

立法會
Legislative Council

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**Report of the Bills Committee on
Waterworks (Amendment) Bill 2017**

Purpose

This paper reports on the deliberations of the Bills Committee on Waterworks (Amendment) Bill 2017 ("the Bills Committee").

Background

2. Under the existing section 15(1) of the Waterworks Ordinance (Cap. 102) ("WWO"), except for minor alterations or repairs or the rewashing of a tap, fire service or inside service may only be constructed, installed, maintained, altered, repaired or removed by a licensed plumber ("LP") or a public officer authorized by the Water Authority ("WA"). According to paragraph 3 of the Legislative Council ("LegCo") Brief (File Ref.: DEVB(CR)(W)1-10/49) issued by the Development Bureau on 29 March 2017, despite the language of the legislation, it has been the policy intent and the industry practice over the past decades that LPs may be assisted by workers in carrying out the construction, installation, maintenance, alteration, repair or removal (collectively referred to as "construction, etc.") of plumbing systems.

3. Moreover, the Commission of Inquiry into Excess Lead found in Drinking Water recommended in its report that WA should define the duties of LPs under WWO, taking into account the relevant provisions of the Construction Workers Registration Ordinance (Cap. 583) ("CWRO") which allows workers registered thereunder¹ to perform plumbing installations.

¹ These workers include registered skilled workers or semi-skilled workers for the relevant designated trade divisions and other registered construction workers working under their instruction and supervision.

Waterworks (Amendment) Bill 2017

4. Against the above background, the Administration has introduced into LegCo the Waterworks (Amendment) Bill 2017 ("the Bill") for amending WWO and the Waterworks Regulations (Cap. 102A) ("WWR"), so that the construction, installation, maintenance, alteration, repair or removal of a fire service or inside service ("specified plumbing works"), except for minor alterations or repairs, may be carried out not only by an LP or a public officer authorized by WA, but also by a registered plumbing worker, a registered plumbing worker (provisional) or a person who carries out specified plumbing works under the instruction and supervision of an LP or registered plumbing worker.

5. The Bill proposes that a registered plumbing worker and a registered plumbing worker (provisional) would mean the relevant registered skilled worker, registered semi-skilled worker, registered skilled worker (provisional) or registered semi-skilled worker (provisional) as registered under CWRO for the specified trade division.

6. Moreover, the Bill proposes that where an offence in relation to construction or installation under section 14(3) of WWO is committed, a person who instructs and supervises another person in carrying out the construction or installation and the LP concerned, apart from the one who carries out the construction or installation, commit an offence, with a defence proposed for them. The Bill also seeks to make other related amendments to WWO and WWR.

The Bills Committee

7. The House Committee agreed at its meeting on 28 April 2017 to form a Bills Committee to study the Bill. Ir Dr Hon LO Wai-kiwok and Dr Hon Helena WONG Pik-wan were elected as Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**. The Bills Committee has held six meetings to meet with the Administration and received views from deputations. A list of the organizations which have submitted views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

8. The Bills Committee supports the Bill to amend WWO in order to delineate clearly the roles, involvements and responsibilities of the persons responsible for carrying out the construction, etc. of plumbing systems including LPs and workers. Members have examined the liabilities of plumbing practitioners under the Bill, clarified the definitions of crucial terms in the provisions, and considered the effectiveness of the means for educating plumbing practitioners and the public about the requirements of WWO as amended by the Bill to tie in with its implementation. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

Liabilities of plumbing workers and defence provision

9. Under the current section 14(3) of WWO, the construction or installation of a fire service or inside service ("the plumbing works") 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. It is an offence under the existing section 14(4) of WWO for any person who contravenes section 14(3) of WWO. Accordingly, a worker who carries out the plumbing works in contravention with section 14(3) of WWO is guilty of an offence under the current regime.

