

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

**Responses to Observations raised by Legal Service Division of  
Legislative Council Secretariat on the Bill  
in letter dated 9 May 2017**

**Response to Question 1**

1. Depending on the circumstances, an licensed plumber (“LP”) may take up the role of an Instructing Supervisor, a Worker and/or a Responsible LP. The person described in the proposed sections 14(4)(a), 14(4)(b) and 14(4)(c) of the Waterworks Ordinance (“WWO”) corresponds to the roles he takes up –

- (i) Section 14(4)(a) refers to the Instructing Supervisor;
- (ii) Section 14(4)(b) refers to the person who actually carries out the works (“Worker”); and
- (iii) Section 14(4)(c) refers to the licensed plumber (“LP”) who applies for the written permission of the Water Authority for the plumbing works under the proposed section 14(2A), but is not an Instructing Supervisor or a Worker (“Responsible LP”).

2. Each of these persons has to fulfill different duties and thus, if they are charged of an offence under the proposed section 14(4), the available defence is different.

3. Proposed sections 14(6) and 14(7) apply to an Instructing Supervisor, who may or may not be an LP. It is our intention that the Instructing Supervisor providing instruction and supervision to the Worker must ensure that the work quality is not compromised. Proposed sections 14(6) and 14(7) aim at emphasizing the required level of instruction and supervision required from Instructing Supervisor. Thus, if an LP who is also acting as an Instructing Supervisor is charged of an offence under section 14(4), he must fulfill the proposed sections 14(6) and 14(7) to invoke the defence.

4. Where an LP is only acting as a Responsible LP but is not an Instructing Supervisor or a Worker, it is our intention to impose on him a

general obligation to ensure the works comply with section 14(3). In order to properly discharge his duties, not only is he expected to inspect the works as often as reasonable, he must also consider all the circumstances and take all reasonable steps, having regard to his capacity as the Responsible LP, to ensure the requirements in section 14(3) are complied with. Therefore, the proposed sections 14(6) and 14(7) do not apply to an LP acting as a Responsible LP. Rather, the proposed section 14(5)(a) provides a statutory defense for him.

### **Response to Question 2**

5. While the requirements regarding the construction or installation of a fire service or inside service are stated in section 14(3) of the WWO, section 14(3) refers to the requirements relating to the matters prescribed in the WWO. The threshold stated in the proposed section 14(6) of the WWO is intended to be the same as the requirements in section 14(3) of the WWO.

### **Response to Question 3**

6. Alterations or repairs to a fire service or inside service which are, in the opinion of the Water Authority, of a minor nature cover an array of works and some of the works may not be of a similar nature and scale as the rewashing of a tap. Therefore, we propose repealing “the rewashing of a tap” from section 15(2) of WWO to avoid confusion and ambiguity in interpretation.

### **Response to Question 4**

7. The Water Supplies Department will publish a list of the minor alterations or repairs, for the purposes of section 15(2) of WWO, on its website for reference of the public and the trade.

8. We will review and update the list whenever necessary.

### **Response to Question 5**

9. We do not propose imposing the offence under the proposed section 15(4) of the WWO on a person who employs or permits a person other than a designated person to carry out works of a minor nature. We will consider revising the wording in the proposed section 15(4) of the WWO to clarify the intent.

### **Response to Question 6**

10. WSD will issue guidelines for contractors and employers on measures to ensure that a Worker working under instruction and supervision can identify his/her Instructing Supervisor as a licensed plumber, registered skilled worker or registered semi-skilled worker for the relevant trade divisions when the proposed amendments to the WWO come into operation. We will make due reference to similar guidelines and code of practice issued by the Construction Industry Council (CIC) when we prepare the guidelines to ensure compatibility.

### **Response to Question 7**

11. Whether the defence in the proposed section 15A(6) of the WWO can be established depends on the facts of each case. The scenarios set out in the question are examples of situations that the accused may be able to rely on the defence under the proposed section 15A(6).

12. When the Worker worked with his Instructing Supervisor at the first time, he should obtain the name and contact information of the Instructing Supervisor, and should have knowledge on the relevant qualification of the Instructing Supervisor.

13. If the Instructing Supervisor produced a plumber's licence or registration card which was later found to be forged and the Worker provided a false or misleading statement or information about the qualification of his Instructing Supervisor based on such allegation, the

Worker may be able to argue that he had no reason to suspect, and could not with reasonable diligence have ascertained that the licence or registration card is forged.

