

Waterworks (Amendment) Bill 2017

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A BILL

To

Amend the Waterworks Ordinance and the Waterworks Regulations to revise the requirements relating to the carrying out of works on fire services and inside services.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Waterworks (Amendment) Ordinance 2017.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

2. Enactments amended

- (1) The Waterworks Ordinance (Cap. 102) is amended as set out in Part 2.

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- (2) The Waterworks Regulations (Cap. 102 sub. leg. A) are amended as set out in Part 3.
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Part 2

Amendments to Waterworks Ordinance

3. **Section 2 amended (interpretation)**

Section 2—

Add in alphabetical order

“registered plumbing worker (註冊水喉技工), for a particular purpose, means a person specified for the purpose in Part 1 of the Schedule;

registered plumbing worker (provisional) (註冊水喉技工(臨時)), for a particular purpose, means a person specified for the purpose in Part 2 of the Schedule;”.

4. **Section 10 amended (disconnexion of a fire service or inside service)**

Section 10(f), after “12”—

Add

“or 15A”.

5. **Sections 13A and 13B added**

Part III, before section 14—

Add

“13A. Meaning of *specified plumbing works*

In this Part—

specified plumbing works (指明水管工程) means the construction, installation, maintenance, alteration, repair or removal of a fire service or inside service.

13B. Meaning of carrying out specified plumbing works under instruction and supervision

For the purposes of this Part, a person carries out specified plumbing works under the instruction and supervision of another person (*supervisor*) if—

- (a) the specified plumbing works are carried out by the person at the direction of the supervisor and within the scope decided by the supervisor; and
- (b) the method and manner in which the specified plumbing works are carried out are specified by the supervisor.”.

6. Section 14 amended (construction, etc., of fire services and inside services)

- (1) Section 14, heading—

Repeal

“**Construction, etc.,**”

Substitute

“**Restriction on construction etc.**”.

- (2) Section 14—

Repeal subsection (1)**Substitute**

“(1) 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.”.

- (3) After section 14(2)—

Add

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

(4) Section 14—

Repeal subsection (4)

Substitute

“(4) 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.

(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 would not contravene subsection (3); or
- (b) for a person mentioned in subsection (4)(b), the person establishes that—

- (i) the person believed that carrying out the construction or installation would not contravene subsection (3); and
 - (ii) it was reasonable for the person to so believe.
- (6) Without limiting subsection (5)(a), a person mentioned in subsection (4)(a) 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.
- (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.”.

7. Section 15 amended (construction, etc. by licensed plumbers)

- (1) Section 15, heading—

Repeal

“Construction, etc. by licensed plumbers”

Substitute

“Who may carry out specified plumbing works”.

- (2) Section 15—

Repeal subsection (1)

Substitute

“(1) Subject to subsection (2), a person who is not a designated person must not carry out specified plumbing works.”.

(3) Section 15(2)—

Repeal

everything after “nature”

Substitute

“may be carried out by a person who is not a designated person.”.

(4) Section 15—

Repeal subsection (3)

Substitute

“(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 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—

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.”.

8. Section 15A added

After section 15—

Add

“15A. Power of entry into non-domestic premises and power to question etc.

- (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 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—

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- (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.

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

(8) 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).”

9. Section 18A added

Part III, after section 18—

Add

“18A. Burden of proof for defence

A person charged with an offence under this Part is taken to have established a fact that needs to be established for the defence 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.”.

10. Section 36A added

After section 36—

Add

“36A. Time limit for prosecutions

- (1) 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) 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.”.

11. Section 38A added

After section 38—

Add

“38A. Amendment of Schedule

The Secretary for Development may, by notice published in the Gazette, amend the Schedule.”.

12. Section 40 and Schedule added

After section 39—

Add**“40. Transitional and saving provisions for Waterworks (Amendment) Ordinance 2017**

- (1) A permission granted on the application of a licensed plumber before the commencement date for the construction, installation, alteration or removal of a fire service or inside service (*the works*) that has not been completed immediately before that date continues to have effect after that date as if it were granted for the works under section 14(2A) on the application of the plumber.
- (2) An application for a permission for the works made by a licensed plumber that is still pending immediately before the commencement date is to continue to be processed as if the amending Ordinance had not been enacted and, if the permission is granted, the permission is to have effect as if it were granted for the works under section 14(2A) on the application of the plumber.
- (3) If section 14(3) is contravened in relation to the construction or installation of a fire service or inside service, or any part of it, for which there was a permission granted before the commencement date—
 - (a) section 14 of the pre-amended Ordinance continues to apply in relation to the contravention as if the amending Ordinance had not been enacted; and
 - (b) section 36A applies in relation to the contravention.

(4) In this section—

amending Ordinance (《修訂條例》) means the Waterworks (Amendment) Ordinance 2017 (of 2017);

commencement date (生效日期) means the date on which the amending Ordinance comes into operation;

permission (許可) means a written permission mentioned in section 14;

pre-amended Ordinance (《未經修訂條例》) means this Ordinance as in force immediately before the commencement date.

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;

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- (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.

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.”.

13. “拆除” substituted for “移動”

The following provisions, Chinese text—

- (a) Section 2, definition of 持牌水喉匠;
- (b) Section 4(2);
- (c) Section 9(c);
- (d) Section 12(1)(e);
- (e) Section 17(1) and (2);

(f) Section 37(1)(b) and (e)—

Repeal

“移動” (wherever appearing)

Substitute

“拆除”.

