

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 2 December 2016**

**Legal Service Division Report on
Fire Services (Amendment) Bill 2016**

I. SUMMARY

1. The Bill

The Bill, which is based on the Fire Services (Amendment) Bill 2015 as introduced into the Fifth Legislative Council in 2015, seeks to amend the Fire Services Ordinance (Cap. 95) to -

- (a) expand the scope of Cap. 95 to provide for registered fire engineers ("RFEs") and a scheme for fire safety risk assessment and certification on compliance with fire safety requirements by RFEs for certain premises ("RFE scheme");
- (b) empower the Chief Executive in Council to make regulations for the RFE scheme and the regulation of RFEs; and
- (c) make related amendments.

2. Public Consultation

The Fire Services Department conducted trade consultations in 2007 and 2011 respectively to gauge the views from the stakeholders on the proposed RFE scheme. Further, a Business Impact Assessment ("BIA") study was conducted from mid-2012 to mid-2013 to assess the business impact of the proposed scheme on various stakeholders. In general, the majority of stakeholders expressed support for the scheme.

**3. Consultation with
LegCo Panel**

The Panel on Security was briefed on the salient features of the re-introduced Bill on 11 November 2016. While expressing general support for early introduction of the Bill, some members expressed concern on various issues.

4. Conclusion

Since the Bill seeks to provide for a statutory framework for the new scheme for fire safety risk assessment and certification by RFEs, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 30 November 2016. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: SBCR 1/2361/14) issued by the Security Bureau on 16 November 2016 for further details.

Object of the Bill

2. The Bill seeks to amend the Fire Services Ordinance (Cap. 95) to -
 - (a) include a scheme for fire safety risk assessment and certification on compliance with fire safety requirements by registered fire engineers ("RFEs") for certain premises ("RFE scheme") and to provide for RFEs;
 - (b) empower the Chief Executive in Council ("CE in Council") to make regulations for the RFE scheme and the regulation of RFEs; and
 - (c) make related amendments.

Background

3. At present, a person who intends to run certain types of premises ("prescribed premises") is required to comply with fire safety requirements imposed by and/or obtain a certificate issued by the Director of Fire Services ("DFS") certifying that the prescribed premises have complied with all relevant fire safety requirements before the applicant can be issued a licence by the regulatory authorities. Cap. 95 and its subsidiary legislation do not provide for persons other than DFS to perform fire safety risk assessment and certification required for the licensing process.

4. In December 2015, the Administration introduced the Fire Services (Amendment) Bill 2015 ("the 2015 Bill") into the Fifth LegCo to provide for the RFE scheme so that professional engineers and qualified persons in the private market may also provide such fire safety risk assessment and certification services. A Bills Committee ("the 2015 Bills Committee") was formed to scrutinize the 2015 Bill. In response to members' concerns, the Administration proposed certain Committee stage amendments ("CSAs") to the 2015 Bill which were agreed by the 2015 Bills Committee. Members may refer to the Report of the 2015 Bills Committee (LC Paper No. CB(2)1791/15-16) for further details.

5. The resumption of the Second Reading debate, Committee stage and Third Reading on the 2015 Bill were put on the Agenda of the Council in June and July 2016 but were not reached before the Fifth LegCo stood prorogued. The Administration therefore introduces the Bill, which is, according to paragraph 1 of the LegCo Brief, by and large a replica of the 2015 Bill but with all the agreed CSAs

incorporated. Other amendments are textual in nature. A marked-up version showing the differences between the Bill and the 2015 Bill is at Annex C to the LegCo Brief.

Provisions of the Bill

6. The main provisions of the Bill are explained in the ensuing paragraphs.

Amendments to Cap. 95

7. Clause 3 of the Bill seeks to amend the long title of Cap. 95 to include the RFE scheme and to provide for RFEs.

8. Clause 5 of the Bill seeks to amend section 25 of Cap. 95 to empower CE in Council to make regulations to provide for the implementation of the proposed RFE scheme. The matters to be provided for in the regulations include -

- (a) the registration and de-registration of RFEs;
- (b) the fees to be charged in relation to the registration and de-registration;
- (c) the duties of RFEs in relation to fire safety risk assessment, and certification on compliance with fire safety requirements for prescribed premises;
- (d) the issue of codes of practice concerning fire safety of any premises and giving guidance in relation to the professional conduct and the administration of RFEs; and
- (e) the regulation of the conduct of RFEs including the provision of disciplinary offences and the establishment of disciplinary boards.

The above regulations (except the one on fees in (b) above which would be subject to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1)) would be subsidiary legislation subject to the approval of LegCo under section 35 of Cap. 1 (proposed section 25(4) as added by clause 5(2)).

Amendments to the Fire Service (Installations and Equipment) Regulations (Cap. 95B)

9. Under regulation 7 of the Fire Service (Installations and Equipment) Regulations (Cap. 95B), no person other than a registered fire service installation contractor shall maintain, inspect or repair any fire service installation or equipment which is installed in any premises. Clause 7 of the Bill seeks to amend regulation 7 of Cap. 95B to empower -

- (a) RFEs to inspect and test any fire service installation or equipment installed in, or for, prescribed premises; and
- (b) DFS or a person authorized by him to inspect and test any fire service installation or equipment installed in, or for, any premises for checking its safety and the efficiency of its working order.

Related amendments

10. Clauses 9 to 20 of the Bill contain related amendments to a number of legislation governing some of the prescribed premises to which the proposed RFE scheme would apply. These legislation include the Food Business Regulation (Cap. 132X), the Places of Amusement Regulation (Cap. 132BA) and the Places of Public Entertainment Regulations (Cap. 172A). These amendments, if passed, would allow the relevant regulatory authorities to accept fire safety requirements imposed by RFEs and fire safety certificates issued by RFEs as proof of compliance with the relevant fire safety requirements when processing licence applications.

Commencement

11. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Public Consultation

12. According to paragraph 13 of the LegCo Brief, the Fire Services Department ("FSD") conducted trade consultations in 2007 and 2011 respectively to gauge the views from the stakeholders on the RFE scheme. In general, the majority of the stakeholders expressed support for the RFE scheme. Further, a Business Impact Assessment ("BIA") study was conducted from mid-2012 to mid-2013 to assess the business impact of the proposed RFE scheme on various stakeholders. The BIA study also found that the stakeholders were generally supportive of the RFE scheme and that there should be a sufficient supply of potential RFE candidates in the market.

Consultation with LegCo Panel

13. The Clerk to the Panel on Security has advised that the Panel was briefed on the legislative progress of the proposed RFE scheme and the salient features of the Bill on 11 November 2016. Most members urged for early introduction of the Bill. However, some members expressed concern on a number of issues, including the qualifications required for registration as RFEs, the regulatory mechanism governing fire safety risk assessment and certification to be performed by RFEs, the regulations to be

made by CE in Council for the RFE scheme, and the role of FSD after the implementation of the RFE scheme.

Conclusion

14. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to provide for a statutory framework for the new scheme for fire safety risk assessment and certification by RFEs, Members may wish to form a Bills Committee to study the Bill in detail.

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