

立法會
Legislative Council

LC Paper No. CB(1)428/17-18
(These minutes have been
seen by the Administration)

Ref : CB1/BC/4/16

Bills Committee on Waterworks (Amendment) Bill 2017

**Minutes of fourth meeting
on Tuesday, 11 July 2017, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Ir Dr Hon LO Wai-kwok, SBS, MH, JP (Chairman)
Dr Hon Helena WONG Pik-wan (Deputy Chairman)
Hon LEUNG Kwok-hung
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon POON Siu-ping, BBS, MH
Hon SHIU Ka-fai
Hon LAU Kwok-fan, MH
Dr Hon YIU Chung-yim

Member attending : Hon Andrew WAN Siu-kin

Members absent : Hon LEUNG Che-cheung, SBS, MH, JP
Dr Hon Junius HO Kwan-yiu, JP

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public officers
attending**

: Agenda item I

Development Bureau

Mr Vincent MAK
Deputy Secretary (Works) 2

Water Supplies Department

Mr Bobby NG, BBS
Team Leader/ Legislative Review

Mr Horace LEE
Senior Engineer/ Legislative Review (2)

Department of Justice

Miss Selina LAU
Senior Assistant Law Draftsman

Miss Wendy HO
Government Counsel

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Mr Fred PANG
Senior Council Secretary (1)5

I. Meeting with the Administration

Matters arising from previous meeting

- (LC Paper No. CB(1)1254/16-17(01) — List of follow-up actions arising from the meeting on 19 June 2017
- LC Paper No. CB(1)1254/16-17(02) — Administration's response to the issues raised at the meeting on 19 June 2017
- LC Paper No. CB(1)1254/16-17(03) — Administration's response to Assistant Legal Adviser's letter dated 14 June 2017
- LC Paper No. CB(1)1289/16-17(01) — Administration's further response to Assistant Legal Adviser's letter dated 14 June 2017)

Relevant papers issued previously

- (LC Paper No. CB(1)1150/16-17(01) — List of follow-up actions arising from the meeting on 12 June 2017
- LC Paper No. CB(1)1150/16-17(02) — Administration's response to the issues raised at the meeting on 12 June 2017
- LC Paper No. CB(1)1150/16-17(03) — Assistant Legal Adviser's letter dated 14 June 2017 to the Administration
- LC Paper No. CB(1)1093/16-17(01) — List of follow-up actions arising from the meeting on 19 May 2017
- LC Paper No. CB(1)1093/16-17(02) — Administration's response to the issues raised at the meeting on 19 May 2017

- LC Paper No. CB(1)962/16-17(03) — Assistant Legal Adviser's letter dated 9 May 2017 to the Administration
- LC Paper No. CB(1)1115/16-17(01) — Administration's response to Assistant Legal Adviser's letter dated 9 May 2017)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)458/16-17 — The Bill
- LC Paper No. CB(1)962/16-17(01) — Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
- File Ref: DEVB(CR)(W)1-10/49 — Legislative Council Brief issued by the Development Bureau
- LC Paper No. LS56/16-17 — Legal Service Division Report
- LC Paper No. CB(1)962/16-17(02) — Paper on Waterworks (Amendment) Bill 2017 prepared by the Legislative Council Secretariat (background brief)

The Bills Committee deliberated (Index of proceedings in the **Appendix**).

Follow-up actions to be taken by the Administration

2. The Administration was requested to provide the following information –

- (a) the number of licensed plumbers who had renewed their licences since the "excess lead in drinking water in public rental housing estates" incident, and among them, the number

of those who had completed the relevant continuing professional development ("CPD") programmes/courses upon their applications for renewal, the content of the CPD programmes/courses (including details of the programmes/courses, if any, that covered issues in respect of drinking water safety and relevant legislations); and

- (b) the general principles and list of examples for "works of a minor nature" as mentioned in paragraph 8 of the Administration's paper LC Paper No. CB(1)1254/16-17(02).

(Post-meeting note: The Administration's supplementary information was issued to members vide LC Paper No. CB(1)1363/16-17(02) on 4 August 2017.)

