

立法會
Legislative Council

LC Paper No. LS108/02-03

**Paper for the House Committee Meeting
on 16 May 2003**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 May 2003**

Date of Tabling in LegCo : 14 May 2003

Amendment to be made by : 11 June 2003 (or 2 July 2003 if extended by resolution)

Fire Services Ordinance (Cap. 95)

Fire Services (Fire Hazard Abatement) Regulation (L.N. 113)

The Fire Services (Fire Hazard Abatement) Regulation ("the Regulation") is made by the Chief Executive in Council under section 25 of Fire Services Ordinance (Cap. 95) ("the Ordinance") to deal with all matters relating to abatement of fire hazards. Sections 9, 9A to 9D of the Ordinance are to be repealed by the Fire Services (Amendment) Ordinance 2003 (Ordinance No. 7 of 2003) ("the Amendment Ordinance") and re-enacted in the Regulation. The Regulation also provides for the following matters in relation to new forms of fire hazards:

- (a) the regulation of the conveyance on land of a container that contains a part of a motor vehicle which has fuel in its fuel tank or is otherwise stained with fuel;
- (b) the regulation of the stowage of 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;
- (c) the prohibition of possession or control of certain liquid fuel in or on any premises for the purposes of a business of supplying the fuel for transferring to the fuel tank of a motor vehicle;
- (d) the liability of the owner, tenant, occupier or person in charge of any premises who knowingly permits or suffers an offence under the Amendment Ordinance to be committed in or on the premises;

- (e) 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 Amendment Ordinance is to be committed in or on the premises; and
- (f) the making of an order by a court or magistrate concerning closing any premises and termination of a tenancy.

2. For further information, members may refer to the LegCo Brief on the Fires Services (Amendment) Bill 2001 ("the Bill") issued by the Security Bureau in June 2001 (Ref: SBCR 6/2361/98 Pt.7) (the 1st LegCo Brief"), the LegCo Brief on the Regulation issued by the Security Bureau on 6 May 2003 (Ref: SBCR6/2361/98 Pt.12) ("the 2nd LegCo Brief"), the Legal Service Division report on the Bill dated 3 July 2001 (LC Paper No. LS131/00-01) and the report of the Bills Committee on the Fire Services (Amendment) Bill 2001 ("the Bills Committee") dated 26 February 2003 (LC Paper No. CB(2)1296/02-03).

3. The Bills Committee has discussed the policy aspects of the Regulation in its draft form ("the draft Regulation"). The Bills Committee agreed with the Administration's suggestion of excluding a whole motor vehicle from the proposed scope of the Regulation. The Bills Committee also agreed with the Administration's suggestion of making a minor textual revision to sections 17(1) and 18(1) of the Regulation in order to address the concern of the transport trade. The Administration has also undertaken to draw up guidance notes on the proper conveyance and stowage of vehicle spare parts in containers in consultation with the trade, and carry out comprehensive publicity over an adequate period of time before the commencement of the Regulation.

4. According to the 2nd LegCo Brief, the Regulation is the same as the draft Regulation considered by the Bills Committee, except for the amendments set out in paragraphs 4 and 6 of the 2nd LegCo Brief. A copy of the Regulation with the amendments highlighted is attached to the soft copy of this Report and its hard copy will be provided upon request.

5. The Administration plans to appoint 1 January 2004 as the commencement date of the Amendment Ordinance and the Regulation in order to allow an adequate period of time for formulating the guidance notes and carrying out comprehensive publicity.

6. We have written to the Administration to clarify some drafting issues on the Regulation and a copy of our letter (Annex B) and its reply (Annex A) are enclosed.

The Chinese University of Hong Kong Ordinance (Cap. 1109)
Statutes of The Chinese University of Hong Kong (Amendment) Statute 2003
(L.N. 114)

7. This Statute is made by the Council of The Chinese University of Hong Kong under section 13 of The Chinese University of Hong Kong Ordinance (Cap. 1109) ("the Ordinance") with the approval of the Chancellor to amend Statute 26 of Schedule 1 of the Ordinance to provide for the conferring of a new master's degree, the Master of Family Medicine (M.F.M.), by the University.

