

Bills Committee on Fire Safety (Industrial Buildings) Bill

Government's Response to Issues Arising from the Bills Committee Meeting on 18 March 2019

Purpose

This paper sets out the Government's response to issues in respect of the Fire Safety (Industrial Buildings) Bill ("the Bill") raised at the Bills Committee meeting on 18 March 2019.

Whether the standards and requirements of alternative measures concerned should be set out in Clause 7 of the Bill

2. At the Bills Committee meeting on 18 March, a Member enquired as to whether the standards and requirements of the alternative measures should be set out in detail in Clause 7 of the Bill, such that the provision would carry greater certainty.

3. Upon enactment of the Bill, the two Enforcement Authorities ("EAs") (i.e. the Fire Services Department ("FSD") and the Buildings Department ("BD")) will deploy officers to conduct joint inspections of the target industrial buildings ("target IBs") under the Bill before issuing fire safety directions ("FSDns") to the owners and/or occupiers in light of the actual condition of the buildings and in accordance with Clause 5 and/or Clause 6 of the Bill. The FSDns would require the owners and occupiers to provide appropriate fire service installations and equipment ("FSIs") and/or carry out fire safety construction works. According to Clause 2 of the Bill, the fire safety requirement(s) which owners and occupiers should comply with means all or any of the requirements in Schedules 1 and 2. The two Schedules also provide that the detailed specifications and requirements for the provision of FSIs and those for the fire safety construction are set out in the Code of Practice for Minimum Fire Service Installations and Equipment 2012 ("the 2012 COP") and the Code of Practice for Fire Safety in Buildings 2011 (October 2015 version) ("the 2011 COP") respectively.

4. As regards Clause 7 of the Bill, it stipulates that if an EA, having regard to the relevant factors (including the structural integrity of the building or part, or the technology available etc.), considers that it would be unreasonable to direct the owner or occupier concerned to comply with any particular fire safety requirement set out in Schedule 1 or 2, the EA may direct the owner or occupier to take appropriate measures other than those in the Schedules (i.e. alternative measures). This provision aims to empower the EAs to handle cases in a flexible and pragmatic approach, with a view to

assisting the owner or occupier concerned to resolve practical difficulties encountered in complying with the fire safety requirements on the premise of not compromising basic fire safety.

5. As regards the reasonableness of the alternative measures, it will be subject to the defence to the offence of not complying with FSDns under Clause 11 of the Bill. Clause 11(1) stipulates that an owner or occupier of a building or a part of a building who, without reasonable excuse, fails to comply with an FSDn for the building or part commits an offence. The “reasonable excuse” is also specified in clause 11(3):

“The reasonable excuse referred to subsection (1) includes, but is not limited to, it not being reasonable to expect the owner or occupier to comply with the direction during the time for complying with it—
(a) because compliance would pose a risk of prejudicially affecting the structural integrity of the building or part; or
(b) because the technology required for compliance is not reasonably available.”

6. Hence, when directing the owner or occupier to take any alternative measure pursuant to Clause 7, the EA must take into account the defence threshold as stipulated in Clause 11(3) and assess the reasonableness of the alternative measure. Otherwise, the owner or occupier concerned may claim the unreasonableness of the alternative measure as a reasonable excuse for not complying with the relevant FSDn.

7. As we expressed at the Bills Committee meetings and having regard to the analysis presented in the preceding paragraphs, the effect of Clause 7 would necessarily be to empower the EAs to handle cases with a flexible and pragmatic approach for assisting the owners and/or occupiers concerned to, as far as reasonably practicable, upgrade the fire safety level of old IBs to the modern standard at the soonest. Given that the condition of each target IB varies, and that the relevant fire safety technologies will continue to advance, we are of the view that the current provisions will better achieve the aforesaid objective as well as cater for circumstances that cannot be envisaged for the time being.

Composition of the proposed advisory committee (AC) under the Bill and the factors to be taken into account by the EAs when considering whether to refer a case to the AC

8. According to Clause 12 of the Bill, an EA may set up an AC to advise the EA on whether to direct the owner or occupier of a target IB under the Bill or a part of it to take other appropriate measures (i.e. alternative measures); and what alternative measures would be appropriate. Clause 12(2) stipulates that

members of an AC must be persons with relevant expertise whom the EA considers appropriate.

