

LEGISLATIVE COUNCIL BRIEF

Security and Guarding Services Ordinance

(Chapter 460)

SECURITY AND GUARDING SERVICES

(AMENDMENT) BILL 2000

INTRODUCTION

At the meeting of the Executive Council on 1 February 2000, the Council ADVISED and the Chief Executive ORDERED that the Security and Guarding Services (Amendment) Bill 2000 (the Bill), at Annex, should be introduced into the Legislative Council, to clarify the scope of activities regulated under the Security and Guarding Services Ordinance, Chapter 460 (the Ordinance) and its fees provisions, and to streamline the operation of the regulatory scheme and the Security and Guarding Services Industry Authority (the Authority) established under the Ordinance.

BACKGROUND AND ARGUMENT

General Background

2. The Ordinance was enacted in December 1994 to provide for the establishment of the Authority, the granting of permits to security personnel and the licensing of security companies. The main objective of the licensing

2

system is to promote and encourage higher standards in the security industry so as to ensure that security and guarding services provided to consumers are of a reasonable and reliable standard. This also helps the fight against crime.

3. Under the Ordinance, the Authority's main functions are to consider and determine applications for licences by security companies, and to specify the criteria and conditions for

issuing permits to security personnel and matters to which the Authority shall have regard when issuing licences to security companies. Applications for permits and applications for renewal of permits are considered and determined by the Commissioner of Police (the Commissioner) taking into account the criteria specified by the Authority. The Commissioner also has power to carry out investigation, and raise objections, in respect of applications for licences. There are at present around 157,000 valid permits and 700 valid licences.

4. Where a person does security work for another person for reward without a permit, he and the licensed security company which supplies his service each commits an offence and will be liable upon conviction to a fine of \$10,000 and imprisonment for three months. A company which supplies, without a licence, individuals to do security work for another person for reward commits an offence and will be liable on conviction to a fine of \$100,000 and imprisonment for two years.

5. The Ordinance has been in full operation since 1 June 1996. We have reviewed the Ordinance and identified three main areas which require improvement. These include -

(a) provisions relating to the scope of activities regulated under the

3

Ordinance that should be clarified (see paragraphs 6 to 9 below);

(b) provisions relating to the operation of the Authority that should be streamlined for the better implementation of the licensing scheme (see paragraphs 10 to 16 and 23 below);

and

(c) provisions relating to the fees for licences and permits that need to be rationalised (see paragraphs 17 to 22 below).

Proposals relating to the scope of regulation

Definition of "security work"

6. For the purpose of the licensing scheme prescribed under the Ordinance, "security work" is defined in section 2 to mean any of the following activities -

- (a) guarding any property;
- (b) preventing or detecting the occurrence of any offence;
- (c) installing, maintaining or repairing a security device;
- (d) designing for any particular premises or place a system incorporating a security device.

7. In the course of the implementation of the Ordinance, it has been brought to our attention that limb (b) of the definition of "security work", i.e. "preventing or detecting the occurrence of any offence", might have inadvertently covered some activities which we have no intention to regulate. For example, doubts have been expressed as to whether it covers investigation work conducted by professional accountants and lawyers or

4

their employees for detecting fraud and other irregularities; investigation work conducted by private investigators and the installation, maintenance and repairing of security devices on vehicles.

8. To address the problem, we propose to tighten up the definition of "security work" by replacing "preventing or detecting the occurrence of any offence" with "guarding any person or place for the purpose of preventing or detecting the occurrence of any offence". The proposed amendments will focus on security and guarding services for protecting a person or premises which are the major types of services sought to be regulated under the Ordinance.

9. We also propose to amend the definition of "security device" so as to put beyond doubt that the installation of devices or systems on or in vehicles for security purpose is not regulated under the Ordinance as it is not our original intention to regulate such activities, normally carried out in garages, under the Ordinance.

Proposals relating to the operation of the Authority

Size of the Authority

10. Section 4 of the Ordinance provides that the Authority shall consist of a Chairman and

three members appointed by the Chief Executive, and the Secretary for Security or her representative. We consider that the membership of the Authority should be slightly enlarged by appointing two additional non-official members to assist the Authority in its work. We therefore propose that the membership of the Authority be increased from five to seven.

5

Transaction of business by circulation of papers

11. All applications made to the Authority under the Ordinance are required to be determined through the holding of public hearings. These include, among others, applications for new issue of licence, for renewal of licence and for variation of licence conditions.