8. The Panel of Education has not discussed the statute.

Occupational Safety and Health Ordinance (Cap. 509)
Occupational Safety and Health (Display Screen Equipment) Regulation (Cap. 509 Sub. Leg. B) (Commencement) Notice 2003 (L.N. 115)

9. Under the Occupational Safety and Health (Display Screen Equipment) Regulation (Cap. 509 Sub. Leg. B) ("the Regulation"), a person responsible for a workplace in which display screen equipment ("DSE") users work is required to:

- (a) perform risk assessment of a workstation where any DSE user works, and record the findings;
- (b) reduce the risks to the safety and health of DSE users at their workstations, e.g. from the DSE and the design of the workstations, which include any chair, desk, work surface, printer, document holder or other items peripheral to the DSE and the immediate working environment around the DSE; and
- (c) provide adequate safety and health training in the use of their workstations by DSE users.

10. The Secretary for Education and Manpower ("SEM") gave notice to move a motion at the LegCo meeting on 6 December 2000 to seek the Council's approval for the Regulation made by the Commissioner for Labour ("the Commissioner") under section 42 of the Occupational Safety and Health Ordinance (Cap. 509) ("the Ordinance"). At the meeting of the House Committee on 24 November 2000, a subcommittee was formed to study the Regulation.

11. The Subcommittee discussed in detail the provisions in the Regulation and the Health Guide on Working with Display Screen Equipment ("the Health Guide") to be issued by the Labour Department ("LD"), which sets out the standards against which the performance of the risk assessment and the reduction of the risk in the Regulation can be measured.

12. The Regulation was approved with amendments by LegCo resolution on 24 April 2002. The Administration also proposed a 12-month grace period before the Regulation takes effect. Having regard to the fact that the Regulation attracted much controversy, members of the Subcommittee have urged the Administration to brief the Panel on Manpower on the proposed commencement date of the Regulation and any changes made to the Health Guide before the commencement date of the Regulation.

13. At its meeting on 28 March 2003, the Panel on Manpower was briefed on the work of the Administration in promoting the requirements of the Regulation and was consulted on its proposal to bring the Regulation into operation in July 2003. The Administration also confirmed that no changes had been made to the Health Guide. A member suggested that the Administration should provide more information on the use of liquid crystal display monitor for the reference of employers and employees. Members did not raise queries on the commencement date of the Regulation.

14. Members may wish to refer to the reports on the Regulation made by the Legal Service Division (LC Paper No. LS23/00-01) and the Subcommittee (LC Paper No. CB(2)312/01-02) and the minutes of the meeting of the Panel on Manpower (LC Paper No. CB(2)1787/02-03) for further information.

15. By this Notice, the Commissioner appoints 4 July 2003 as the date on which the Regulation comes into operation.

Encl

Prepared by

LAI Shun wo, Monna
Assistant Legal Adviser
Legislative Council Secretariat
13 May 2003

Tel No.: 2810 3948

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14 May 2003

Assistant Legal Adviser
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8 Jackson Road
Hong Kong

(Attn: Miss Monna LAI)

Dear Miss LAI,

Fire Services (Fire Hazard Abatement) Regulation

Thank you for your letter of 12 May 2003 and your comments on the captioned Regulation. Our response to your questions are as follows:

Section 19(2)

Section 19 of the Fire Services (Fire Hazard Abatement) Regulation (FS(FHA)R) seeks to regulate illegal refueling activities. It provides that any person who has possession or control of a controlled substance, which in this context means dangerous goods in category 5 under the Dangerous Goods (Application and Exemption) Regulations, for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle commits an offence, unless a proper licence for the storage of the controlled substance has been granted or renewed under the Dangerous Goods Ordinance (Cap.295)(DGO).

As provided for in the Dangerous Goods (General) Regulations (DG(G)R), a licence for the storage of category 5 dangerous

goods may not be granted or renewed unless the conditions as set out in either Regulation 97 or Regulation 125 are complied with. While Regulation 97 spells out the licensing conditions for storage of category 5 dangerous goods in container form, Regulation 125, which specifically targets storage of category 5 dangerous goods in bulk with dispensing facilities (i.e. petrol filling station), sets out more stringent licensing conditions requiring the provision of ancillary facilities such as tankage, ancillary container, pipeline, filling, dispensing or pumping equipments in accordance with the designs and specifications approved by the licensing authority. It is our policy intent that the offence provision of Section 19(1) of the FS(FHA)R should not apply only to the storage of category 5 dangerous goods with licence granted under DGO in compliance with the conditions set out in Regulation 125 of the DG(G)R. The reason for having both section 19(2)(a) and (b) is that a person who has obtained a licence under DGO may not necessarily have complied with the conditions set out in Regulation 125 of the DG(G)R (as the licence may also be granted or renewed in compliance with the conditions set out in Regulation 97 only).

