

**For discussion on
24 January 2017**

Legislative Council Panel on Development

Proposed amendments to the Waterworks Ordinance (Cap. 102) and the Waterworks Regulations (Cap. 102A)

PURPOSE

This paper briefs Members on a proposal to amend the Waterworks Ordinance (“**WWO**”) (Cap. 102) and the Waterworks Regulations (“**WWR**”) (Cap. 102A) in regard to persons responsible for carrying out the construction, installation, alteration, maintenance, repair or removal (hereinafter referred to as “**construction, etc.**”) of fire services or inside services¹ (hereinafter collectively referred to as “**plumbing system(s)**”), and updating of the technical requirements and standards of pipes and fittings for plumbing works (hereinafter collectively referred to as “**plumbing materials**”) in the WWR.

BACKGROUND

2. The provision and regulation of water supply in Hong Kong is governed by the WWO and the WWR. The Water Authority² (“**WA**”) is empowered to administer and enforce the legislation.

3. The current WWO came into force in 1975. Whilst legislative amendments have been made from time to time over the past decades³,

¹ Pursuant to section 2 of the WWO, “fire service” means the pipes and fittings in premises, and any pipes and fittings between the premises and a connection to the main, which are used or intended to be used for a supply solely for the purposes of fire fighting, whereas “inside service” means the pipes and fittings in premises, and any pipes and fittings between the premises and a connection to the main, (other than the pipes and fittings forming part of a fire service) which are used or intended to be used for the purposes of a supply.

² Pursuant to section 2 of the WWO, “Water Authority” means the Director of Water Supplies.

³ Eleven legislative amendments were made to the WWO since it came into force on 1 January 1975.

the Water Supplies Department (“WSD”) has set forth on a holistic review of the WWO and the WWR with a view to revamping the legislation to cater for the latest development of the plumbing trade, technologies and practices, including a review on the roles and responsibilities of trade personnel and technical requirements and plumbing material standards.

4. The Commission of Inquiry into Excess Lead Found in Drinking Water⁴ (“CoI”) recommended in its report that the WA/WSD should define the duties of licensed plumber (“LP”) under the WWO, taking into account the relevant provisions of the Construction Workers Registration Ordinance (Cap. 583) (“CWRO”), which allows workers registered thereunder⁵ to perform plumbing installations⁶. CoI also recommended that the WA/WSD should set out clearly, in the legislation or appropriate medium, the latest standards for all plumbing material and components to be used in the construction, etc. of plumbing systems, and update the same regularly and periodically⁷.

5. While WSD is holistically reviewing the WWO and the WWR as stated in paragraph 3 above, we have examined the recommendations made in the Report of CoI in respect of the duties of LPs and the latest applicable standards in the legislation for plumbing materials. After careful study and review, we consider it prudent to prioritize legislative amendments to the WWO and the WWR to deal with the duties of LPs and the standards of plumbing materials respectively.

⁴ The CoI was appointed by the Chief Executive on 13 August 2015 to inquire into the incident of excess lead found in drinking water in Public Rental Housing estates.

⁵ These workers include registered skilled workers or semi-skilled workers for relevant designated trade divisions and other registered construction workers working under their instruction and supervision.

⁶ *Report of the Commission of Inquiry into Excess Lead Found in Drinking Water*, May 2016, paragraph 487(9)(i)

⁷ *Ibid* paragraph 487(8)

PROPOSAL

6. We propose to introduce into the Legislative Council the Waterworks (Amendment) Bill and the Waterworks (Amendment) Regulation for amending the WWO and the WWR as described in the ensuing paragraphs.

Amendments to the WWO

Inclusion of persons other than LPs and public officers for carrying out the construction, etc. of plumbing systems

7. Section 15(1) of the WWO stipulates that “[s]ubject to subsection (2)⁸, no fire service or inside service shall be constructed, installed, maintained, altered, repaired or removed by a person other than a licensed plumber or a public officer authorized by the Water Authority”.

8. Despite the language of section 15(1) of the WWO, it has been our policy intent and the industry practice over the past decades that LPs may be assisted by workers in carrying out the construction, etc. of plumbing systems. Plumbing works cover a lot of menial or repetitive tasks that can be carried out by other persons who have the necessary qualifications or work under proper instruction and supervision. We recognise that skilled workers or semi-skilled workers for relevant designated trade divisions registered under the CWRO as included in the **Annex** are in possession of the relevant trade skills and are qualified to carry out plumbing works competently. In fact, the CWRO only allows these workers and other registered construction workers under their instruction and supervision to carry out plumbing works when the sections of the CWRO on “designated workers for designated skills”⁹ come into force on 1 April 2017.

