be conveyed on land” or “knowingly causes or permits to be stowed” containers in an improper manner. In both cases, it is clear that any cargo owners or other relevant parties who knowingly made or permitted arrangements for conveyance or stowage of containers in an improper manner may be caught by s.17(1)(b) or s.18(1)(b) and be held liable. In response to the trade’s suggestion, we are prepared to fine-tune the draft Regulation by switching the order of subparagraphs (a) and (b) in both s.17(1) and s. 18(1);
- (c) Regarding the conveyance of a motor vehicle as an integrated whole, we have agreed to further examine the need for regulation; and
- (d) To tie in with the future implementation of the draft Regulation when passed, FSD will promulgate guidance notes on the conveyance and stowage of motor vehicles/motor vehicle parts to facilitate the trade’s compliance with the new law. In drawing up such guidance notes, FSD would consult the Marine Department, the Transport Department and the Department of Justice as well as the trade to ensure that the guidance notes would be reasonable and pragmatic and have due regard to the mode of operation of the

container trade. Particular attention would be given to address the respective liabilities of different parties including the drivers, cargo owners, freight forwarders etc.

The representatives of the trade were satisfied with our response.

3. Following paragraph 2(c) above, we have further examined the matter in consultation with relevant departments including the Marine Department. It is noted that the Marine Department, in response to the recommendation of a coroner, has proposed to the International Maritime Organisation (IMO) the regulation of conveyance of motor vehicles and motor vehicle parts stained with fuel in international sea transport. Following discussion in the IMO, it is noted that, given proper stowage, there is indeed very little explosion risk in conveying a whole vehicle in a closed container in sea transport, as a vehicle is designed to prevent leakage of fuel. This assessment is evidenced by the fact that there has been hardly any known explosion incident involving sea conveyance of vehicles in the past. At present, the Marine Department is now only pursuing in the IMO the regulation of sea conveyance of vehicle parts stained with fuel. In view of this latest development, we are prepared to fine-tune the provisions in ss.17 and 18 of the draft Regulation to exclude whole vehicles from the proposed control.

(b) To consider providing a code of practice on the conveyance of motor vehicles/motor vehicle parts to facilitate enforcement and compliance with the Fire Service (Fire Hazard Abatement) Regulation to be enacted.

4. See paragraph 2 above.

(c) To provide a written response to the submission of the Hong Kong Hotel Owners Limited.

5. We will provide a written reply to the submission as soon as possible.

Security Bureau
December 2002