12. At present, hearings are held even if the applications are not contested. To streamline operations, we propose that the Authority should be given the flexibility to transact its business by circulation of papers. This new procedure will apply to uncontested applications for the issue or renewal of licences and for variation of licence conditions and to other businesses of the Authority. However, it will not apply to cases where the Commissioner applies for revocation of a permit or a licence. Neither will it apply for an application for variation of the conditions of a permit as such conditions are applied across the board for all security personnel and any variation will have a wide-ranging effect. A member of the Authority may require an application in circulation to be dealt with by a hearing. In order not to affect the existing right of an applicant to be heard before his application is rejected, we further propose that a hearing must be held if the Authority is not prepared to grant an application under circulation.

Protection against personal liability

13. We propose that no personal liability should be incurred by any member of the Authority in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under the Ordinance. This is to supplement the existing

privileges and immunities provided under section 9 of the Ordinance to participants in a hearing and is a common provision in many other ordinances for protecting members of statutory authorities and other people concerned when discharging their statutory duties.

Maximum time for investigation of a licence application

14. Under section 20 of the Ordinance, there is a maximum period of 60 days within which the Commissioner has to complete investigation into an application for a licence and after which follow-up procedures will take place. This period may sometimes need to be extended if a large number of applications are received within a short period of time, or if the applicant needs more than 60 days to satisfy all the licensing requirements.

15. In order to provide the necessary flexibility for the applicant and the Police, we propose to empower the Authority to stipulate, before the 60-day period expires, a period not longer than 90 days from the date of application, for completion of investigation. If necessary, the Authority may extend this period further subject to a period not longer than 120 days from the date of application for completion of investigation. For transparency, the Authority will be required to specify the matters to which it shall have regard before stipulating a longer period and publish them for public information.

16. At present, there is no provision in the Ordinance to allow the Commissioner to carry out an investigation in the case of an application by a licensee for variation of licence conditions. Such investigation is necessary and we propose that the Commissioner should be empowered to carry out investigation within 60 days and the Authority be empowered to extend this period, for the first time, to not more than 90 days and, for the second time, to

not more than 120 days. If the application is made by the Police, we propose that the licensee should be given 30 days to respond. As the licensee is not required to carry out detailed investigations, a shorter period is considered adequate for him to respond to the

Commissioner's application. However, to avoid unnecessary delay in processing the application, we propose to specify that follow-up action on an application may be taken after the said 30-day period or after the licensee has indicated acceptance of, or objection to, the variation of licence conditions, whichever is the earlier.

Proposals relating to fees provisions

Nature and size of a business in prescribing fees

17. Section 30(1) of the Ordinance provides that the Chief Executive in Council may by regulation provide for the imposition of fees for a licence that are fixed by reference to the nature and size of the licensee. The fees charged under the Ordinance are stipulated in the Security and Guarding Services (Fees) Regulation (the Fees Regulation).

18. The licence fees seek to recover fully the costs incurred in respect of the application and issue of licences and the running costs of the licence scheme. Such costs will depend on the nature, rather than the size, of the licensee's operations. We therefore propose to remove from section 30(1)(b) of the Ordinance the reference to the size of a company as a factor to be considered in fixing the licence fee.

Fee payable upon actual renewal of permit and licence

19. Sections 15(2)(c) and section 23(3)(c) of the Ordinance provide for

8

the payment of application fees for the renewal of permits and licences respectively. The power to charge a fee upon actual renewal has not been made explicit. We consider it important to avoid any possible doubts that only an application fee for renewal, but not a fee upon actual renewal, will be charged. We therefore propose to add a separate provision for a fee to be charged upon actual renewal of a permit and licence.

Fees payable to General Revenue

20. Section 2 of the Fees Regulation provides that the fees payable in respect of permits should be paid to the Commissioner and the fees payable in respect of licences should be paid

to the Authority. In practice, all such fees are paid into the General Revenue of the Government. To reflect this, we propose to expressly provide that all fees payable under the Ordinance should be paid into the General Revenue.

21. We also propose to add a global costing clause so that fees may be fixed for cost recovery in general instead of costs recovery for individual items. The global costing clause is needed when individual costing is impracticable. Its addition will provide a firm basis for us to set fees at cost recovery level for providing a range of services on an overall basis instead of on an individual service basis.