⁸ Pursuant to section 15(2) of the WWO, alterations or repairs to a fire service or inside service which are, in the opinion of the WA, of a minor nature, or the rewashing of a tap, may be carried out by a person other than a licensed plumber or a public officer authorized by the WA.

⁹ Sections 3 and 4 of the CWRO only allows registered skilled workers or semi-skilled workers of designated trade divisions, and other registered construction workers under their instruction or supervision, to carry out plumbing works on construction sites.

9. Furthermore, if the construction, etc. of plumbing systems can only be carried out personally by LPs, the workforce demand of LPs will be considerably high and far exceed the current manpower supply, not to mention the consequential increase in the cost of hiring LPs for the construction, etc. of plumbing systems.

10. In light of the above, we **propose** to set out clearly in the WWO the qualifications of persons designated to carry out the construction, etc. of plumbing systems, duly taking into account the relevant provisions of the CWRO. Section 15 of the WWO will henceforth be amended to include (in addition to LPs and public officers authorized by the WA) skilled workers or semi-skilled workers for the relevant designated trade divisions registered under the CWRO for carrying out the construction, etc. of plumbing systems. We also **propose** to allow other persons working under the instruction and supervision¹⁰ of LPs, skilled workers or semi-skilled workers for the relevant designated trade divisions (collectively referred to as “**supervisor(s)**”) to carry out the construction, etc. of plumbing systems. This arrangement will facilitate such other persons to acquire necessary work experience and trade skills for becoming LPs, skilled workers or semi-skilled workers for the relevant designated trade divisions in future.

11. Through the proposed amendments, we can align the requirements on the persons designated for carrying out the construction, etc. of plumbing systems under the WWO with those under the CWRO, and provide additional workforce in the plumbing industry without compromising work quality.

12. A summary list of persons designated to carry out the construction, etc. of plumbing systems (“**designated person(s)**”) is enclosed at **Annex**.

¹⁰ A person is carrying out the construction, etc. of a plumbing systems under the instruction and supervision of a supervisor if: (a) the works are carried out at the direction of the supervisor; (b) the supervisor specifies the method and manner in which the works are to be carried out; and (c) the supervisor inspects the carrying out of the works as often as is necessary to ensure that the works are carried out in accordance with the WWO, having regard to the nature of the works, the risks involved in the works and the knowledge and experience of the person carrying out the works.

Obligation of responsible LPs, supervisors and designated persons for construction, etc. of plumbing systems

13. Section 14(1)¹¹ of the WWO requires that no person shall construct, install, alter or remove a fire service or inside service, except with the permission in writing of the WA.

14. At present, it is an administrative requirement that all applications for permissions under section 14(1) of the WWO for the construction, etc. of a plumbing systems (“**section 14(1) permission**”) are to be made by LPs. This is because LPs have the knowledge in statutory procedures and requirements for the plumbing works. The LP, who applied for a section 14(1) permission that is subsequently granted by the WA (the “**responsible LP**”), is required to certify that the completed plumbing works covered by that permission comply with section 14(3)¹² of the WWO.

15. We **propose** to formalise the abovementioned administrative requirement by amending the WWO to stipulate that all applications for section 14(1) permissions have to be made by LPs. Following the setting out of designated persons for carrying out the construction, etc. of plumbing systems, we also **propose** to make it clear that a section 14(1) permission granted in respect of the relevant plumbing works is deemed to be sufficient. This would avoid the need for every designated person, who intends to carry out plumbing works under a section 14(1) permission, to separately apply for that permission.

16. Under the current section 14(4)¹³ of the WWO, any person who contravenes section 14(3) shall be guilty of an offence. With the introduction of responsible LPs and supervisors, we **propose** to make it clear that if section 14(3) is contravened, the responsible LP and supervisors may also commit an offence unless they can show that they have taken reasonable steps to ensure that section 14(3) is not contravened.

¹¹ The requirement under section 14(1) of the WWO may be waived if the alterations to a fire service or inside service are, in the opinion of the WA, of a minor nature.

¹² Section 14(3) of the WWO requires the construction or installation of a fire service or inside service to be carried out in such manner as may be prescribed and the nature, size and quality of pipes and fittings of the fire service or inside service shall be as prescribed.

¹³ Section 14(4) of the WWO stipulates that any person who contravenes section 14(1) or section 14(3) shall be guilty of an offence.

We also **propose** that a similar defence will be available to designated persons carrying out the construction, etc. of plumbing systems if they can show that they have no reasonable grounds to believe that the carrying out of the relevant works would contravene section 14(3).