Section 21(1)

We confirm that in taking enforcement actions, the Director or member will, as always, inform the person concerned the act, default or sufferance which constitutes the suspected offence before requiring the production of personal particulars or proof of identity.

Should you require any further clarification, please feel free to contact the undersigned.

Yours sincerely,

(David Wong)
for Secretary for Security

LS/S/31/02-03
2869 9370
2877 5029

Secretary for Security
Security Bureau
(Attn: Miss Agnes CHEUNG
AS (S) B2
Rm 649, CGO
East Wing
Hong Kong

By Fax (2868 9159) and By Post

12 May 2003

Dear Miss CHEUNG,

**Fire Services (Fire Hazard Abatement) Regulation
(L.N. 113 of 2003)**

I am scrutinising the legal and drafting aspect of the above Regulation and have the following comments:

Section 19(2)

Section 19(2) provides that subsection (1) shall not apply if -

- (a) the conditions set out in regulation 125 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg. B) ("the regulation") have been complied with in respect of the relevant installation in or on the premises referred to it in that subsection; and
- (b) a licence for the storage of dangerous goods in liquid form in or on the premises ("the licence") has been granted or renewed under the Dangerous Goods Ordinance (Cap. 295)

The regulation provides that no licence for the storage of any dangerous goods in liquid form shall be granted or renewed by the Authority unless he is satisfied that the conditions set out in the regulation in relation to the required installation have been complied with.

It appears that the compliance of conditions required under paragraph (a)

is a necessary condition for the granting or renewal of the licence under paragraph (b). Please clarify the need for the express provision of paragraph (a).

Section 21(1)

Section 21(1) provides that the Director, or a member authorized by the Director, may require -

- (a) any person on whom a fire hazard abatement notice is served;
- (b) any person whom the Director or the member has reasonable grounds for suspecting as being the person by reason of whose willful act, default or sufferance a fire hazard arose or continues; or
- (c) any person whom the Director or the member has reasonable grounds for suspecting has committed, 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.

Should the Director or member inform the person the act, default or sufferance which constitutes the suspected contravention before requiring that person to give his personal particulars or produce proof of identity?

It will be appreciated if your reply, in both Chinese and English, could reach us by close of play, 14 May 2003.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

FIRE SERVICES (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~~ a day to be appointed for the commencement of the Fire Services (Amendment) Ordinance 2003 (7 of 2003).

2. Interpretation

(1) 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;

"fire hazard abatement notice" (消除火警危險通知書) means a fire hazard abatement notice ~~in-served under~~ 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~~ operations to be carried out, ~~and or~~ action to be taken ~~[relating to fire hazard abatement]~~ as required by ~~the Ordinance~~ this Regulation.

(2) In this Regulation, a reference to "premises" shall be read as including any part of the premises.

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

(4) In sections 14 and 16, "article or thing" (物件或東西), 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.

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

(a) the cargo compartment of a lorry; or

- (b) a freight container otherwise than on board a vessel or aircraft.

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~~ a 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 referred to in paragraph (a) is the servant or agent of some other person, such other person;
 - (c) if the person ~~or such other person, as the case may be~~ referred to in paragraph (a) and, if any, the person referred to in paragraph (b), cannot readily be found or is absent from Hong Kong, the owner, tenant, occupier or person in charge of the premises ~~in or on which the fire hazard exists.~~
- (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~~ for the purpose of 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 ~~to which the notice relates~~ 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 ~~relevant~~ premises such works, and cause to be removed and taken possession of such article or thing, ~~as appear to that is considered necessary by the Director to be necessary~~ to abate the ~~relevant~~ fire hazard and to prevent ~~the its recurrence of the fire hazard in or on the premises.~~

(2) The Director may not cause works to ~~be~~ carried out, ~~and cause to be removed and taken possession of any article or thing,~~ 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 ~~relevant~~ 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 abate fire hazard without serving fire hazard~~ abatement notice