9. The two EAs propose to each set up an AC upon enactment of the Bill to provide sound professional advice to the Director of Fire Services (“DFS”) and the Director of Buildings (“DB”) on alternative measures in relation to FSIs and fire safety construction under the Bill respectively. The two proposed ACs will be chaired by an Assistant Director of FSD and BD respectively, and comprise members covering representatives of FSD and BD, relevant professionals, academics and members of the public with the relevant expertise, so as to ensure that the ACs can offer fair and objective advice on the proposed alternative measures from different perspectives. The proposed composition of the two ACs is at **Annex 1**. The composition of the above ACs is broadly similar to the existing ACs set up under the Fire Safety (Buildings) Ordinance (Cap. 572).

10. As always, the two EAs will adopt a flexible and pragmatic approach to handle each case and consider alternative measures which can improve the fire safety level of the target IBs. However, if a proposed alternative measure involves more innovative or complex proposals (such as adoption of performance-based designs using fire engineering approach), or deviates from the general practice, the EA(s) will consider referring the case to the AC(s), so that members from different professions and backgrounds can carry out a fair analysis and offer objective advice from the technical, cost and fire safety standard perspectives, among others. Apart from consideration from the technical perspective, since the ACs will also engage members of the public, we believe that they can offer advice from an owner’s or a district’s perspective, enabling the ACs to render more comprehensive advice.

Comparison between the prohibition order under the Bill and other similar orders under existing legislation

11. If an owner or occupier fails to comply with a reasonable and necessary FSDn or fire safety compliance order (FSCO), an EA may apply to the District Court for a prohibition order under Clause 17 of the Bill to prohibit anyone from occupying the building concerned or a part of it. The purpose of that clause is to prevent any substantial fire risks arising from the occupation of the relevant building or a part of it, thereby ensuring public safety. Before applying to the District Court for a prohibition order, the EA will consider very carefully from the angle of public safety.

12. In fact, the aim of the Bill is to upgrade the fire safety level of the target IBs (rather than dealing with fire hazards or structural safety of the buildings). We therefore believe that it should be very rare for a target IB to have substantial fire risks due to failure to comply with a reasonable and

necessary FSDn or FSCO that necessitate an application to the District Court for a prohibition order. That said, we do see the need to provide for such a mechanism in the Bill, such that the EAs will have sufficient legal grounds and prescribed procedures to apply to the District Court for a prohibition order under extremely serious circumstances for efficient handling of any possible cases. A hypothetical example is that the original FSIs and the fire resisting enclosure to the means of escape of a target IB have been removed for the purpose of carrying out the fire safety improvement works as required by the Bill; however, such improvement works have experienced prolonged delay and cannot be completed as scheduled, rendering the target IB unprotected by the original FSIs, and the original fire resisting enclosure can no longer prevent the spread of fire and smoke effectively, meaning the means of escape fails to perform its function. If the relevant IB or a part of it remains to be occupied, it might constitute substantial fire risks. For the protection of public safety, an EA may apply to the District Court pursuant to Clause 17 of the Bill for a prohibition order for the building or part.

13. While FSD and BD may, depending on the circumstances, apply for prohibition order and closure order under other existing laws at present, these orders may not be able to handle the scenario specifically related to the Bill as mentioned in paragraph 12 above. For instance, according to section 11 of the Fire Services (Fire Hazard Abatement) Regulation (Cap. 95F) (see **Annex 2**), DFS may, by swearing an information to the magistrate, apply for a prohibition order in respect of the premises to which a fire hazard abatement notice relates, prohibiting the use of the premises for the purposes specified in the order. However, section 11(2)(c) of Cap. 95F provides that the fire hazard needs to be a result of the structural character of the relevant premises, or a result of the location of the premises. Under the scenario described in paragraph 12, the fire hazard of the IB arises from the removal of the original FSIs of the IB, which may not necessarily be “a result of the structural character of the relevant premises or a result of the location of the premises”. Thus, the prohibition order under Cap. 95F may not be applicable.

14. Similarly, under section 27 of the Buildings Ordinance (Cap. 123) (see **Annex 3**), if the Building Authority (i.e. DB) considers that any building is dangerous or liable to become dangerous, he may also apply to the District Court for a closure order to close the building. For example, if the improvement works in respect of fire safety construction carried out in an IB lead to cracks in the building, the Building Authority may apply to the District Court for a closure order from structural safety angle of the building pursuant to section 27 of Cap. 123. Nevertheless, given the circumstances under paragraph 12 above, although the removal of the original FSIs and the fire resisting enclosure to the means of escape may constitute substantial fire risks, whether the building is dangerous or liable to become dangerous as a result would depend on the circumstances. Hence, BD may not be able to put forth sufficient justifications to apply to the District Court for a closure order under

Cap. 123.

