

立法會
Legislative Council

LC Paper No. CB(2)1438/18-19

(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/18

Bills Committee on Fire Safety (Industrial Buildings) Bill

Minutes of meeting
held on Monday, 18 March 2019, at 8:30 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Tony TSE Wai-chuen, BBS (Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon WU Chi-wai, MH
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon Jeremy TAM Man-ho

Public Officers attending : Item I

Mrs Apollonia LIU LEE Ho-kei, JP
Deputy Secretary for Security 2

Mr Alex CHAN Yuen-tak
Principal Assistant Secretary for Security B

Miss Venus TSOI Yuen-san
Assistant Secretary for Security B2

Mr Terrance TSANG Wing-hung
Assistant Director (Fire Safety)
Fire Services Department

Mr LEE Koon-yau
Senior Divisional Officer (Support)
Fire Services Department

Mr Ken NG Kin-shing
Assistant Director / Mandatory Building Inspection
Buildings Department

Mr Joseph YU Kwok-hung
Chief Building Surveyor / Fire Safety
Buildings Department

Miss Elaine NG Pui-kei
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Ms Gloria TSANG
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to provide the following information:

- (a) whether clause 7 of the Bill should expressly provide for the standards and requirements of other appropriate measures to be taken by owner or occupier under a fire safety direction issued and served by the enforcement authorities ("EAs");

- (b) membership and composition of the advisory committee proposed to be set up under clause 12 of the Bill, and factors to be considered by EAs before making referrals to the advisory committee; and
- (c) rationale for the proposed arrangement of empowering the District Court to, on application of an EA, make a prohibition order prohibiting the occupation of a building or a part of a building on ground of substantial fire risks under clause 18 of the Bill, together with a comparison of the proposed arrangement under clause 18 of the Bill and existing arrangements in related legislation.

II. Any other business

- 3. Members agreed that the next meeting would be held on 2 April 2019 at 10:45 am to continue discussion with the Administration.
- 4. There being no other business, the meeting ended at 10:32 am.

Council Business Division 2
Legislative Council Secretariat
14 May 2019

**Proceedings of meeting of the
Bills Committee on Fire Safety (Industrial Buildings) Bill
held on Monday, 18 March 2019, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000355 - 000416	Chairman	Opening remarks Members raised no questions on the Administration's consolidated response to issues raised at the meeting on 13 February 2019 (LC Paper No. CB(2)989/18-19(01)).	
000417 - 000618	Chairman Mr SHIU Ka-fai	In response to Mr SHIU Ka-fai's enquiry, the Chairman advised that the written submission from the Self Storage Association Asia would be circulated for members' information after the meeting. The Administration would also be requested to provide a written response.	
000619 - 000738	Chairman Admin	Examination of clause 6 of the Bill.	
000739 - 002341	Admin Chairman ALA1	Examination of clause 7 of the Bill. The Chairman's enquiries regarding: (a) examples of "other relevant factors" under clause 7(c); and (b) whether the fire safety direction ("FSDn") issued by enforcement authorities ("EAs") would clearly specify the other appropriate measures and the time limit for the owner or occupier to comply with FSDn. Referring to the Administration's response (LC Paper No. CB(2)770/18-19(05)) to issues raised in ALA1's letter (LC Paper No. CB(2) 583/18-19(01)) regarding the proposal to empower EAs to direct the owner or occupier to take other appropriate measures, ALA1 asked about: (a) in actual operation, the procedures involved in EAs issuing FSDns on owners or occupiers to take other appropriate measures if the circumstances fell within any of the factors mentioned under clause 7 of the Bill; and	

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		<p>(b) the respective duties of EA, the owner and the occupier in working out, via administrative means, whether other appropriate measures had to be taken to ensure compliance with the proposed requirements under the Bill, and the Administration's rationale for not expressly providing for the relevant administrative procedures in the Bill.</p> <p>The Administration responded that:</p> <p>(a) if, after taking all relevant factors into consideration, it was found during a preliminary inspection that any particular fire safety requirement listed in Schedule 1 or 2 to the Bill was apparently infeasible, EAs would direct the owner or occupier to take other appropriate measures by specifying so in an FSDn. For example, a fire service water tank with a smaller capacity might be allowed if the building concerned faced insurmountable spatial constraint for installing a standard-sized water tank. Under such circumstances, EAs would exercise their power under clause 7 on their own initiative. It was highlighted that the owner or occupier should normally be able to follow the FSDn to carry out the fire safety improvement works;</p> <p>(b) when the owners or occupiers encountered difficulties in complying with FSDns, they could apply to EAs for taking other appropriate measures. Designated case officers of EAs would adopt a flexible and pragmatic approach in considering each application and provide technical advice as appropriate. Having regard to the operational experience of the Fire Safety (Commercial Premises) Ordinance (Cap. 502) ("FS(CP)O") and the Fire Safety (Buildings) Ordinance (Cap. 572) ("FS(B)O"), the Administration considered it unnecessary to expressly provide for the relevant administrative procedures in the Bill;</p> <p>(c) the time limit for compliance would be specified in FSDns, which would give reasonable time for owners and/or occupiers to comply with the fire safety requirements. EAs would also consider applications for extension of the time limit, having regard to the justification(s) provided by the owner(s) or occupier(s) concerned. Where necessary, EAs could amend FSDns by written notice; and</p>	