Part 3

Amendments to Waterworks Regulations

14. Regulation 6 amended (inspection and approval of works)

(1) Regulation 6(1)—

Repeal

“A person who constructs or installs a fire service or inside service shall”

Substitute

“If the construction or installation of a fire service or inside service is carried out with a written permission granted under section 14(2A) of the Ordinance on an application of a licensed plumber, the plumber must”.

(2) Regulation 6(2)—

Repeal

“A person who makes any alterations to a fire service or inside service shall”

Substitute

“If the alteration of a fire service or inside service is carried out with a written permission granted under section 14(2A) of the Ordinance on an application of a licensed plumber, the plumber must”.

(3) Regulation 6(2), English text—

Repeal

“alterations.”

Substitute

“alteration.”.

(4) Regulation 6(5), English text—

Repeal

“he shall”

Substitute

“, the Water Authority must”.

15. Regulation 26 amended (installation of meters)

Regulation 26(2A)(b)—

Repeal

everything after “by”

Substitute

“any of the following persons in the manner specified by the Water Authority—

- (i) a licensed plumber;
- (ii) a registered plumbing worker;
- (iii) a registered plumbing worker (provisional).”.

16. Regulation 51A added

After regulation 51—

Add

“51A. Time limit for prosecutions

- (1) A prosecution for a contravention of these regulations 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) This regulation does not apply in relation to a contravention committed before the date on which the Waterworks (Amendment) Ordinance 2017 (of 2017) comes into operation.”.

17. “拆除” substituted for “移動”

The following provisions, Chinese text—

- (a) Regulation 3(1);
- (b) Regulation 5(1);
- (c) Regulation 35(1) and (2);
- (d) Regulation 37(1)(b)—

Repeal

“移動” (wherever appearing)

Substitute

“拆除”.

Explanatory Memorandum

The object of this Bill is to amend the Waterworks Ordinance (Cap. 102) (*Ordinance*) and the Waterworks Regulations (Cap. 102 sub. leg. A) (*Regulations*) to revise the requirements relating to the carrying out of works on fire services and inside services.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 amends section 2 of the Ordinance to add the new definitions of *registered plumbing worker* and *registered plumbing worker (provisional)*. Clause 12 adds a new Schedule to the Ordinance to set out the persons who are registered plumbing workers and registered plumbing workers (provisional). The Schedule may be amended by the Secretary for Development (new section 38A of the Ordinance added by clause 11).
4. Clause 6 amends section 14 of the Ordinance. The main purposes are to specify that only a licensed plumber may apply for a written permission of the Director of Water Supplies (*Water Authority*) and to provide that, in the case of a contravention of section 14(3) of the Ordinance, the person who instructs and supervises another person in carrying out the works concerned and the licensed plumber will also be liable.
5. Clause 7 amends section 15 of the Ordinance. The main purpose is to provide that works on a fire service or inside service may only be carried out by a licensed plumber, a registered plumbing worker, a registered plumbing worker (provisional), a person carrying out the works under the instruction and supervision (as defined by new section 13B of

the Ordinance added by clause 5) of a licensed plumber or registered plumbing worker, or a public officer authorized by the Water Authority.

6. Clause 8 adds a new section 15A to the Ordinance to empower the Water Authority or a public officer authorized by the Water Authority in writing (*authorized officer*) to enter any non-domestic premises without a warrant or the consent of the occupier of the premises to ascertain whether section 15 of the Ordinance is contravened and to exercise other related powers. Section 10 of the Ordinance is also amended to provide that the Water Authority may disconnect a fire service or inside service if the Water Authority or an authorized officer is obstructed from entering the premises or carrying out any function under the new section 15A of the Ordinance (see clause 4).
7. Clause 9 adds a new section 18A to the Ordinance to provide that the burden of proof for a defence under Part III of the Ordinance is an evidential burden.
8. Clause 10 adds a new section 36A to the Ordinance to provide that the time limit for the prosecution for a contravention of the Ordinance after the commencement date of the Waterworks (Amendment) Ordinance 2017 is 6 months from the discovery of the contravention.
9. Clause 12 adds a new section 40 to the Ordinance to provide for the transitional and saving provisions. In particular, if section 14(3) of the Ordinance is contravened for works carried out with a written permission granted before the commencement date of the Waterworks (Amendment) Ordinance 2017, the person concerned will commit an offence

under section 14 of the pre-amended Ordinance instead of the amended section 14 of the Ordinance.

10. Clause 14 amends regulation 6 of the Regulations to bring the requirement in that regulation in line with the new requirement for the application for a written permission of the Water Authority in the amended section 14 of the Ordinance.
11. Clause 15 amends regulation 26 of the Regulations to specify the persons who may install a meter on a fire service or inside service.
12. Clause 16 adds a new regulation 51A to the Regulations to provide that the time limit for the prosecution for a contravention of the Regulations after the commencement date of the Waterworks (Amendment) Ordinance 2017 is 6 months from the discovery of the contravention.
13. Clauses 13 and 17 make minor textual amendments to the Chinese text of the Ordinance and that of the Regulations respectively.