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on 28 February 2003**

**Report of the Bills Committee on
Fire Services (Amendment) Bill 2001**

Purpose

This paper reports on the deliberations of the Bills Committee on Fire Services (Amendment) Bill 2001.

Background

2. The Fire Services Ordinance (FSO) was enacted in 1954 to provide for the constitution, duties and powers of the 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 of fire service installation contractors; control over the sale, supply, installation, repair, inspection and maintenance of fire service installations or equipment; the making and issue of reports and certificates by FSD; and the administration of the FSD Welfare Fund. Revisions to the FSO and its subsidiary legislation have been made from time to time to cope with 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 regulatory framework on fire hazard abatement and prevention. A package of measures has been proposed upon completion of the review, and the Bill seeks to implement these proposed measures.

The Bill

4. The main purpose of the Bill is to amend the FSO to -
 - (a) provide for the powers of the Director of Fire Services (the Director) in relation to investigation of matters relating to a fire and abatement and prevention of fire hazards;
 - (b) empower the Chief Executive (CE) in Council to make regulations providing for the regulation of new types of fire hazards and the making of a court order concerning fire hazards; and
 - (c) amend the level of fines for offences under the FSO and its subsidiary legislation.

5. The proposed Fire Service (Fire Hazard Abatement) Regulation (the proposed Regulation) which will deal with all matters relating to abatement of fire hazards is to be made by CE in Council under section 25 of the FSO, as amended by the Bill. The proposed Regulation is subsidiary legislation subject to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). According to the Administration, the proposed Regulation has been approved in principle by CE in Council and will be referred back to CE in Council for approval after enactment of the Bill.

The Bills Committee

6. At the House Committee meeting on 10 July 2001, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon IP Kwok-him, the Bills Committee has held five meetings with the Administration. The Bills Committee has received views from the Container Transportation Employees General Union, the Hong Kong Consolidation Freight Station and Logistics Association, the Hong Kong Container Drayage Services Association Limited, the Hong Kong Container Tractor Owners Association Limited, and the “Medium and Heavy Tractors Concern Group” (中重型貨車關注組) at one of these meetings. The Bills Committee has also received a submission from the Federation of Hong Kong Hotel Owners Limited.

Deliberations of the Bills Committee

8. The Bills Committee has discussed the various proposals in the Bill. The Bills Committee has also discussed the policy aspects of the proposed Regulation. The main deliberations of the Bills Committee are summarised in the following paragraphs.

Current framework on fire hazards abatement

9. Currently, the abatement of fire hazards and prevention of their recurrence are provided for under sections 9 and 9A to 9D of 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 (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.

10. The Administration informs the Bills Committee that the relevant provisions had been revised and new provisions added following a series of amendments to the FSO in 1964, 1969, 1975, 1982 and 1986. The Administration considers it appropriate to take the opportunity to streamline these provisions in order to facilitate ease of reference in enforcement action and future amendments to be made.

11. The Bill proposes to repeal sections 9, 9A to 9D of the FSO and to re-enact them in a new regulation i.e. the proposed Regulation to be made by CE in Council under the proposed amended section 25 of the FSO.

12. Under the existing section 9(11) of the FSO, any property removed by FSD officers during physical abatement of fire hazards may be claimed by the owner. There are, however, no clear procedures governing the owner's claim for the return of his or her properties. The Bill proposes to formally set out the relevant procedures in the proposed Regulation.

13. 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. To expedite the enforcement work, the Administration proposes 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. The person who fails to comply with such demand without reasonable excuse will be held liable for an offence under section 21 of the proposed Regulation.

14. Some members have questioned the need to empower FSD officers to demand instant production of a person's proof of identity in taking enforcement action against offences that create potential fire hazards. They consider the existing practice of requesting the assistance of the Police for identification of a responsible person sufficient and reasonable. These members stress that any proposal to empower an officer to demand personal particulars must be considered with caution.

15. The Administration has responded that the current provision (section 9 of the FSO proposed to be repealed) 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. The Administration has pointed out that if FSD officers are not empowered to obtain personal particulars instantly, the responsible person might ignore their demand and leave the scene before the arrival of the Police.

16. Some members have suggested that the rank of FSD officers who are authorised to obtain personal particulars and the requirement that they should wear uniform whilst on duty should be specified in the proposed Regulation.