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		(d) due to the various circumstances and ways to carry out fire safety improvement works in industrial buildings ("IBs"), it might not be appropriate or possible to specify all other appropriate measures under clause 7.	
002342 - 002746	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai's enquiries regarding:</p> <p>(a) the correlation between the term "technology" in clause 7(b) and compliance with the fire safety requirements set out in Schedules 1 and 2 to the Bill; and</p> <p>(b) the procedure for amending the Code of Practice for Minimum Fire Service Installations and Equipment 2012 and the Code of Practice for Fire Safety in Buildings 2011 referred to in Schedules 1 and 2 to the Bill.</p> <p>The Administration responded that:</p> <p>(a) in the event that there was no technology available to enable compliance with the fire safety requirements under clause 7(b), for example, a particular sprinkler head acceptable to the Fire Services Department ("FSD") was no longer available in the market years later, EAs could direct the owner or occupier to take other appropriate measures; and</p> <p>(b) as the fire safety standards would change from time to time, the relevant codes of practice would be reviewed and updated accordingly. Under clause 55, the Security for Security might, by notice published in the Gazette, amend Schedule 1 or 2 to the Bill. Such notice would be subject to the approval of the Legislative Council, i.e. the "positive vetting procedure" pursuant to section 35 of the Interpretation and General Clauses Ordinance (Cap. 1).</p>	
002747 - 004120	Chairman Mr James TO Admin	As the standards and requirements of other appropriate measures were not specified in clause 7, Mr James TO expressed concern whether this would result in uncertainty. For instance, he raised concern as to whether EAs could direct other appropriate measures which were extraordinarily expensive, and whether such direction would be subject to judicial review.	

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		<p>The Chairman asked whether there were any checks and balances in the Bill to prevent the Administration from having excessive enforcement power.</p> <p>The Administration stressed that under normal circumstances, an EA would issue and serve an FSDn on an owner or occupier to direct the owner or occupier to, within a specified time limit, comply with the fire safety requirements specified in Schedules 1 and/or 2 to the Bill. Pursuant to clause 7, EAs might, if circumstances so warranted, impose other appropriate measures, which would be of a reasonable standard. The standard of such other appropriate measures would be subject to the defence to the offence of not complying with FSDns under clause 11 of the Bill.</p> <p>Mr TO requested the Administration to consider expressly provide in the Bill the standards and requirements of other appropriate measures.</p>	Admin
004121 - 005318	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai's enquiries regarding:</p> <ul style="list-style-type: none"> (a) the procedure(s) involved in initiating discussion with EAs about taking other appropriate measures if the owner or occupier encountered difficulties in complying with an FSDn; (b) whether the cost for the relevant fire safety improvement works was a factor to be considered when issuing an FSDn; and (c) how to prevent significant increase in the cost of improvement works due to the change in market demand upon passage of the Bill. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) the owners or occupiers might directly communicate with the designated case officers of EAs if they encountered difficulties in compliance; and (b) given that many of IBs were already equipped with fire service water tanks, there should be relatively fewer technical and structural difficulties in carrying out fire safety improvement works in IBs. Based on the findings of a technical feasibility study conducted by FSD and Buildings Department ("BD") earlier, the estimated cost associated with the improvement works to be borne by the owners of targeted IBs should be affordable. 	