Annual instalment versus annual fee

22. Under the Fees Regulation, a licensee is required to pay fees according to the type of security work he provides. The Ordinance provides for a licence to be valid for five years or such shorter period as the Authority may specify. At present, a single licence fee is payable in respect of a 5-

9

year licence by the licensee by five equal annual instalments. It would be simpler administratively to change the present method of payment by charging five separate annual fees instead. Under the new payment arrangement, the licence shall remain valid for five years in general. The proposed fees shall include a fee payable upon the issue of a licence plus four subsequent annual fees payable upon each successive anniversary of the date of issue of a licence during the term of its validity. A licensee who defaults in payment of any fee will be liable to revocation of his licence.

Replacement permit or licence

23. The Ordinance has no explicit provision empowering the issue of replacement permit or licence, or to charge fees for the purpose. There is a need to make such provisions to cater for situations where the permit or licence is lost, stolen, damaged or destroyed.

THE BILL

24. Clause 2 amends the definition of "security device" to exclude security devices for vehicles. It also amends the definition of "security work" so that the category of "preventing or detecting the occurrence of any offence" is limited to activities of guarding any person or place.

25. Clauses 3 and 4 increase the number of members of the Authority and the number of members required to form a quorum for its meetings.

26. Clauses 5, 13(e), 14 and 17 and part of clause 18 provide for the transaction of business of the Authority by circulation of papers. Clause 7

10

extends the scope of privileges and immunities to cover the transaction of business by circulation of papers and confers protection against personal liability on persons performing functions under the Ordinance.

27. Clause 18 extends the power of the Commissioner to carry out investigation to cover an application by the licensee to vary the conditions of a licence. Clauses 6, 13(b), (f) and (g) and part of clause 18 provide for the specification of a longer period by the Authority for the Commissioner to carry out investigation in processing an application for a licence or an application for variation of conditions of a licence.

28. Amendments relating to fees are made to -

(a) separately provide for the fee payable for the renewal of a permit (clause 8);

(b) replace the existing fee payable for the issue of a licence (being one fee payable by instalments) by an annual fee fixed as at the date of issue of the licence and payable on issue of the licence and thereafter annually (clause 15);

(c) separately provide for the fee payable for the renewal of a licence, being an annual fee fixed as at the date of renewal of the licence and payable on renewal of a licence and thereafter annually (clause 16);

(d) put beyond doubt that all fees received under the Ordinance are part of the General

Revenue (clause 22);

11

(e) remove size of the business of the licensee as a factor for fixing any fee (clause 23(a));

(f) add a global costing clause so that fees may be fixed for costs recovery in general instead of costs recovery for individual items (clause 23(b)).

29. Clauses 11 and 20 provide for the replacement of permits and licences.

30. Clause 24 provides for transitional arrangements.

LEGISLATIVE TIMETABLE

31. The legislative timetable will be -

Publication in the Gazette 3 February 2000

First Reading and

commencement of Second

Reading debate

16 February 2000

Resumption of Second

Reading debate, committee

stage and Third Reading

to be notified

BASIC LAW IMPLICATIONS

32. The Department of Justice advises that the proposed amendments are consistent with the Basic Law.

12

HUMAN RIGHTS IMPLICATIONS

33. The Department of Justice advises that the proposed amendments have no human rights implications.

BINDING EFFECT OF THE LEGISLATION

34. The Bill does not affect the current binding effect of the existing provisions of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

35. The introduction of a new fee for replacement of lost permit and licence will generate additional revenue in the order of a few thousands dollars per annum. Any additional workload arising from the proposed amendments will be absorbed within Secretary for Security's global allocation.

PUBLIC CONSULTATION

36. We have consulted the Authority, major associations of the security industry, as well as the legal profession on the proposals. Both the Hong Kong Bar Association and the Law Society have pointed out the need to tighten up the rather wide scope of limb (b) of the definition of "security

13

work". We also consulted the Legislative Council Panel on Security in November 1999. Some Members expressed concern about our proposal to expressly include private investigation work in the definition of "security work" as they considered such work outside the original scope of the Ordinance. We accepted Members' advice and took out private investigation work from our proposals. Separately, we have taken on board the Authority's views on expanding the membership of the Authority and its comments on other aspects, for instance, the need to cap the extension of the maximum time permitted for investigation into an application. The latter point was also made by the Legislative Council Panel on Security.