17. The Administration has responded that the current FSD General Orders provide that FSD officers listed in the Sixth Schedule to the FSO are required to wear uniforms when on operational duty, including carrying out enforcement actions against fire hazards. For future implementation of the proposed Regulation, the Director plans to authorise, under section 21 of the proposed Regulation, only fire officers not below the rank of Station Officer to obtain personal particulars from the public, and to promulgate the authorisation through the FSD General Orders. The Administration therefore does not consider it necessary to specify in the proposed Regulation the rank of FSD officers who are authorised to obtain personal particulars and the requirement that they should wear uniform whilst on duty.

Improper stowage/conveyance of motor vehicles (including motorcycles) and motor vehicle parts containing residual fuel in an enclosed freight container or goods compartment on land

18. The Bill also proposes to provide for the following matters under the proposed Regulation to cope with new forms of fire hazards -

- (a) 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; and
- (b) 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.

19. Under section 17(1) of the proposed Regulation, 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.

20. Under section 18(1) of the proposed Regulation, 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.

21. The Administration proposes that improper stowage or conveyance of motor vehicles or parts of motor vehicles containing residual fuel in an enclosed freight container or goods compartment would be subject to direct prosecution. The maximum penalty for these offences is a fine at level 6 i.e. \$100,000 and imprisonment for 6 months on a first conviction and a fine of \$200,000 and imprisonment for one year on a subsequent conviction. The Administration also proposes that officers of FSD, the Police and the Customs and Excise Department would be empowered to stop, board, search the vehicles and detain anything carried in, on or by the vehicles if they have reasonable grounds to suspect that such an offence has been committed.

22. Hon LEUNG Fu-wah has asked about the quantity of residual fuel to be found in motor vehicles or parts of motor vehicles improperly conveyed or stowed in a freight container which would constitute an offence in the proposed Regulation.

23. The Administration explains that under normal temperature, even if there is only a trace of liquid petroleum inside the fuel tank, petroleum vapour is able to escape from a scrapped vehicle into the ambient air inside the freight container or cargo compartment. The Administration further points out that it is practically impossible to accurately measure the aggregate quantity of residual fuel with which parts of motor vehicles being carried inside a freight container are stained. To ensure public safety, enforcement action would be taken if the parts are found to be stained with residual fuel and no allowance in the quantity would be given.

24. Hon Miriam LAU has expressed concern that enforcement against improper stowage or conveyance of motor vehicles and parts of motor vehicles in freight containers would impose liabilities which are unfair to drivers and tractor owners in the transport trade. She has also raised queries about the interpretation of the word “knowingly” in sections 17 and 18 of the proposed Regulation.

25. The Administration clarifies that the element of “knowingly” is related to the state of mind of the alleged offender which would have to be determined by the court in the light of the facts and circumstances in each case. The legislative intent is not to target innocent drivers and tractor owners and the proposed Regulation has not imposed a duty on the part of the drivers and tractor owners to open the containers and check the contents. The Administration stresses that law-abiding drivers and tractor owners following the usual practice of the trade and have no knowledge of the actual contents of the containers would not be caught by the proposed provisions.

26. Members note that it is not an offence under section 17(1) or 18(1) of the proposed Regulation if the container used for the conveyance or stowage of a motor vehicle or a part of a motor vehicle which has fuel in its tank or is stained with fuel is open at the top or is well ventilated. Hon Miriam LAU has pointed out that it would be difficult for drivers in the container trade to ascertain whether the motor vehicles and parts of motor vehicles in a particular container are free of fuel stains. She has suggested that the Administration should consider imposing a mandatory requirement for using open containers to convey or stow used motor vehicles or parts of motor vehicles.

27. Hon IP Kwok-him and Hon James TO have expressed reservations about Hon Miriam LAU’s suggestion. They consider that a minimalist approach should be adopted as far as legislation is concerned, and mandatory requirements should not be imposed unless they are strictly necessary. Hon IP Kwok-him and Hon James TO have pointed out that the suggestion might not be in the best interest of the trade, and operators in the trade should be given the flexibility to decide the type of containers to be used for conveyance or stowage of motor vehicles or parts of motor vehicles.