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		<p>Mr WU's further enquiries and the Administration's response regarding:</p> <p>(a) whether the arrangement of directing owners or occupiers to take other appropriate measures under clause 7 of the Bill was found in FS(B)O; and</p> <p>(b) communication between FSD and BD in implementing the enacted ordinance.</p>	
005319 - 010028	Chairman Admin ALA1	<p>Examination of clause 8 of the Bill.</p> <p>ALA1's enquiries regarding:</p> <p>(a) the application procedure for extension of the time limit specified in an FSDn and whether such application would be initiated by EA, the owner or the occupier; and</p> <p>(b) factors to be considered if the extension application was received shortly before the expiry of the time limit or when there was already substantial delay in compliance, or when repeated applications were received from the same owner or occupier.</p> <p>The Administration responded that:</p> <p>(a) the time limit specified in an FSDn would allow reasonable time for compliance;</p> <p>(b) the owner and occupier could apply for extension of the specified time limit. To prevent abuse, EAs would only grant extension of the time limit for cases with reasonable grounds; and</p> <p>(c) if the owner or occupier had applied to take other appropriate measures, the time limit would also be considered and reasonably adjusted by EAs if the application was approved.</p>	
010029 - 010411	Chairman Admin	Examination of clauses 9 to 11 of the Bill.	
010412 - 011450	Chairman Admin	<p>Examination of clause 12 of the Bill.</p> <p>In response to the Chairman's enquiry regarding the setting up of an advisory committee, the Administration advised that reference would be drawn from the setting up of the advisory committee under FS(B)O.</p>	

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		<p>In response to the Chairman's further enquiry regarding the referral mechanism proposed under clause 12(3), the Administration advised EAs would refer cases with unique nature or with specific technical measures that could facilitate the fire safety improvement works across similar buildings to the advisory committee(s), so as to avoid abuse of the mechanism.</p> <p>The Chairman requested the Administration to provide supplementary information regarding the membership and composition of the advisory committee(s), and factors to be considered by EAs before making referrals to the advisory committee(s).</p>	Admin
011451 - 011707	Chairman Admin	<p>Examination of clause 13 of the Bill.</p> <p>In response to the Chairman's enquiry regarding the fire safety compliance order ("FSCO"), the Administration advised that it was proposed that a reasonable time limit for compliance specified in FSCO would be decided by a magistrate, having regard to all relevant factors, including the time limit suggested by EAs for compliance.</p>	
011708 - 011820	Chairman Admin	Examination of clause 14 of the Bill.	
011821 - 012232	Chairman Admin Mr WU Chi-wai	<p>Examination of clause 15 of the Bill.</p> <p>In response to Mr WU Chi-wai's enquiry regarding the circumstances under which FSCO could be revoked, the Administration said that an FSCO would normally be discharged when the owner or occupier had completed the relevant fire safety improvement works and a certificate of compliance had been issued. Pursuant to clause 14(1), the magistrate might also revoke FSCO on the application of the owner or occupier if he considered so justified.</p>	
012233 - 012617	Chairman Admin Mr WU Chi-wai	<p>Examination of clause 16 of the Bill.</p> <p>In response to Mr WU Chi-wai's enquiry regarding the time limit for compliance with FSCO, the Administration said that it would suggest a reasonable time limit for the magistrate to consider.</p>	

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012618 - 014846	Chairman Admin Mr WU Chi-wai	<p>Examination of clauses 17 to 18 of the Bill.</p> <p>The Chairman and Mr WU Chi-wai's concern on the need to provide for the making of prohibition order ("PO") by the District Court to prohibit the occupation of the building or part, given that the main purpose of the Bill was to provide for a mechanism for raising the fire safety standard of (as opposed to addressing fire hazards in) targeted IBs.</p> <p>The Administration stressed that a PO would be made when the District Court considered, amongst others, that there were substantial fire risks if the building or part was occupied. While similar provisions existed in FS(CP)O and FS(B)O, the Administration said that no PO had ever been made.</p> <p>The Chairman requested the Administration to provide information on the rationale for the proposed arrangement to make a PO under the Bill, together with a comparison between the proposed arrangement under clause 18 of the Bill and existing arrangements in related legislation.</p>	Admin
014847 - 015317	Chairman Admin	Examination of clauses 19 to 21 of the Bill.	
015318 - 020547	Chairman Admin Mr WU Chi-wai	<p>Examination of clause 22 of the Bill.</p> <p>Mr WU Chi-wai sought clarification on the circumstances under which the District Court might consider it appropriate to order a PO to come into force within 28 days after the date on which the order was served on the owner or occupier. The Administration explained that clause 22(2) was proposed to provide flexibility for the District Court to determine when a PO should come into force, after taking all relevant factors into considerations, including but not limited to the substantial fire risks referred to in clause 18(2)(e).</p> <p>Responding to the Chairman, the Administration said that making of PO and issuing FSDn/FSCO to the owner or occupier of target IBs concerned separate issues. While a PO aimed to prohibit the occupation of the relevant IB or part, an FSDn/FSCO required the owner or occupier concerned to carry out fire safety improvement works to comply with the requirements under the respective clauses of the Bill.</p>	

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020548 - 020622	Chairman	Date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
14 May 2019