

Bills Committee on Fire Services (Amendment) Bill 2015

**Government's Response to Issues Raised by the Bills Committee
at its Meetings on 22 and 29 February 2016**

Purpose

This paper sets out the Government's response to the issues raised by the Bills Committee in relation to the Fire Services (Amendment) Bill 2015 (the Bill) at its meetings on 22 and 29 February 2016. The Government previously responded to other matters raised by Members, including the proposed registration mechanism and regulatory framework of Registered Fire Engineers (RFEs), the current manpower for licence processing in the Fire Services Department (FSD) and maintaining FSD's current level of service at the meeting on 22 February vide a separate information paper (LC Paper No. CB(2)970/15-16(02)).

Implementation Details of RFE Scheme

Qualifications for registration as an RFE

(Item (a) on the list of follow-up actions arising from the meeting on 22 February)

2. As the proposed RFEs will be categorised into three classes (Risk Assessment, Fire Service Installation and Ventilating System), FSD's requirements on qualifications and experience of the RFEs will vary according to the duties of each class.

3. Having carefully considered the qualifications and experience required of RFEs, and comments from relevant professional bodies and stakeholders, we propose that the three types of persons below may apply to be registered as RFEs:

- (i) persons registered as Registered Professional Engineers of disciplines relevant to fire safety risk assessment, and compliance checks of fire service installations and ventilating systems under the Engineers Registration Ordinance (Cap. 409). They shall possess at least one year of relevant working experience;
- (ii) persons with undergraduate degrees relevant to the duties of the three classes above (e.g. degrees in fire engineering, structural engineering, civil engineering, building services engineering,

building surveying or other academic qualifications recognised by the Registration Committee upon examination). They need to have completed courses relating to the class of RFE they apply to register (courses such as fire science, fire protection systems, fire safety legislation) during the course of their degree programmes, or have separately completed the relevant top-up courses. They shall possess a longer period of relevant working experience than in (i) above (say six years or above); or

- (iii) practitioners with sufficient experience (for instance those with at least 15 years of relevant working experience). They are also required to have completed the relevant top-up courses.

4. We are now consulting the relevant professional bodies and stakeholders on the aforesaid qualifications requirements proposal, and would continue the engagement with a view to formulating detailed qualifications and experience requirements. As proposed under the Bill, the qualifications and experience requirements will be provided for in the new regulation to be made under the Fire Services Ordinance (FSO, Cap. 95) (the New Regulation) as appropriate.

Vetting procedure of the new subsidiary legislation

(Item (a) on the list of follow-up actions arising from the meeting on 29 February)

5. After the passage of the Bill, the Government will introduce the New Regulation to provide for the implementation details of the RFE Scheme, including the registration and duties for RFEs, their inclusion in and removal from the register, the disciplinary and appeal mechanisms, as well as the issue of codes of practice in relation to the Scheme.

6. Under the Bill, the New Regulation is proposed to be made by negative vetting pursuant to the arrangements stipulated in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). This has taken into account the fact that the New Regulation sets out the implementation details of the Scheme and would facilitate more efficient amendments in the future, whilst the Legislative Council could offer comments and make amendments during the vetting period. We have also made reference to the rule-making procedure of other similar subsidiary legislation provided under the FSO¹.

¹ Including the Fire Service (Installation Contractors) Regulations (Cap. 95A) and the Fire Service (Installations and Equipment) Regulations (Cap. 95B), which provides for the regulation of the

7. The above notwithstanding, in the light of some Members' suggestion that the New Regulation should instead be subject to the positive vetting arrangements stipulated in section 35 of Cap. 1, we are of the view that with the exception of the fees for registration, retention and restoration of RFEs (fees of similar nature are typically specified by the negative vetting procedure under other laws of Hong Kong), we have no objection to the other details of the Scheme being specified by a new regulation which is subject to the positive vetting procedure. If Members consider this the preferred approach, the Government will prepare draft Committee Stage Amendments to that effect.

Disciplinary offences on the part of an RFE

(Item (a) on the list of follow-up actions arising from the meeting on 22 February)

8. FSD will issue codes of practice and/or guidelines to the RFEs in order to provide practical guidance on fire safety risk assessment, as well as inspection and certification of fire service installations and equipment (FSI) and ventilating systems. The RFEs are required to strictly comply with the codes and guidelines. Our preliminary proposal is that an RFE may be regarded as having committed a disciplinary offence² if he/she:

- (i) has committed misconduct or neglect in any professional respect;
- (ii) has deviated from the requirements issued by FSD or a registered fire engineer (risk assessment) (RFE(RA)) in certifying compliance of the fire safety requirements of any prescribed premises³;
- (iii) has failed to discharge the duties or abide by the requirements under the New Regulation;
- (iv) has obtained registration or renewal of registration under the New Regulation by fraud or misrepresentation; or
- (v) has committed an offence under the New Regulation.

registration and disciplinary matters of fire service installation contractors, as well as the duties of the registered fire service installation contractors.