~~In addition to the powers given to the Director under~~Notwithstanding section ~~4~~ 3, the Director may, ~~abate a fire hazard and may do what is necessary to abate a fire or prevent the recurrence of the fire hazard~~ if satisfied of the existence in or on any premises of a fire hazard, 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, that is considered necessary by the Director to abate the fire hazard and to prevent its recurrence in or on the premises without the service of a fire hazard abatement notice if -

- (a) the person by reason of whose act, default or sufferance the fire hazard ~~in or on any premises~~ arose or continues ~~in or on the relevant premises~~ cannot readily be found ~~or is absent from Hong Kong~~; and
- (b) ~~if the~~ Director is ~~clear~~ satisfied 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~~ ~~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-member~~ to exercise or discharge any of those powers or duties.

7. ~~Removal of a~~Articles or things removed creating
~~fire hazards under section 4~~

(1) If an article or thing is removed under section 4 or 5, a notice in both ~~English-Chinese~~ and ~~Chinese-English~~ 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 ~~for the on people to submit~~ submission to
the Director, 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~~Where a claim is made under subsection (1) for the return of ~~the-an~~ article or thing, the Director may refuse to return it unless ~~he is~~ satisfied that the claimant is the owner or otherwise entitled to possession of the article or thing.

(3) If ~~the-an~~ 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, -

(i) may otherwise be sold; or

(eii) may otherwise be disposed of without sale.

(4) The proceeds arising from the sale of ~~the~~an article or thing under subsection (3)-(a) or (b)(i) -

~~(a)~~ shall be ~~retained by the Director and~~ applied in payment of the expenses reasonably incurred by the works carried out under section 4 or 5; and ~~(b)~~ the surplus, if any, shall be paid ~~into~~ the general revenue.

~~(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~~

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

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

(a) shall ~~be constitute~~ a civil debt due to the Government by the person on whom the relevant fire hazard abatement notice was served; and

(b) ~~shall~~may be ~~recoverable~~recovered by action in the District Court from ~~the that person on whom the relevant fire hazard abatement notice was served.~~

(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~~ a 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 ~~in respect of him~~) 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 ~~is~~ 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 after a person is convicted of an offence under section 9, ~~either on application by the Director or on the magistrate's own initiative,~~ make a fire hazard order in the form of Form 2 in Schedule 1 in respect of ~~the~~ that 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, on application by the Director, make a fire hazard order in respect of that person ~~on application by the Director,~~ if the Director proves to the satisfaction of 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 ~~it has been~~ abated since the service of the notice, ~~has~~ ~~recurred-recurs~~, or is ~~in the opinion of the~~ ~~Director likely to recur~~ continuing.

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

- (a) requires ~~a~~ a person to comply with all or any of the requirements of a fire hazard abatement notice in ~~connection with~~ relation to which the order is made, or otherwise to abate the relevant fire hazard within the period specified in the order;
- (b) requires ~~a~~ a person to do what may be necessary to prevent the recurrence of the relevant fire hazard within the period specified in the order;
- (c) prohibits ~~the-a~~ a person from causing, permitting or suffering the relevant 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~~ carried out by ~~the-that~~ 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~~~~any~~ penalties imposed in respect of ~~the~~~~an~~ 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 ~~either~~ personally on or ~~sent~~ by registered post ~~sent~~ 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 ~~relevant~~ 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 ~~that~~
~~may materially increase the likelihood of-~~

(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~~ relation to which a prohibition order is in
force has been rendered suitable for the use specified in the
order, ~~it~~ 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 ~~is~~ 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~~ from the person in respect of whom the order was made any expenses reasonably incurred by the execution of the order ~~from the person against whom the order was made~~ as a civil debt due to the Government by action in the District Court.

13. Appeal against fire hazard orders or prohibition orders

(1) ~~Subject to the following provisions,~~ 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) ~~against~~ 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~~ (whether or not it also provides for other matters);
- (b) ~~of against~~ a fire hazard order that requires the ~~execution carrying out~~ of structural works ~~, or~~

(c) ~~of~~ against 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 referred to in subsection (4) shall not be payable if the appellant -

- (a) in the case of an appeal that is dismissed, satisfies the court hearing the appeal ~~in the case of an appeal that is dismissed~~; or
- (b) in the case of an appeal that is abandoned, 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 referred to in that 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-thinks~~ fit.

