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FIRE SERVICES (FIRE HAZARD ABATEMENT) REGULATION

(Made by the Chief Executive in Council under section 25 of the Fire Services Ordinance (Cap. 95))

1. Commencement

This Regulation shall come into operation on a day to be appointed for the commencement of the Fire Services (Amendment) Ordinance 2003 (7 of 2003).

2. Interpretation

(1) In this Regulation, unless the context otherwise requires—
“closure order” (封閉令) means an order made by a magistrate under section 27;

“fire hazard abatement notice” (消除火警危險通知書) means a fire hazard abatement notice served under section 3;

“fire hazard order” (火警危險令) means an order made by a magistrate under section 10;

“motor vehicle” (汽車) includes a motor cycle with or without a side car;

“prohibition order” (禁止令) means an order made by a magistrate under section 11;

“scheduled member” (表列成員) means a member holding a rank set out in Schedule 2;

“tenancy” (租賃) includes sub-tenancy;

“works” (工程) includes any kind of operations to be carried out, or action to be taken as required by this Regulation.

(2) In this Regulation, a reference to “premises” shall be read as including any part of the premises.

(3) In sections 14 and 15, “means of escape” (逃生途徑), in respect of premises, means such means of escape as may be required for the safety of persons having regard to the use or intended use of the premises.

(4) In sections 14 and 16, “article or thing” (物件或東西), in respect of premises, means any article or thing not being an installation, fitting or fixture required by the use or intended use of the premises.

(5) In sections 17 and 18, “container” (貨櫃) means—

(a) the cargo compartment of a lorry; or

(b) a freight container otherwise than on board a vessel or aircraft.

PART 1

FIRE HAZARD ABATEMENT

3. Fire hazard abatement notice

(1) The Director may, if satisfied of the existence in or on any premises of a fire hazard, serve a fire hazard abatement notice in the form of Form 1 in Schedule 1 either personally on or by registered post sent to—

- (a) the person by reason of whose act, default or sufferance the fire hazard arose or continues;
 - (b) if the person referred to in paragraph (a) is the servant or agent of some other person, such other person; or
 - (c) if the person referred to in paragraph (a) and, if any, the person referred to in paragraph (b) cannot readily be found or is absent from Hong Kong, the owner, tenant, occupier or person in charge of the premises.
- (2) A fire hazard abatement notice may—
- (a) require the person on whom the notice is served to abate the fire hazard within the period specified in the notice;
 - (b) require the person on whom the notice is served to carry out such works as may be necessary for the purpose in paragraph (a); and
 - (c) if the Director thinks fit, specify any works to be carried out for the purpose in paragraph (a).

4. Director may carry out works for the purpose of fire hazard abatement notice

(1) Subject to subsection (2), if the person on whom a fire hazard abatement notice is served—

- (a) fails to abate the fire hazard to which the notice relates within the period specified in the notice; or
- (b) causes, permits or suffers the fire hazard to recur at any time within a period of 12 months after the date of service of the notice,

the Director may cause to be carried out in or on the relevant premises such works, and cause to be removed and taken possession of such article or thing, that is considered necessary by the Director to abate the relevant fire hazard and to prevent its recurrence in or on the premises.

(2) The Director may not cause works to be carried out, and cause to be removed and taken possession of any article or thing, under subsection (1), unless the Director is satisfied that the fire hazard to which the fire hazard abatement notice relates—

- (a) constitutes an immediate and substantial danger of fire in or on the relevant premises; or
- (b) is likely, if fire breaks out in or on the premises, to increase substantially the normal risk to life which occurs in the event of a fire.

5. Director may abate fire hazard without serving fire hazard abatement notice

Notwithstanding section 3, the Director may, if satisfied of the existence in or on any premises of a fire hazard, cause to be carried out in or on the premises such works, and cause to be removed and taken possession of such article or thing, that is considered necessary by the Director to abate the fire hazard and to prevent its recurrence in or on the premises without the service of a fire hazard abatement notice if—

- (a) the person by reason of whose act, default or sufferance the fire hazard arose or continues in or on the relevant premises cannot readily be found or is absent from Hong Kong; and
- (b) the Director is satisfied that the fire hazard neither arose nor continues by reason of any act, default or sufferance on the part of the owner, tenant, occupier or person in charge of the premises.

6. Delegation of powers and duties by Director

The Director may authorize a Deputy Director or a Chief Fire Officer to exercise or discharge the powers and duties conferred on the Director by section 4 but the Director may not authorize any other member to exercise or discharge any of those powers or duties.

7. Article or thing removed

(1) If an article or thing is removed under section 4 or 5, a notice in both Chinese and English shall be caused to be affixed by the Director to a conspicuous part of the relevant premises—

- (a) setting out details of the article or thing; and
- (b) calling for the submission to the Director, within 1 month after the day on which the notice was affixed, of any claim for the return of the article or thing.

(2) Where a claim is made under subsection (1) for the return of an article or thing, the Director may refuse to return it unless he is satisfied that the claimant is the owner or otherwise entitled to the possession of the article or thing.

(3) If an article or thing is not claimed within the period under subsection (1)(b), or if the Director refuses to return it under subsection (2), the article or thing—

(a) may be sold by public auction; or

(b) if the Director thinks the circumstances of the case require it—

(i) may otherwise be sold; or

(ii) may otherwise be disposed of without sale.

(4) The proceeds arising from the sale of an article or thing under subsection (3)(a) or (b)(i) shall be applied in payment of the expenses reasonably incurred by the works carried out under section 4 or 5; and the surplus, if any, shall be paid into the general revenue.

8. Recovery of expenses

(1) Subject to subsection (2), the expenses reasonably incurred by the Director in carrying out works under section 4—

(a) shall constitute a civil debt due to the Government by the person on whom the relevant fire hazard abatement notice was served; and

(b) may be recovered by action in the District Court from that person.