Date of next meeting

- 3. The Chairman said that he would work out the date of the next meeting with the Clerk and inform members in due course.

(Post-meeting note: As directed by the Chairman, the next meeting of the Bills Committee would be held on Tuesday, 7 November 2017 at 4:30 pm. The notice and agenda of the meeting were issued to members vide LC Paper No. CB(1)1339/16-17 on 28 July 2017.)

II. Any other business

- 4. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 1
Legislative Council Secretariat
4 January 2018

**Proceedings of the fourth meeting of
the Bills Committee on Waterworks (Amendment) Bill 2017
on Tuesday, 11 July 2017, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000512 – 000530	Chairman	Opening remarks	
000531 – 001156	Chairman Administration	Briefing by the Administration on LC Paper No. CB(1)1254/16-17(02)	
001157 – 002039	Chairman Dr Helena WONG Administration	<p>In response to Dr Helena WONG's enquiry about the persons who were allowed under the Bill to provide instruction and supervision for other persons in carrying out plumbing works, the Administration advised that –</p> <p>(a) designated persons under the proposed section 15(6)(d) included, among others, a person who carried out specified plumbing works under the instruction and supervision of a licensed plumber ("LP") or registered plumbing worker; and</p> <p>(b) the meaning of carrying out specified plumbing works under instruction and supervision was set out in the proposed section 13B of the Waterworks Ordinance (Cap. 102) ("WVO").</p> <p>Dr Helena WONG opined that –</p> <p>(a) the Administration should consider specifying explicitly under the Bill the persons who were allowed to provide instruction and supervision for other persons in carrying out plumbing works;</p> <p>(b) it might not be fair to impose the same responsibilities and liabilities on LPs, registered skilled and semi-skilled plumbing workers for providing instruction and supervision to other workers, given the differences in their skill levels, legal knowledge, experience, qualifications, remuneration levels, training and trade tests provided for them; and</p> <p>(c) the Administration should consider allowing only LPs and registered skilled plumbing workers to take up the role of an instructing supervisor for plumbing works and requiring them to undergo relevant training programmes, including those on legal aspects, before taking up the role.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration replied that –</p> <ul style="list-style-type: none"> (a) a general worker was expected to carry out menial or repetitive tasks in plumbing works at the direction of an instructing supervisor; (b) since skilled and semi-skilled plumbing workers were qualified to carry out the plumbing works, they both should be able to provide instruction and supervision for general workers in carrying out the plumbing works; and (c) as skilled and semi-skilled workers might possess different levels of skills, the scope of tasks carried out by a general worker under the instruction and supervision of these two types of workers might be different. 	
002040 – 002818	Chairman Mr SHIU Ka-fai Administration Assistant Legal Adviser 6	<p>Mr SHIU Ka-fai opined that workers were concerned about the additional liabilities imposed on them in respect of plumbing works, given that under the Bill, the Water Authority ("WA") might institute prosecution against a non-compliance which was discovered a long time after the completion of the works concerned.</p> <p>The Administration replied that –</p> <ul style="list-style-type: none"> (a) the proposed provision that any prosecution under WWO might be brought within a period of six months from the date on which the offence was discovered by, or came to the notice of, WA was important to enhance the deterrence effect such that persons involved in specified plumbing works must comply with the relevant requirements under WWO; (b) compared to the offence of strict liability in the current WWO, the proposed statutory defence provision under the Bill would give a more comprehensive protection to persons from being convicted of the offence due to reasons out of their control; (c) LPs and workers were not obliged under the relevant legislation to keep records in respect of the plumbing works carried out by them; and (d) it was the Administration's responsibility to conduct investigation in order to collect evidence for possible prosecutions. <p>Discussion on why the Administration could not</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>institute prosecution against the non-compliances in relation to the "excess lead in drinking water in public rental housing estates" incident.</p> <p>In response to Mr SHIU Ka-fai's enquiry, Assistant Legal Adviser 6 advised that –</p> <p>(a) apart from the Lifts and Escalator Ordinance (Cap. 618) and the Electricity Ordinance (Cap. 406), similar arrangement regarding the proposed time limit for prosecution under the Bill could also be found under the Companies Ordinance (Cap. 622); and</p> <p>(b) members might consider whether the time limit for prosecution proposed by the Administration under the Bill was appropriate.</p>	