10. Members note the plumbing workers' worries of the risk of being charged with the offence under the proposed section 14(4) of WWO. The Administration has advised that 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, the Administration has proposed adding a new statutory defence provision, the proposed new section 14(5) of WWO, which provides that it is a defence for a person, including a worker, who is charged with an offence under the proposed section 14(4)(b) of WWO to establish that he or she believed that carrying out the plumbing works would not contravene section 14(3) of WWO and it was reasonable for him or her to so believe (see the proposed new section 14(5)(b)). Furthermore, the burden to prove beyond reasonable doubt that the worker commits an offence and could not rely on the defence remains on the prosecution side at all times. If WA considers that there is not sufficient evidence to demonstrate a reasonable prospect of conviction taking into account the defence available to the worker, WA will not proceed with the prosecution. To address members' concern, the Administration has undertaken to explain in its guidelines for plumbing practitioners workers' responsibility under WWO as amended by the Bill.

11. Notwithstanding the Administration's explanation above, some members including Hon Alice MAK Mei-kuen remain of the view that the proposed new statutory defence provision under the proposed new section 14(5) of WWO as it is currently drafted cannot alleviate plumbing workers' worries effectively, because a plumbing worker carrying out the plumbing works, who contravenes section 14(3) of WWO, cannot easily prove that it was reasonable for him or her to believe that carrying out the plumbing works would not contravene section 14(3) of WWO. These members have suggested that the Administration may consider amending the Bill to specify that if a non-compliance is found in a plumbing project, workers will not be prosecuted for an offence unless they have deliberately not followed the instruction of their instructing supervisors when carrying out the works concerned.

12. To address the above concern of members and the plumbing trade on plumbing workers' liabilities, the Administration will propose a Committee stage amendment ("CSA") to the proposed section 14(4) of WWO to the effect that plumbing workers are liable only if they know that carrying out the works would contravene section 14(3) of WWO.

Time limit for prosecutions

13. At present, a prosecution under WWO or WWR must commence within six months from the time when the offence was committed pursuant to section 26 of the Magistrates Ordinance (Cap. 227). According to the Administration, on many occasions, prosecution against offenders would be time-barred due to the lapse of over six months between the time the offence was committed and the subsequent discovery of the offence. To enhance the deterrence effect such that persons involved in specified plumbing works must comply with the relevant requirements under WWO, the Administration has proposed a new section 36A of WWO so that any prosecution under WWO may be brought within a period of six months from the date on which the offence is discovered by, or comes to the notice of, WA. The Administration has explained that similar arrangements regarding the time limit for prosecution can be found under section 142 of the Lifts and Escalator Ordinance (Cap. 618) and section 57 of the Electricity Ordinance (Cap. 406).

14. Members including Hon SHIU Ka-fai and Hon Alice MAK Mei-kuen have expressed concern that the proposed new section 36A of WWO in effect means that an LP is liable for a non-compliance of a plumbing system that is discovered a long time after the installation of the plumbing system concerned. These members consider it unfair to plumbing practitioners as some other people may have made modifications to the plumbing system after it has been installed and plumbing practitioners have no control over such modifications.

15. Members have noted that the plumbing trade also has a similar concern that its practitioners may be charged with an offence under WWO as amended by the Bill in respect of plumbing works due to reasons out of their control. The plumbing practitioners' concern in this regard may discourage them to stay in the plumbing industry. In considering the appropriate time limit for prosecutions, some members consider that the Administration should take into account the workers' concern about the difficulty to keep records or recall the details in respect of the plumbing works that have been completed for a long time. These members have urged the Administration to consider amending the Bill to the effect that no prosecution under WWO may be brought after six years from the date on which the offence is committed.

16. On the contrary, Dr Hon Helena WONG Pik-wan opines that the proposed new section 36A of WWO should not necessarily be a burden to industry practitioners if they have taken all reasonable steps to comply with the relevant requirements when carrying out plumbing works. Dr WONG considers that to specify a short time limit for prosecutions in the Bill might make it impossible for the Administration to institute prosecutions against the non-compliances of plumbing works discovered by WA; and if the Administration considers it necessary to amend the Bill to shorten the time limit, the time limit for prosecutions should not be less than 10 years.