28. The deputations from the transport trade have informed the Bills Committee that they in general support the enactment of the Bill because it would ensure public safety in the transportation of motor vehicles or parts of motor vehicles in the territory, as well as protect the safety of drivers in the trade. However, they are concerned that the Bill would impose an unreasonable burden on drivers and tractor owners who have no right to inspect the contents of the containers. They have pointed out that a driver and a tractor owner would be unable to know the contents inside the freight container if a goods owner or shipping company has arranged another company to pack the goods.

29. Members in general agree that innocent tractor owners and drivers who in practice are unable to ascertain the goods inside the containers should not be held liable for improper stowage and conveyance of motor vehicles or parts of motor vehicles containing residual fuel in an enclosed freight container or goods compartment. As the proposed Regulation contains detailed provisions regulating improper conveyance or stowage of motor vehicles or parts of motor vehicles in containers that are or are to be conveyed on land, members are of the view that the Administration should have consulted the trade on the proposed Regulation. At the request of the Bills Committee, the Administration has held discussions with the deputations from the trade on the proposed Regulation.

30. The Administration has reported to the Bills Committee that deputations from the trade have expressed concern that the proposed Regulation as presently worded seems to impose an obvious liability on the part of the drivers, but the liability on the part of cargo owners, freight forwarders and other relevant parties might not be so obvious. In response to the trade's suggestion, the Administration agrees to make a minor textual revision to sections 17(1) and 18(1) of the proposed Regulation.

31. Members also note that deputations from the trade have queried the need to regulate conveyance and stowage of a whole motor vehicle which is safe from explosion risk.

32. The Administration has informed the Bills Committee that it has consulted relevant departments including the Marine Department which has previously proposed to the International Maritime Organisation (IMO) the regulation of conveyance of motor vehicles and parts of motor vehicles stained with fuel in international sea transport. The Administration explains that following discussion in IMO, it is concluded 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 motor vehicles in the past. At present, the Marine Department is only pursuing with IMO the regulation of conveyance by sea of parts of motor vehicles stained with fuel.

33. In view of this latest development, the Administration has undertaken to amend the provisions in sections 17 and 18 of the proposed Regulation to exclude a whole motor vehicle from the scope of regulation. At the suggestion of the Bills Committee, the Administration also agrees to move Committee Stage amendments (CSAs) to amend the empowering provisions in the proposed new sections 25(1)(he) and (hf) in the principal Ordinance by removing the reference to “a motor vehicle”.

34. Members have requested that FSD should promulgate guidance notes on the conveyance and stowage of parts of motor vehicles to tie in with the future implementation of the proposed Regulation. The Administration has agreed to accede to the request. The Administration has further undertaken that in drawing up the guidance notes, FSD would consult the transport trade and relevant departments, including the Marine Department, the Transport Department and the Department of Justice, to ensure that the guidance notes are reasonable and pragmatic and have due regard to the mode of operation of the trade.

35. Members have also requested the Administration to launch a comprehensive publicity programme to ensure that the transport trade and relevant parties are fully aware of the requirements of the proposed Regulation, in particular the requirement for stowage and conveyance of parts of motor vehicles in containers. The Administration has undertaken to carry out comprehensive publicity over an adequate period of time before the commencement of the proposed Regulation.

36. The Administration has further informed the Bills Committee that after consideration of the comments of the Law Society of Hong Kong, the Administration proposes to amend the proposed section 25(1)(hg) by adding “or enter and search a container” after “search a vehicle”, and by adding “or contained in the container” after “by the vehicle”. The Administration explains that a container may or may not form part of a motor vehicle or be carried in or by a motor vehicle. For the sake of proper enforcement of the law, the Administration plans to suitably amend section 22 of the proposed Regulation to ensure that the investigation powers of authorised officers will also cover relevant containers not already being carried on a vehicle. It is therefore necessary to amend the empowering provision i.e. the proposed section 25(1)(hg) of the principal Ordinance. Members raise no query on the Administration’s proposal.

Illegal vehicle refuelling stations

37. The Bill also proposes to provide for the following matters under the proposed Regulation -

- (a) the prohibition of possession or control of certain liquid fuel in or

on any premises not so licensed under the Dangerous Goods Ordinance (Cap. 295) for the purposes of a business of supplying the fuel for transferring to the fuel tank of a motor vehicle;

- (b) the liability of the owner, tenant, occupier or person in charge of any premises who knowingly permits or suffers an offence under the FSO to be committed in or on the premises;
- (c) 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 the FSO is to be committed in or on the premises; and
- (d) the making of an order by a court or magistrate concerning closing any premises and termination of a tenancy.