(2) It shall be a defence for a person against whom an action is brought under subsection (1) to satisfy the court that—

(a) the fire hazard to which the fire hazard abatement notice relates—

(i) did not constitute an immediate and substantial danger of fire in or on the relevant premises; and

(ii) was not likely, if fire had broken out in or on the premises, to increase substantially the normal risk to life which occurs in the event of a fire; or

(b) the fire hazard was due to the wilful act, default or sufferance of a person other than the person on whom the fire hazard abatement notice was served.

(3) Nothing in this section shall be construed as affecting any right that the person on whom a fire hazard abatement notice has been served may have to a contribution, indemnity or damages from any other person.

9. Offences relating to fire hazard abatement notice

(1) A person on whom a fire hazard abatement notice is served commits an offence if that person fails to comply with a requirement of the notice within the period specified in the notice and shall (whether or not a fire hazard order has been made in respect of him) be liable on conviction to a fine at level 6 and to a further fine of \$10,000 for each day during which the offence continues.

(2) If the person on whom a fire hazard abatement notice is served causes, permits or suffers the fire hazard to recur at any time within a period of 12 months after the date of service of the notice, the person commits an offence and shall be liable on conviction to a fine at level 6 and to a further fine of \$10,000 for each day during which the offence continues.

PART 2

FIRE HAZARD ORDER AND PROHIBITION ORDER

10. Fire hazard order

(1) A magistrate may, at any time after a person is convicted of an offence under section 9, either on application by the Director or on the magistrate's own initiative, make a fire hazard order in the form of Form 2 in Schedule 1 in respect of that person.

(2) Notwithstanding subsection (1), whether or not a person on whom a fire hazard abatement notice is served has been convicted of an offence under section 9, a magistrate may, on application by the Director, make a fire hazard order in respect of that person if the Director proves to the satisfaction of the magistrate—

- (a) that the person has failed to comply with a requirement of the notice within the period specified in the notice; or
- (b) that the fire hazard, whether or not it has been abated since the service of the notice, has recurred, or is continuing.

(3) A fire hazard order may provide for any or any combination of the following matters—

- (a) require a person to comply with all or any of the requirements of a fire hazard abatement notice in relation to which the order is made, or otherwise to abate the relevant fire hazard within the period specified in the order;
- (b) require a person to do what may be necessary to prevent the recurrence of the relevant fire hazard within the period specified in the order;

(c) prohibit a person from causing, permitting or suffering the relevant fire hazard to recur.

(4) If—

(a) the person in respect of whom a fire hazard order is made so requires; or

(b) the magistrate making the order considers it desirable,

that order shall specify the works to be carried out by that person for the purpose of abating, or of preventing the recurrence of, the fire hazard to which the order relates.

(5) A fire hazard order is in addition to any penalties imposed in respect of an offence under section 9.

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.

12. Offences against non-compliance with fire hazard orders or prohibition orders

(1) A person who without reasonable excuse knowingly contravenes a fire hazard order or a prohibition order commits an offence and shall be liable on conviction to a fine of \$200,000 and to a further fine of \$20,000 for each day during which the offence continues.

(2) Without prejudice to subsection (1), if a fire hazard order has not been complied with, the Director—

- (a) subject to section 13(9), may abate the fire hazard;
- (b) subject to section 13(9), may do whatever may be necessary in execution of the order; and
- (c) may recover from the person in respect of whom the order was made any expenses reasonably incurred by the execution of the order as a civil debt due to the Government by action in the District Court.

13. Appeal against fire hazard orders or prohibition orders

(1) Subject to the following provisions, Part VII of the Magistrates Ordinance (Cap. 227) applies in relation to proceedings in a magistrate's court under this section.

(2) In the event of an appeal against a fire hazard order or a prohibition order, the order shall be suspended pending the determination or abandonment of the appeal.

(3) If the order in subsection (2) has not been quashed in the appeal, the period for compliance with the requirements of the order shall commence to run on the determination or abandonment of the appeal.

(4) Subject to subsection (5), if an appeal—

- (a) against a fire hazard order that provides for the matter under section 10(3)(c) (whether or not it also provides for other matters);
- (b) against a fire hazard order that requires the carrying out of structural works; or
- (c) against a prohibition order,

is dismissed or abandoned, then notwithstanding subsections (2) and (3), the appellant shall be liable to a further fine of \$20,000 for each day during the period when the order was not complied with.

(5) The daily fine referred to in subsection (4) shall not be payable if the appellant—

- (a) in the case of an appeal that is dismissed, satisfies the court hearing the appeal; or

(b) in the case of an appeal that is abandoned, satisfies the court before which proceedings are taken for the recovery of the fine, that there was substantial ground for the appeal and that the appeal was not brought merely for the purpose of delay.

(6) The period in respect of which a daily fine is payable under subsection (4) commences to run on the expiry of the period that would have been permitted for the compliance with the requirements of an order referred to in that subsection if there had been no appeal against the order, until the day immediately preceding the day of the dismissal or abandonment of the appeal.

(7) In the case of an appeal that is dismissed, the daily fine (if any) imposed under subsection (4) shall be imposed by the court hearing the appeal.

(8) In the case of an appeal that is abandoned, the daily fine (if any) shall, for the purpose of proceedings for the recovery of the fine, be taken to have been imposed by the court before which the proceedings are taken, but the court may reduce or cancel the amount of the fine if it thinks fit.

(9) Subject to subsection (10), in the event of an appeal against a fire hazard order that requires the carrying out of structural works, no works shall be done under section 12(2) or under the order until after the determination or abandonment of the appeal.

(10) If the magistrate by whom a fire hazard order that requires the carrying out of structural works was made is of the opinion that the nature of the relevant fire hazard is such as to require immediate abatement, the magistrate may, notwithstanding that an appeal in respect of the order is pending, authorize the Director to abate the fire hazard immediately.