17. Having taken into account views of members and the trade, the Administration will propose to add a new section 36A(1A) to WWO so that for a contravention of the proposed section 14(3) of WWO in relation to the construction or installation of, or alteration to, a fire service or inside service, or any part of it ("the works"), no prosecution may be commenced if the contravention is discovered by, or comes to the notice of, WA after 6 years after:

- (a) in case where an application for inspection and approval of the fire service or inside service, or alteration, has been made under the proposed regulation 6(1)(a) or (2) of WWR, the date of the application; or

- (b) in case where the works are alterations falling within section 14(2) of WWO (i.e. alterations of a minor nature), the date of the contravention.

18. The Administration has advised that in working out the proposed CSA regarding the time limit for prosecutions, apart from the concerns of Bills Committee members and the trade, the Administration has taken into account the time it normally takes the Administration to collect evidence for possible prosecutions, and has also made reference to the relevant provisions in respect of comparable situations in other legislation in Hong Kong. The Administration considers that since it has in recent years stepped up inspection of completed plumbing works, WA should be able to identify any non-compliance case in respect of such works within six years after the date on which the non-compliance was committed.

Works of a minor nature

19. Members note that under the proposed section 15(2) of WWO, alterations or repairs to a fire service or inside service which are, in the opinion of WA, of a minor nature may be carried out by persons other than those prescribed. It is an offence for a person who is not a designated person to carry out specified plumbing works other than "works of a minor nature". The Administration has advised that WA has an existing power to explain the meaning of "works of a minor nature" under WWO. For this purpose, the Water Supplies Department ("WSD") has been promulgating the general principles and a list of examples for "works of a minor nature" via circular letters for LPs and publications on its website for the reference of the public and the trade. WSD will review and update the list whenever necessary. The Bills Committee has examined the principles by which the Administration defines and classifies works as "works of a minor nature" and the extent to which such definition/classification is made known to the trade and the public at large.

20. The Administration has advised that generally, alterations or repairs to inside services or fire services that are of a minor nature are works that will not involve soldering for connecting copper pipes and dismantling of an installed water meter, and also will not:

- (a) materially change the general arrangement of plumbing installation already approved by WA, for example, changing from indirect supply to direct supply;

- (b) cause misuse, wastage and possible contamination of a supply, for example, change in purpose of supply or approved usage, requiring provision of backflow preventive devices for a water using apparatus; and
- (c) materially affect the flow conditions of plumbing system thus causing possible supply problems.

Some common examples of works of a minor nature given by the Administration include one-to-one replacement of pipes or fittings, rewashering of a tap, tightening joints of leaking pipe, etc.

21. The Administration initially considered that the current practice of promulgating the general principles and a list of examples for "works of a minor nature" had all along been effective and retained flexibility for WA to give prompt response in catering for changes in the plumbing trade. Notwithstanding the Administration's explanation, members including Dr Hon Helena WONG Pik-wan remain of the view that the definition of "works of a minor nature" should be clearly set out under WWO with a view to ensuring that such works will not affect the efficiency of the water supply system and the quality of the water. In this regard, the Administration has taken on board members' suggestion and will propose a CSA to add a new section 15AA to WWO to provide which alterations or repairs to a fire service or inside service must not be considered as "works of a minor nature".

Regulating other relevant parties

22. As a plumbing project involves a wide range of relevant parties apart from LPs and workers, members have expressed concern that under the current regime, only the role of LP is expressly provided and that the Bill only extends the control to workers. Members including Dr Hon Helena WONG Pik-wan and Dr Hon KWOK Ka-ki, and deputations from the plumbing trade consider that the Bill should delineate clearly the roles, involvements and responsibilities of the developers, professionals and contractors apart from those of LPs and workers ("the other relevant parties"). Dr WONG has enquired about the reason for not specifying in the Bill the responsibilities of the Building Services Engineers engaged in carrying out the design for large scale plumbing projects nor imposing criminal sanctions for their non-compliances.