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

(10) If the magistrate by ~~which-whom~~ a fire hazard order that requires the ~~execution-carrying out~~ of structural works was made is of the opinion that the nature of the ~~relevant~~ 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-in respect of~~ 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-any~~ expenses ~~reasonably~~ incurred in abating the fire hazard ~~as a civil debt due to the Government by action in the District Court~~.

PART 3

FIRE HAZARD OFFENCES

14. Obstruction of means of escape

(1) In relation to any premises, Aa 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-the~~ premises, permits or suffers to be set out or left,

any article or thing that obstructs or may obstruct the means of escape in ~~respect of~~ 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 ~~second-and~~ 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-document~~ was on ~~a-the~~ date specified in the ~~certificate-document~~ 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 **admitted in evidence** under subsection

(3) -

- (a) that it is a certificate signed by the Director;
and
- (b) that the person named in the **certificate-document** was on the date specified in the **certificate document** 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 **respect of** 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 **respect of** 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 ~~second and~~ 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-document~~ was on ~~a-the~~ date specified in the ~~certificate-document~~ 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 ~~admitted in evidence~~ under subsection

(3) -

- (a) that it is a certificate signed by the Director;
and
- (b) that the person named in the ~~certificate-document~~ was on the date specified in the ~~certificate document~~ 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, ~~either on the-application of-by~~ 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 ~~in respect of that person~~.

(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 ~~may requires~~ the person in respect of whom it is made -

- (a) in the case where that person is convicted of an offence under section 14, 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) in the case where that person is convicted of an offence under section 15, 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~~ carry out, or cause to be ~~executed~~ carried out any works necessary to give effect to the requirements of the ~~removal~~ order; and
- (b) may recover ~~in the District Court from the person~~ any expenses reasonably incurred by the carrying out ~~execution~~ of the works ~~from the person~~ as a civil debt due to the Government by action in the District Court.

17. Conveyance of parts of motor vehicles ~~in containers~~

(1) Subject to subsection (2), a person commits an offence if the person -

- (a) ~~knowingly conveys on land~~ knowingly causes or permits to be conveyed on land; or
- (b) ~~knowingly causes or permits to be conveyed on land~~ knowingly conveys on land,

a container that contains ~~a motor vehicle or~~ a part of a motor vehicle ~~, which that~~ has fuel in its fuel tank or is otherwise stained with fuel.

(2) ~~It is not an offence under this section~~ Subsection (1) shall not apply if the container referred to in ~~that~~ 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 ~~second and~~ subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year.

18. Stowage of parts of motor vehicles ~~in containers~~

(1) Subject to subsection (2), a person commits an offence if the person -

- (a) ~~knowingly stows~~ knowingly causes or permits to be stowed; or
- (b) ~~knowingly causes or permits to be stowed~~ knowingly stows,

in a container that is or is to be conveyed on land ~~a motor vehicle, or~~ a part of a motor vehicle, ~~which~~ that has fuel in its fuel tank or is otherwise stained with fuel.

(2) ~~It is not an offence under this section~~ Subsection (1) shall not apply if the container referred to in that 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 ~~second and~~ 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.~~

(21) Subject to subsection (2), Aa person commits an offence if he ~~who~~ has possession or control of a controlled substance in or on any premises for ~~business~~ the purpose ~~commits an offence of a~~ business of supplying the substance for transferring to the fuel tank of a motor vehicle, and shall be liable -

- (a) on a first conviction, to a fine at level 6 and to imprisonment for 6 months;
- (b) on a ~~9(second and)~~ subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year.

(32) Subsection (21) shall ~~have no application not apply~~ 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 referred to in subsection (2).~~

- (a) the conditions set out in regulation 125 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg. B) have been complied with in respect of the relevant installation in or on the premises referred to in that subsection; and
- (b) a licence for the storage of dangerous goods in liquid form in or on the premises has been granted or renewed under the Dangerous Goods Ordinance (Cap. 295).

(43) In proceedings ~~under relating to~~ subsection (21), 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 the purpose of a business ~~purpose of supplying the substance for transferring to the fuel tank of a motor vehicle~~ 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.

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

20. Liability of owners, tenants 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 willful 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-practicable~~ with a requirement of the Director or the relevant 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 ~~is shall~~ be liable on conviction to a fine at level 4.