002819 – 003446	Chairman Mr POON Siu-ping Administration	<p>Mr POON Siu-ping opined that workers were concerned about the risk of being charged with an offence in respect of plumbing works under the amended WWO, and enquired –</p> <p>(a) whether, in a case of non-compliance found in a plumbing project, the general worker concerned would not be regarded as having committed an offence under the amended WWO if he/she had followed the instruction provided by the instructing supervisor in carrying out the works under the project; and</p> <p>(b) how the Administration would deal with the situation where the instructing supervisor did not admit that he/she had given such instruction.</p> <p>The Administration replied that –</p> <p>(a) under the Bill, it was a defence for a worker to establish that he or she believed that carrying out the plumbing works would not contravene the requirements under the relevant legislation and it was reasonable for him or her to so believe. After all, it was the Administration's responsibility to conduct investigation in order to collect evidence beyond reasonable doubt for possible prosecutions;</p> <p>(b) workers should not be liable to prosecution for offences under WWO if they had carried out the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>plumbing works according to the instruction provided by their instructing supervisors; and</p> <p>(c) the Bill did not seek to impose any additional liabilities but had provided a statutory defence on a worker in respect of plumbing works, and it had not introduced any change to the maximum penalty level of the offences under WWO.</p>	
003447 – 003921	Chairman Dr YIU Chung-yim Administration	<p>Dr YIU Chung-yim said that the number of LPs was limited and workers were concerned about the additional liabilities imposed on them under the Bill in respect of plumbing works. In this connection, he enquired whether the Administration would make reference to the Site Safety Supervision Plan introduced by the Buildings Department and put in place a registration system for plumbing supervisory personnel who would take up the relevant responsibilities of LPs.</p> <p>The Administration replied that –</p> <p>(a) the purpose of the proposed amendments under the Bill was not for dealing with the lack of LPs but for clarifying the duties of LPs and workers in carrying out plumbing works; and</p> <p>(b) the roles and responsibilities of other persons involved in works related to plumbing systems would be examined and defined in the next phase of the review of WWO/the Waterworks Regulations (Cap. 102A) ("WWR").</p>	
003922 – 004749	Chairman Ms Alice MAK Administration	<p>Ms Alice MAK opined that the Administration should continue to communicate with workers during the summer recess of the Legislative Council ("LegCo") and consider amendments to the Bill with a view to addressing the workers' concern about the risk of being charged with an offence in respect of plumbing works under the amended WWO.</p> <p>The Chairman said that –</p> <p>(a) plumbing workers were concerned about the circumstances under which they might be prosecuted for an offence under the amended WWO, and the additional liabilities that would arise from the proposed time limit for prosecution under the Bill; and</p> <p>(b) the Administration might consider amending the Bill to address the workers' concerns, such as by adding</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>a provision to the Bill specifying that if a non-compliance was found in a plumbing project, workers would not be prosecuted for an offence unless they had not followed deliberately the instruction of their instructing supervisors when carrying out the works concerned.</p> <p>The Administration responded that it would –</p> <p>(a) formulate guidelines on the roles and responsibilities of LPs and plumbing workers under the amended WWO/WWR, and would provide briefing sessions to explain to them their roles and responsibilities; and</p> <p>(b) continue to communicate with the plumbing practitioners including workers during the summer recess of LegCo, and might propose amendments to the Bill having regard to their views and concerns.</p>	
004750 – 005540	Chairman Mr LEUNG Kwok-hung	<p>Mr LEUNG Kwok-hung opined that –</p> <p>(a) the Bill should provide adequate safeguard to plumbing workers, including general workers, against committing an offence inadvertently; and</p> <p>(b) the Administration should consult these workers during the summer recess of LegCo on the Bill, conduct a survey to collect their views, and address their concerns.</p>	
