

## **Waterworks (Amendment) Bill 2017**

### **Draft Committee Stage Amendments**

#### **Proposed by the Administration**

**(version as of 16 January 2018)**

In response to the comments and suggestions from Members of the Bills Committee and the Assistant Legal Adviser of the Legal Services Division, Legislative Council Secretariat (“ALA”), as well as those from stakeholders, the Administration proposes a number of Committee Stage Amendments (“CSAs”) to the Waterworks (Amendment) Bill 2017 (“the Bill”).

The CSAs address four issues, namely:

- (i) liability of persons other than licensed plumbers for contravening section 14(3) of the Waterworks Ordinance (Cap. 102) (“WWO”) in the proposed section 14(4) of the WWO;
- (ii) time limit of prosecution for contravention of section 14(3) in the proposed section 36A;
- (iii) other comments and suggestions made by Members of the Bills and the ALA; and
- (iv) the effective date of the Bill.

The marked-up version of the relevant provisions as amended by the draft CSAs are at **Annex**.

**Development Bureau**  
**January 2018**

**Draft Committee Stage Amendments Proposed by the Administration  
Marked-up Version of the Relevant Provisions**

**Sections 10, 14, 15, 15A, 15B, 18A, 36A and Schedule  
of the Waterworks Ordinance (Cap. 102)**

(Note:

Revisions made in **blue** are amendments proposed by the Waterworks (Amendment) Bill 2017.

Revisions made in **green** are amendments proposed by the Administration draft Committee Stage Amendments.)

Section:	10	<b>Disconnection of a fire service or inside service</b>
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The Water Authority may disconnect a fire service or inside service if-

- (a) any charge in respect of the fire service or inside service is not paid;
- (b) there is no consumer for the fire service or inside service or, if there is a communal service, no agent for the communal service;
- (c) the fire service or inside service does not, in the opinion of the Water Authority, comply with the provisions of this Ordinance;
- (d) the fire service or inside service is constructed, installed, or altered without his permission;
- (e) the consumer or agent, on receipt of a notice under section 16, fails to carry out the repairs or other works specified in the notice;
- (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 **or 15A-15B**; (Amended 81 of 1992 s. 4)
- (g) the Water Authority is satisfied that waste, misuse or pollution of the supply has occurred or is likely to occur; or (Amended 81 of 1992 s. 4)
- (h) the occupier (if any) of the premises and the consumer, on receipt of a notice in writing from the Water Authority requiring them to make reasonable arrangements to enable the Water Authority or any person authorized by him in writing to enter the premises or carry out any function under section 12, fail to make such arrangements within a reasonable time. (Added 81 of 1992 s. 4)

Section:	14	<b><del>Construction, etc.,</del> Restriction on construction etc. of fire services and inside services</b>
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(1) ~~Subject to subsection (2), no person shall, except with the permission in writing of the Water Authority, construct, install, alter or remove a fire service or inside service.~~ Subject to subsection (2), a person must not construct, install, alter or remove a fire service or inside service unless the Water Authority has granted a written permission for it.

(1A) A person who contravenes subsection (1) commits an offence.

(2) The Water Authority may waive the requirement of permission under subsection (1) in the case of alterations to a fire service or inside service which are, in his opinion, of a minor nature.

(2A) The Water Authority may grant the written permission on the Authority's own initiative or on the application of a licensed plumber.

~~(3) The construction or installation of a fire service or inside service shall be carried out in such manner as may be prescribed and the nature, size and quality of the pipes and fittings of the fire service or inside service shall be as prescribed.~~

(3) The construction or installation of, or alteration to, a fire service or inside service must be carried out in the prescribed way and the pipes and fittings used in the construction, installation or alteration must be of the prescribed nature, size and quality.

