

C045e

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 found 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 referred to 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 referred to in subsection (1)---

(i) to attend at a time and place 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 referred to 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, under the prescribed circumstances, remove and take possession of any article or thing 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 discharge 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 discharge 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;

(h1) the prescribing of anything required to be prescribed under this Ordinance;";

(c) by adding---

"(2) A regulation made 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 provisions 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. Provisions of pre-existing Ordinance continue to apply to existing notices, orders etc.

The provisions of the pre-existing Ordinance shall continue to apply in relation to---

(a) a fire hazard abatement notice served under section 9(1) of the pre-existing Ordinance;

(b) a notice served under section 9(1A) of the pre-existing Ordinance;

(c) a fire hazard order made under section 9(3AA) or (4) of the pre-existing Ordinance;

(d) the recovery of expenses incurred in---

(i) the carrying out of works under section 9(3A) of the pre-existing Ordinance;

(ii) the abatement of fire hazard or execution of a fire hazard order under section 9(9)(b) or (10)(c) of the pre-existing Ordinance;

(iii) the execution of works under section 9C(4)(b) of the pre-existing Ordinance;

(e) a complaint made under section 9(4) of the pre-existing Ordinance;

(f) an appeal referred to in section 9(10) of the pre-existing Ordinance;

- (g) a closing order made under section 9(7A) of the pre-existing Ordinance;
- (h) any property removed under section 9 of the pre-existing Ordinance in abating or preventing the recurrence of a fire hazard;
- (i) a certificate signed by the Director under section 9B(4) of the pre-existing Ordinance;
- (j) a removal order made under section 9C(1) of the pre-existing Ordinance;
- (k) an offence committed, or any conviction (subject to section 25), under section 9(1C), (3), (4A) or (9)(a), section 9B(1) or (2) or section 9C(4)(a) of the pre-existing Ordinance,

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

25. Power of Director to register information, publicize conviction and apply for order

Notwithstanding section 24(k), the new section 9(d), (e) and (f) of the principal Ordinance shall apply where, after the commencement of this Ordinance, a person is charged with, convicted of, acquitted of or successfully appeals against a conviction of an offence committed under the pre-existing Ordinance before the commencement of this Ordinance.

26. Subordinate officers and members of other ranks absent from duty immediately before commencement of this Ordinance

If a subordinate officer or member of other ranks is absent from duty without leave immediately 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.

27. 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. 12]

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 discharge 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 by 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 the subsidiary legislation made under the Ordinance 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.