005541 – 010120	Chairman Dr KWOK Ka-ki Administration	<p>Dr KWOK Ka-ki opined that –</p> <p>(a) apart from LPs and workers, it was also important for the Administration to regulate contractors and other persons involved in plumbing works; and</p> <p>(b) the proposed amendments under the Bill and for the next phase of the review of WWO should be introduced to LegCo in one go.</p> <p>The Administration replied that –</p> <p>(a) the proposal for the next phase of the review of WWO/WWR involved complicated issues, and it</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>might take time to consult relevant stakeholders on the proposal; and</p> <p>(b) the Administration considered it appropriate to prioritize the first phase amendments to WWO to stipulate clearly the duties of LPs and plumbing workers, as the relevant section of the current WWO did not reflect the industry practice that LPs might be assisted by workers in carrying out plumbing works.</p>	
010121 – 015744	<p>Chairman Mr SHIU Ka-fai Dr YIU Chung-yim Dr Helena WONG Administration</p>	<p>Mr SHIU Ka-fai opined that –</p> <p>(a) it might be unfair to hold the LP concerned liable for a non-compliance of a plumbing system that was discovered a long time after the installation of the plumbing system concerned, as some other people might have made modifications to the installed system;</p> <p>(b) the Administration should increase manpower to support the work of the Water Supplies Department ("WSD") in inspecting the completed plumbing works so that the department could conduct a full compliance check during the inspection; and</p> <p>(c) it might not be appropriate for the Administration to include in the Bill the similar arrangement regarding the time limit for prosecution found under the Lifts and Escalator Ordinance (Cap. 618) and the Electricity Ordinance (Cap. 406), given that the maximum penalty levels for offences under the two Ordinances were much higher than that that under WWO.</p> <p>The Administration replied that –</p> <p>(a) given that a prosecution under the current WWO must commence within six months from the time when the offence was committed, WSD could not take legal actions against any non-compliances discovered during its inspection on a plumbing system because inspections were conducted upon completion of the plumbing works, which was usually more than six months from the time when the offence was committed;</p> <p>(b) before making a decision to prosecute, WA had to consider whether there was sufficient evidence to support a prosecution;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) the resources required for WSD to conduct a full compliance check on every completed plumbing works would be substantial; and</p> <p>(d) in working out the proposed time limit for prosecution, the Administration mainly considered the time between when the non-compliance occurred and when the non-compliance might be discovered by WA, and the maximum penalty level under WWO was not a factor for consideration.</p> <p>In response to Mr SHIU Ka-fai's enquiry whether instead of amending WWO to the effect that the Administration might institute prosecution under WWO within a period of six months from the date on which the offence was discovered by, or came to the notice of, WA, the Bill should allow the Administration to institute prosecution against the offence which was discovered during its inspection of the completed plumbing works concerned, irrespective of when the offence was committed, the Administration advised that Mr SHIU's suggestion would be considered.</p> <p>Dr YIU Chung-yim opined that –</p> <p>(a) the Administration should ensure that the proposed amendments under the Bill would have the effect of improving, instead of just reflecting, the existing industry practice;</p> <p>(b) the Administration should introduce a registration regime for plumbing supervisory personnel who would, on behalf of LPs, monitor persons designated for carrying out plumbing works to ensure the compliance of the works with relevant legislation, and the Bill should set out the roles and responsibilities of the plumbing supervisory personnel; and</p> <p>(c) workers under the instruction and supervision of the plumbing supervisory personnel should not be held liable for non-compliance of plumbing works.</p> <p>The Administration replied that –</p> <p>(a) the Administration considered it prudent to prioritize the proposed legislative amendments to WWO under the Bill to reflect the industry practice that LPs might be assisted by workers in carrying out</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>plumbing works;</p> <p>(b) in working out the proposal for the next phase of the review of WWO/WWR, the Administration would take into account members' concerns on the need for improvement of the existing plumbing industry practice, and Dr YIU's suggestion about plumbing supervisory personnel; and</p> <p>(c) the Administration was considering whether the current role of LPs in monitoring persons designated for carrying out plumbing works could be taken up by professionals such as Building Services Engineers ("BSEs").