

**For discussion
on 25 April 2006**

Legislative Council Panel on Planning, Lands and Works

**Revisions to fines provisions in
the Waterworks Ordinance and the Waterworks Regulations**

PURPOSE

This paper sets out a proposal to amend the Waterworks Ordinance (Cap 102) and the Waterworks Regulations (Cap 102A) by increasing the fines for offences in line with the past cumulative inflation rate to maintain the deterrent effect.

BACKGROUND

2. The fines provisions in Cap 102 and Cap 102A have not been revised for a long time, with some dating back to 1975 while the most up-to-date provision was made in 1983. Owing to the eroded value of money caused by inflation, it is inevitable that the punitive effect of the fines provisions has significantly diminished throughout the years. When reporting on convictions for offences under Cap 102 and Cap 102A, the media has often criticised the lack of deterrent effect of the existing fines provisions. These media reports signify the growing expectation of the community at large for the Administration to deal stringently with unlawful acts in particular relation to unmetered consumption.

3. Against the above backdrop, we have reviewed the fines provisions in Cap 102 and Cap 102A, and concluded that early improvement can be achieved by adjusting the fines provisions in line with the past cumulative inflation rate. The opportunity is also taken to convert the fines to the appropriate levels according to the standard scale of fines under the Criminal Procedure Ordinance (Cap 221) (see paragraphs 4 and 5 below).

CRIMINAL PROCEDURE ORDINANCE (Cap 221)

4. Sections 113B, 113C and Schedule 8 of Cap 221 provide for a system of scale of fines not exceeding \$100,000. Under this system, all maximum fines are placed on a standard scale of six levels as follows –

Up to \$2,000	- Level 1
Up to \$5,000	- Level 2
Up to \$10,000	- Level 3
Up to \$25,000	- Level 4
Up to \$50,000	- Level 5
Up to \$100,000	- Level 6

5. The object of this system is to enable all maximum fines to be revised in future by a single legislative measure, as from time to time the existing maxima become outdated because of the changing value of money.

PROPOSAL

6. The penalty provisions now existing in Cap 102 and Cap 102A are summarised at **Annex**.

7. To restore the deterrent effect, we propose that the fines in sections 30(4), 32, 35(1), 35(2) and 37(2) of Cap 102 and the fines in regulations 44 and 51(2) of Cap 102A be brought up-to-date in terms of inflation according to the change in Consumer Prices Index (A). On this basis, the percentages of the proposed increase in the fines will range from about 150% to 400%. After adjustment, the proposed level of fines will be set pursuant to the standard scale stipulated in Schedule 8 of Cap 221.

8. The following table shows the respective existing monetary maxima in the relevant provisions, the year in which they were last adjusted, the rate of inflation since the last adjustment, as well as the proposed fines after inflation adjustment together with the corresponding level of fines -

Section or Regulation	Existing fine	Date of last adjustment	Rate of inflation since last adjustment (Note 1)	Proposed fine after adjustment for inflation	Corresponding level of proposed fine (Note 2)
<u>Cap 102</u>					
S 30(4)	\$ 20,000	1983	+ 148.9 %	\$49,780	Level 5 (\$ 50,000)
S 32	\$ 5,000	1975	+ 415.8 %	\$25,790	Level 4 (\$ 25,000)
S 35(1)	\$ 5,000	1975	+ 415.8 %	\$25,790	Level 4 (\$ 25,000)
S 35(2)	\$ 200/day	1975	+ 415.8 %	\$1,032/day	\$1,000/day (Note 3)
S 37(2)	\$ 4,000	1983	+ 148.9 %	\$9,956	Level 3 (\$ 10,000)
<u>Cap 102A</u>					
Reg 44	\$ 4,000	1983	+ 148.9 %	\$9,956	Level 3 (\$ 10,000)
Reg 51(2)	\$ 4,000	1983	+ 148.9 %	\$9,956	Level 3 (\$ 10,000)

Note 1 - The rates of inflation and proposed level of fines are calculated based on the change in Consumer Price Index (A) up to 2005 as advised by Census and Statistics Department.

Note 2 - The figures in brackets denote the maximum fines for the relevant levels as provided in Cap 221.

Note 3 - The standard scale under Cap 221 is not applicable to a daily fine which has to be expressed as a monetary value (ref. Section 113C(1)(b) of Cap 221).

9. We do not propose any change to the imprisonment terms specified in sections 30(4) and 32 of Cap 102.

10. We will effect the above revisions by way of a resolution, as provided for in section 100A of the Interpretation and General Clauses Ordinance (Cap 1). We aim to move the resolution at a LegCo sitting before the coming summer recess.