~~(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence. If subsection (3) is contravened in relation to the construction or installation of a fire service or inside service, or any part~~

~~of it, each of the following persons commits an offence—~~

- ~~(a) A person under whose instruction and supervision the construction or installation is carried out;~~
- ~~(b) a person who carries out the construction or installation, whether under the instruction and supervision of another person or not;~~
- ~~(c) if a written permission for the construction or installation was granted under subsection (2A) on the application of a licensed plumber and the plumber is not a person mentioned in paragraph (a) or (b)—the plumber.~~

(4) If subsection (3) is contravened in relation to the construction, or installation of, or alteration to, a fire service or inside service, or any part of it, (*the works*) each of the following persons commits an offence—

- (a) a licensed plumber under whose instruction and supervision the works are carried out;
- (b) a licensed plumber who carries out the works;
- (c) if a written permission for the works was granted under subsection (2A) on the application of a licensed plumber who is not a plumber described in paragraph (a) or (b)—the licensed plumber;
- (d) a person (other than a licensed plumber)—
  - (i) under whose instruction and supervision the works are carried out; and
  - (ii) who knows that carrying out the works would contravene subsection (3);
- (e) a person (other than a licensed plumber) who—
  - (i) carries out the works; and
  - (ii) knows that carrying out the works would contravene subsection (3).

(5) It is a defence for a person charged with an offence under subsection (4) if —

- (a) for a person mentioned in subsection (4)(a) or (c), the person establishes that the person had taken all reasonable steps to ensure that carrying out the ~~construction or installation~~ works would not contravene subsection (3); or
- (b) for a person mentioned in subsection (4)(b), the person establishes that—
  - (iii) the person believed that carrying out the ~~construction or installation~~ works would not contravene subsection (3); and
  - (iv) it was reasonable for the person to so believe.

(6) Without limiting subsection (5)(a), a person mentioned in subsection (4)(a) or (c) must not be regarded as having taken all reasonable steps if the person did not, having regard to the matters set out in subsection (7), inspect the carrying out of the ~~construction or installation~~ (*the works*) as often as was reasonable to ensure that the works were carried out in compliance with this Ordinance works as often as was reasonable to ensure that the works were carried out in compliance with subsection (3).

(7) The matters are—

- (a) the nature of the works;
- (b) the risks involved in the works; and
- (c) the knowledge and experience of the person carrying out the works.

Section:	15	<b><u>Construction, etc. by licensed plumbers</u></b> Who may carry out specified plumbing works
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~~(1) Subject to subsection (2), 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. Subject to subsection (2), a person who is not a designated person must not carry out specified plumbing works.~~

~~(2) Alterations or repairs to a fire service or inside service which are, in the opinion of the Water Authority, 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 Water Authority. may be carried out by a person who is not a designated person.~~

(2) A person who is not a designated person may carry out specified plumbing works if the works are—

- (a) alterations or repairs to a fire service or inside service that are, in the opinion of the Water Authority, of a minor nature;
- (b) construction work on a construction site carried out in accordance with section 3(2), 3A or 4 of the Construction Workers Registration Ordinance (Cap. 583); or
- (c) construction work exempted from sections 3(2), 3A and 4 of that Ordinance under section 4, 7 or 8 of the Construction Workers Registration (Exemption) Regulation (Cap. 583 sub. leg. C).

~~(3) Subject to subsection (2), any person who—~~

~~(a) contravenes subsection (1); or~~

~~(b) employs or permits a person other than a licensed plumber or a public officer authorized by the Water Authority to construct, install, maintain, alter, repair or remove a fire service or inside service;~~

~~shall be guilty of an offence.~~

(3) A person who contravenes subsection (1) commits an offence.

(4) A person who employs or permits a person who is not a designated person to carry out specified plumbing works that do not fall within subsection 2(a), (b) or (c) commits an offence.

(5) It is a defence for a person charged with an offence under subsection (4) (*defendant*) if the defendant establishes that—

(a) the defendant believed that the person who carried out the specified plumbing works was a designated person; and

(b) it was reasonable for the defendant to so believe.

(6) In this section—

*construction site* (建造工地) has the meaning given by section 2(1) of the Construction Workers Registration Ordinance (Cap. 583);

*construction work* (建造工作) has the meaning given by section 2(1) of the Construction Workers Registration Ordinance (Cap. 583);

*designated person* (指定人士) means—

(a) a licensed plumber;

(b) a registered plumbing worker;

(c) a registered plumbing worker (provisional);

(d) a person who carries out specified plumbing works under the instruction and supervision of a licensed plumber or registered plumbing worker; or

(e) a public officer authorized by the Water Authority.