PUBLICITY

37. A press release and a Legislative Council brief will be issued. A spokesman will be available to handle media enquiries.

ENQUIRIES

38. Any enquiries to this brief could be directed to Miss Eliza YAU, Principal Assistant

Secretary for Security, at 2810 2632.

Security Bureau

February 2000

Annex

SECURITY AND GUARDING SERVICES (AMENDMENT) BILL 2000

CONTENTS

Clause Page

1. Short title and commencement 1

2. Interpretation 1

3. Security and Guarding Services

Industry Authority

2

4. Meetings of the Authority 2

5. Section added

5A. Transaction of business by the

circulation of papers

2

6. Functions of the Authority 3

7. Section substituted

9. Privileges and immunities 4

8. Renewal of permit 4

9. Application for variation of conditions of permit 5

10. Application for revocation or suspension of permit 5

11. Section added

18A. Replacement of permit 5

12. Application for licence 5

13. Investigation of application for licence 6

14. Determination of application for licence 9

Page 2

Clause Page

15. Section added

21A. Licence fee 10

16. Renewal of licence 10

17. Application by the Commissioner for variation of conditions of
licence

11

18. Section added

24A. Application by the licensee for variation of
conditions of licence

13

19. Application for revocation of licence 16

20. Section added

25A. Replacement of licence 17

21. Appeals against decisions 17

22. Section added

28A. Fees received to form part of the general revenue 17

23. Regulations 17

24. Section added

35. Savings and transitionals 19

A BILL

To

Amend the Security and Guarding Services Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Security and Guarding Services (Amendment) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Interpretation

Section 2 of the Security and Guarding Services Ordinance (Cap. 460) is amended -

(a) in the definition of "security device", by adding ", except on or in a vehicle," after "any premises or place";

(b) in the definition of "security work", by repealing paragraph (b) and substituting -

"(b) guarding any person or place for the purpose of preventing or detecting the occurrence of any offence;"

(c) by adding -

Page 2

""requisition notice" (要求召開會議通知書) means a notice given under section 5A(2);".

3. Security and Guarding Services

Industry Authority

Section 4(2)(c) is amended by repealing "3" and substituting "5".

4. Meetings of the Authority

Section 5(3) is amended by repealing "3" and substituting "4".

5. Section added

The following is added -

"5A. Transaction of business by the

circulation of papers

(1) The Authority may transact any of its business, other than business specified in subsection (4), by the circulation of papers; and, subject to subsections (2) and (3), a resolution in writing which is approved in writing by a majority of the members of the Authority shall be as valid and effectual as if it had been a resolution passed at a meeting of the Authority by the votes of the members so approving the resolution in writing.

(2) Any member of the Authority may, by notice in writing to the Secretary within 7 days after the date on which the Secretary circulates the papers, require any business which is being transacted by circulation of papers to be transacted at a meeting of the Authority.

(3) Where, in respect of any business being transacted by the circulation of papers, a notice is given to the Secretary under

Page 3

subsection (2), any resolution approved in writing under subsection (1) in respect of the business shall be void.

(4) This section does not apply to the following business of the Authority -

(a) an application for a variation of the conditions of a permit under section 16;

(b) an application for a revocation or suspension of a permit under section 18;

(c) an application for a revocation of a licence under section 25;

(d) an application for a licence, an application for renewal of a licence or an application for variation of the conditions of a licence except as provided in section 20 or that section as

applied by section 23(4), or in section 24 or 24A (as the case may be).".

6. Functions of the Authority

Section 6(1)(b) is amended -

(a) in subparagraph (iii), by repealing "and" at the end;

(b) by adding -

"(v) the matters to which the Authority shall have regard when determining whether the Authority should specify any, and if so what, period for the purpose of section 20(3)(a) or (6)(a) or 24A(4)(a); and".

Page 4

7. Section substituted

Section 9 is repealed and the following substituted -

"9. Privileges and immunities

(1) No personal liability shall be incurred by any person in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under this Ordinance.

(2) Without affecting the generality of subsection (1), any party, witness, representative or other person appearing at or otherwise participating in -

(a) any meeting of the Authority under this Ordinance (including any meeting to hear an application under this Ordinance);

(b) the transaction of business of the Authority by circulation of papers under section 5A,

shall have the same privileges and immunities as he would have if the meeting or transaction of business were civil proceedings conducted by the Court of First Instance.".