38. According to the Administration, illegal refuelling activities are already treated as fire hazards but enforcement action has proved not satisfactory since 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 for FSD to pin down any one operator for prosecution or issue of a fire hazard order or closing order.

39. To tackle the problem, the Administration proposes that the storage of any liquid fuel for the purpose of the business of supplying the fuel for transferring to a motor vehicle's fuel tank in or on any premises other than a place so licensed or approved by FSD under the Dangerous Goods Ordinance should be subject to direct prosecution.

40. To tackle the problem of frequent change of illicit operators and to make property owners more vigilant about the use of their premises, the Administration proposes to prohibit any person from letting or sub-letting any premises with the knowledge that such premises are to be used for illegal vehicle refuelling activities. The Administration also proposes 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 (i.e. a period beginning four months after and ending 16 months after an immediately preceding conviction), 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, mortgagees and chargee of such premises, the Administration proposes 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.

41. Under the proposed Regulation, an owner, tenant, occupier, or person in charge of any premises commits an offence if he knowingly permits or suffers the premises to be used for illegal refuelling activities and is liable on conviction to a fine at level 6 i.e. \$100,000 and to imprisonment for 6 months. A person who lets or agrees to let any premises with the knowledge that the premises are to be used for illegal refuelling activities is also liable to the same level of penalty upon conviction. The Administration has informed the Bills Committee that the proposals are modelled along the line of the existing legislative provisions tackling premises repeatedly used for illegal manufacture of dangerous drugs or as vice establishments.

42. Ir Dr Hon Raymond HO has sought clarifications on whether proposals in the Bill cover liquefied petroleum gas (LPG) filling stations. The Administration clarifies that LPG is regulated by the Electrical and Mechanical Services Department under the Gas Safety Ordinance (Cap. 51) and therefore not covered by the Bill.

43. Members in general agree that the operation of illegal vehicle refuelling stations, notably those set up in residential areas, causes serious safety concern because over-storage or mishandling of illicit fuel in these stations may cause fire and explosion. They, however, consider that an effective appeal mechanism must be provided for an innocent owner whose premises have been issued with a closure order.

44. The Administration informs the Bills Committee that a number of appeal channels are available for closure orders made under section 27 of the proposed Regulation. The Administration explains that -

- (a) section 33 of the proposed Regulation provides for the rescission of a closure order on application by a person who becomes a bona fide purchaser, mortgagee or chargee of the premises after another person is convicted of an offence on which the closure order is based and before a notice relating to that conviction has been registered in the Land Registry;
- (b) section 34 provides for the rescission of a closure order after the conviction on which the closure order is based has been quashed; and
- (c) section 35 provides for the conditional suspension of a closure order on application by the immediate landlord or a mortgagee or chargee of the premises.

45. Some members have expressed concern that it might take a long time for a magistrate to hear an application lodged by a bona fide purchaser, mortgagee or chargee for a rescission of a closure order, or an application for a conditional suspension order lodged by a mortgagee or chargee who would be entitled or

permitted to occupy or possess the premises or would be the immediate landlord of the occupier of the premises. They have requested the Administration to provide relevant information in respect of similar appeal mechanism in other legislation.

46. The Administration informs the Bills Committee that according to the Judiciary, there are currently no statistics kept in respect of the lead time for an application for rescission of a closure order under section 153C of the Crimes Ordinance (Cap. 200) to be heard. However, based on the experience of the Judiciary, it is estimated that the time taken would be in the region of two or three weeks, depending on the court diary. In exceptional cases and subject to court availability, a shorter time may be possible.

47. Hon Miriam LAU has asked about the proof of the mens rea 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 the FSO is to be committed in or on the premises”. Hon IP Kwok-him has expressed concern that some innocent landlords who are genuinely unaware of their premises on lease being used as an illegal refuelling station could be caught by relevant provisions of the Bill.

48. The Administration explains that the mens rea of the person who commits the act could be proved by his own confession, the testimonies of witnesses or circumstantial evidence. In practice, prima facie evidence of the mens rea of the person could be established if a landlord of the premises renews a lease with a tenant with the knowledge that the tenant has just been convicted of the relevant offence during the previous lease, or the landlord occupies a portion of the premises which are being operated for illicit refuelling activities.