15. The analysis in the above paragraphs reflects that a prohibition order made under Cap. 95F and a closure order made under Cap. 123 may not necessarily be able to handle situations that may arise under the Bill (such as the scenario set out in paragraph 12). We therefore consider that the current proposal of establishing a mechanism for making a prohibition order under the Bill is the most appropriate, as it provides a clear and straightforward framework for the EAs to follow through the procedures under the Bill and apply to the District Court for a prohibition order when an FSDn or FSCO issued under the Bill is not complied with and the occupation of the relevant IB or part may give rise to substantial fire risks. This is the best way to achieve the legislative intent of the Bill because it can prohibit the occupation of the relevant IB for the protection of public safety on the one hand, while empowering the EAs to allow relevant parties to enter the IB or part to complete the required fire safety improvement works on the other.

Security Bureau
Buildings Department
Fire Services Department
March 2019

Annex 1

Proposed composition of advisory committees to be set up under Clause 12 of the Fire Safety (Industrial Buildings) Bill

(1) Advisory committee to be set up by the Director of Fire Services

Chairman	<ul style="list-style-type: none">• 1 Assistant Director of the Fire Services Department (FSD)
Official Members	<ul style="list-style-type: none">• 2 officers of FSD• 1 officer of the Buildings Department (BD)
Non-official Members	<ul style="list-style-type: none">• 2 representatives of the Hong Kong Institution of Engineers• 1 representative of the Association of Registered Fire Service Installation Contractors of Hong Kong Limited• 2 representatives of post-secondary colleges specialising in the study of building safety or fire engineering• 3 persons (one each from Hong Kong, Kowloon and the New Territories) with relevant expertise in fire safety and management of buildings
Secretary	<ul style="list-style-type: none">• 1 officer of FSD

(2) Advisory committee to be set up by the Director of Buildings

Chairman	<ul style="list-style-type: none">• 1 Assistant Director of BD
Official Members	<ul style="list-style-type: none">• 2 officers of BD• 1 officer of FSD
Non-official Members	<ul style="list-style-type: none">• 3 authorized persons• 3 fire safety professionals• 3 academics in the fire safety field• 3 persons (one each from Hong Kong, Kowloon and the New Territories) with relevant expertise in fire safety and management of buildings <p>Note: Non-official members of each category will take turns to attend meetings</p>
Secretary	<ul style="list-style-type: none">• 1 officer of BD

Cap. 95F

FIRE SERVICES (FIRE
HAZARD ABATEMENT)
REGULATION

02/01/2004

11. Prohibition order

- (1) Subject to subsection (2), a magistrate may, on a sworn information by the Director, make a prohibition order in the form of Form 3 in Schedule 1 in respect of any premises to which a fire hazard abatement notice relates prohibiting the use of the premises for the purposes specified in the order.
- (2) A magistrate may not make a prohibition order unless the Director proves to the satisfaction of the magistrate—
 - (a) that not less than 24 hours have elapsed since a notice in writing stating the intention of the Director to swear an information for the purpose of subsection (1) has been served either personally on or by registered post sent to the person on whom a fire hazard abatement notice was served;
 - (b) that the fire hazard to which the fire hazard abatement notice relates continues at the time when the Director swears the information;
 - (c) that the fire hazard—
 - (i) is a result of the structural character of the relevant premises; or
 - (ii) is a result of the location of the premises having regard to the nature of the area in which the premises are situated; and
 - (d) that the premises are being used for a purpose that may materially increase the likelihood of—
 - (i) fire or other calamity or danger to life or property resulting from the outbreak of fire; or
 - (ii) the occurrence of any other calamity in or on the premises.
- (3) If a magistrate, on application, is satisfied that any premises in relation to which a prohibition order is in force has been rendered suitable for the use specified in the order, he may declare that fact and revoke the order.