8. Renewal of permit

Section 15 is amended by adding -

"(4A) A prescribed fee is payable by the holder of a permit in respect of the renewal of the permit."

Page 5

9. Application for variation of

conditions of permit

Section 16(2)(a) is amended by adding "at least" after "give".

10. Application for revocation or

suspension of permit

Section 18(2)(a) is amended by adding "at least" after "give".

11. Section added

The following is added -

"18A. Replacement of permit

The Commissioner may, if satisfied that any permit has been lost, stolen, damaged or destroyed, issue a replacement of the permit to its holder on payment of the prescribed fee."

12. Application for licence

Section 19(2) and (3) is repealed and the following substituted -

"(2) An application for a licence shall -

(a) be made to the Authority in such form and manner as the Authority may specify; and

(b) be accompanied by -

(i) a statement in writing containing such particulars in respect of the application as may be prescribed or as, in any particular case, the Authority may require; and

(ii) the prescribed fee."

Page 6

13. Investigation of application for licence

Section 20 is amended -

(a) by repealing subsection (2) and substituting -

“(2) 為根據本條進行調查，處長可用書面規定申請^人 出示處長指明的有關簿冊、紀錄或文件以供查閱，或提交處長指明的有關資料。在本款^中，‘有關’指與根據第(1)款由該申請^人 提出的申請或與該申請^人 所進行或擬進行的業務有關。”；

(b) in subsection (3)(a), by adding ", or of such longer period as the Authority may specify in the particular case under subsection (7)," after "60 days";

(c) in subsection (4), by repealing everything after "licence," and substituting "he shall, within a period of 7 days beginning on the material date, serve notice on the Authority of his intention to object and of the grounds of such objection, and he shall send a copy to the applicant.";

(d) by repealing subsection (5) and substituting -

"(5) Where the Commissioner has served a notice of his intention to object to the application under subsection (4), the Secretary shall, within 7 days after the service of the notice, fix a date for the hearing of the application.";

(e) by adding -

"(5A) Where the Commissioner -

Page 7

(a) has, before the expiry of the period specified in subsection (4), notified the Authority in writing that he does not intend to object to the application; or

(b) has, on the expiry of the period specified in subsection (4), neither served a notice of his intention to object to the application under that subsection nor given the notification under paragraph

(a),

the Secretary shall, in order that the application may be determined by the Authority by circulation of papers in accordance with section 5A, circulate papers relevant to the application to members of the Authority.

(5B) Upon circulation of papers under subsection (5A)

-

(a) if a requisition notice is given, the Secretary shall forthwith fix a date for the hearing of the application;

(b) if no requisition notice is given and the Authority resolves to grant the application in accordance with section 5A within

Page 8

28 days after the material date, the

resolution shall be as valid and effectual as if it were a determination made by the Authority after a hearing;

(c) if no requisition notice is given but no resolution under paragraph (b) has been approved, the Secretary shall forthwith fix a date for the hearing of the application.

(5C) The Secretary shall give at least 14 days' notice of the date fixed under subsection (5) or (5B) to the Commissioner and the applicant.";

(f) in subsection (6) -

(i) by repealing "(5)" and substituting "(5B)";

(ii) in paragraph (a), by adding ", or of such longer period as the Authority may specify in the particular case under subsection (7)," after "60 days";

(g) by adding -

"(7) Before the 60 days' period under subsection (3)(a) or (6)(a) expires or (where a longer period has been specified under this subsection) before the longer period expires, the Commissioner or the applicant may request the

Page 9

Authority to make a specification for the purposes of subsection (3)(a) or (6)(a). The Authority may -

(a) upon the request, specify a period if the Authority considers it appropriate to do so;

(b) exercise the power under paragraph (a) at most

twice in respect of a particular application and

may -

(i) for the first time, specify a period

not longer than 90 days;

(ii) for the second time, specify a

period not longer than 120 days,

beginning on the day after the application was

made or the Authority was informed of the

amendment (as the case may be),

and where a period is so specified the Secretary shall give

notice in writing of the specification to the applicant and the

Commissioner."

14. Determination of application for licence

Section 21(1) is repealed and the following substituted -

Page 10

"(1) The Authority shall, in considering an application for a licence, have

regard to any evidence adduced by or on behalf of the applicant and any evidence

adduced by or on behalf of the Commissioner."