49. The Administration points out that the proposed Regulation would provide a mechanism for a magistrate to notify the owners and, if ascertainable, the tenant, or the agent or the person in charge of the premises in relation to which a person has been convicted of an offence caused by the illicit refuelling activity. If the owner, tenant, etc. takes no action to stop the illicit refuelling activity or to make an application to the magistrate for the issue of an order terminating the tenancy of the premises, this may constitute prima facie evidence of the mens rea of the person committing an offence under section 20(2) of the proposed Regulation.

50. Hon Cyd HO has expressed concern about the protection of innocent persons residing in premises against which a closure order is issued. She considers that these persons should be allowed to continue habitation on the premises. She has suggested that the Administration should make reference to the CSAs made to the Public Health and Municipal Services (Amendment) Bill 2001 which have the effect of letting innocent residents continue habitation in food premises in respect of which a closure order is made.

51. The Administration explains that the situations of food premises under the Public Health and Municipal Services Ordinance (Cap. 132) and that of residential premises where illegal refuelling activities are conducted are different in many aspects. Firstly, a magistrate must be satisfied that the relevant offence is a recurrence before a closure order could be made. Secondly, allowing habitation in premises under a closure order will seriously undermine enforcement efforts in eradicating the illegal refuelling activities in the premises. Lastly, illegal refuelling stations are mostly small street-side stores with rapid change of operators and the illicit business is usually run on a temporary and make-shift basis for the maximisation of profits within the shortest possible period of time before it is cracked down by the Police or FSD officers. Anything short of a total closure of the premises may render law enforcement difficult. The Administration believes that there should be few, if any, bona fide innocent persons who would be made homeless by a closure order.

Definition of “fire service installation or equipment”

52. Clause 3 of the Bill extends the definition of “fire service installation or equipment” to cover the installation or equipment that facilitates the evacuation from any premises in case of fire and the provision of a stand-by power supply. The Bill also proposes consequential amendments to the definition of “fire service installation or equipment” in the Public Health and Municipal Services Ordinance, the Places of Public Entertainment Regulations (Cap. 172 sub. leg.) and the Fire Safety (Commercial Premises) Ordinance (Cap. 502).

53. The Administration explains that since the last amendment to the definition of fire service installation or equipment in 1971, new forms of installations have been introduced to facilitate the evacuation from any premises and the provision of emergency power supply in case of fire and they are required to be provided in buildings nowadays. The definition of “fire service installation or equipment” should be amended to ensure coverage of these new installations or equipment under the FSO.

54. The Administration has also informed the Bills Committee that with the enactment of the Fire Safety (Buildings) Ordinance (Cap. 572) in July 2002, the definition of “fire service installation or equipment” therein should be consequentially amended to align with the new definition now proposed in the Bill.

55. Members note that the Federation of Hong Kong Hotel Owners Limited has expressed concern about the likely impact of the amended definition of “fire service installation or equipment” proposed in the Bill on the trade.

56. The Administration confirms that amending the definitions of “fire service installation or equipment” under relevant Ordinances as proposed in the

Bill would neither impose any new fire safety requirements nor change the current requirements for installation of fire service installation or equipment under the relevant licensing or regulatory regimes. Hence, there would be no financial impacts on the relevant sectors and the trade.

57. Ir Dr Hon Raymond HO has asked whether provisions requiring certification of fire safety improvement works by registered professional engineers (building services) would be included in the Bill or the proposed Regulation.

58. The Administration explains that registration of fire service installation contractors and certification of fire safety improvement works are issues being dealt with under a separate, on-going review of the current Fire Service (Installation Contractors) Regulations. The initial proposal is to recognise registered professional engineers (building services) as qualified persons in appropriate classes of registered contractors which may undertake certification work. Consultations among relevant industries, professions and trades are in progress. Any change to the existing registration and certification systems will, as necessary, be implemented in a separate legislative exercise in due course.

Investigation power of the Director of Fire Services

59. According to the Administration, FSD would carry 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" of the fire. 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. However, there is currently no specific provision in the FSO for the conduct of an investigation into an incident of fire.

60. To facilitate discharge of public duties, clause 4 of the Bill proposes to formally empower the Director 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.

61. Members note that to protect trade secrets, sanction against FSD officers unlawfully disclosing any information collected in fire investigation would be imposed under the proposed new section 8A(5) of the FSO.