Section:	15A	<b>Alterations or repairs not considered as of minor nature</b>
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For the purpose of sections 14(2) and 15(2), alterations or repairs to a fire service or inside service must not be considered as of a minor nature if the alterations or repairs would, in the opinion of the Water Authority, adversely affect—

(a) the efficiency of the fire service or inside service in providing a reliable and adequate supply of water; or

(b) the quality of the water.

Section:	<del>15A</del> 15B	<b>Power of entry into non-domestic premises and power to question, etc.</b>
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(1) An authorized officer may at any reasonable time—

(a) enter any non-domestic premises to ascertain whether specified plumbing works are being, or have been, carried out on the premises in contravention of section 15; or

(b) enter any other non-domestic premises for exercising the power under paragraph (a).

(2) After entering any premises under subsection (1)(a), an authorized officer may exercise any or all of the following powers—

- (a) take photographs or make video recordings of the premises and the fire service or inside service on the premises;
- (b) require a person found on the premises to answer a question as to—
  - (i) whether the person is carrying out or has carried out specified plumbing works on the premises; and
  - (ii) whether the person is a licensed plumber, registered plumbing worker or registered plumbing worker (provisional) (*qualified person*);
- (c) if a person found on the premises states that the person is a qualified person—
  - (i) require the person to produce documentary proof in support of the statement; or
  - (ii) if the person is not able to produce the documentary proof immediately—require the person to produce the proof at a place and within a reasonable time required by the officer;
- (d) if a person found on the premises states that the person is not a qualified person—
  - (i) require the person to answer a question as to whether the person is carrying out or has carried out specified plumbing works on the premises under the instruction and supervision of a licensed plumber or registered plumbing worker; and
  - (ii) if the person answers the question in the affirmative—require the person to provide to the officer the name and contact details of the person who provided the instruction and supervision;
- (e) if the officer reasonably suspects that there is or has been a contravention of section 15 on the premises, require a person found on the premises to provide to the officer any information that the officer reasonably believes—
  - (i) is relevant for ascertaining whether there is or has been a contravention of section 15; and
  - (ii) is within the person's knowledge;
- (f) if the officer reasonably suspects that a person found on the premises is contravening or has contravened section 15, after informing the person of the act or omission that may constitute the suspected contravention—
  - (i) detain the person in the premises for a reasonable time for further enquiries about the suspected contravention; and
  - (ii) require the person to provide to the officer the person's name, address, telephone number, proof of identity and any other personal particulars the officer may reasonably require.

(3) A person who fails to comply with a requirement under subsection (2) commits an offence.

(4) A person who, in purported compliance with a requirement under subsection (2), makes any statement or provides any information that is false or misleading in a material particular commits an offence.

(5) It is a defence for a person charged with an offence under subsection (3) if the person establishes that at the time of the alleged offence the person had a reasonable excuse for failing to comply with the requirement of the authorized officer.

(6) It is a defence for a person charged with an offence under subsection (4) if the person establishes that at the time of the alleged offence the person did not know, had no reason to suspect, and could not with reasonable diligence have ascertained, that the statement or information concerned was false or misleading in a material particular.

(7) A person is not excused from complying with a requirement under subsection (2) only on the ground that to do so might tend to incriminate the person.

~~(7)~~(8) The power under this section is in addition to, and not in derogation of, the power under section 12.

~~(8)~~(9) In this section—

**authorized officer** (獲授權人員) means the Water Authority or a public officer authorized by the Water Authority in writing;

**home for elderly persons** (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

**home for persons with disabilities** (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613);

**non-domestic premises** (非住用處所) means premises other than those used for human habitation (including those used as a hotel, guesthouse, serviced apartment, dormitory, home for elderly persons, home for persons with disabilities, child care centre, nursery or similar premises).

Section:	18A	<b>Burden of proof for defence</b>
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A person charged with an offence under this Part is taken to have established a fact that needs to be established for ~~the defence~~ a defence under this Part if—

- (a) there is sufficient evidence to raise an issue with respect to the fact; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

Section:	36A	<b>Time limit for prosecutions</b>
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(1) ~~A—Subject to subsection (2),~~ a prosecution for a contravention of this Ordinance may be commenced within 6 months beginning on the date immediately after the date on which the contravention is discovered by, or comes to the notice of, the Water Authority.