(11) If the Director abates the fire hazard under subsection (10), then—

- (a) if the appeal is allowed, the Director shall pay to the person in respect of whom the fire hazard order was made the amount of any damage sustained by the person by reason of the abatement of the fire hazard by the Director;
- (b) if the appeal is dismissed or abandoned, the Director may recover from the person any expenses reasonably incurred in abating the fire hazard as a civil debt due to the Government by action in the District Court.

PART 3

FIRE HAZARD OFFENCES

14. Obstruction of means of escape

(1) In relation to any premises, a person commits an offence if the person—

- (a) sets out or leaves or causes to be set out or left; or
- (b) being the owner, tenant, occupier or person in charge of the premises, permits or suffers to be set out or left,

any article or thing that obstructs or may obstruct the means of escape in respect of the premises.

(2) A person who commits an offence under this section shall be liable—

- (a) on a first conviction, to a fine at level 6;
- (b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year,

and, in any case, to a further fine of \$20,000 for each day during which the offence continues.

(3) In any proceedings under subsection (2), a document purporting to be a certificate signed by the Director stating that the person named in the document was on the date specified in the document convicted of an offence contrary to this section shall be admitted in evidence on its production.

(4) Unless the contrary is proved, it shall be presumed in respect of the document admitted in evidence under subsection (3)—

- (a) that it is a certificate signed by the Director; and
- (b) that the person named in the document was on the date specified in the document convicted of an offence contrary to this section.

15. Locking of means of escape

(1) A person commits an offence if the person—

- (a) secures or causes to be secured the means of escape in respect of any premises; or
- (b) being the owner, tenant, occupier or person in charge of any premises, permits or suffers to be secured the means of escape in respect of the premises,

by any lock or other device which in the event of fire or other calamity—

- (c) cannot readily and conveniently be opened from within the premises without the use of a key; or
- (d) might render escape materially more difficult.

- (2) A person who commits an offence under this section shall be liable—
- (a) on a first conviction, to a fine at level 6;
 - (b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year,

and, in any case, to a further fine of \$20,000 for each day during which the offence continues.

(3) In any proceedings under subsection (2), a document purporting to be a certificate signed by the Director stating that the person named in the document was on the date specified in the document convicted of an offence contrary to this section shall be admitted in evidence on its production.

(4) Unless the contrary is proved, it shall be presumed in respect of the document admitted in evidence under subsection (3)—

- (a) that it is a certificate signed by the Director; and
- (b) that the person named in the document was on the date specified in the document convicted of an offence contrary to this section.

16. Removal of obstruction or lock

(1) If a person is convicted of an offence under section 14 or 15, a magistrate may, either on application by the Director or on the magistrate's own initiative, make a removal order in the form of Form 4 in Schedule 1 in respect of that person.

(2) A removal order is in addition to any penalty imposed in respect of an offence under section 14 or 15.

(3) A removal order may require the person in respect of whom it is made—

- (a) in the case where that person is convicted of an offence under section 14, to remove the article or thing to which that offence relates within the period specified in the order; or
- (b) in the case where that person is convicted of an offence under section 15, to remove the lock or other device to which that offence relates within the period specified in the order.

(4) If a person in respect of whom a removal order is made fails to comply with a requirement of the order within the period specified in the order, the person commits an offence and shall be liable on conviction to a fine of \$200,000 and to a further fine of \$20,000 for each day during which the offence continues.

(5) Whether or not a person in respect of whom a removal order is made has been convicted of an offence under subsection (4), if that person fails to comply with a requirement of the order within the period specified in the order, the Director—

- (a) may carry out, or cause to be carried out any works necessary to give effect to the requirements of the order; and

- (b) may recover from the person any expenses reasonably incurred by the carrying out of the works as a civil debt due to the Government by action in the District Court.

17. Conveyance of parts of motor vehicles

- (1) Subject to subsection (2), a person commits an offence if the person—
(a) knowingly causes or permits to be conveyed on land; or
(b) knowingly conveys on land,

a container that contains a part of a motor vehicle that has fuel in its fuel tank or is otherwise stained with fuel.

(2) Subsection (1) shall not apply if the container referred to in that subsection is open at the top or is well ventilated.

- (3) A person who commits an offence under this section shall be liable—
(a) on a first conviction, to a fine at level 6 and to imprisonment for 6 months;
(b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year.

18. Stowage of parts of motor vehicles

- (1) Subject to subsection (2), a person commits an offence if the person—
(a) knowingly causes or permits to be stowed; or
(b) knowingly stows,

in a container that is or is to be conveyed on land a part of a motor vehicle that has fuel in its fuel tank or is otherwise stained with fuel.

(2) Subsection (1) shall not apply if the container referred to in that subsection is open at the top or is well ventilated.

- (3) A person who commits an offence under this section shall be liable—
(a) on a first conviction, to a fine at level 6 and to imprisonment for 6 months;
(b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year.

19. Illegal possession of controlled substance

(1) Subject to subsection (2), a person commits an offence if he has possession or control of a controlled substance in or on any premises for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle, and shall be liable—

- (a) on a first conviction, to a fine at level 6 and to imprisonment for 6 months;

- (b) on a subsequent conviction, to a fine of \$200,000 and to imprisonment for 1 year.
- (2) Subsection (1) shall not apply if—
- (a) the conditions set out in regulation 125 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg. B) have been complied with in respect of the relevant installation in or on the premises referred to in that subsection; and
- (b) a licence for the storage of dangerous goods in liquid form in or on the premises has been granted or renewed under the Dangerous Goods Ordinance (Cap. 295).

(3) In proceedings relating to subsection (1), it is presumed in the absence of evidence to the contrary that a person has possession or control of a controlled substance in or on any premises for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle if—

- (a) that person sells, offers for sale or supplies a controlled substance in or on the premises; and
- (b) that person does so in circumstances that gives rise to a reasonable belief that the controlled substance is to be transferred to the fuel tank of a motor vehicle.