62. Members agree with the suggestion of the legal adviser to the Bills Committee that the scope of the legal professional privilege under the proposed new section 8A(3) of the Ordinance should be expanded to cover information obtained from answers given by a person under the proposed new section 8A(2)(f). Members also agree with the suggestion of the legal adviser to the

Bills Committee that it should be stipulated clearly in the proposed section 8A(5) of the Ordinance that the obligation of non-disclosure also covers information derived from documents obtained under the proposed section 8A(2)(g). The Administration will move CSAs to such effect.

Powers of the Director in relation to the abatement and prevention of fire hazards

63. Clause 5 of the Bill provides for the powers of the Director in relation to the abatement and prevention of fire hazards.

64. Members have asked about the scope of “a person” and “any person” under the proposed new section 9(a) and (b) of the FSO respectively i.e. the power to serve a notice on a person or recover the expenses incurred from any person.

65. The Administration explains that under these provisions, FSD officers may issue a FHAN on -

- (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.

If the fire hazard is not abated as required or recurs within 12 months and there is a substantial risk of fire or risk to life, the Director may cause to be carried out works to abate the fire hazard and prevent its recurrence and recover the expenses incurred in carrying out the works from the person on whom the FHAN was served. In other words, the scope of “any person” referred to in the new section 9(b) only covers those on whom a FHAN referred to in the new section 9(a) has been served. The Administration also points out that such arrangement for the issue of a FHAN had been clearly set out in section 3 of the proposed Regulation.

Coverage of insurance against fire

66. Clause 9 of the Bill, which amends section 21 of the FSO, extends the coverage of a policy of insurance against fire to cover a damage done by FSD in the discharge of its duty on the occasion of a fire or an incident that may pose an immediate danger of fire.

67. Under existing 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 a damage 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 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 if the provision is not amended as proposed.

68. At members' suggestion, the Administration has consulted the Consumer Council on the adequacy of consumer protection as a result of extending the scope of the protection under the proposed amended section 21. Members note that the Consumer Council has expressed support for the proposed expansion of the scope of "damage by fire".

Offences

69. Clause 11 of the Bill proposes to amend existing section 27(1) of the FSO to the effect that any person who, without reasonable excuse, resists, obstructs or delays any person holding any rank in FSD set out in the Sixth Schedule to the Ordinance acting in the exercise of his power, or in the discharge of any duty conferred by the Ordinance shall be guilty of an offence and shall be liable to a fine at level 3 i.e. \$10,000 and to imprisonment for six months.

70. The Administration explains that FSD officers may sometimes be delayed unreasonably in daily operations by members of the public and this causes concern about protecting public safety. To ensure effective enforcement of the FSO, any act of delaying FSD officers in the discharge of duties should be prohibited. The Administration also points out that any reasonable excuse could be used as a defence against allegation of obstructing, resisting or delaying FSD officers.

Deterrent effect of penalties

71. 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 and link them with the levels of fine stipulated in the Criminal Procedure Ordinance (Cap. 221).

72. According to the Administration, 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 the Fire Service (Installations and equipment) Regulations are set at extremely low levels i.e. \$2,000 and \$5,000 respectively. In the case of fire hazard abatement under existing sections 9 and 9A to 9D of the FSO, the average fines

imposed by the courts from 1993 to 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.

73. The Administration considers 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, the Administration proposes a general four-fold 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 to the Criminal Procedure Ordinance.

Other miscellaneous provisions

74. The Bill proposes to revise and update various provisions in the FSO with a view to, among other things, refining the procedures for disciplinary proceedings and reflecting the changes in the rank structure of FSD over time. Clause 7 changes the period for a subordinate officer or member of other ranks of 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. Clauses 14 and 15 introduce new post titles to FSD.

75. Members have not made any particular comments on these proposals.

Committee Stage amendments

76. Apart from the CSAs discussed above, the Administration will move a number of textual amendments to improve the drafting and clarity of various proposed provisions. The CSAs to be moved by the Administration are in **Appendix II**. The Bills Committee supports these CSAs.

Follow-up action by the Administration

77. At the request of the Bills Committee, the Administration has undertaken -

- (a) to draw up guidance notes on the conveyance and stowage of parts of motor vehicles in enclosed containers in consultation with the stakeholders of the transport trade, including the drivers, tractor owners, cargo owners, freight forwarders, etc. (paragraph 34 above refers); and
- (b) to carry out comprehensive publicity on the requirements of the proposed Regulation before its commencement (paragraph 35 above refers).