</p> <p>Dr Helena WONG reiterated that the Bill should specify explicitly the persons who were allowed to provide instruction and supervision for other workers in carrying out plumbing works, and opined that the Administration should –</p> <p>(a) require persons who would take up the role of instructing supervisors for plumbing works to undergo training on the legal and regulatory requirements in relation to drinking water safety;</p> <p>(b) put in place a registration system for instructing supervisors for plumbing works to ensure that they had sufficient awareness of how to comply with the requirements with respect to water quality and safety; and</p> <p>(c) consider the appropriateness of allowing persons other than LPs/registered skilled workers, such as BSEs, to take up the role of monitoring persons designated for carrying out plumbing works, in view that they might not necessarily be familiar with plumbing and water quality matters.</p> <p>The Administration replied that –</p> <p>(a) from the law drafting point of view, it was appropriate not to specify explicitly under the proposed section 13B of the Bill the persons who were allowed to provide instruction and supervision for other workers in carrying out plumbing works,</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>after taking into account the provisions under the proposed sections 13B, 14(4)(b) and 15(6)(d) of WWO;</p> <p>(b) unlike LPs who might act as a Responsible LP and hence had a general obligation to ensure compliance of the plumbing works concerned with WWO, registered skilled/semi-skilled workers were not required to possess knowledge of relevant legislation on waterworks in order to fulfill the role of an instructing supervisor as the instructions provided by them were technical in nature;</p> <p>(c) following the "excess lead in drinking water in public rental housing estates" incident, the Construction Industry Council ("CIC") had enhanced the training for registered plumbing workers;</p> <p>(d) WSD had launched the Voluntary Continuing Professional Development ("CPD") Scheme for LPs in October 2016, and would consider providing CPD programmes for plumbing workers;</p> <p>(e) the Administration would work out guidelines on the roles and responsibilities of instructing supervisors for plumbing works; and</p> <p>(f) it was quite common that BSEs were engaged to carry out the design for large scale plumbing projects, and they might be able to assume certain supervisory duties currently performed by LPs.</p> <p>Dr Helena WONG enquired whether the Administration would make the CPD programmes mandatory to LPs, and provide CPD training programmes to registered skilled and semi-skilled plumbing workers.</p> <p>The Administration replied that –</p> <p>(a) the voluntary CPD scheme for LPs had been launched for about a year only;</p> <p>(b) making the scheme mandatory to LPs might not be necessary if the scheme was well received by LPs; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) the Administration would communicate with CIC and workers' unions regarding Dr WONG's suggestion of providing more training to registered plumbing workers.</p> <p>Dr Helena WONG requested the Administration to provide information on the number of LPs who had renewed their licences since the "excess lead in drinking water in public rental housing estates" incident, and among them, the number of those who had completed the relevant CPD programmes/courses upon their applications for renewal, and the content of the CPD programmes/courses (including details of the programmes/courses, if any, that covered issues in respect of drinking water safety and relevant legislations).</p> <p>Mr SHIU Ka-fai said that –</p> <p>(a) the Administration should consider whether it should amend the Bill to the effect that a prosecution under WWO might be brought within six years from the date on which the offence was committed; and</p> <p>(b) he agreed to Dr YIU Chung-yim's suggestion about plumbing supervisory personnel.</p>	<p>The Administration to follow up as stated in paragraph 2(a) of the minutes</p>
015745 – 020303	Chairman All members present Administration	<p>Dr Helena WONG opined that the Administration should consider setting out the definition of "works of a minor nature" under the Bill with a view to ensuring that such works would not affect the efficiency of the water supply system and the quality of the water.</p> <p>In response to Dr Helena WONG, the Administration undertook to provide information on the general principles and list of examples for "works of a minor nature", as mentioned in paragraph 8 of LC Paper No. CB(1)1254/16-17(02)</p> <p>Discussion on the timeframe for the scrutiny of the Bill</p> <p>Meeting arrangement</p>	<p>The Administration to follow up as stated in paragraph 2(b) of the minutes</p>

4 January 2018