14. If the Instructing Supervisor could not produce the plumber's licence or registration card and claimed that the licence or card had been lost or destroyed pending replacement, and the Worker had verified the qualification of the Instructing Supervisor with his employer or his employer's representative prior to carrying out of the works, he may be able to argue that he had no reason to suspect that the work arrangement by his employer would contravene section 15 of the WWO, and could not with reasonable diligence have ascertained that the Instructing Supervisor did not possess the relevant qualification.

### **Response to Question 8**

15. The purpose of the powers under the proposed sections 15A(2)(b), (d) and (e) of the WWO is to help an authorized officer (as defined in that section) ascertain whether specified plumbing works are being, or have been, carried out on any non-domestic premises in contravention of section 15 of the WWO. It is considered that these powers are necessary for the effective enforcement of the requirements under section 15 of the WWO. Pursuant to the legal advice obtained, given the overriding societal interests in the quality of waterworks and drinking water in Hong Kong, and the insignificant inroads made to the rights of the person affected, it can reasonably be argued that the proposed powers under the proposed sections 15A(2)(b), (d) and (e) of the WWO have struck a fair balance between the demands and interests of the general community on the one hand, and the fundamental rights of the individual on the other.

16. In this regard, we intend that a person should not be allowed to invoke the right against self-incrimination (or the right to silence) as a reasonable excuse for failing to comply with a requirement to provide information under the proposed section 15A(2) of the WWO.

17. Further, if appropriate, the answers or information given by the person would be used by the prosecution against him or her subsequently in criminal proceedings under the WWO.

18. We will review the wording of the proposed section 15A of the WWO to make sure that the above points are reflected.

### **Response to Question 9**

19. The person in respect of whom the powers under proposed section 15A(2)(b), (d) and (e) of the WWO are exercisable is a person found on the premises concerned and the powers are investigatory in nature. The person in respect of whom the power under proposed section 15A(2)(f) of the WWO is exercisable is a person reasonably suspected to be contravening or to have contravened proposed section 15 of the WWO. The latter also involves the detention of the person in the premises for a reasonable time. Hence, it is appropriate to inform the person of the act or omission that leads to his/her detention.

### **Response to Question 10**

20. We would propose a committee stage amendment (“CSA”) to honour the current cross trade arrangement in construction site defined under Construction Workers Registration Ordinance (Cap. 583).

### **Response to Question 11**

21. Section 10(f) currently provides as follows:

*“(f) the Water Authority, or any person authorized by him in writing, is obstructed from entering the premises or carrying out any function under section 12;”*.

22. The Bill proposed an amendment to section 10(f) by adding the reference to the proposed section 15A after the reference to section 12.

23. Section 12 of the WWO provides for the general powers of entry into premises by the Water Authority, or any person authorized by the Water Authority. Section 15A of the WWO is proposed to be added by clause 8 of the Bill to provide for additional powers in respect of non-domestic premises in certain circumstances. The proposed section 15A(7) of the WWO indicates that the proposed section 15A of the WWO is an extension of section 12 of the WWO.

24. It is not the policy intent to change the reference relating to section 12 of the WWO (including the word “function” that is used in connection with section 12). From a drafting point of view, using the same term for both section 12 of the WWO and proposed section 15A of the WWO is preferable for the sake of consistency and the use of the word “function” also works in the context of the proposed section 15A of the WWO.

### **Response to Question 12**

25. The ultimate requirement for “all reasonable steps” is set out in the proposed section 14(5)(a) of the WWO. The proposed section 14(6) of the WWO only sets out the “minimum requirement” for satisfying the “all reasonable steps” requirement. Even the proposed section 14(6) of the WWO is satisfied, whether or not all reasonable steps are taken is to be determined under the proposed section 14(5)(a) of the WWO. The purpose of adding “without limiting subsection (5)(a)” is to avoid the argument that a person who satisfies proposed section 14(6) of the WWO will be regarded as satisfying section 14(5)(a) of the WWO. Hence, “without limiting subsection (5)(a)” is added to section 14(6) of the WWO to avoid any limitation of the interpretation of the wording “all reasonable steps” in section 14(5) of the WWO because of the existence of section 14(6) of the WWO.

### **Response to Question 13**

26. The policy intent is to apply the proposed section 18A of the WWO only to the statutory defences provided under the Part III. We will review the wording and, if appropriate, propose a CSA to clarify this point.

### **Response to question 14**

27. The installation of a meter is a different category of work from the construction, installation, maintenance, alteration, repair or remove of a fire service or inside service. There is no need to distinguish the installation of a meter on a fire services from the installation of a meter on an inside service. The policy intent is to allow the persons listed in section 1 of Part 1 or section 1 of Part 2 of the Schedule to install a meter on a fire service or inside service. The drafting reflects the policy intent.

**Development Bureau**  
**9 June 2017**