

Waterworks (Amendment) Bill 2017 (“The Bill”)

**Response to the List of follow-up actions arising from
the discussion at the meeting of the Bills Committee on 19 May 2017**

Response to item (a)

Overview

1. The Administration is conducting a holistic review (“the Review”) on the Waterworks Ordinance (Cap. 102) (“WVO”) and Waterworks Regulations (Cap. 102A) (“WVR”) with a view to revamping the legislation to cater for the latest development of the plumbing trade, technologies and practices. Amendments to the WVO and WVR will be prioritized and carried out in phases.

First phase

2. The first phase involves the issues put forward under the Bill currently being considered by the Bills Committee and the Waterworks (Amendment) Regulation 2017 currently being scrutinized by the Bills Sub-committee. The first phase amendments are considered of top priority because –

- a. the current section 15(1) of the WVO does not reflect the policy intent and the industry practice and is not in line with the relevant provisions of the Construction Workers Registration Ordinance (Cap. 583); and
- b. the material standards cited in the WVR have become outdated or superseded by other standards and the Administration’s arrangement to promulgate the updated standards in the website of Water Supplies Department (“WSD”) is not legally satisfactory.

Second phase

Relevant Parties and Approval Process

3. The parties relevant to a plumbing project include the developers, professionals, contractors, licensed plumbers (“LP”) and workers. Under the current regime, only the role of LP is expressly provided. The Bill currently being considered by the Bills Committee extends the control to workers and also delineates clearly the roles, involvements and responsibilities of the LP and workers.

4. Under the current regime, the Water Authority (“WA”) controls the process on design, construction and approval of plumbing systems through issue of circular letters to the plumbing industry that facilitate the preparation and processing of applications for water supplies and that set out the inspection and approval process of plumbing works. In addition, we have published a Good Practice Guide on Plumbing Works (with the Construction Industry Council), to promote the quality of plumbing works and enhance the control process on design, construction and approval of plumbing systems.

5. The Administration is reviewing the roles, involvements and responsibilities of the developers, professionals and contractors (“the other relevant parties”) in the design and construction of plumbing projects and the control process mentioned in paragraph 4 above (“the process”) and the need to regulate the other relevant parties and/or to enhance the process in the WWO/WWR. We will take into consideration the practice adopted in overseas regulatory systems, local legislations of similar nature as well as the roles, involvements and responsibilities of the other relevant parties in ensuring the quality of materials and workmanship of the plumbing system and in ensuring the drinking water safety for the public using such plumbing system in determining whether any or all of the other relevant parties shall be so regulated and/or the process shall be enhanced. During the Review, while the Administration is determined to ensure that drinking water safety will not be compromised, we will also be mindful of not over-regulating the industry resulting in an out of proportional burden on the stakeholders and compliance cost.

Plumbing Materials

6. Under the current regime, plumbing materials for use in plumbing systems shall comply with the requirements prescribed in the WWO/WWR. This mode of stipulation of material standards and requirements is considered not desirable as the pace of amendments of the WWR may not be able to synchronise with the need to update the relevant material standards and requirements arising from rapid technological development. The Administration therefore is considering a proposal to empower the WA to issue a Code of Practice and/or Technical Memorandum for material standards and requirements for plumbing materials to be used in plumbing systems.

7. The Administration is also reviewing the need to control plumbing materials for sale in the retail market. As the first step, in order to enhance the

control of plumbing materials for sale in the retail market, the WSD have been working with the plumbing material suppliers and have introduced a voluntary labelling scheme (“the scheme”) for plumbing materials for sale in the retail market. This is to assist the general public to procure plumbing materials with complying quality for minor works, such as replacement of water tap, which do not require the approval of the WA. Under the scheme, suppliers affix a label designed by the WSD on the product package or the counter of the shops that sell the plumbing materials approved by the WA. In addition, each label is printed with a QR code for retrieval of useful information about the plumbing materials, such as its country of origin, approval expiry date and quality assurance details, via smartphones. The experience obtained from the voluntary labelling scheme for control of plumbing materials in the retail market will also form part of the Review.