Other related issues

(i) Ascertaining whether construction, etc. of plumbing systems are carried out by persons designated under the WWO

17. Under the current WWO, the WA must first obtain the occupier's consent or a magistrate's warrant before entering any premises to ascertain compliance with the WWO¹⁴. This requirement is potentially detrimental to the effective policing of whether the construction, etc. of plumbing systems are being carried out by designated persons. We envisage that enforcement opportunities may be lost or the enforcement process may be hampered if the inspection by the WA to ascertain compliance with the WWO is forewarned or delayed due to the need to obtain consent from the occupier or a warrant from the magistrate.

18. In contrast, under the CWRO, officers authorized by the Construction Industry Council are empowered to enter construction sites without consent or warrant to ascertain whether the persons carrying out construction work are registered construction workers¹⁵. A person, who without reasonable excuse, fails to provide information, or provides misleading or false information, in relation to whether he or she is a registered construction worker, commits an offence¹⁶.

¹⁴ Pursuant to section 12(1)(d) of the WWO, except in case of urgency, the WA must first obtain the consent of the occupier of any premises or a warrant issued by a magistrate before entering the premises to ascertain whether there is in respect of a fire service or inside service on the premises any contravention of the WWO or the WWR.

¹⁵ Pursuant to section 17(5) of the CWRO, for the purpose of ascertaining whether the provisions of the CWRO have been or are being complied with, an authorized officer may enter a construction site at all reasonable times.

¹⁶ Pursuant to sections 48(8) and 59 of the CWRO, a person, who without reasonable excuse, (i) fails to comply with a requirement made to that person pursuant to the power given to an officer authorized by the Construction Industry Council to ascertain whether the works are being carried out by registered construction workers; or (ii) makes any statement or furnishes any information which is false or misleading in a material particular in connection with such requirement, commits an offence.

19. We **propose** to introduce similar provisions in the WWO to empower the WA to enter non-domestic premises¹⁷, where there are ongoing plumbing works, to ascertain whether the works are being carried out by persons designated under the WWO. However, we do not propose to extend this power to domestic premises so as to minimize intrusion upon the privacy of the occupants¹⁸. A similar offence is also **proposed** to be included in the WWO for a person who without reasonable excuse fails to provide information, or provides misleading or false information, in relation to whether that person is a designated person.

20. Further, a person who employs or permits a non-designated person to carry out the construction, etc. of a plumbing system will commit an offence unless the person can show that he or she believed, and it was reasonable for him or her to believe, that the person carrying out the construction, etc. of a plumbing systems is a designated person¹⁹.

(ii) Time limit for prosecution

21. At present, a prosecution under the WWO or the WWR must commence within six months from the time when the offence was committed pursuant to section 26 of the Magistrates Ordinance (Cap. 227). On many occasions, prosecution against offenders would be time-barred due to the lapse of over six months between the time the offence was committed and the subsequent discovery of the offence. This has seriously reduced the deterrent effect of the offences in the WWO.

¹⁷ “Non-domestic premises” also include common areas of domestic buildings such as the roof, pump rooms, meter rooms, corridors, lobbies, club houses, and buildings under construction, for example, construction sites of domestic buildings, commercial buildings, industrial buildings, public buildings, composite buildings and villages houses.

¹⁸ For entering domestic premises, we would first obtain the occupier’s consent or magistrate’s warrant in accordance with the existing provisions of the WWO.

¹⁹ A similar defence provision can be found in section 6(3) of the CWRO which states that if a person is charged for an offence under section 6(2) for employing another person to personally carry out on a construction site construction work, it shall be a defence for the defendant to prove that he believed, and that it was reasonable for him to believe, the relevant matter exists.

22. Therefore, we **propose** to include provisions in the WWO that any prosecution under the WWO or the WWR may be brought within a period of six months from the date on which the offence is discovered by, or comes to the notice of, the WA.

(iii) Penalty level of offences

23. We **propose** that the penalty levels of any offences introduced in connection with this proposal are to be kept in line with those of the current offences²⁰ under the WWO, i.e. a maximum fine at level 4, which is currently set at \$25,000, and without any imprisonment terms.

Amendments to the WWR

Updating the technical requirements and standards of plumbing materials

24. The construction and installation of plumbing systems are required under section 14(3) of the WWO to comply with the requirements prescribed in WWO and WWR. Pursuant to regulation 20 of the WWR, every plumbing material must be of the British Standard (“BS”). Most technical requirements and BS for plumbing materials are cited in Schedule 2 to the WWR. While “BS” is defined to mean “*the latest revised edition of a specification issued by the British Standards Institution*” in regulation 2 of the WWR, some of the BS in Schedule 2 to the WWR have been outdated or superseded by other standards. Nevertheless, WSD has published a list of latest applicable standards for plumbing materials on its website for reference of the trade.

