

LEGISLATIVE COUNCIL BRIEF

REVISIONS TO FINES PROVISIONS IN THE WATERWORKS ORDINANCE AND THE WATERWORKS REGULATIONS

INTRODUCTION

A At the meeting of the Executive Council held on 13 June 2006, the Council ADVISED and the Chief Executive ORDERED that the proposed Resolution at Annex A should be introduced into the Legislative Council (LegCo) to -

- (a) adjust the fines in the Waterworks Ordinance (WVO) and the Waterworks Regulations (WWR) in line with past cumulative inflation rate; and
- (b) convert the fines in WVO and WWR, after adjustment based on inflation, to the appropriate levels according to the standard scale of fines under the Criminal Procedure Ordinance (CPO).

JUSTIFICATIONS

Existing Fines Provisions in WVO and WWR

2. The existing fines provisions in WVO and WWR 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 WVO and WWR, the media have 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, particular in relation to unmetered water consumption.

3. In view of the above, we have reviewed the fines provisions in WWO and WWR, and concluded that early improvement can be achieved by adjusting the fines 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 CPO.

Standard Scale of Fines under CPO

4. Section 113B, 113C and Schedule 8 of CPO, added in August 1994, 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 objective 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maximum fines to be revised in future by a single legislative measure, as from time to time the existing maxima become outdated because of the changing value of money.

Proposed Revisions to Fines Provisions

6. To restore the deterrent effect, we propose that the fines in sections 30(4), 32, 35(1), 35(2) and 37(2) in WWO and in regulations 44 and 51(2) in WWR be brought up-to-date in terms of inflation as reflected in the movements of the Consumer Price Index (A) [CPI(A)]. The penalty provisions now existing in WWO and WWR are summarised in Annex B.

B

7. 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 since enactment in 1975	Rate of inflation ⁽¹⁾ since enactment or last adjustment	Proposed fine after inflation adjustment	Corresponding level of proposed fine ⁽²⁾
WVO					
S 30(4)	\$ 20,000	1983	+ 148.9 %	\$49,780	Level 5 (\$ 50,000)
S 32	\$ 5,000	-	+ 415.8 %	\$25,790	Level 4 (\$ 25,000)
S 35(1)	\$ 5,000	-	+ 415.8 %	\$25,790	Level 4 (\$ 25,000)
S 35(2)	\$ 200/day	-	+ 415.8 %	\$1,032/day	\$ 1,000/day ⁽³⁾
S 37(2)	\$ 4,000	1983	+ 148.9 %	\$9,956	Level 3 (\$ 10,000)
WWR					
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)

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

OTHER OPTIONS

9. As the fines are provided for in the statute, legislation is the only means to restore the deterrent effect of the existing fines provisions undermined by past cumulative inflation. Non-legislative means cannot be employed to effect the increase in fines.

⁽¹⁾ The rate of inflation and proposed level of fines are calculated based on the change in CPI(A) up to 2005 as advised by the Census and Statistics Department.

⁽²⁾ The figures in brackets denote the maximum fines for the relevant level as provided in CPO.

⁽³⁾ The standard scale under CPO is not applicable to a daily fine which has to be expressed as a monetary value.

THE PROPOSED RESOLUTION

10. Section 100A of the Interpretation and General Clauses Ordinance [I&GCO] provides that LegCo may, by resolution, amend an Ordinance so as to increase the amount of a fine specified in the Ordinance, and the amount of a fine specified in the Ordinance as an amount that may be prescribed in the subsidiary legislation made under the Ordinance.

11. Pursuant to section 100A of I&GCO, the proposed Resolution seeks to update the fines in sections 30(4), 32, 35(1), 35(2) and 37(2) in WWO and in regulations 44 and 51(2) in WWR based on the movements of CPI[A]. The monetary value of the fines will be substituted by the corresponding levels of fines under CPO as appropriate. As shown in paragraph 7 above, the percentages of the proposed increase in the fines will range from about 150% to 400%.

LEGISLATIVE TIMEABLE

12. We plan to move the proposed Resolution at a LegCo meeting in early July 2006 before this summer recess.

IMPLICATIONS OF THE PROPOSAL

13. Given that the fines will be increased to catch up with the level of inflation, it is likely that revenue generated from the adjustment to fines will be increased. However, the total financial implications in relation to the proposal will unlikely be substantial and they will depend on the number of convictions and the amount of fines to be imposed by the court. The proposal is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of WWO and WWR.