² The exact wording will be provided in the New Regulation.

³ Under the existing legislation, certain types of premises will require a "licence", a "permit", a "certificate of compliance" or a "certificate of registration" (hereafter collectively referred to as "a licence") to operate. Those premises requiring a "licence" or a "permit" to operate include general restaurants, factory canteens, funeral parlours, cinemas, theatres, karaoke establishments, hotels, guesthouses, places of public entertainment etc. A club-house requires a "certificate of compliance" to operate, whereas a school needs a "certificate of registration". Such premises are hereafter collectively referred to as "prescribed premises".

We will further consider if there are other circumstances which should be regarded as disciplinary offences. We will consult the trade on the detailed proposal and set out the details in the New Regulation as appropriate.

9. The Government will establish a disciplinary mechanism for inquiring into and dealing with cases where an RFE is suspected to have failed to discharge his/her duties properly. Details of the disciplinary proceedings in relation to RFEs, including disciplinary offences, the establishment, composition and meeting procedures of the Disciplinary Board Panel and the Disciplinary Boards, will be set out in the New Regulation. Please refer to paragraph 6 of LC Paper No. CB(2)970/15-16(02) for the proposed functions and compositions of the Disciplinary Board Panel and the Disciplinary Boards.

RFE's civil and criminal liabilities for misconduct

(Item (b) on the list of follow-up actions arising from the meeting on 22 February)

10. Apart from disciplinary offences, our preliminary proposal is that the New Regulation will stipulate that an RFE will be subject to criminal liability if he/she⁴:

- (i) fails to notify the Director of Fire Services (DFS), without reasonable excuse, within a specified period after a change in his professional qualification that affects his fulfilling the requirements for registration;
- (ii) carries out a duty that is not within the scope of duties of the class for which the RFE is registered; or
- (iii) issues a fire safety certificate that is false or misleading.

We will further consider if there are other circumstances which should be regarded as giving rise to criminal liability. We will consult the trade on the detailed proposal and set out the details in the New Regulation as appropriate.

11. On the other hand, any person who is affected by the misconduct of the RFE (e.g. the licence applicant appointing the RFE) may bring legal actions against the RFE and claim civil liability.

⁴ The exact wording will be provided in the New Regulation.

Proposed formulation of fire safety requirements by RFE

(Item (b)(i) on the list of follow-up actions arising from the meeting on 29 February)

12. An RFE(RA) is required to conduct fire safety risk assessment for the prescribed premises, and recommend, from the fire safety point of view, to the licence applicant the suitability of the prescribed premises to be used for the intended purpose and formulate fire safety requirements. Taking a general restaurant as an example, for the purposes of reducing the probability of fire, mitigating the effect of fire and limiting the spread of fire, an RFE(RA) has to take into account the following issues when conducting fire safety risk assessment and drawing up fire safety requirements for the premises:

(i) Site restrictions

13. An RFE(RA) is required to review the site restrictions of the proposed location of the restaurant, including the type of buildings and the suitability of its use; any co-existence of premises posing potential risk to the restaurant as well as its existing provision of FSI.

(ii) Fire safety requirements

14. Besides formulating a set of requirements for the restaurant to install typical FSI, including the portable firefighting equipment, manual fire alarm system, exit signs and emergency lighting, the RFE(RA) shall review the potential fire risks of the premises, such as the quantity of combustibles in the restaurant, or the area of the designed openable/breakable windows being obstructed by decorations or sealed up. Depending on the risk level, the RFE(RA) may require the licence applicant to install additional FSI such as automatic sprinkler systems, automatic fire detection systems as well as smoke extraction systems.

15. Apart from FSI, the RFE(RA) is required to formulate other fire safety requirements, such as requiring the applicant to ensure that the materials used for false ceilings, partitions or wall furnishings and all the polyurethane foam filled furniture meet the specified standard.

(iii) Fire protection measures

16. To ensure fire safety of a licensed premises upon obtaining the licence, the RFE(RA) also needs to draw up relevant fire protection measures for the premises (such as that the licensee shall ensure all means of escape in the premises are free from obstructions, and all FSI are maintained in efficient working order at all times, etc.) for the licensee's

on-going implementation in the operation of the restaurant.