(4) In this section, “controlled substance” (受管制物質) means dangerous goods in category 5 under the Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg. A).

20. Liability of owners, tenants etc.

(1) A person who is the owner, tenant, occupier or person in charge of any premises commits an offence if the person knowingly permits or suffers an offence under section 19 to be committed in or on the premises.

(2) A person commits an offence if the person lets or agrees to let, whether as principal or agent of another person, any premises with the knowledge that an offence under section 19 is to be committed in or on the premises.

(3) A person who commits an offence under this section shall be liable on conviction to a fine at level 6 and to imprisonment for 6 months.

PART 4

INVESTIGATION POWERS

21. Power to obtain personal particulars

(1) The Director, or a member authorized by the Director in writing on producing, if so required, the document showing the member’s authority, may require—

- (a) any person on whom a fire hazard abatement notice is served;
- (b) any person whom the Director or the member has reasonable grounds for suspecting as being the person by reason of whose wilful act, default or sufferance a fire hazard arose or continues; or
- (c) any person whom the Director or the member has reasonable grounds for suspecting has committed, is about to commit or intends to commit an offence under this Regulation,

to give correct particulars of the person's name and address and produce the person's proof of identity to the Director or the member.

(2) The reference in subsection (1) to a person's proof of identity is construed in accordance with the definition of "proof of identity" in section 17B(1) of the Immigration Ordinance (Cap. 115).

(3) A person who—

- (a) without reasonable excuse, fails to comply as soon as reasonably practicable with a requirement of the Director or the relevant member made under subsection (1); or
- (b) furnishes particulars which the person knows to be false in a material particular in connection with a requirement under subsection (1),

commits an offence and shall be liable on conviction to a fine at level 4.

22. Power to stop, board, search, of seizure etc.

(1) If an authorized officer has reasonable grounds for suspecting that an offence against section 17 or 18 has been, is about to be, or is intended to be, committed in respect of a motor vehicle or container, the authorized officer may—

- (a) stop, board and search the motor vehicle; and
- (b) enter and search the container.

(2) An authorized officer may seize, remove and detain a motor vehicle or container or any article or thing carried in, on or by the motor vehicle or contained in the container—

- (a) with respect to which the authorized officer has reasonable grounds for suspecting that an offence against section 17 or 18 has been, is about to be, or is intended to be, committed; or
- (b) which appears to the authorized officer likely to be, or to contain, evidence of the offence.

(3) An authorized officer in exercising his power under this section in respect of any motor vehicle or container may forcibly—

- (a) board, enter and search the motor vehicle or container;
- (b) remove any article or thing or any person obstructing the authorized officer in exercising the power;

- (c) detain any person who has control of the motor vehicle or container; and
- (d) prevent any person from approaching or boarding the motor vehicle, or approaching or entering the container.

(4) A person who, without reasonable excuse, resists, obstructs or delays an authorized officer in the exercise of the power conferred by this section commits an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(5) In this section—
“authorized officer” (獲授權人員) means—

- (a) a scheduled member;
- (b) a member of the Customs and Excise Service in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); or
- (c) a police officer.

PART 5

PROTECTION OF INNOCENT PARTIES

Notification and publication of charges and convictions

23. Notification to Land Registrar of charges etc.

(1) If a charge under section 19 or 20 is preferred against a person or is withdrawn, the Director shall, as soon as reasonably practicable, cause to be registered in the Land Registry a notice in writing stating the fact and the date on which it occurred and setting out the specified information.

(2) If a person is acquitted or convicted by a magistrate of, or successfully appeals against a conviction for, an offence under section 19 or 20, the magistrate or the appellate court (as the case may be) shall, as soon as reasonably practicable, send a notice in writing to the Director stating the fact and the date on which it occurred and setting out the specified information.

(3) On receipt of the notice under subsection (2), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

(4) In this section, “specified information” (指明的資料) means the address of the premises, in respect of which an offence under section 19 or 20 is or was alleged or proved to have been committed, and if the alleged offence or the proved offence related to a part of premises, the location of that part.

24. Publication of fact of conviction

(1) If a person is convicted of an offence under section 19 or 20, a scheduled member not below the rank of Assistant Divisional Officer may within 2 weeks after the conviction—

- (a) sign a notice in Chinese and another notice in English—
 - (i) stating that a person has been convicted of the offence in respect of the relevant premises and stating the nature and date of the offence, but the notice shall not disclose the name, address and other personal particulars of the person convicted of the offence;
 - (ii) stating that if, within a period beginning 4 months after the date of that conviction and ending 16 months after that date, any person commits an offence under section 19 or 20 in respect of the premises, a closure order will be made in respect of the premises; and
 - (iii) setting out the section referred to in subparagraph (ii);
- (b) affix or cause to be affixed by a scheduled member the notices referred to in paragraph (a) to a conspicuous part of the premises in respect of which the offence is proved to have been committed; and
- (c) cause the notice in Chinese to be published in one newspaper published in Hong Kong in the Chinese language, and the notice in English in one newspaper so published in the English language.

(2) For the purpose of the application for a closure order, a document purporting to be a certificate signed by a scheduled member stating that he has on the date specified in the document affixed the notices in accordance with subsection (1) shall be admitted in evidence on its production.

(3) Unless the contrary is proved, it shall be presumed in respect of the document admitted in evidence under subsection (2)—

- (a) that it is a certificate signed by the scheduled member; and
- (b) that the scheduled member has on the date specified in the document affixed the notices in accordance with subsection (1).