ADVICE SOUGHT

11. Members are invited to support the proposal set out in paragraphs 7 to 10 above.

**Environment, Transport and Works Bureau
April 2006**

**Summary of existing penalty provisions
in the Waterworks Ordinance (Cap 102) and the Waterworks Regulations (Cap 102A)**

Section/ Regulation	Particulars	Penalty	Date of enactment
Cap 102			
S 30(4)	Any person who is guilty of an offence under section 30(1) or (2) (with regard to polluting water forming part of the waterworks) shall be liable on summary conviction to a fine and imprisonment.	Fine: \$ 20,000 Imprisonment: 2 years	1983
S 32	Any person who obstructs the Water Authority, or any person authorised by him in writing, from exercising any power, performing any duty or carrying out any function under this Ordinance shall be guilty of an offence and liable on conviction to a fine and imprisonment.	Fine: \$ 5,000 Imprisonment: 6 months	1975
S 35(1)	Any person who is guilty of an offence under this Ordinance shall, unless a penalty is otherwise expressly provided, be liable on summary conviction to a fine. The following sections are pertinent – (i) section 13 (with regard to taking of water from public standpipes without permission for non-domestic purpose); (ii) section 14 (with regard to construction, installation, alteration or removal of fire or inside service without permission); (iii) section 15 (with regard to construction, installation, alteration, repair or removal of fire or inside service by unauthorised persons other than licensed plumbers); (iv) section 28 (with regard to wastage or misuse of water supply); (v) section 29 (with regard to unlawful taking of water); and (vi) section 31 (with regard to damage to waterworks).	Fine: \$ 5,000	1975

Section/ Regulation	Particulars	Penalty	Date of enactment
S 35(2)	Any person convicted of an offence under section 29 (with regard to unlawful taking of water) or section 30(1) or (2) (with regard to polluting water forming part of the waterworks) shall, if the offence is a continuing one, be liable to a further fine for every day or part of a day during which the offence continues.	Fine: \$ 200/day	1975
S 37(2)	A regulation made under this section may provide that a contravention thereof shall be an offence and may prescribe a penalty for such offence.	Fine: \$ 4,000	1983
Cap 102A			
Reg 44	Any person who- (i) contravenes regulation 41 (with regard to fishing in waters forming part of the waterworks without licence, by any means other than by rod and line, or using explosive or toxic substance); (ii) contravenes any condition of a fishing licence; (iii) without lawful excuse fails to comply with a requirement of an authorised officer under regulation 43(1) (with regard to production of fishing licence for inspection); or (iv) wilfully resists or obstructs an authorised officer in the exercise of his powers under regulation 43(2) and (3) (with regard to carrying out arrest and seizure on a person believed to have committed an offence under regulation 44), shall be guilty of an offence and shall be liable on summary conviction to a fine.	Fine: \$ 4,000	1983
Reg 51(2)	Any person who is guilty of an offence under the following regulations shall be liable on summary conviction to a fine – (i) regulation 9 (with regard to use of inside service without permission for reception or conveyance of any water other than water from the waterworks); (ii) regulation 10 (with regard to installation of draw-off points in, or drawing of water from, any part of inside service, or for extension or alteration of inside service, without permission);	Fine: \$ 4,000	1983

Section/ Regulation	Particulars	Penalty	Date of enactment
Reg 51(2) (cont'd)	<ul style="list-style-type: none"> (iii) regulation 11 (with regard to drawing of fresh water from inside service by means of hosepipe or similar apparatus without permission); (iv) regulation 13 (with regard to use of water from the waterworks without permission for heating, cooling or humidification plant, or swimming pool); (v) regulation 15(1) (with regard to use or supply of salt water for flushing water-closets, latrines and urinals); (vi) regulation 15(2) or (3) (with regard to construction material used for pipes and fittings of water-closets, latrines or urinals in which salt water is used or is required to be used for flushing); (vii) regulation 21 (with regard to testing of pipes and fittings before installation or use); (viii) regulation 23 (with regard to installation or use of booster pump on fire or inside service without permission and the associated arrangement for pumping water); (ix) regulation 24 (with regard to installation or use of apparatus using water, or apparatus for treatment or filtration of water, without permission); (x) regulation 26(4) (with regard to unauthorized removal of meter from fire or inside service); (xi) regulation 32(2) (with regard to testing of private check meter); (xii) regulation 32(4) (with regard to removal of private check meter found to be operating unsatisfactorily or restricting the supply to any premises); (xiii) regulation 39 (with regard to inappropriate use of, or preventing without authorization other persons from taking water from, public standpipes); or (xiv) regulation 47 (with regard to sale, or offer for sale, of water from the waterworks without permission). 		