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**Paper for the House Committee meeting on
20 June 2003**

**Report of the Subcommittee on
Fire Services (Fire Hazard Abatement) Regulation**

Purpose

This paper reports on the deliberations of the Subcommittee on the Fire Services (Fire Hazard Abatement) Regulation.

Background

2. The Fire Services (Amendment) Bill 2001 was introduced into the Legislative Council (LegCo) in June 2001. It aimed to enhance the effectiveness of the regulatory framework on fire hazard abatement and prevention. The main provisions of the Bill were to -

- (a) provide for the powers of the Director of Fire Services to investigate matters relating to a fire and abatement, and prevention of fire hazards;
- (b) empower the Chief Executive in Council to make regulations providing for the regulation of new types of fire hazards and the making of a court order concerning the fire hazards; and
- (c) amend the level of fines for offences under the Ordinance and its subsidiary legislation.

3. A Bills Committee was formed by the House Committee to examine the Bill. In scrutinising the Bill, the Bills Committee had also discussed the policy aspects of the proposed Fire Services (Fire Hazard Abatement) Regulation which was attached to the LegCo Brief on the Bill issued in June 2001. Members of the Bills Committee had raised a number of concerns, and the Administration had agreed to make suitable amendments to both the Bill and the proposed Regulation. The Bill was subsequently passed with amendments by LegCo on 12 March 2003. The Regulation, which was subject to the negative vetting procedure of LegCo, was gazetted on 9 May 2003 and tabled in LegCo on 14 May 2003.

The Regulation

4. The Fire Services (Fire Hazard Abatement) Regulation deals with all matters relating to abatement of fire hazards made by the Chief Executive in Council under section 25 of the Ordinance. Sections 9 and 9A to 9D of the Ordinance which have been repealed by the Fire Services (Amendment) Ordinance 2003 are re-enacted in sections 3 to 16 of the Regulation.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.

5. According to the LegCo Brief on the Regulation issued on 6 May 2003, the Regulation is the same as the draft Regulation considered by the Bills Committee on Fire Services (Amendment) Bill 2001, except that some amendments have been made to address concerns previously raised by the Bills Committee, representatives of the transport trade and The Law Society of Hong Kong, to delete the original section 9(1)(a) which is an obsolete provision, and to provide for some technical or editorial refinements.

6. The Administration plans to appoint 1 January 2004 as the commencement date of the Fire Services (Amendment) Ordinance 2003 and the Regulation.

The Subcommittee

7. At the House Committee meeting on 16 May 2003, Members agreed to form a subcommittee to examine the Regulation. Chaired by Hon IP Kwok-him, the Subcommittee has held two meetings with the Administration. The membership list of the Subcommittee is in the **Appendix I**.

Deliberations of the Subcommittee

Fire hazard abatement (sections 3 -13)

8. The abatement of fire hazards and prevention of their recurrence were previously provided for under sections 9 and 9A to 9D of the Fire Services Ordinance. For ease of reference in taking enforcement action and to facilitate future updating of the procedures, the previous sections 9 and 9A to 9D of the Ordinance have been repealed by the Fire Services (Amendment) Ordinance 2003 and re-enacted in the Regulation.

9. At the request of the Subcommittee, the Administration has provided a comparison between the relevant sections in the Regulation and the deleted sections 9 and 9A to 9D of the Fire Services Ordinance. The Administration has informed the Subcommittee that Parts 1 and 2, and sections 14 to 16 of Part 3 of the Regulation are modelled on the repealed sections 9 and 9A to 9D of the Fire Services Ordinance except with some additions and textual improvements. These parts of the Regulation set out the following -

- (a) procedures for the issue of a fire hazard abatement notice, fire hazard order, prohibition order and removal order;
- (b) powers of the Director of Fire Services to carry out works to abate the relevant fire hazard and to recover the expenses;
- (c) procedure for the claim of article or thing removed;
- (d) procedures for appeals against fire hazard orders or prohibition orders;
- (e) offences and penalty in relation to fire hazard abatement notice, fire hazard order, prohibition order and removal order; and
- (f) offences related to the obstruction and locking of means of escape.

10. Hon LAU Ping-cheung has sought clarification on the enforcement of section 5 of the Regulation concerning the removal of articles or things to abate fire hazards. The Administration has explained that Fire Services Department is empowered to remove articles or things in public places in or on any premises, if such articles or things cause obstruction to fire escape or fire services installation or equipment. In most of the cases handled by the Fire Services Department, the owner of those articles or things which cause obstruction or fire hazard could be identified and they would be asked to remove such articles or things. If the owner cannot be identified and a fire abatement notice cannot be issued, the Director of Fire Services is empowered, under section 5 of the Regulation, to carry out works to remove such articles or things to abate the fire hazard.