23. The Administration has explained that the main purpose of the legislative amendments under the Bill is to delineate clearly the roles, involvements and responsibilities of the persons responsible for carrying out specified plumbing works including LPs and workers. Meanwhile, the Administration is reviewing the roles, involvements and responsibilities of other relevant parties including developers, professionals and contractors in the design and construction of plumbing projects, with a view to working out proposals to regulate them where necessary (see also paragraph 31 below).

Training and development for plumbing practitioners

24. In the course of deliberations, members have taken the opportunity to examine the continuing professional development programmes/courses available for plumbing practitioners over various stages of careers. Dr Hon Helena WONG Pik-wan opines that to ensure that the persons who are allowed under the proposed regime to provide instruction and supervision for other persons in carrying out specified plumbing works have updated knowledge in the aspects of drinking water safety and relevant legislation, their attendance of the relevant continuing professional development programmes/courses should be made a prerequisite for them to seek/renew their licenses/registrations.

25. The Administration has advised that the Development Bureau in collaboration with the Construction Industry Council and Vocational Training Council has all along organized continuing professional development programmes/courses for plumbing practitioners, and the Administration will continue its efforts in enhancing their skills and knowledge. It will consider Dr Hon Helena WONG Pik-wan's suggestion of including training requirements as a prerequisite for LPs and plumbing workers to seek/renew their licences/registrations.

Other issues

26. The Administration will also propose other CSAs to certain provisions of the Bill, including those made in response to the suggestions and views of members, and the enquiries and observations made by the Legal Adviser to the Bills Committee. Some of these CSAs are:

- (a) adding a proposed new section 15A(6) to WWO to reflect the policy intent that a person is not excused from complying with a requirement under the proposed new section 15A(2) of WWO only on the ground that to do so might tend to incriminate the person; the Administration considers that it has already 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;

- (b) amending the proposed new section 15A(2)(a) of WWO to allow an authorized officer to make video recordings, in addition to taking photographs, after entering any non-domestic premises referred to in the proposed new section 15A(1)(a) for ascertaining whether specified plumbing works are being, or have been, carried out on the premises in contravention of the proposed section 15 of WWO;
- (c) amending the proposed new section 18A of WWO to clarify the policy intent that the provision, which deals with the burden of proof for defence, only applies to the statutory defence provided under Part III of WWO;
- (d) amending the proposed section 15(2) and the proposed new section 15(6) of WWO to resolve the inconsistencies between the Bill and CWRO. For example, under section 3A of, and Schedule 1A to, CWRO, a registered skilled worker for the fire service mechanic (master) trade division or the fire service mechanical fitter trade division (collectively referred to as "FSTD") may personally carry out on a construction site construction work that involves any required skills of the plumber trade division involving metal pipe work. Under the proposed section 15 of, and section 2 of Parts 1 and 2 of the proposed new Schedule to, WWO, a registered skilled worker for either of FSTD is not permitted to carry out the prescribed works on an inside service. The prescribed works on an inside service, however, involve such required skills of the plumber trade division; and
- (e) amending the proposed new Schedule to WWO so as to make separate provisions in Parts 1 and 2 to provide for the persons who may install a meter.

Implementation issues

Commencement date

27. It is originally proposed in clause 1 of the Bill that the Bill, if passed, would come into operation on a day to be appointed by the Secretary for

Development. The Administration will propose a CSA so that the Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance. Members have no objection to it.

Guideline for plumbing practitioners

28. Members have sought information on guidelines, if any, for helping plumbing practitioners, particularly the workers, to understand the requirements of WWO as amended by the Bill. In particular, to help a plumbing worker avoid contravening WWO, such guidelines should provide information on how a worker working under instruction and supervision can ascertain whether the worker's instructing supervisor is in fact an LP or registered plumbing worker.

29. To this end, members have examined the draft guidelines to be published for the reference of the public and the plumbing practitioners, including the workers. Members note that the proposed contents of the guidelines will cover (a) roles and responsibilities of all plumbing practitioners, including the employer, contractor, LPs and designated persons; and (b) steps that should be adopted by the plumbing practitioners in carrying out specified plumbing works.