Implementation timetable and progress

8. Currently, we are conducting researches on the relevant international practices and collaborating with the interested parties to enhance the current regulatory framework to address the abovementioned issues. We target to develop a comprehensive proposal for consultation with the stakeholders, government bureaux/departments and the public next year, before proceeding to the necessary legislative amendments.

Response to item (b)

9. Under the current section 14(3) of the WWO, the construction or installation of a fire service or inside service (hereinafter referred to as “the plumbing works”) shall be carried out in such manner as may be prescribed and the nature, size and quality of pipes and fittings of the plumbing works shall be as prescribed. Section 14(4) of the WWO stipulates that **any person** who contravenes section 14(3) shall be guilty of an offence. Therefore, any person, including a worker, who carries out the plumbing works in contravention with section 14(3) is guilty of an offence under the current legislation.

10. The Bill does not seek to impose any additional liability on a worker in respect of the works. In contrast, in order to provide protection to workers under the law from being convicted of the offence due to reasons out of their control, we propose adding a new statutory defence provision to provide that it is a defence for a person, including a worker, who is charged with an offence

under the new section 14(4)(b)¹ to establish that he or she believed that carrying out the plumbing works would not contravene section 14(3) and it was reasonable for him or her to so believe (see the new section 14(5)(b)). After passing the Bill, we will issue guidelines for workers to explain their responsibility under the amended WWO.

Decision to Prosecute

11. Before making the decision to prosecute, the WA will consider whether there is sufficient evidence to support a prosecution.

12. The WA will consider whether a worker may be able to rely on the new statutory defence before making the decision to prosecute. This is because, in the event that a worker who is charged with the offence relies on the defence, the burden to prove beyond reasonable doubt that the worker could not rely on the defence remains on the prosecution side at all times. If the WA considers there is not sufficient evidence to demonstrate a reasonable prospect of conviction taking into account the defence available to the worker, the WA will not proceed with the prosecution.

Establishing the Defence

13. Whether the worker believed that carrying out the plumbing works would not contravene section 14(3) and whether it was reasonable for him/her to so believe would depend on the actual facts and evidence of each particular case. In the context of the defence under the new section 14(5)(b), the knowledge and experience of the worker, the factual circumstances leading to the contravention and the general industry practice would likely be relevant in determining whether the worker's belief was reasonable.

14. As explained earlier, the new statutory defence aims at protecting workers from being convicted of the offence due to reasons out of their control. In contrast, if a worker intentionally or knowingly carries out the plumbing works in contravention of section 14(3), the Administration will take appropriate enforcement actions to ensure the quality of the plumbing works is not compromised.

¹ The offence under the new section 14(4)(b) reproduces the liability of a worker who carries out the plumbing works in contravention of section 14(3) under section 14(4) of the current WWO.

Response to item (c)

15. The Secretary for Development appointed in June 2016 the International Expert Panel on Drinking Water Safety (“IEP”), comprising members from Australia, Canada, United Kingdom and local experts, to provide advice on matters relating to drinking water safety. In tandem, the WSD has engaged an expert consultant from the United Kingdom to conduct review studies on the drinking water standards and sampling protocols of various organizations (e.g. the European Union) and developed countries including the practices of these organisations and countries, the purposes, limitations, applicability in Hong Kong etc. of their practices and to put forward proposals that are suitable in Hong Kong context. In addition, the WSD has engaged an expert consultant from Australia to develop the guidelines and templates for Water Safety Plan for general and specific buildings for implementation by the building owners and the property management companies.

16. The expert consultants have completed the studies and the views of IEP on the proposals of the expert consultants have been sought. Development Bureau (“DEVB”) and WSD are deliberating on the implementation details of the above proposals with the relevant bureaux/departments, relevant professional bodies, plumbing trade associations and/or licensed plumbers, with a view to finalizing the proposals as soon as possible.

17. Besides, DEVB has established an inter-bureau and inter-departmental working group in March 2016 and engaged a consultant to study the water safety regimes of leading jurisdictions. Having reviewed the findings of the consultancy studies, DEVB will continue, in consultation with the working group, to explore the water quality regulatory regime and deliberate the necessity of legislation on drinking water safety and developing a water quality regulatory framework.