11. The Administration has informed the Subcommittee that section 7(1) and (2) of the Regulation are new provisions to provide for a procedure for the return of articles or things removed by the Director of Fire Services. Under section 7(1), a notice will be posted at the place where the article or thing is removed. The notice will set out the details of the article or thing, and invite submission within one month from the day of the notice of any claim for the return of such article or thing. If such article or thing is not claimed within the specified period, or if the Director refuses to return it to the claimant under section 7(2), the article or thing may be sold by public auction or disposed of otherwise. The Administration has advised that the procedure is similar to those adopted by other enforcement departments for the return of seized or removed articles.

Stowage or conveyance of parts of motor vehicles (sections 17 and 18)

12. The Administration has advised that, in response to the concern raised by the Bills Committee on Fire Services (Amendment) Bill 2001, the proposed control framework will now apply to motor vehicle parts but not whole motor vehicles. In this respect, the Administration had consulted the Marine Department which had submitted a proposal to the International Maritime Organisation (IMO) to regulate the sea conveyance of motor vehicles and motor vehicle parts. Following discussion at the IMO, it is noted that, given proper stowage, there is indeed very little explosion risk in conveying a whole vehicle in a container, since a vehicle is designed to prevent leakage of fuel and is intrinsically safe. The relevant provisions in sections 17 and 18 of the Regulation and clause 10 of the Bill have therefore been amended.

13. Members of the Subcommittee have noted that the transport industry had previously expressed concern about the possible liabilities on the part of drivers of freight containers under sections 17 and 18 of the Regulation, as drivers had no right to inspect the content of the containers. Members have asked whether such concern has been addressed. In this connection, they have sought clarification on the interpretation of "knowingly" in sections 17 and 18 of the Regulation, and whether drivers can have a defence of not being aware of the contents of the container.

14. The Administration has explained that sections 17 and 18 of the Regulation do not add extra liabilities on drivers or impose a duty on them to open the containers and check the contents. The Administration has also explained that the element of "knowingly" is related to the state of mind and the intent of the alleged offender, and this will have to be determined by the court having regard to the circumstances of each case. To avoid giving the impression that the Regulation imposes an obvious liability on the part of drivers, the order of subparagraphs (a) and (b) in both sections 17(1) and 18(1) of the draft Regulation has been swapped. Moreover, the Administration has discussed with the transport trade and drawn up guidance notes to assist the trade to comply with the Regulation (paragraph 27 below).

Power to obtain personal particulars (section 21)

15. The Administration has explained that under the repealed section 9(1A) of the Ordinance, the Director of Fire Services may, by notice in writing, require a person to give correct particulars of his name and address, and produce proof of identity within 24 hours as specified in the fire hazard abatement notice. This provision, which has now become section 21 of the Regulation, is slightly amended by deleting the reference to the time limit of 24 hours. The amendment will enable the Director, or an officer authorised by the Director, to require a person suspected to have caused a fire hazard to produce proof of identity immediately, in order to avoid delays in taking action to abate the fire hazard.

16. The Chairman has advised that the proposed amendment had been discussed and agreed to by the Bills Committee on Fire Services (Amendment) Bill 2001.

Investigation powers (section 22)

17. The Administration has informed the Subcommittee that the Law Society has pointed out that a container can normally be kept away from a vehicle, and the proposed powers of authorised officers to stop, board and search a vehicle (and a container it carried) should be expanded to cover stand alone containers which are to be conveyed on vehicles. After considering the comments of the Law Society, the investigation powers of authorised officers under section 22 of the Regulation and clause 10 of the Bill have been suitably amended.

Illegal vehicle refuelling stations (Parts 3-5)

18. According to the Administration, while illegal vehicle refuelling activities are already treated as fire hazard offences, enforcement against such activities have not been satisfactory. Frequent change of operators has made it difficult for Fire Services Department to pin down any one operator for

prosecution or for a fire hazard order or closure order to be made. To tackle the problem, the Administration has proposed 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.

19. The Administration has also proposed 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, the court may make a closure order to effect complete closure of such premises. To protect the interest of bona fide purchasers, mortgagees and chargees 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.

20. Under the 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 is liable on conviction to a maximum 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 Subcommittee 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.