(2) For a contravention of section 14(3) in relation to the construction or installation of, or alteration to, a fire service or inside service, or any part of it, (*the works*)—

- (a) if an application for inspection and approval of the fire service or inside service, or alteration, has been made under regulation 6(1)(a) or (2) of the Waterworks Regulations (Cap. 102 sub. leg. A)—no prosecution may be commenced if the contravention is discovered by, or comes to notice of, the Water Authority after 6 years after the date of the application; or
- (b) if the works are alteration falling within section 14(2)—no prosecution may be commenced if the contravention is discovered by, or comes to notice of, the Water Authority after 6 years after the date of the contravention.

~~(2)(3)~~ This section does not apply in relation to a contravention committed before the date on which the Waterworks (Amendment) Ordinance 2017 ( of 2017) comes into operation.

## Schedule

[ss. 2 & 38A]

### Registered Plumbing Worker and Registered Plumbing Worker (Provisional)

#### Part 1

#### Registered Plumbing Worker

1. For the construction, installation, maintenance, alteration, repair or removal of a fire service ~~or the installation of a meter~~, a person who is registered under the Construction Workers Registration Ordinance (Cap. 583) as—

- (a) a registered skilled worker for the plumber trade division;
- (b) a registered skilled worker for the drain and pipe layer (master) trade division;
- (c) a registered skilled worker for the fire service mechanic (master) trade division;
- (d) a registered skilled worker for the fire service mechanical fitter trade division;

- (e) a registered semi-skilled worker for the plumber trade division; or
- (f) a registered semi-skilled worker for the fire service mechanical fitter trade division.

2. For the construction, installation, maintenance, alteration, repair or removal of an inside service, a person who is registered under the Construction Workers Registration Ordinance (Cap. 583) as—

- (a) a registered skilled worker for the plumber trade division;
- (b) a registered skilled worker for the drain and pipe layer (master) trade division; or
- (c) a registered semi-skilled worker for the plumber trade division.

3. For the installation of a meter, a person who is registered under the Construction Workers Registration Ordinance (Cap. 583) as—

- (a) a registered skilled worker for the plumber trade division;
- (b) a registered skilled worker for the drain and pipe layer (master) trade division;
- (c) a registered skilled worker for the fire service mechanic (master) trade division;
- (d) a registered skilled worker for the fire service mechanical fitter trade division;
- (e) a registered semi-skilled worker for the plumber trade division; or
- (f) a registered semi-skilled worker for the fire service mechanical fitter trade division.

## **Part 2**

### **Registered Plumbing Worker (Provisional)**

1. For the construction, installation, maintenance, alteration, repair or removal of a fire service ~~or the installation of a meter~~, a person who is registered under the Construction Workers Registration Ordinance (Cap. 583) as—

- (a) a registered skilled worker (provisional) for the plumber trade division;
- (b) a registered skilled worker (provisional) for the drain and pipe layer (master) trade division;
- (c) a registered skilled worker (provisional) for the fire service mechanical fitter trade division;
- (d) a registered semi-skilled worker (provisional) for the plumber trade division; or
- (e) a registered semi-skilled worker (provisional) for the fire service mechanical fitter trade division.

2. For the construction, installation, maintenance, alteration, repair or removal of an inside service, a person who is registered under the Construction Workers Registration Ordinance (Cap. 583) as—

- (a) a registered skilled worker (provisional) for the plumber trade division;
- (b) a registered skilled worker (provisional) for the drain and pipe layer (master) trade division; or
- (c) a registered semi-skilled worker (provisional) for the plumber trade division.

3. For the installation of a meter, a person who is registered under the Construction Workers Registration Ordinance (Cap. 583) as—

- (a) a registered skilled worker (provisional) for the plumber trade division;
- (b) a registered skilled worker (provisional) for the drain and pipe layer (master) trade division;
- (c) a registered skilled worker (provisional) for the fire service mechanical fitter trade division;
- (d) a registered semi-skilled worker (provisional) for the plumber trade division; or
- (e) a registered semi-skilled worker (provisional) for the fire service mechanical fitter trade division.