15. Section added

The following is added -

"21A. Licence fee

A fee is payable by the applicant in respect of a licence issued under this Part

as follows -

(a) on the issue of the licence, the prescribed annual fee; and

(b) on or before each successive anniversary of the date of issue of

the licence during the term of the licence as issued, a fee equal to the fee that was payable on the issue of the licence under paragraph (a).".

16. Renewal of licence

Section 23 is amended by adding -

"(5A) A fee is payable by the licensee in respect of the renewal of its licence as follows -

- (a) on the renewal of the licence, the prescribed annual fee; and
- (b) on or before each successive anniversary of the date of renewal of the licence during the term of the licence as renewed, a fee equal to the fee that

Page 11

was payable on the renewal of the licence under paragraph (a).".

17. Application by the Commissioner for variation of conditions of licence

Section 24(1) and (2) is repealed and the following substituted -

"(1) The Commissioner may apply to the Authority for a variation of the conditions of a licence and shall at the same time send a copy of the application to the licensee.

(1A) Where the licensee intends to object to an application under subsection (1), the licensee shall, within 30 days after the day on which the application was made, serve notice on the Authority of his intention to object and of the grounds of such objection, and he shall send a copy to the Commissioner.

(1B) Where the licensee has served a notice of its intention to object to the application under subsection (1A), the Secretary shall, within 7 days after the service of the notice, fix a date for the hearing of the application.

(1C) Where the licensee has, before the expiry of the period specified in subsection (1A), notified the Authority in writing that it does not intend to object to the application ("no-objection notification"), the Secretary shall, in order that the application may be determined by the Authority by circulation of papers in accordance with section 5A, circulate papers relevant to the application to members of the Authority; and -

(a) if a requisition notice is given, the Secretary shall forthwith fix a date for the hearing of the application;

Page 12

(b) if no requisition notice is given and the Authority resolves to grant the application in accordance with section 5A within 28 days after the day on which the Authority receives the noobjection notification, the resolution shall be as valid and effectual as if it were a determination made by the Authority after a hearing;

(c) if no requisition notice is given but no resolution under paragraph (b) has been approved, the Secretary shall forthwith fix a date for the hearing of the application.

(1D) If at the expiry of the period specified in subsection (1A) the licensee has neither served a notice of his intention to object to the application under that subsection nor given the no-objection notification, the Secretary shall, within 7 days after that expiry, fix a date for the hearing of the application.

(1E) The Secretary shall give at least 14 days' notice of the date fixed under subsection (1B), (1C) or (1D) to the Commissioner and the licensee.

(2) Before an application made under subsection (1) is determined, the Authority or any member of the Authority authorized by the Authority to do so may

by notice in writing to the Commissioner and to the licensee vary the conditions of the licence until such time as the application is determined."

Page 13

18. Section added

The following is added -

"24A. Application by the licensee for

variation of conditions of licence

(1) A licensee may apply to the Authority for a variation of the conditions of its licence and shall at the same time send a copy of the application to the Commissioner.

(2) Where an application is made under subsection (1), the Commissioner may cause an investigation to be carried out in respect of the application for the purpose of determining whether, in the opinion of the Commissioner, there are grounds for objecting to the application.

(3) For the purpose of carrying out an investigation under this section, the Commissioner may in writing require the licensee to produce for inspection such books, records or documents or to furnish such information relating to the application or any business carried on or intended to be carried on by it as the Commissioner may specify.

(4) In respect of an application under subsection (1), no step shall be taken by the Authority before -

(a) the date immediately following the end of a period of 60 days, or of such longer period as the Authority may specify in the particular case under subsection (5), after the day on which the application was made; or

(b) the date on which the Commissioner notifies the Authority that

any investigation carried out

Page 14

under this section in respect of the application has been completed,

whichever is the earlier (in this section referred to as "the material date").

(5) Before the 60 days' period under subsection (4)(a) expires or (where a longer period has been specified under this subsection) before the longer period expires, the Commissioner or the licensee may request the Authority to make a specification for the purposes of subsection (4)(a). The Authority may -

(a) upon the request, specify a period if the Authority considers it appropriate to do so;

(b) exercise the power under paragraph (a) at most twice in respect of a particular application and may -

(i) for the first time, specify a period not longer than 90 days;

(ii) for the second time, specify a period not longer than 120 days,

beginning on the day after the application was made,

and where a period is so specified the Secretary shall give notice in writing of the specification to the licensee and the Commissioner.