14. In line with the sustainability principle of promoting the sustainable use of natural resources, the proposal will help restore the deterrent effect of the fines provisions against unlawful acts of unmetered water consumption and in turn improve water conservation and the integrity of the water supply system. The proposal has no civil service, economic, productivity or environmental implications.

PUBLIC CONSULTATION

15. On 18 April 2006 we issued an information paper on the proposal for consultation with the LegCo Panel on Planning, Lands and Works on the proposal. No adverse comments have been received.

PUBLICITY

16. A press release will be issued when the Resolution is gazetted, and a spokesman will be available to handle media enquiries.

ENQUIRIES

17. Please contact Mr Norman Heung, Chief Assistant Secretary for the Environment, Transport and Works (Works) at 2848 6223 for enquiries on this subject.

Environment, Transport and Works Bureau
June 2006

**REVISIONS TO FINES PROVISIONS IN
THE WATERWORKS ORDINANCE AND
THE WATERWORKS REGULATIONS**

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INTERPRETATION AND GENERAL CLAUSES ORDINANCE

PROPOSED RESOLUTION

(Under section 100A of the Interpretation and General Clauses Ordinance (Cap. 1))

INCREASE OF FINES IN WATERWORKS ORDINANCE
AND WATERWORKS REGULATIONS

RESOLVED that –

- (a) the Waterworks Ordinance (Cap. 102) be amended –
 - (i) in section 30(4) by repealing “of \$20,000” and substituting “at level 5”;
 - (ii) in section 32 by repealing “of \$5,000” and substituting “at level 4”;
 - (iii) in section 35(1) by repealing “of \$5,000” and substituting “at level 4”;
 - (iv) in section 35(2) by repealing “\$200 for every day” and substituting “\$1,000 for every day”;
 - (v) in section 37(2) by repealing “of \$4,000” and substituting “at level 3”;
- (b) the Waterworks Regulations (Cap. 102 sub. leg. A) be amended –
 - (i) in regulation 44 by repealing “of \$4,000” and substituting “at level 3”;
 - (ii) in regulation 51(2) by repealing “of \$4,000” and substituting “at level 3”.

**Summary of existing penalty provisions
in the Waterworks Ordinance and the Waterworks Regulations**

Section/ Regulation	Particulars	Penalty	Date of enactment
Waterworks Ordinance (Chapter 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);	Fine: \$ 5,000	1975

Section/ Regulation	Particulars	Penalty	Date of enactment
S 35(1) (cont'd)	(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
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
Waterworks Regulations (Chapter 102 sub. leg. A)			
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	Fine: \$ 4,000	1983

Section/ Regulation	Particulars	Penalty	Date of enactment
Reg 44 (cont'd)	(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); (iii) regulation 11 (with regard to drawing of fresh water from inside service by means of hosepipe or similar apparatus without permission); (iv) regulation 12 (with regard to use of fresh water for flushing without permission); (v) regulation 13 (with regard to use of water from the waterworks without permission for heating, cooling or humidification plant, or swimming pool); (vi) regulation 15(1) (with regard to use or supply of salt water for flushing water-closets, latrines and urinals); (vii) 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);	Fine: \$ 4,000	1983

Section/ Regulation	Particulars	Penalty	Date of enactment
Reg 51(2) (cont'd)	<ul style="list-style-type: none"> <li data-bbox="383 296 1637 368">(viii) regulation 21 (with regard to testing of pipes and fittings before installation or use); <li data-bbox="383 389 1637 501">(ix) 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); <li data-bbox="383 521 1637 593">(x) regulation 24 (with regard to installation or use of apparatus using water, or apparatus for treatment or filtration of water, without permission); <li data-bbox="383 614 1637 686">(xi) regulation 26(4) (with regard to unauthorized removal of meter from fire or inside service); <li data-bbox="383 707 1458 738">(xii) regulation 32(2) (with regard to testing of private check meter); <li data-bbox="383 759 1637 831">(xiii) regulation 32(4) (with regard to removal of private check meter found to be operating unsatisfactorily or restricting the supply to any premises); <li data-bbox="383 852 1637 963">(xiv) regulation 39 (with regard to inappropriate use of, or preventing without authorization other persons from taking water from, public standpipes); or <li data-bbox="383 984 1637 1046">(xv) regulation 47 (with regard to sale, or offer for sale, of water from the waterworks without permission). 	Fine: \$ 4,000	1983