

LEGISLATIVE COUNCIL BRIEF

Water Pollution Control Ordinance (Chapter 358)

Water Pollution Control (Sewerage) (Amendment) Regulation 1998

INTRODUCTION

At the meeting of the Executive Council on 7 July 1998, the Council ADVISED and the Chief Executive ORDERED that, under Section 46(2) of the Water Pollution Control Ordinance, the Water Pollution Control (Sewerage) (Amendment) Regulation 1998, at the Annex, should be made, to enable minor sewerage works involving road closure to be carried out without having to gazette the scheme concerned.

BACKGROUND AND ARGUMENT

General Background

2. The execution of sewerage works normally requires road closure. Under the existing Sewerage Regulation (the Regulation), the power to close roads is derived from the application of the relevant section of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) (the Roads Ordinance).

3. Under section 4 of the Roads Ordinance, the Secretary for Transport (S for T) may, without having to gazette a scheme, execute any road works, which, in his opinion, are minor in respect of any physical or structural operations involved (section 4(1)(a)), and in respect of which the only powers required by him are :

- (a) to close a road which does not serve any useful or lawful purpose (section 4(1)(b)(i)); or
- (b) to close a road to use for a period not exceeding 14 days in any period of 3 months (section 4(1)(b)(ii)); or
- (c) to close part of the width of a road to use but not to such an extent as will interfere unreasonably with the normal flow of traffic on that road and for no longer than is reasonably necessary to execute the works (section 4(1)(b)(iii)).

Section 17 of the Roads Ordinance empowers S for T to close roads for major works, but for this gazetting is required.

4. When drafting the Regulation, the Administration considered that the Director of Environmental Protection (the Director) could be authorised to close roads on a limited scale by exercising the power given under section 2 of the Regulation, which states that the Authority (i.e. the Director) may construct, maintain, repair or demolish any sewerage and carry out related works. A provision similar to section 4 of the Roads Ordinance was therefore not sought.

5. Subsequent to the enactment of the Regulation in June 1994, the then Attorney General's Chambers advised that section 2 of the Regulation did not empower the Director to close roads and that, since section 4 of the Roads Ordinance was not applied, the only power available to the Director to close roads for the purpose of sewerage works was conferred by virtue of section 17 of the Roads Ordinance, as applied by section 26 of the Regulation.

Present Position

6. The average number of sewerage works which require closure of roads on a limited scale is more than 500 per week. Most are small scale works which last only a few days and require only partial closure of a certain portion of a traffic lane. They have to be carried out at short notice to maintain the effective performance of the sewerage system and to prevent any problem in the system from getting worse.

7. Each gazetting procedure normally takes at least six months to complete (not including the time for addressing objections). This long lead time disrupts routine maintenance programme and causes severe delays to emergency repairs. The Director has been resorting to administrative means to execute these types of minor but essential sewerage works without gazetting them. However, this practice could at any time be subject to legal challenge.

The Proposal

8. As the gazetting requirement would severely affect the timely implementation of essential sewerage works, we propose to amend the Regulation to lift the gazetting requirement for sewerage works requiring road closure of a limited scale, so that the procedures for implementing such sewerage works will be identical to those for minor road works. This could be achieved by applying section 4(1)(b)(i) to (iii), 4(2) and 4(3) of the Roads Ordinance to the Regulation.

9. We also propose to take the opportunity of the amendment exercise to rectify a typographical error in Column 3 of Item 9 in Part I of Schedule 1 to the Regulation.

THE AMENDMENT REGULATION

10. **Clause 1** of the Amendment Regulation amends Column 3 of Item 9 in Part I of Schedule 1 in such a way that it will be identical to the corresponding Column 3 of Item 9 in Part II of the Schedule to the Roads Ordinance.

11. **Clause 2** amends Schedule 2 so that the relevant part of section 4 of the Roads Ordinance could be applied for the purpose of carrying out sewerage works under the Regulation.

LEGISLATIVE TIMETABLE

12. The legislative timetable for introducing the proposed Amendment Regulation will be -

Publication in the Gazette	17 July 1998
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Tabling in the Legislative Council	22 July 1998
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HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the proposed Amendment Regulation is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

14. There are no financial or staffing implications.

ECONOMIC IMPLICATIONS

15. The proposal to exempt sewerage works which involve road closure of a limited scale from the gazetting requirement will ensure that minor construction, emergency repair and maintenance of the sewerage infrastructure can continue to be carried out expeditiously.

ENVIRONMENTAL IMPLICATIONS

16. It will help to prevent pollution from blockages or improper connections of sewers by ensuring that minor construction, repair and maintenance works are carried out quickly.

PUBLIC CONSULTATION

17. The Advisory Council on the Environment (ACE) was consulted on the proposed legislative amendments on 18 May 1998. Some Members were concerned that the proposals would deprive members of the public of a channel to raise objections and that the Director did not have the expertise to make professional judgement as to whether a proposed road closure would affect traffic flow. Members were advised that S for T has been authorised to execute minor road works for years without going through the gazetting procedure and so far no complaints had been received from the public; that the sewerage works covered by the amendment would be small scale projects, lasting a few days and with little impact on the public; and that before exercising his power to close a road, the Director would consult the Commissioner for Transport, the Commissioner of Police, District Offices, and other relevant departments on the traffic impact and local reactions. The ACE endorsed the proposed amendments to the Regulation, but asked for a report on the operations to be submitted one year after the enactment of the Amendment Regulation.

ENQUIRIES

18. Enquiries can be directed to :

Mr. Eugene Fung

Acting Principal Assistant Secretary (Environment)

Planning, Environment and Lands Bureau

Tel. No. 2848 2833

Dr. David Ha

Senior Environmental Protection Officer (Waste Policy and Services)

Environmental Protection Department

Tel. No. 2835 1221

Planning, Environment and Lands Bureau

[PELB(E) 55/04/57(98)]

**WATER POLLUTION CONTROL (SEWERAGE) (AMENDMENT) REGULATION
1998**

(Made by the Chief Executive in Council after consultation
with the Advisory Council on the Environment
under section 46(2) of the Water
Pollution Control Ordinance
(Cap. 358))

1. Compensation rights and assessment

Part I of Schedule 1 to the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg.) is amended, in column 3 of item 9, by repealing paragraph (ii) and substituting -

“(ii) professional fees and expenses, which loss, expense, fees and expenses are attributable solely to compliance with the amendment required or the condition imposed.”.

2. Application of the Roads (Works, Use and Compensation) Ordinance

Schedule 2 is amended -

- (a) in Part I, by repealing “, 3, 5”;
- (b) in Part II -
 - (i) in paragraph 1(1), by adding “, 4” before “, 5”;
 - (ii) in paragraph 3, by adding “(except section 4)” after “section”;
 - (iii) under the heading “Particular Modifications and Additions” -
 - (A) by adding -

- “4 (a) Repeal subsection (1)(a).
- (b) In subsection (3), repeal “this Ordinance” and substitute “the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg.)”.”;
- (B) in respect of the reference to section 5, by repealing paragraph (a);
- (C) in respect of the reference to section 36 -
 - (I) by repealing paragraph (a);
 - (II) in paragraph (b), by adding “(i)” after “(c)”.

Clerk to the Executive Council

COUNCIL CHAMBER

1998

Explanatory Note

The main purpose of this Regulation is to amend the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg.) (“the principal Regulation”) so as to revise the extent of application of the provisions of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) for the purpose of carrying out of works or the construction, maintenance, repair or demolition of works under the principal Regulation, or of any matter related or incidental to such purpose.