27. Closure Order

- (1) Upon the application of—
- (a) the Building Authority, where he is of the opinion that—
 - (i) any building is dangerous or liable to become dangerous; or
 - (ii) any building should be closed in order to enable any works, which he is empowered to carry out or cause to be carried out under this Part, to be carried out without danger to the occupiers or to the public; or (*Replaced 59 of 1983 s. 3*)
 - (b) the owner—
 - (i) where a notice has been served upon him by the Building Authority requiring closure of a building under section 26; or
 - (ii) where the Building Authority has supplied a certificate to him showing that a building should be closed in order to enable building works to be carried out without danger to the occupiers or to the public,

the District Court shall on being satisfied that notice has been given in accordance with the provisions of subsection (2) make a Closure Order: (*Amended 35 of 1969 Schedule*)

Provided that nothing in paragraph (b)(ii) shall entitle an owner to carry out any building works which would result in a contravention of Part I of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

- (2) (a) Not less than 7 days' notice of intention to apply for a Closure Order shall be given by the person making such application by posting a copy of such notice upon a conspicuous part of the building to be affected, and upon being so posted such notice shall be deemed to be notice to all persons of such intention: (*Amended 40 of 1965 s. 5*)
- Provided that in the case of an emergency such notice shall be given as is practicable.
- (b) The notice shall reproduce in clear and legible form subsections (8), (10) and (11) in both the English and Chinese languages. (*Amended 23 of 1969 s. 6*)
- (3) (*Repealed 23 of 1969 s. 6*)
- (4) A Closure Order made under this section shall—
- (a) specify the building to be closed; and
 - (b) order the closure thereof under the direction of a police officer. (*Amended 23 of 1969 s. 6*)
- (5) (a) Save with the permission in writing of the Building Authority, no person, other than a public officer in the course of his duty, shall enter or be in a building at any time while a Closure Order is in force in respect of that building.

- (b) Where he thinks fit, the Building Authority may, subject to such conditions as he thinks fit, by notice in writing permit any person to enter and be in a building while a Closure Order is in force in respect of that building.
 - (c) Any permission granted under paragraph (b) may be cancelled by the Building Authority at any time and for any reason. *(Replaced 40 of 1965 s. 5)*
- (6) Where a Closure Order is in force in respect of a building—
- (a) any police officer of or above the rank of inspector, with such assistance as may be necessary, may remove therefrom any person who is in the building in contravention of subsection (5)(a); and
 - (b) the Building Authority may seal, or cause to be sealed, all or any of the entrances to or exits from the building. *(Added 40 of 1965 s. 5)*
- (7) The Building Authority may recover from the owner of the building the cost of any works that he carries out, or causes to be carried out, under subsection (6)(b). *(Added 40 of 1965 s. 5)*
- (8) A Closure Order shall remain in force in respect of a building until—
- (a) the Building Authority has caused a notice, to be known as a notice of expiry of the Closure Order to be posted upon a conspicuous part of the building to which the Closure Order relates and, subject to subsection (11), has served a copy of the notice of expiry on the owner of the building; or
 - (b) the building to which the Closure Order relates is completely demolished or otherwise ceases to exist, as the case may be. *(Replaced 55 of 1996 s. 5)*
- (9) Every notice of expiry of a Closure Order shall specify—
- (a) the building to which it relates; and
 - (b) the date upon which the Closure Order expires. *(Replaced 23 of 1969 s. 6)*
- (10) Where an owner has received a copy of a notice of expiry of a Closure Order under subsection (8)(a), such owner shall — *(Amended 55 of 1996 s. 5)*
- (a) cause copies thereof to be served upon all former occupiers of the building who have notified him of their addresses; and
 - (b) within 14 days of the date of such notice, serve upon the Building Authority a certificate in such form as the Building Authority may specify, setting out—
 - (i) the names and addresses of such former occupiers of the building as have notified him of their addresses; and
 - (ii) the date upon which each of such former occupiers was served with a copy of the notice of expiry of the Closure Order. *(Replaced 23 of 1969 s. 6)*
- (11) Notwithstanding the provisions of subsection (8)(a) as to service of a copy of a notice of expiry of a Closure Order upon the owner, where— *(Amended 55 of 1996 s. 5)*
- (a) the owner cannot be found or ascertained, or is absent from Hong Kong, or is under a disability; or *(Amended 62 of 2000 s. 3)*

- (b) the notice of expiry of the Closure Order is served on the completion of works by the Building Authority in accordance with his powers in that behalf under section 26,

then the Building Authority shall cause copies of the notice of expiry of the Closure Order to be—

- (i) served upon all former occupiers of the building of whose addresses he is aware; and
- (ii) advertised in at least 1 English language newspaper and 1 Chinese language newspaper published in Hong Kong.
(Added 23 of 1969 s. 6)