(6) Where the Commissioner intends to object to an application under subsection (1), he shall, within a period of 7 days beginning on the material date, serve notice on the

Page 15

Authority of his intention to object and of the grounds of such objection, and he shall send a copy to the licensee.

(7) Where the Commissioner has served a notice of his intention to object to the application under subsection (6), the Secretary shall, within 7 days after the service of the notice, fix a date for the hearing of the application.

(8) Where the Commissioner -

(a) has, before the expiry of the period specified in subsection (6), notified the Authority in writing that he does not intend to object to the application; or

(b) has, on the expiry of the period specified in subsection (6), neither served a notice of his intention to object to the application under that subsection nor given the notification under paragraph (a),

the Secretary shall, in order that the application may be determined by the Authority by circulation of papers in accordance with section 5A, circulate papers relevant to the application to members of the Authority.

(9) Upon circulation of papers under subsection (8) -

(a) if a requisition notice is given, the Secretary shall forthwith fix a date for the hearing of the application;

(b) if no requisition notice is given and the Authority resolves to grant the application in accordance with section 5A within 28 days after

Page 16

the material date, the resolution shall be as valid and effectual as if it were a determination made by the Authority after a hearing;

(c) if no requisition notice is given but no resolution under paragraph (b) has been approved, the Secretary shall forthwith

fix a date for the hearing of the application.

(10) The Secretary shall give at least 14 days' notice of the date fixed under subsection (7) or (9) to the Commissioner and the licensee.

(11) Before an application made under subsection (1) is determined, the Authority or any member of the Authority authorized by the Authority to do so may by notice in writing to the Commissioner and to the licensee vary the conditions of the licence until such time as the application is determined.

(12) The licensee and the Commissioner may appear and be heard and be legally represented at the hearing of an application under this section.

(13) On an application under subsection (1) the Authority may, if it thinks fit, vary the conditions of the licence."

19. Application for revocation of

licence

Section 25 is amended -

(a) in subsection (1), by repealing "之" and substituting "人";

(b) in subsection (2), by adding "at least" after "give".

Page 17

20. Section added

The following is added -

"25A. Replacement of licence

The Authority may, if satisfied that any licence has been lost, stolen, damaged or destroyed, issue a replacement of the licence to the licensee on payment of the prescribed fee."

21. Appeals against decisions

Section 26(1) is amended by adding ", 24A(13)" after "24(4)".

22. Section added

The following is added -

"28A. Fees received to form part of the general revenue

(1) All fees received under this Ordinance form part of the general revenue.

(2) For the avoidance of doubt, all fees received before the commencement date for the Security and Guarding Services (Amendment) Ordinance 2000 (of 2000) are declared to form and to have always formed part of the general revenue."

23. Regulations

Section 30 is amended -

(a) by repealing subsection (1) and substituting -

"(1) The Chief Executive in Council may by regulation prescribe the fees to be paid under

Page 18

sections 14(2), 15(2)(c) and (4A), 18A, 19(2)(b)(ii), 21A, 23(3)(c) and (5A) and 25A.";

(b) by adding -

"(1A) Any fees prescribed in regulations made under subsection (1) may be fixed by reference to the nature of business of the licensee.

(1B) Any fees prescribed in regulations made under subsection (1) -

(a) may be fixed at levels sufficient to effect the recovery of expenditure incurred or likely to be incurred by the Government or the Authority in performing any or all

functions under this Ordinance;

(b) shall not be limited by reason only of the amount of administrative or other costs incurred or likely to be incurred by the Government or the Authority in performing any function under this Ordinance as regards any particular person or class of persons.";

(c) in subsection (2), by repealing paragraph (b) and substituting -

Page 19

"(b) provide for the revocation of a licence for failure to pay any fee, or part thereof, required to be paid in respect of that licence; and".

24. Section added

The following is added -

"35. Savings and transitionals

(1) Where a licence issued before the commencement of section 2 of the Security and Guarding Services (Amendment) Ordinance 2000 (of 2000) (in this section referred to as "the 2000 Amending Ordinance") makes reference to any activity which -

(a) is security work for the purposes of this Ordinance immediately before that commencement; but

(b) is not security work for the purposes of this Ordinance as amended by that section,

the licence shall, in respect of the remainder of its term after that commencement, be treated as a licence that does not contain that reference.