22. Power to stop, board ~~and~~, search, ~~a motor vehicle~~

~~and of seizure articles in relation to offences~~
~~against sections 17 and 18 etc.~~

(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~~ an 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~~ a motor vehicle or ~~anything carried in, on or by it.~~ container, the authorized officer may -

- (a) stop, board and search the motor vehicle; and
- (b) enter and search the container.

(2) An authorized officer may seize, remove and detain a motor vehicle or ~~anything~~ container or any article or thing carried in, on or by ~~it~~ the motor vehicle or contained in the container -

- (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 in exercising his power under this section in respect of any motor vehicle or container may ~~forcibly-~~

- (a) ~~forcibly-~~ board, enter and search ~~a~~ the motor vehicle ~~that the authorized officer is empowered to stop, board and search~~ or container ~~(as the case may be); and~~

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

(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; ~~and~~
- (b) a member of the Customs and Excise Service in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); ~~and/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~~

**Notification and publication
of charges and convictions**

**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~~ respect of 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 a 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-Chinese~~ and another notice in ~~Chinese-English~~ -

(i) stating that a person has been convicted of the offence in ~~relation to respect of~~ the ~~relevant~~ premises and ~~state stating~~ the nature and date of the offence, but ~~it the notice~~ 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 respect of~~ 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 ~~or cause to be affixed by a scheduled member~~ the notices referred to in paragraph (a) to a conspicuous part of the premises in ~~relation to~~

respect of which the offence is proved to have been committed; and

- (c) ~~arrange to publish cause~~ the notice in Chinese to be published 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 document purporting to be a certificate ~~purporting to be~~ signed by a ~~S~~scheduled member ~~not below the rank of Assistant Divisional Officer~~ stating that ~~the officer he~~ has on the date specified in the document affixed ~~a the~~ notices in accordance with subsection(1) shall be admitted in evidence on its production.

(3) ~~Unless~~ the contrary is proved, it shall be presumed in respect of the document admitted in evidence under subsection (2) ~~to be~~ -

- (a) that it is a certificate signed by the ~~officer~~ scheduled member; and
- (b) ~~evidence of the facts stated in the certificate relating to that fixing~~ that the scheduled member has on the date specified in the document affixed the notices in accordance with subsection(1).

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 that~~

fact shall be served either personally on or ~~sent~~ by registered post ~~sent~~ to -

- (a) the owner and, if ascertainable, the tenant, of the premises in ~~relation to~~ respect of which the offence is proved to have been committed; ~~or~~
- (b) if the person referred to in paragraph (a) cannot readily 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~~ on 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~~ respect of 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 ~~made~~ under subsection (1) shall be sufficient authority ~~to~~~~for~~ 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 ~~reasonably~~ necessary to exercise the power conferred ~~under~~~~by~~ 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~~ ~~c~~closure order

(1) This section applies to ~~an~~ offences under section 19 ~~or~~ ~~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 ~~any~~~~the~~ preceding conviction); and
 - (b) that ~~a~~~~the~~ notices under section 24 in respect of the immediately preceding conviction ~~has~~~~have~~ 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. ~~Content of~~ ~~C~~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 ~~without reasonable excuse~~-
 - (i) enters~~the premises~~; or

- ~~—(ii)—~~ is in the premises ~~after they that~~ have been closed; or
- (iii) ~~without reasonable excuse,~~ interferes with ~~anything any~~ lock, bar or other ~~thing~~ 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 a~~ closure order under section 27 ~~in respect of any premises~~ shall, as soon as reasonably practicable, ~~send-cause~~ a copy of the order signed by the magistrate ~~to be sent~~ to the Director.

(2) On receipt of the copy of the order ~~under subsection (1),~~ 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 a~~ closure order ~~under section 27~~ 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 ~~relevant~~ premises;
- (c) ~~use such reasonable force and take such reasonable other reasonably necessary measures as are necessary~~ to effect the closure.

(2) A bailiff and the person assisting bailiff may use such force as is reasonably necessary to exercise the power conferred by subsection (1).