Recommendation

78. Subject to the CSAs to be moved by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill on 12 March 2003.

Advice sought

79. Members are invited to note the recommendation of the Bills Committee in paragraph 78 above.

Council Business Division 2
Legislative Council Secretariat
26 February 2003

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

Membership List

Chairman Hon IP Kwok-him, JP

Members Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon James TO Kun-sun
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon CHOY So-yuk
Hon Abraham SHEK Lai-him, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon Frederick FUNG Kin-kee (up to 27.10.02)
Hon Audrey EU Yuet-mee, SC, JP

(Total : 11 Members)

Clerk Miss Flora TAI Yin-ping

Legal Adviser Miss Connie FUNG

Date 28 October 2002

FIRE SERVICES (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary
for Security

Clause

Amendment Proposed

- 3 In the proposed paragraph (e) of the definition of "fire service installation or equipment", by deleting "under" and substituting "the purposes of which are mentioned in".
- New By adding -
- "3A. General powers of entry**
- Section 8(3) is amended by repealing everything after "該處所" and substituting "在防禦侵入者方面的有效程度，一如他在進入時所察覺到的狀況。".
- 4 (a) In the proposed section 8A -
- (i) in subsection (3), by deleting everything after "compel" and substituting "a person to disclose any information or produce any document that the person would on grounds of legal professional privilege be entitled to refuse to disclose or

produce.";

(ii) in subsection (4), by deleting everything after "該處所" and substituting "在防禦侵入者方面的有效程度，一如他在進入時所察覺到的狀況。";

(iii) in subsection (5)-

(A) in paragraph (a), by deleting everything after "given" and substituting "or document obtained under subsection (2)(f) or (g), as the case may be; or";

(B) by adding "or (g)" before "or in the factory".

(b) In the proposed section 8B, by deleting everything after "但" and substituting "就該答案而對《刑事罪行條例》(第 200 章)第 36 條所訂罪行進行的法律程序除外。".

5 In the proposed section 9(f)-

(a) by deleting "具有以下效力的";

(b) in subparagraph (i), by deleting "to close" and substituting "that closes";

(c) in subparagraph (ii), by deleting "to prohibit" and substituting "that prohibits";

(d) in subparagraph (iv), by deleting "any means" and substituting "the means".

10(b) (a) In the proposed section 25(1)(hb)-

- (i) by deleting "，飭令";
 - (ii) in subparagraph (i), by adding "規定" before "任何";
 - (iii) in subparagraph (v), by deleting "any means" and substituting "the means".
- (b) In the proposed section 25(1)(hd), by deleting "any means" and substituting "the means".
- (c) In the proposed section 25(1)(he) and (hf), by deleting "a motor vehicle or a part of a motor vehicle, which" and substituting "a part of a motor vehicle that".
- (d) In the proposed section 25(1)(hg)-
- (i) by adding "or enter and search a container" after "search a vehicle";
 - (ii) by adding "or contained in the container" after "by the vehicle".
- (e) In the proposed section 25(1)(hi), by deleting "某" and substituting "任何".

20 In the proposed paragraph (e) of the definition of "fire service installation or equipment", by deleting "under" and substituting "the purposes of which are mentioned in".

21(b) (a) In the proposed paragraph (d) of the definition of "fire service installations and equipment", by

adding "or place" after "premises".

- (b) In the proposed paragraph (e) of the definition of "fire service installations and equipment", by deleting "under" and substituting "the purposes of which are mentioned in".

22(b) (a) In the proposed paragraph (d) of the definition of "fire service installation or equipment", by adding "or place" after "premises".

- (b) In the proposed paragraph (e) of the definition of "fire service installation or equipment", by deleting "under" and substituting "the purposes of which are mentioned in".

New By adding before Part III -

"Fire Safety (Buildings) Ordinance

22A. Interpretation

Section 3(1) of the Fire Safety (Buildings) Ordinance (21 of 2002) is amended in the definition of "fire service installation or equipment" -

- (a) in paragraph (b), by repealing "or";
- (b) in the Chinese text, in paragraph (c), by repealing the comma and substituting a semicolon;
- (c) by adding -

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