25. In view of the importance of clarity and certainty of plumbing requirements, we **propose** to amend regulation 20 of the WWR to refer to the prescribed standards in Schedule 2 to the WWR and update Schedule 2 to the WWR to cover all applicable technical requirements and standards (including BS and other international standards recognised by the British Standards Institution) for plumbing materials. We also **propose** to amend the definition of “BS” in the WWR to include other applicable international standards and to mean specific versions of the standards as prescribed in Schedule 2 of the WWR.

²⁰ Pursuant to section 35(1) of the WWO, any person who is guilty of an offence under the WWO shall be liable on summary conviction to a fine at level 4 unless a penalty is otherwise expressly provided.

Transitional Arrangement

26. Section 14(1) permissions which are granted or first applied for before the commencement date of the amended WWO (“**Commencement Date**”) will continue to be effective and processed as if no amendments to the WWO were made. For the liability of responsible LPs mentioned in paragraph 16, the proposed liability will only be imposed on those LPs who first apply for section 14(1) permissions after the Commencement Date. Moreover, the proposed time limit for prosecution mentioned in paragraph 21 will not apply in relation to an offence committed before the Commencement Date even if the offence is discovered by, or comes to the notice of, the WA after the Commencement Date.

CONSULTATION

27. WSD has set up a Consultative Group for Legislative Review (“**LRCG**”) to consult major stakeholders of the plumbing industry on various issues in relation to legislative amendments of the WWO and the WWR. The LRCG consists of 20 representatives from professional bodies, plumbing trade associations, plumbers associations, a workers union, construction sector, developers, and the Consumer Council. Members of the LRCG are in general supportive of this proposal for the amendment of the WWO and the WWR.

28. WSD has also conducted a public consultation exercise between September and November 2016 to gauge views of the public on this legislative amendment proposal. The views of the public have been collected via written submissions and telephone hotline. In addition, two public forums were held on 15 and 19 October 2016 with more than 200 attendees. Members of the public who responded are either generally supportive or have no adverse comment on the proposal. We have duly considered the comments and suggestions received in the consultation exercise in this proposal.

HOLISTIC REVIEW OF THE LEGISLATION

29. As stated in paragraph 3 above, we are now holistically reviewing the WWO and the WWR. Amongst others, we are examining in detail the roles, involvements and responsibilities of relevant parties including the developers, contractors and other persons, who are involved in the design, construction and maintenance, etc. of plumbing systems, as well as the licensing/registration regime for parties responsible for the construction, etc. of plumbing systems. We will in due course seek the views of the Members of the Panel on Development on any proposed legislative amendments after completion of the review of the WWO and the WWR.

WAY FORWARD

30. We plan to introduce the Waterworks (Amendment) Bill and the Waterworks (Amendment) Regulation into the Legislative Council in April 2017.

ADVICE SOUGHT

31. Members are invited to provide views on the proposed legislative amendments.

Development Bureau
Water Supplies Department
January 2017

Summary list of persons designated to carry out the construction, etc. of plumbing systems

Construction, etc. of <u>fire services</u>	Construction, etc. of <u>inside services</u>
<p>(i) a licensed plumber</p> <p>(ii) a registered skilled worker for the:</p> <p>(a) plumber;</p> <p>(b) drain and pipe layer (master);</p> <p>(c) fire service mechanic (master); or</p> <p>(d) fire service mechanical fitter</p> <p>trade divisions under the CWRO</p> <p>(iii) a registered semi-skilled worker for the:</p> <p>(a) plumber; or</p> <p>(b) fire service mechanical fitter</p> <p>trade divisions under the CWRO</p> <p>(iv) a registered skilled worker (provisional) for the:</p> <p>(a) plumber;</p> <p>(b) drain and pipe layer (master); or</p> <p>(c) fire service mechanical fitter</p> <p>trade divisions under the CWRO</p> <p>(v) a registered semi-skilled worker (provisional) for the:</p> <p>(a) plumber; or</p> <p>(b) fire service mechanical fitter</p> <p>trade divisions under the CWRO</p> <p>(vi) a person who works under the instruction and supervision of (i), (ii) or (iii) above</p> <p>(vii) a public officer authorized by the WA</p>	<p>(i) a licensed plumber</p> <p>(ii) a registered skilled worker for the:</p> <p>(a) plumber; or</p> <p>(b) drain and pipe layer (master)</p> <p>trade divisions under the CWRO</p> <p>(iii) a registered semi-skilled worker for the plumber trade division under the CWRO</p> <p>(iv) a registered skilled worker (provisional) for the:</p> <p>(a) plumber; or</p> <p>(b) drain and pipe layer (master)</p> <p>trade divisions under the CWRO</p> <p>(v) a registered semi-skilled worker (provisional) for the plumber trade division under the CWRO</p> <p>(vi) a person who works under the instruction and supervision of (i), (ii) or (iii) above</p> <p>(vii) a public officer authorized by the WA</p>