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

(~~24~~) A person who, ~~without reasonable excuse~~, obstructs a bailiff or a person ~~who~~ assisting the bailiff in the exercise of ~~any function~~ the power conferred by ~~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 ~~reasonably reasonable~~ excuse -

- (a) ~~interferes with any lock, bar or other thing used to close the premises subject to a closure order~~enters or is in the premises that have been closed under a closure order; or
- (b) ~~enters or is in the premises that have been closed under a closure order~~interferes with any lock, bar or other thing used to close the premises subject to 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 ~~is 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, and address ~~and business or occupation~~ of the applicant; and
- (b) shall state the business or occupation of the applicant; and
- (bc) 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 made under this section, the magistrate shall -

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

(5) After hearing an application ~~made by the applicant~~ 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 ~~or charge~~ (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~~ ~~cause~~ a notice in writing signed by the magistrate stating that fact ~~to be sent~~ 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 after 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 he~~ 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-cause~~ a notice in writing sealed with the seal of the court stating that fact ~~to be sent~~ 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 made under this section -

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

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

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

(4) After hearing an application made by the applicant 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-cause~~ a copy of the order signed by the magistrate ~~to be sent~~ 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,~~

~~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.

(11) ~~An application made under subsection (10) shall, as far as is practicable, be made to the magistrate who made the suspension 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 ~~suspension~~ 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 penalized 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-and~~ -

- (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 ~~made~~ under subsection (1), the magistrate may, if satisfied that a condition ~~of-attached~~ to the suspension order has been breached, ~~do-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-cause~~ a copy of the order signed by the magistrate ~~to be sent~~ 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 [s. 3, 10, 11 & 16]

FORMS FOR NOTICES AND ORDERS UNDER THIS REGULATION

FORM 1 [s. 3]

FIRE SERVICES (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 Services (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~~carried out).

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 Services (Fire Hazard Abatement) Regulation.
~~Upon~~ On conviction, a court may impose a maximum fine at level 6
and ~~\$10,000~~ 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.

FORM 2

[s. 10]

FIRE SERVICES (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) situated at
 (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~~—describe 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 Order 1
 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 Services (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).

And I/we being satisfied that, notwithstanding that Order 2
 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~~carried out]).

Now on proof here had before me/us that at or Order 3 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~~causeding 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).

Dated this day of,

(Signed)

Magistrate

FORM 3

[s. 11]

FIRE SERVICES (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 of the Regulation was served on (date of service) in respect of premises situated 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 Fire Services (Fire Hazard Abatement) 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 Fire Services (Fire Hazard Abatement) 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

FORM 4

[s. 16]

FIRE SERVICES (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

(insert such description of the situation as may be sufficient to identify the premises) having been convicted of the offence of (describe offence) under section ~~{section-(14/ OR 15)}~~ of the Fire Services (Fire Hazard Abatement) Regulation] on (date of conviction) at Court.

TAKE NOTICE that under section 16 of the Fire Services (Fire Hazard Abatement) Regulation I/we do require you within (specify time) from the service of this order to remove (~~specify the~~ articles or things ~~to be removed~~ 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 16(4) of the Fire Services (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 costs₇ which may be incurred thereby.

Dated this day of,

(Signed)

Magistrate

SCHEDULE 2

[s. 2]

SCHEDULED 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 work 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 ~~or thing~~ that may create a fire hazard;

- (e) section 8 provides for the recovery of expenses reasonably incurred in carrying out works by the Director to abate a fire hazard and prevent it from recurring; and
- (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 proposes -
 - (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 and to prevent the fire hazard from recurring;
 - (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; and
- (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 ~~M~~magistrate to make orders to remove any article or things that obstruct or lock or other devices that secures ~~the~~ a 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~~ that has fuel in its fuel tank or is otherwise stained with fuel, unless the container is open at the top ~~and 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~~ that 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 ~~or control~~ 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 the conditions set , whether in the form of a licence or otherwise, is issued~~ under regulation 125 of the Dangerous Goods ~~Ordinance~~ (General)

Regulations (Cap. 295 sub. leg. B) have been complied with and a licence is granted or renewed under Dangerous Goods Ordinance (Cap. 295)—~~in respect of~~ for the storage of the relevant controlled substance in or on the premises; and

(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 motor vehicle and seize articles or thing carried in, on or by it.

6. Part 5 (sections 23 to ~~38~~ 37) 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 is 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 of, 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~~ served 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-; and
- (k) section 37 provides for the effect of notices and orders sent to the Land Registry.

FIRE SERVICES (FIRE HAZARD ABATEMENT) REGULATION

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