30. The Administration has advised that it will collaborate with relevant workers' unions to launch educational and promotional activities, such as briefings and publication of leaflets, to disseminate messages on the roles and responsibilities of registered plumbing workers under WWO as amended by the Bill.

Review of WWO

31. During the scrutiny of the Bill, the Bills Committee has taken the opportunity to examine the overall plan of the Administration to review WWO and WWR with a view to revamping the legislation to cater for the latest development of the plumbing trade, technologies and practices. According to the Administration, amendments to WWO and WWR will be prioritized and carried out in phases. The next phase of work in the review will address various areas of issues, namely, (a) examining the roles, involvements and responsibilities of relevant parties including the developers, contractors and other persons involved in works related to plumbing systems; (b) examining the licensing/registration regime for parties responsible for the construction, etc. of plumbing systems; (c) reviewing and streamlining the control process on design, construction and approval of plumbing systems;

and (d) reviewing and strengthening the regulatory framework of plumbing materials, together with its relevant implementation timetable and progress.

32. Members note that the Administration is conducting researches on the relevant international practices and collaborating with the interested parties to enhance the current regulatory framework to address the abovementioned issues. The current plan is to develop a comprehensive proposal for consultation with the stakeholders, government bureaux/departments and the public in 2018, before proceeding to the necessary legislative amendments.

Committee Stage amendments

33. The Administration will propose a number of CSAs to address mainly the following four issues:

- (a) liabilities of persons other than LPs for contravening the proposed section 14(3) of WWO in the proposed section 14(4) of WWO (see paragraphs 9 to 12 above);
- (b) time limit for prosecutions for contravention of the proposed section 14(3) of WWO in the proposed new section 36A of WWO (see paragraphs 13 to 18 above);
- (c) other comments and suggestions made by members and the Legal Adviser to the Bills Committee (see, for example, paragraphs 19 to 21 and paragraph 26 (b) to (e) above); and
- (d) the commencement date of the Bill (see paragraph 27 above).

34. The Bills Committee will not propose any amendment to the Bill.

Resumption of Second Reading debate on the Bill

35. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 7 February 2018.

Consultation with the House Committee

36. The Bills Committee reported its deliberations to the House Committee on 26 January 2018.

Council Business Division 1
Legislative Council Secretariat
1 February 2018

Bills Committee on Waterworks (Amendment) Bill 2017

Membership List*

Chairman Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Deputy Chairman Dr Hon Helena WONG Pik-wan

Members Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon POON Siu-ping, BBS, MH
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon LAU Kwok-fan, MH

(Total : 10 members)

Clerk Mr Derek LO

Legal Adviser Ms Wendy KAN

* Changes in membership are shown in Annex to Appendix I

Bills Committee on Waterworks (Amendment) Bill 2017

Changes in membership

| Member | Relevant date |
|-------------------|------------------------|
| Hon Kenneth LEUNG | Since 17 November 2017 |

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.

Bills Committee on Waterworks (Amendment) Bill 2017

**List of organizations which have given views to
the Bills Committee**

1. Frontline Tech Workers Concern Group
2. Hong Kong Licensed Plumbers Union Limited
3. Hong Kong Licensed Plumbing Professionals Association Limited
4. Hong Kong Plumbing and Sanitary Ware Trade Association Limited
5. Hong Kong Water Works Professionals Association Limited
6. Liberal Party
7. Plumbing Technology Student Association
8. Progressive Lawyers Group
9. Registered Minor Works Contractor Signatory Association Limited
10. The Chartered Institute of Plumbing and Heating Engineering –
Hong Kong Branch
11. The Hong Kong Federation of Electrical and Mechanical Contractors
Limited
12. The Hong Kong Institute of Architects
13. The Hong Kong Institution of Engineers
14. The Hong Kong Institution of Plumbing and Drainage Limited