25. Notification to owner etc. of convictions

If a person is convicted by a magistrate of an offence under section 19 or 20, a magistrate may order that a notice of that fact shall be served either personally on or by registered post sent to—

- (a) the owner and, if ascertainable, the tenant of the premises in respect of which the offence is proved to have been committed;

- (b) if the person referred to in paragraph (a) cannot readily be found or is absent from Hong Kong or is under disability, the agent of the person (if any); or
- (c) if the person is a body corporate, the chairman, president, manager, secretary, or other similar officer of the body.

Termination of tenancy and closure order

26. Termination of tenancy

- (1) A magistrate may, on application—
 - (a) by a person on whom a notice was served under section 25; or
 - (b) in the case of a body corporate, by the body or by a person on behalf of the body,

make an order terminating the tenancy of the premises in respect of which a person has been convicted of an offence under section 19 or 20, and the tenancy shall terminate as from the date of the order for all purposes.

(2) A tenant under the tenancy so terminated and an occupier of the premises under the tenancy may be treated as trespassers on the termination of the tenancy.

(3) An order made under subsection (1) shall be sufficient authority for a member or police officer—

- (a) to enter the premises specified in the order;
- (b) to evict from the premises any person who may under subsection (2) be treated as a trespasser; and
- (c) to remove from the premises anything belonging to or in the possession of the person treated as a trespasser.

(4) A member or police officer may use such force as is reasonably necessary to exercise the power conferred by subsection (3).

(5) The powers under this section shall be in addition to and not in derogation of any powers conferred by or under any other law.

27. Closure order

(1) This section applies to offences under section 19 and 20. An offence to which this section applies is referred to in this section as a “relevant offence”.

(2) A magistrate may, either on application by the Director or on the magistrate’s own initiative, make a closure order in respect of any premises in relation to which a person is convicted of any relevant offence if the magistrate is satisfied—

- (a) that the relevant offence was committed within a period beginning 4 months after and ending 16 months after an immediately preceding conviction of either the same person or otherwise for any relevant offence in respect of the same premises (whether or not a closure order was made in respect of the preceding conviction); and
 - (b) that the notices under section 24 in respect of the immediately preceding conviction have been affixed and published in accordance with that section.
- (3) The magistrate making the closure order—
- (a) shall have the same power to sentence or otherwise deal with the convicted person as if a closure order were not being made; and
 - (b) shall leave the closure order out of account in determining the appropriate sentence or other manner of dealing with the convicted person.

28. Content of closure order

A closure order—

- (a) shall identify the premises to which it applies;
- (b) shall state that the premises are to be closed for 6 months;
- (c) shall state that a person commits an offence if the person without reasonable excuse—
 - (i) enters or is in the premises that have been closed; or
 - (ii) interferes with any lock, bar or other thing used to close the premises; and
- (d) shall state that any person who is a mortgagee or chargee of the premises or who would, if the premises were not closed—
 - (i) be entitled or permitted to occupy or possess the premises; or
 - (ii) be the immediate landlord of the occupier of the premises, may apply to suspend the closure order under section 35.

29. Registration of closure order

(1) The magistrate making a closure order under section 27 in respect of any premises shall, as soon as reasonably practicable, cause a copy of the order signed by the magistrate to be sent to the Director.

(2) On receipt of the copy of the order under subsection (1), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

30. Issue of warrant

The magistrate making a closure order under section 27 in respect of any premises—

- (a) shall issue a warrant to any bailiff, commanding the bailiff to close the premises and to fix a copy of the order to a conspicuous part of the premises; and
- (b) may direct that the warrant is not to be executed until after a specified period not exceeding 3 days.

31. Power of bailiff

(1) A bailiff by executing a warrant issued under section 30, and any person assisting the bailiff, may—

- (a) enter any place in order to effect the closure;
- (b) evict persons from the relevant premises;
- (c) take other reasonably necessary measures to effect the closure.

(2) A bailiff and the person assisting bailiff may use such force as is reasonably necessary to exercise the power conferred by subsection (1).

(3) The powers under this section shall be in addition to and not in derogation of any powers conferred by or under any other law.

(4) A person who, without reasonable excuse, obstructs a bailiff or a person assisting the bailiff in the exercise of the power conferred by subsection (1) commits an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

32. Interfering premises subject to closure order

(1) A person commits an offence if the person without reasonable excuse—

- (a) enters or is in the premises that have been closed under a closure order; or
- (b) interferes with any lock, bar or other thing used to close the premises subject to a closure order.

(2) Subsection (1) does not apply—

- (a) to a public officer in the course of carrying out the officer's duty; and
- (b) to a person who has permission in writing to enter from a magistrate.

(3) A person who is convicted of an offence under this section shall be liable to a fine at level 3 and to imprisonment for 6 months.

33. Application for rescission of closure order

(1) If a closure order has been made in respect of any premises, a person to whom this section applies may apply in writing to a magistrate for the closure order to be rescinded.

(2) This section applies to a person who became a bona fide purchaser, mortgagee or chargee for valuable consideration of an interest in the premises—

- (a) after another person had been convicted of an offence or had been charged with an offence for which that other person was subsequently convicted, and that conviction being the conviction on which the closure order was based; and
- (b) before a notice relating to that conviction or charge was registered in accordance with section 23.

(3) An application made under this section—

- (a) shall state the name and address of the applicant;
- (b) shall state the business or occupation of the applicant; and
- (c) if the applicant is an individual, shall be accompanied by a copy of a document which is proof of his identity for the purposes of section 17B(1) of the Immigration Ordinance (Cap. 115).

(4) On receipt of an application made under this section, the magistrate shall—

- (a) appoint a date for the hearing of the application;
- (b) cause a copy of the application and of the accompanying document of identity to be sent to the Director; and
- (c) inform the Director of the date of the hearing.

(5) After hearing an application made by the applicant under this section and any representations made by or on behalf of the Director, the magistrate may rescind the closure order—

- (a) if satisfied that, at the time the applicant became a bona fide purchaser, mortgagee or chargee for valuable consideration of an interest in the premises, the applicant did not know of the conviction or charge (as the case may be) in relation to which a notice had not been registered in accordance with section 23; and
- (b) if satisfied that, having regard to all the circumstances of the case, it would be unjust for the applicant to be affected by the closure order.