(2) Where, immediately before the commencement of sections 12 and 15 of the 2000 Amending Ordinance, a licence fee is payable in respect of any licence under this Ordinance as it then applied (whether or not allowed to be paid by instalments under section 4 of the Security and Guarding Services (Fees) Regulation (Cap. 460 sub. leg.)), then -

Page 20

(a) the licence fee remains payable under this Ordinance as it then applied as if sections 12 and 15 of the 2000 Amending Ordinance had not been enacted;

(b) during the remainder of the term for which the licence was issued, section 21A of this Ordinance does not apply in relation to the licence.

(3) Where immediately before the commencement of section 13(d) and (e) of the 2000 Amending Ordinance -

(a) an application made under section 19 or 23 of this Ordinance is pending; and

(b) the Secretary has given notice of the date fixed for the hearing of the application (whether or not the hearing has commenced), the application shall be determined in accordance with this Ordinance as if section 13(d) and (e) of the 2000 Amending Ordinance had not been enacted.

(4) Where, immediately before the commencement date for sections 17 and 18 of the 2000 Amending Ordinance, an application made under section 24 of this Ordinance is pending, the application shall be determined in accordance with this Ordinance as if sections 17 and 18 of the 2000 Amending Ordinance had not been enacted.

(5) Except as provided in this section, any amendment made by a provision

of the 2000 Amending Ordinance applies to and in relation to an application made or a licence issued under this Ordinance before the commencement of that provision as it applies

Page 21

to and in relation to an application made or a licence issued on or after that commencement."

Explanatory Memorandum

This Bill amends the Security and Guarding Services Ordinance (Cap. 460) ("the Ordinance").

2. Clause 2 amends -

(a) the definition of "security device" to exclude security devices for vehicles; and

(b) the definition of "security work" so that the category of "preventing or detecting the occurrence of any offence" (paragraph (b) of the definition) is limited to cases involving the guarding of any person or place.

3. Clauses 3 and 4 increase the number of members of the Security and Guarding Services Industry Authority ("the Authority") and the number of members required to form a quorum for its meetings.

4. Clauses 5, 13(e), 14 and 17 and part of clause 18 provide for the transaction of business of the Authority by circulation of papers. Clause 7 extends the scope of privileges and immunities to cover the transaction of business by circulation of papers and also confers protection against personal liability on persons performing functions under the Ordinance.

5. Clause 18 extends the power of the Commissioner of Police ("the Commissioner") to carry out investigations to cover, in addition to an application for a licence, an application by the licensee to vary the conditions of a licence. Clauses 6 and 13(b), (f) and (g) and part

of Clause 18 provide for the specification of a longer period by the Authority for the Commissioner to carry out investigation in the two types of applications.

6. Amendments relating to fees are made to -

(a) separately provide for the fee payable for the renewal of a permit (clause 8);

(b) replace the existing fee payable for the issue of a licence (being one fee payable by instalments) by an annual fee fixed as at the date of issue of the licence and payable on issue of the licence and thereafter annually (clause 15);

(c) separately provide for the fee payable for the renewal of a licence, being an annual fee fixed as at the date of renewal of the licence and payable on renewal of a licence and thereafter annually (clause 16);

(d) put beyond doubt that all fees received under the Ordinance are part of the general revenue (clause 22);

(e) remove size of the business of the licensee as a factor for fixing any fee (clause 23(a));

(f) add a global costing clause so that fees may be fixed for costs recovery in general instead of costs recovery for individual items (clause 23(b)).

7. Clauses 11 and 20 provide for the replacement of permits and licences.

8. Clause 24 is a transitional provision. It provides as follows -

(a) for an existing licence that covers any activity which ceases to be "security work" under the definition of

the term as amended, the licence shall be treated as a licence that does not cover the activity;

(b) for a licence issued before the commencement date for the amendments relating to licence fees, the licensee's existing liability for licence fees is preserved;

(c) where, at the date of commencement date for the amendments providing for transaction of business by circulation of papers -

(i) an application for the issue or renewal of a licence is pending, it may be determined in accordance with those amendments only if no notice has been given of the date fixed for hearing the application;

(ii) an application for a variation of the conditions of a licence is pending, it shall be determined without regard to those amendments;

(d) unless otherwise provided, any amendment made by a provision of the Bill applies to all applications and licences (whether or not made or issued on or after the commencement of the amendment).