Response to item (d)

18. Plumbing works cover a lot of menial or repetitive tasks, which are generally expected to be carried out by a person under instruction and supervision. In fact, allowing a qualified person to be assisted by a person who may not be qualified in carrying out the works has been a decades-long practice in the plumbing trade, as well as other trades. This arrangement provides additional workforce in the plumbing trade and facilitates such a person to acquire the necessary work experience and trade skills for becoming licensed plumbers and registered plumbing workers in future. It is also in line with the relevant arrangement under the Construction Workers Registration Ordinance (Cap. 583), which allows a registered construction worker, who is not a registered worker for a designated trade division, to carry out construction work on construction sites under instruction and supervision.

19. Despite the menial or repetitive nature of the plumbing works, in order not to compromise the work quality, Instructing Supervisors must provide necessary instruction and supervision to this person for carrying out the plumbing works. In particular, this person may only carry out specified plumbing works at the direction of and within the scope decided by the Instructing Supervisor, and the method and manner in which the specified plumbing works are carried out are specified by the Instructing Supervisor. Furthermore, since the nature of the plumbing works, the risks involved in the plumbing works and the knowledge and experience of the person carrying out the plumbing works vary from one situation to another, the Instructing Supervisor must, having regard to these matters, inspect the carrying out of the work as often as is reasonable to ensure the plumbing works are carried out in compliance with section 14(3) of the WWO.

20. In addition, the responsible licensed plumber, i.e. the licensed plumber who applied for the written permission granted by the WA for the plumbing works, has a general obligation to ensure the plumbing works covered by the permission comply with section 14(3) of the WWO.

Response to item (e)

21. Pursuant to section 12 of the current WWO, for entering into any premises to ascertain whether there is in respect of the plumbing works any contravention to the Ordinance, the WA or any person authorized by the WA in writing would first obtain consent of the occupier either in advance or at the spot. In case, the WA fails to obtain consent or to obtain a consent for admission would defeat the object of the entry, a warrant would be obtained from the magistrate for entry under section 12(3) satisfying the specified requirements².

Response to item (f)

22. The WA would conduct random inspections to premises where specified plumbing works are being carried out to ascertain whether there is any contravention to the proposed section 15 of the WWO. The premises would be selected from those having obtained a permission granted under section 14 of the WWO or based on complaints received while the frequency of inspection to individual sites would be determined based on various factors, including past records of the site, and the nature, scale and risk of the relevant plumbing works.

23. In conducting the inspections, the WA and public officer authorized by WA in writing would be empowered under the proposed section 15A of the WWO to enter at any reasonable time any non-domestic premises without consent of the occupier or a warrant. It is considered that such power is necessary as the enforcement opportunities may be lost or the enforcement process may be hampered if the inspection is forewarned or delayed due to the need to obtain consent from the occupier or a warrant from the magistrate.

² The requirements for obtaining a warrant is specified in section 12(3) of the WWO:

“(3) If it is shown to the satisfaction of a magistrate on sworn information in writing that-

- (a) admission to any premises has been refused, or refusal is apprehended, or the premises are unoccupied, or the occupier is temporarily absent, or an application for admission would defeat the object of the entry;*
- (b) there is reasonable ground for entry into the premises for any purpose specified in subsection (1); and*
- (c) notice of the intention to apply for the warrant has been served on the occupier of the premises, or such notice cannot be served because the premises are unoccupied or the occupier is temporarily absent, or the serving of such notice would defeat the object of the entry,*

the magistrate may by warrant authorize the Water Authority, or any person authorized by the Water Authority in writing, to enter the premises, if need be by force.”

24. With a view to minimizing intrusion into the privacy of the occupants, the proposed power only covers premises which are not used for human habitation, including residential buildings under construction. For specified plumbing works in premises other than non-domestic premises, the WA may carry out inspection relying on the power under section 12 of the WWO.

Development Bureau
9 June 2017