(6) The magistrate who rescinds a closure order under subsection (5) shall, as soon as reasonably practicable, cause a notice in writing signed by the magistrate stating that fact to be sent to the Director.

(7) On receipt of the notice under subsection (6), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

34. Rescission of closure order after successful appeal

(1) If a person (first-mentioned person) successfully appeals against a conviction (first-mentioned conviction) on which a closure order is based, the appellate court shall rescind the order unless—

- (a) the first-mentioned person or any other person was convicted in the same proceedings of an offence of which he remains convicted and, as a result, the order could have been made without reference to the first-mentioned conviction; or
- (b) the appellate court substitutes a verdict of guilty of another offence on which the order could, if the person had originally been convicted of that offence, have been based.

(2) The court that rescinds a closure order under subsection (1) shall, as soon as reasonably practicable, cause a notice in writing sealed with the seal of the court stating that fact to be sent to the Director.

(3) On receipt of the notice under subsection (2), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

35. Application for suspension order

(1) If a closure order has been made in respect of any premises, a person who is a mortgagee or chargee of the premises or who would, if the premises were not closed—

- (a) be entitled or permitted to occupy or possess the premises; or
- (b) be the immediate landlord of the occupier of the premises,

may apply in writing to a magistrate for the closure order to be suspended.

(2) An application made under this section—

- (a) shall state the name and address of the person who is proposed to be the occupier of the premises, during the suspension of the closure order;
- (b) shall state the business or occupation of such person, during the suspension of the closure order;
- (c) shall state the purpose for which it is proposed the premises be used, during the suspension of the closure order; and
- (d) if the proposed occupier is an individual, shall be accompanied by a copy of a document which is proof of his identity for the purposes of section 17B(1) of the Immigration Ordinance (Cap. 115).

(3) On receipt of an application made under this section, the magistrate shall—

- (a) appoint a date for the hearing of the application;
- (b) cause a copy of the application and of the accompanying document of identity to be sent to the Director; and

(c) inform the Director of the date of the hearing.

(4) After hearing an application made by the applicant under this section and any representations made by or on behalf of the Director, the magistrate may make an order suspending the closure order for a period of at least 2 years but not exceeding 3 years if the magistrate is satisfied that the proposed use of the premises is unlikely to pose an undue risk of fire.

(5) The magistrate making a suspension order under subsection (4)—

(a) shall attach a condition to the order to the effect that the premises are, during the suspension, to be used only for the purpose proposed and, when occupied, to be occupied by the person proposed; and

(b) may attach any other conditions to the order as the magistrate thinks fit, including a condition that a person gives security, in such a manner and such amount as may be specified, that will be forfeited as a result of a breach of the condition referred to in paragraph (a).

(6) The magistrate may enforce payment of any sum of money that is forfeited as a result of a breach of any condition attached to a suspension order in the same manner as if it were a judgment debt and any money recovered shall be paid into the general revenue.

(7) If a closure order is suspended and is not revived under section 36, the order shall cease to have effect at the end of the period for which it was suspended.

(8) The magistrate making a suspension order shall, as soon as reasonably practicable, cause a copy of the order signed by the magistrate to be sent to the Director.

(9) On receipt of the copy of the order under subsection (8), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

(10) A person—

(a) referred to in subsection (1)(a) or (b); or

(b) liable to be penalized in the event of a breach of a condition attached to the suspension order under subsection (5),

may apply in writing to a magistrate for a variation of any condition attached to the order.

(11) An application made under subsection (10) shall, as far as is practicable, be made to the magistrate who made the suspension order.

36. Revival of closure order

(1) If a closure order has been suspended under section 35, a scheduled member not below the rank of Assistant Divisional Officer may apply in writing to the magistrate making the suspension order for the closure order to be revived on the basis that there is a breach of a condition attached to the suspension order.

(2) On receipt of an application made under subsection (1), the magistrate shall—

- (a) appoint a date for the hearing of the application; and
- (b) issue a summons to the occupier of the premises, the immediate landlord of the occupier, and any person liable to be penalized in the event of a breach of a condition attached to the suspension order, requiring them to appear before the magistrate on the hearing of the application.

(3) An application made under this section is, for the purposes of section 8 of the Magistrates Ordinance (Cap. 227), a complaint, and—

- (a) if the place of abode of the immediate landlord of the occupier of the premises is not known, a summons to the immediate landlord may be served by leaving it with any person at the premises; and
- (b) if the identity of the immediate landlord is not known, a summons may be issued to the immediate landlord by reference to that status, without naming the immediate landlord.

(4) After hearing of an application made under subsection (1), the magistrate may, if satisfied that a condition attached to the suspension order has been breached, take any or all of the following action—

- (a) make an order reviving the closure order;
- (b) make such modifications to the closure order as considered necessary by the magistrate.

(5) The magistrate making an order under subsection (4) shall, as soon as reasonably practicable, cause a copy of the order signed by the magistrate to be sent to the Director.

(6) On receipt of the copy of the order under subsection (5), the Director shall, as soon as reasonably practicable, cause it to be registered in the Land Registry.

(7) If the magistrate makes an order under subsection (4), the period during which the closure order was suspended shall not count as part of the period for which the closure order is in force.

37. Registration of notices and orders

A notice or copy of an order sent to the Land Registry by the Director under this Part shall be taken to be an instrument affecting land, but a failure to register such a notice or copy of an order shall not, except as is provided in section 33, affect its validity as against any person.

