

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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(By E-mail)

26 February 2016


Ms Vanessa Cheng
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Legal Service Division
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Cheng,

Fire Services (Amendment) Bill

Thank you for your letter of 15 February 2016 on the captioned Bill. Our response to your enquiries is set out at **Annex**.

Yours sincerely,


(Alex Chan)
for Secretary for Security

c.c. Director of Fire Services (Attn: Mr Lo Siu-hang) (Fax: 2312 0376)
Department of Justice (Attn: Ms Rayne Chai) (Fax: 3918 4613)

Fire Services (Amendment) Bill 2015

**Response to the issues raised in the letter of 15 February 2016
from the LegCo Assistant Legal Adviser**

Clause 5 – Power to make regulations

The Fire Services (Amendment) Bill 2015 (the Bill) mainly seeks to amend the Fire Services Ordinance (Cap. 95) (FSO) to extend its scope and empower the Chief Executive in Council (CE in C) to make regulations under section 25 of FSO to provide for a scheme for fire safety risk assessment and certification on compliance with fire safety requirements by registered fire engineers (RFEs) for certain premises (the RFE Scheme). After the passage of the Bill, we will work towards introducing a new subsidiary legislation under FSO to provide for the implementation details of the RFE Scheme as early as practicable. The proposed RFE Scheme could be rolled out after the passage of the Bill and the new subsidiary legislation.

2. Under our proposal, matters of principle are provided in the Bill and matters of details or of technical, procedural or operational nature of the RFE Scheme and regulation of RFEs are to be provided in a new regulation under FSO. We consider this arrangement justified and appropriate for reasons set out in the ensuing paragraphs. Delegation of legislative power is a well-established and long-standing practice. Usually at the design stage of a legislative scheme, consideration has already been given in establishing the structure of the scheme.

3. FSO is enacted to make better provision as to the constitution, duties and powers of the Fire Services Department (FSD), and as to the discipline of members thereof and to make provision for the prevention of fire hazards, for the investigation into matters relating to a fire and for a welfare fund; and to regulate the registration of fire service installation contractors (FSICs) and to provide for the control of the sale, supply, installation, repair, maintenance and inspection of fire service installations or equipment (FSI); and for purposes connected with the matters aforesaid.

4. Given the wide coverage and variety of matters provided under the FSO, it is inappropriate to set out each and every detail of the matters in the main Ordinance. Hence, the CE in C is provided with the power under section 25 of the FSO to make regulations for the details of the various matters under the Ordinance. For instance, while the principle of the registration and regulation of FSICs is provided in the FSO, the implementation details (including the qualifications for registering as a registered fire service installation contractor (RFSIC) and the disciplinary board matters in relation to RFSICs) are set out in the Fire Service (Installation Contractors) Regulations (FS(IC)R, Cap. 95A) pursuant to the powers under section 25(f) and (g) of FSO.

5. To maintain consistency of style in the organisation of FSO and its subsidiary legislation, we consider it appropriate to set out the details relating to the RFE Scheme in a new regulation, rather than in the main Ordinance of the FSO.

Clause 7 – Regulation 7 of the Fire Service (Installations and Equipment) Regulations (Cap. 95B) (maintenance or repair of fire service installations or equipment)

(a) Issue of certificates by RFSICs and RFEs

6. The certificates currently issued by an RFSIC under Regulation 9 of the Fire Service (Installations and Equipment) Regulations (FS(IE)R, Cap. 95B) are different from the proposed fire safety certificates to be issued by a Registered Fire Engineer (Fire Service Installation) (RFE(FSI)).

7. Regulation 9 of FS(IE)R is to regulate RFSICs in the issue of certificates upon the completion of the works and such certificates serve as a documentary proof for the condition of FSI in any premises. On the other hand, the proposed Regulation 7(3) of FS(IE)R (Clause 7(3) of the Bill) seeks to empower RFE(FSI) to **inspect and test** any FSI installed in “prescribed premises” (being premises that are applicable under the RFE Scheme) for the purpose of certifying compliance of the applicable fire safety requirements. The mechanism relating to the issue of the proposed fire safety certificates by RFE(FSI) will be spelt out in the new subsidiary legislation to be made by the CE in C after the passage of the Bill.

(b) Authorisation by the Director of Fire Services (DFS) to inspect and test FSI

8. The existing Regulation 7(1) of FS(IE)R stipulates that no person other than an RFSIC shall maintain, **inspect** or repair any FSI in any premises. To enable RFE(FSI) to conduct compliance inspections of FSI in the **prescribed premises**, it is necessary to introduce the proposed Regulation 7(3) of FS(IE)R (Clause 7(3) of the Bill).

9. The proposed Regulation 7(4) of FS(IE)R (Clause 7(3) of the Bill) empowers DFS or any person authorised by DFS to inspect and test any FSI in **any premises**. This would enable FSD officers to inspect and test any FSI in discharging their duties, for instance in the course of surprise inspections and fire investigations.

10. Given the difference in the types of premises where RFE(FSI)s and FSD officers would be allowed to inspect the FSI therein (as per the proposed Regulation 7(3) and 7(4) of FS(IE)R), RFE(FSI)s will not be included in the types of persons to be authorized by DFS pursuant to the proposed Regulation 7(4).

Licensing process

11. As regards whether the RFE Scheme will be applicable to the renewal and transfer of licences at prescribed premises, FSD currently conducts fire safety risk assessment, formulates fire safety requirements and issues fire service certificates upon compliance inspections for new licence applications only, but not applications for transfer and renewal of licences. As a prudent start, we consider it more appropriate for RFEs to perform functions similar to the role that FSD currently plays in the licensing process. That said, FSD will conduct a review of the RFE Scheme after running it for about two years, and consider whether and to what extent the scope of duties of the RFEs should be expanded.

Consequential amendments

12. Regarding the need to make related or consequential amendments to the provisions listed in paragraph 7 of the Assistant Legal Adviser's letter dated 15 February 2016, we are studying the provisions in greater detail and will revert separately as soon as possible.

Offence

13. On whether a person will commit an offence if he resists, obstructs or delays an RFE acting in the exercise of latter's duties, we consider it not necessary to provide for any offence regulations. Similar to other professionals performing their duties and functions, for instance RFSICs (FS(IC)R and FS(IE)R are relevant) or registered lift engineers (the Lifts and Escalators Ordinance, Cap. 618 is relevant), RFEs are engaged by the private sector (i.e. the licence applicants) to provide the relevant services and their conduct of business should be subject to contractual arrangements between the RFEs and the licence applicants. With reference to other similar Ordinances and regulations, we consider that no offence regulations should be provided for the act of resisting, obstructing or delaying the RFEs to discharge their duties.

**Security Bureau
Fire Services Department
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