Current manpower and procedures of FSD in licensing and certification

*The estimated number of FSD staff who could meet the proposed qualifications for registration as an RFE
(Item (c) of the list of follow-up actions arising from the meeting on 22 February)*

17. FSD will establish a Registration Committee consisting of professionals and representatives from the academia to provide professional advice to FSD on matters including whether to accept qualified persons who have relevant experience and/or completed the relevant fire engineering courses to register as an RFE of the relevant classes. A qualified person who wishes to apply for registration as an RFE needs to submit a completed application form, together with certificates of the relevant professional qualifications and experience, to FSD. After verifying the form and relevant professional qualifications, FSD will refer the application to an interview board which, having examined the application and found that the applicant satisfies the requirements, will conduct a professional interview with the applicant. Subject to the interview result, the interview board will formally recommend the applicant to DFS for registration as an RFE.

18. Since applicants may possess different qualifications and experience, FSD cannot estimate the number of members of its staff who could meet the proposed qualifications for registration as RFEs.

*Respective roles of FSD and Authorized Persons (APs) in the process of licence application and certification
(Item (b)(ii) of the List of follow-up actions arising from the meeting on 29 February)*

Role of FSD in the process of licence application and certification

19. In the process of application and certification for licences of prescribed premises, FSD is responsible for offering advice on fire safety to the licensing authorities for issue of various licences and registration of the premises concerned. On receipt of an application, FSD officers will conduct on-site fire safety risk assessment. According to the result of the assessment, FSD officers will issue a set of fire safety requirements to the applicant stipulating the fire safety works required (such as installation of FSI and ventilating systems). Upon notification by the

applicant that the required fire safety works have been completed, FSD officers will conduct compliance inspection. If the requirements are found to be complied with, FSD will issue a certificate or letter to the applicant, with which he/she can submit to the relevant licensing authority for obtaining the relevant licence or registration.

Role of APs in the process of license application and certification

20. APs⁵ mainly provide building safety services and certification in respect of the applications for various licences. Since the application procedures are quite different for various licences, the ensuing paragraphs provide an overview of the role of an AP in the different applications.

(i) Restaurant Licence (RL) and Places of Public Entertainment Licence (Cinemas/Theatres) (PPEL(C/T))

21. Regarding licences for restaurants and cinemas/theatres, the Buildings Department (BD) adopts a three-tier system for streamlining and simplifying the verification of applicants' compliance with building safety requirements. The system classifies building safety requirements into three categories. For **Category 1**, the applicant is required to certify compliance direct to the licensing authority in respect of requirements relating to matters of fact (for example removal of movable obstructions from exit routes). As for **Category 2**, an AP or a registered structural engineer (RSE) is required to certify compliance to the licensing authority in respect of requirements involving a professional appraisal relating to well established standards (for example improvement of means of escape to meet stipulated standards). In **Category 3** cases where more serious concerns about building safety are involved, e.g. obtaining approval of plans for extensive alterations and additional works obtained prior to licensing, the AP/RSE is required to report compliance to BD.

22. In the process of handling an application for a full licence as mentioned above, at present, only FSD officers are to offer advice and certification for the licensing authorities with respect to fire safety risk assessment as well as the compliance of the relevant fire safety requirements. APs are not involved.

23. On the other hand, the licensing authorities have put in place a

⁵ Under the Buildings Ordinance (Cap. 123), "Authorized Person" refers to the following persons listed in the authorized persons' register maintained in accordance with the Ordinance:(a) persons listed in the capacity of architect; (b) persons listed in the capacity of engineer; or(c) persons listed in the capacity of surveyor.

provisional RL regime and a provisional PPEL(C/T) regime with a view to facilitating the businesses to operate on a provisional basis following the certification of compliance of essential requirements, pending the issue of full licences. Under the two regimes, as far as fire safety requirements are concerned, the licensing authorities may make reference to documents in relation to the fire safety requirements submitted by an AP, a registered FSI contractor and the licence applicant for issuing provisional licenses. Nonetheless, FSD will inspect the premises of the applicant within seven days after receipt of referral from the licensing authority for verifying compliance with the relevant fire safety requirements.

24. The current responsibilities borne by an AP and a registered FSI contractor in the process of applying for the provisional RL and the provisional PPEL(C/T) will not be changed as a result of the implementation of the RFE Scheme.

(ii) Other licences, such as those for school registration, billiard, public bowling centre and public skating rink

25. In the application process for other licences, at present, only FSD officers are to offer advice and certification for the licensing authorities with respect to fire safety risk assessment as well as the certification of the relevant FSI. APs are not involved. The role of an AP or an RSE is to ensure the premises are in compliance with all building structural safety requirements. In carrying out alteration or addition works involving the building structure and/or means of escape, the AP and/or RSE should make formal submission of the plans for the proposed works to BD.

**Security Bureau
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