SCHEDULE 1

[ss. 3, 10, 11 & 16]

FORMS FOR NOTICES AND ORDERS UNDER THIS REGULATION

FORM 1

[s. 3]

FIRE SERVICES (FIRE HAZARD ABATEMENT) REGULATION

(Section 3)

Fire Hazard Abatement Notice

TO

(name and address of person by reason of whose own or whose servant's or agent's act, default or sufferance the fire hazard arose or continues, or owner, tenant, occupier or person in charge of the premises at which the fire hazard exists, as the case may be).

1. TAKE NOTICE that under section 3 of the Fire Services (Fire Hazard Abatement) Regulation the Director of Fire Services, being satisfied of the existence at (premises where fire hazard exists) of a fire hazard being (describe the fire hazard), does hereby require you within (specify the time) from the service of this notice, to abate the fire hazard and for that purpose to (specify works to be carried out).

2. If you make default in complying with the requirements of this notice you are liable to prosecution for an offence under section 9 of the Fire Services (Fire Hazard Abatement) Regulation. On conviction, a court may impose a maximum fine at level 6 and a further fine of \$10,000 for each day during which the offence continues. Application may also be made for an order against you requiring the abatement of the fire hazard or prohibiting its recurrence or both and for recovering the costs which may be incurred thereby.

Dated this day of,

(Signed)
Director of Fire Services

FORM 2

[s. 10]

FIRE SERVICES (FIRE HAZARD ABATEMENT) REGULATION

(Section 10)

Fire Hazard Order

To A.B. of (or to the owner, tenant, occupier or person in charge of) (describe premises) situated at (insert such description of the situation as may be sufficient to identify the premises).

WHEREAS the said A.B. (or, the owner, tenant, occupier or person in charge of the said premises, namely) has this day appeared before me/us, (describe the court), to answer the matter of a complaint made by etc. that at etc. (follow the words of complaint in summons): [(or, in the case where the party charged does not appear, say, in place of the foregoing).

WHEREAS it has been now proved to my/our satisfaction that a summons has been duly served requiring the said A.B. (or, the owner, tenant, occupier or person in charge of the said premises) to appear this day before me/us to answer the matter of a complaint made by etc. that at etc. (following the words of complaint in summons):] (Any of the following orders may be made or a combination of any of them, as the case seems to require.)

Now on proof here had before me/us that the fire hazard so complained of does exist at the said premises (add, where the order is made on the person causing the fire hazard—and that the fire hazard is caused by the act, default or sufferance of A.B.), I/we, in pursuance of section 10 of the Fire Services (Fire Hazard Abatement) Regulation, do order the said A.B. (or, the said owner, tenant, occupier or person in charge) within (specify the time) from the service of this order to abate (here specify the fire hazard to be abated and the manner, whether by compliance with the requirements of the relevant fire hazard abatement notice, or otherwise). Order 1

And I/we being satisfied that, notwithstanding that the said fire hazard may be temporarily abated under this order, the fire hazard is likely to recur, do therefore prohibit the said A.B. (or, the said owner, tenant, occupier or person in charge) from allowing the recurrence of the said fire hazard (and for that purpose I/we direct the said A.B. (or, the said owner, tenant, occupier or person in charge)..... [here specify any works to be carried out]). Order 2

Now on proof here had before me/us that at or recently before the time of making the said complaint, to wit, on, the fire hazard so complained of did exist at the said premises, but that the fire hazard has since been abated (add, where the order is made on the person causing the fire hazard—and that the fire hazard was caused by the act, default or sufferance of A.B.), yet, notwithstanding the abatement, I/we, being satisfied that it is likely that the same fire hazard will recur at the said premises, do therefore prohibit (continue as in Order 2). Order 3

Dated this day of,

(Signed) Magistrate

FORM 3

[s. 11]

FIRE SERVICES (FIRE HAZARD ABATEMENT) REGULATION

(Section 11)

Prohibition Order

TO (name and address of person served with a fire hazard abatement notice under section 3 of the Fire Services (Fire Hazard Abatement) Regulation) being a person upon whom a fire hazard abatement notice under section 3 of the Regulation was served on (date of service) in respect of premises situated at (insert such description of the situation as may be sufficient to identify the premises).

TAKE NOTICE that the Director of Fire Services has this day appeared before me/us and by information sworn on oath has proved to my/our satisfaction that—

- (a) you have been given notice in writing by the Director of Fire Services as required by section 11(2)(a) of the Fire Services (Fire Hazard Abatement) Regulation of his intention to swear the information;
- (b) the fire hazard continues and the cause of the fire hazard is the structural character of the premises or their location having regard to the nature of the area in which they are situated; and
- (c) the premises are being used for a purpose which may materially increase the likelihood of fire or other calamity or danger to life or property resulting from the outbreak of fire or the occurrence of any other calamity in or on the premises.

NOW THEREFORE I/We in pursuance of section 11 of the Fire Services (Fire Hazard Abatement) Regulation do hereby PROHIBIT the use of the premises for the purpose specified as follows:

.....
.....
.....
(describe use, purpose and prohibition).

Dated this day of,

(Signed)
Magistrate

FORM 4

[s. 16]

FIRE SERVICES (FIRE HAZARD ABATEMENT) REGULATION

(Section 16)

Removal Order

TO (name and address) being the owner, tenant, occupier or person in charge of premises situated at (insert such description of the situation as may be sufficient to identify the premises) having been convicted of the offence of (describe offence) under section (14 OR 15) of the Fire Services (Fire Hazard Abatement) Regulation on (date of conviction) at Court.

TAKE NOTICE that under section 16 of the Fire Services (Fire Hazard Abatement) Regulation I/we do require you within (specify time) from the service of this order to remove (the articles or things to which that offence relates OR the lock or other device to which that offence relates).

IF you make default in complying with the requirements of this order you are liable to prosecution for an offence under section 16(4) of the Fire Services (Fire Hazard Abatement) Regulation. On conviction, you may be liable to a maximum fine of \$200,000, and you may also be liable to a further fine of \$20,000 for each day during which the offence continues. The Director of Fire Services may also carry out any work necessary to give effect to the requirements of this order and take proceedings to recover from you the costs which may be incurred thereby.