21. Regarding the liability of tenant or occupier under section 20 of the Regulation, Hon LAU Ping-cheung has sought clarification whether a co-tenant who shares the use of the premises but has no involvement in the illegal vehicle refuelling activities will also be held liable under this section. The Administration has explained that section 20 of the Regulation has specified that only a person who is "in charge of" the premises and "knowingly" permits or suffers an offence under section 19 of the Regulation will commit an offence.

22. The Subcommittee has noted that section 35(4) of the Regulation empowers a magistrate to suspend a closure order for a period of two to three years if he is satisfied that the proposed use of the premises is unlikely to pose an undue risk of fire. In this connection, Hon LI Fung-ying has asked whether Fire Services Department will be informed of the making of a suspension order so that it can monitor the situation to ensure that the premises will not be used again as an illegal vehicle refuelling station.

23. The Administration has explained that section 35 has provided for the procedures to notify the Director of Fire Services the hearing on an application for a suspension order and also the making of such an order. The Director may make representations to the magistrate on applications for suspension orders. Under section 36 of the Regulation, the Director may also apply to the magistrate making the suspension order for the closure order to be revived if there is a breach of a condition attached to the suspension order.

Levels of fines

24. The Subcommittee has noted that the levels of fines under sections 9, 12, 13, 14, 15 and 16 of the Regulation for offences relating to fire hazard abatement notice, fire hazard order, and obstruction and locking of means of escape have been increased by four-fold. The Administration has explained that the previous fine levels were set in 1986 or before, and can no longer provide sufficient deterrence in present day circumstances. The revised levels of fine are within the range provided under the amended section 25(3) of the Fire Services (Amendment) Ordinance 2003.

25. The Chairman has advised that the proposed increase in fine had been discussed and agreed to by the Bills Committee on Fire Services (Amendment) Bill 2001.

Technical amendments to the Regulation

26. After discussion with the legal adviser to the Subcommittee, the Administration has proposed a few technical amendments to improve the drafting of sections 10, 22 and Form 2 in Schedule 1. For consistency with section 10(2), appropriate references to continuance of fire hazards will be added to sections 10(3)(b), 10(3)(c) and 10(4), while reference to likely recurrences of fire hazards in Form 2 of Schedule 1 will be repealed. Amendments are also proposed to section 22(2) and (3) to elucidate that the various powers to be exercised by the authorised officer under those provisions should be incidental to the execution of the powers provided by section 22(1). The proposed amendments are set out in **Appendix II**.

Guidance notes to the trade

27. In response to members, the Administration has advised that it has drawn up a set of guidance notes for the transport trade on the conveyance and stowage of parts of motor vehicles. The transport trade has been consulted and indicated agreement to the draft guidance notes. The draft guidance notes and the reference materials used in drawing up the guidance notes have been provided to the Subcommittee for information.

Recommendations

28. The Subcommittee supports the Regulation and does not propose any amendment.

Advice sought

29. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
19 June 2003

**Subcommittee on
Fire Services (Fire Hazard Abatement) Regulation**

Membership list

Chairman Hon IP Kwok-him, JP

Members Hon Ambrose LAU Hon-chuen, GBS, JP

Hon LI Fung-ying, JP

Hon LAU Ping-cheung

(Total : 4 members)

Clerk Mrs Constance LI

Legal Advisers Miss Connie FUNG

Miss Monna LAI

Date 27 May 2003

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

FIRE SERVICES (FIRE HAZARD ABATEMENT) REGULATION

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on July 2003.

RESOLVED that the Fire Services (Fire Hazard Abatement) Regulation, published in the Gazette as Legal Notice No. 113 of 2003 and laid on the table of the Legislative Council on 14 May 2003, be amended -

(a) in section 10 -

- (i) in subsection (3)(b), by adding "or continuance" after "recurrence";
- (ii) in subsection (3)(c), by adding "or continue" after "recur";
- (iii) in subsection (4), by adding "or continuance" after "recurrence";

(b) in section 22 -

- (i) in subsection (2), by adding "in exercising his power under subsection (1)" after "An authorized officer";

- (ii) in subsection (3), by repealing
"this section" and substituting
"subsection (1)";

(c) in Schedule 1, in Form 2 -

- (i) by repealing ", notwithstanding that
the said fire hazard may be
temporarily abated under this order,
the fire hazard is likely to recur"
and substituting "the said fire
hazard is continuing";
- (ii) by adding "/continuance" after
"recurrence";
- (iii) by repealing "it is likely that the
same fire hazard will recur" and
substituting "the same fire hazard
has recurred".

Clerk to the Legislative Council

July 2003

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RESOLUTION

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"recurrence";

(iii) by repealing "it is likely that
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and substituting "the same fire
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