Dated this day of,

(Signed)
Magistrate

SCHEDULE 2

[s. 2]

SCHEDULED MEMBERS

- Director of Fire Services
- Deputy Director of Fire Services
- Chief Fire Officer
- Deputy Chief Fire Officer
- Senior Divisional Officer
- Divisional Officer
- Assistant Divisional Officer
- Senior Station Officer
- Station Officer
- Principal Fireman
- Senior Fireman
- Fireman

CHENG Mei-sze, Maisie
Clerk to the Executive Council

COUNCIL CHAMBER
29 April 2003

Explanatory Note

The purpose of this Regulation is to provide for matters relating to—

- (a) the fire hazard abatement notice;
- (b) the fire hazard order and prohibition order;
- (c) the fire hazard offences;
- (d) the investigation powers;
- (e) the protection of innocent parties; and
- (f) the closure order.

2. Part 1 (sections 3 to 9) provides for matters relating to a fire hazard abatement notice as follows—

- (a) section 3 provides that if the Director of Fire Services (“the Director”) is satisfied that there is in existence a fire hazard in or on any premises, the Director may serve a fire hazard abatement notice on a person requiring that person to abate the fire hazard;
- (b) sections 4 and 5 provide that the Director may carry out works to abate a fire hazard or prevent it from recurring;
- (c) section 6 provides that the power to carry out works to abate a fire hazard or prevent it from recurring may only be delegated to a Deputy Director of Fire Services or a Chief Fire Officer but not other public officers;
- (d) section 7 provides that the Director may remove any article or thing that may create a fire hazard;
- (e) section 8 provides for the recovery of expenses reasonably incurred in carrying out works by the Director to abate a fire hazard and prevent it from recurring; and
- (f) section 9 provides for the offences for non-compliance with the requirement of a fire hazard abatement notice.

3. Part 2 (sections 10 to 13) provides for matters relating to a fire hazard order and a prohibition order as follows—

- (a) section 10 provides that a magistrate may make a fire hazard order for either or both of the following purposes—
 - (i) to require a person on whom a fire hazard abatement notice is served to comply with the requirement of a fire hazard abatement notice and to prevent the fire hazard from recurring;

- (ii) to prohibit a person from causing, permitting or suffering the fire hazard to recur;
 - (b) section 11 provides that a magistrate may make a prohibition order to prohibit any premises to be used for a particular purpose;
 - (c) section 12 provides for the offences of contravention of a fire hazard order or a prohibition order; and
 - (d) section 13 provides for the appeals against a fire hazard order or a prohibition order.
4. Part 3 (sections 14 to 20) provides for the fire hazard offences as follows—
- (a) sections 14 and 15 provide that it is an offence to obstruct or lock a means of escape;
 - (b) section 16 provides for the power of the magistrate to make orders to remove any article or thing that obstruct or lock or other devices that secure a means of escape;
 - (c) section 17 provides that it is an offence to convey on land a container that contains a part of a motor vehicle that has fuel in its fuel tank or is otherwise stained with fuel, unless the container is open at the top or is well ventilated;
 - (d) section 18 provides that it is an offence to stow in a container that is or is to be conveyed on land a part of a motor vehicle that has fuel in its fuel tank or is otherwise stained with fuel, unless the container is open at the top or is well ventilated;
 - (e) section 19 provides that it is an offence to possess or control a controlled substance in or on any premises for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle, unless the conditions set out under regulation 125 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg. B) have been complied with and a licence is granted or renewed under the Dangerous Goods Ordinance (Cap. 295) for the storage of the relevant controlled substance in or on the premises; and
 - (f) section 20 provides that—
 - (i) a person who is the owner, tenant, occupier or person in charge of any premises in relation to which an offence under section 19 is committed commits an offence if the person knowingly permits or suffers the offence to be committed in or on the premises; and
 - (ii) a person who lets or agrees to let any premises with the knowledge that an offence under section 19 is to be committed in or on the premises commits an offence.

5. Part 4 (sections 21 and 22) provides for the powers to obtain personal particulars and to stop, board and search a motor vehicle and seize articles or thing carried in, on or by it.

6. Part 5 (sections 23 to 37) provides for the termination of tenancy and closure order as follows—

- (a) section 23 provides that—
 - (i) if a charge under section 19 or 20 is preferred against a person or is withdrawn, a notice in writing may be registered by the Director in the Land Registry in respect of the premises involved; and
 - (ii) if a person is acquitted or convicted of, or successfully appeals against a conviction for, an offence under section 19 or 20, a notice of that fact shall be registered by the Director in the Land Registry in respect of the premises involved;
- (b) section 24 provides that if a person is convicted of an offence under section 19 or 20, a notice stating that fact shall be affixed to a conspicuous part of the relevant premises and published in newspapers;
- (c) section 25 provides that if a person is convicted of an offence under section 19 or 20 by a magistrate, a notice of that fact may be served to the owner and tenant of the relevant premises;
- (d) section 26 provides that on application of the owner or tenant, a magistrate may make an order to terminate the tenancy of the relevant premises;
- (e) sections 27 and 28 provide for the making of a closure order in respect of any premises involved in an offence under section 19 or 20 to close the premises for 6 months;
- (f) section 29 provides that a closure order shall be registered by the Director in the Land Registry;
- (g) sections 30, 31 and 32 provide for the enforcement of the closure order;
- (h) sections 33 and 34 provide for the application and making of an order by a magistrate to rescind a closure order;
- (i) section 35 provides for the application and making of an order by a magistrate to suspend a closure order;
- (j) section 36 provides for the revival of a closure order that is suspended; and
- (k) section 37 provides for the effect of notices and orders sent to the Land Registry.