

# A BILL

## To

Amend the Waterworks Ordinance and the Waterworks Regulations to increase the penalty for the offence of selling or offering for sale water from the waterworks without permission; to provide for the Director of Water Supplies' powers to request information and reference documents and to disclose them to specified persons; to provide for related offences; and to make related amendments.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

##### 1. Short title and commencement

- (1) This Ordinance may be cited as the Waterworks (Amendment) Ordinance 2023.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.

- (3) Section 5 (in so far as it relates to the new regulation 47C) comes into operation on the expiry of 3 months beginning on the day on which this Ordinance is published in the Gazette.

**2. Enactments amended**

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

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## Part 2

### Amendments to Waterworks Ordinance (Cap. 102)

#### 3. Section 37 amended (regulations)

(1) After section 37(1)(s)—

##### **Add**

- “(sa) the duties of a person (other than the Water Authority) to give, and keep copies of, documents relating to charges paid to the person by another person for using water;
- (sb) the Water Authority’s power to request any information or document for the purposes of this Ordinance;
- (sc) the disclosure by the Water Authority to another person of any information or document obtained under this Ordinance for enabling or assisting the person to exercise a power (including a right) conferred, or perform a function (including a duty) imposed, on the person by any Ordinance;”.

(2) Section 37(2)—

##### **Repeal**

everything after “under”

##### **Substitute**

“subsection (1) may provide that a contravention of any provision of the regulation is an offence punishable by a fine not exceeding level 4 and imprisonment not exceeding 3 months and, in the case of a continuing offence, by a

further fine not exceeding \$1,000 for each day during which the offence continues.”.

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## **Part 3**

### **Amendments to Waterworks Regulations (Cap. 102 sub. leg. A)**

#### **4. Regulation 47 amended (prohibition of sale of water)**

##### **(1) Regulation 47(1)—**

##### **Repeal**

“Subject to subregulation (2), no person shall”

##### **Substitute**

“A person must not”.

##### **(2) Regulation 47—**

##### **Repeal subregulation (2)**

##### **Substitute**

- “(2) For the purposes of subregulation (1), a person is to be regarded as selling water from the waterworks to another person if the person charges that other person for using the water, and offer for sale is to be construed accordingly.
- (3) To avoid doubt, for the purposes of this regulation, subregulation (2) does not limit the meaning of “sell” and “offer for sale”.
- (4) Subregulation (1) does not prohibit a person from receiving, after a water bill is issued by the Water Authority for an inside service, from a specified user of the inside service the reimbursement of the specified charges, or a proportionate portion of the specified charges, for water used by the specified user in the premises in which the inside service exists during the period covered by the bill.

- (5) Subregulation (1) also does not prohibit a person from requesting a specified user of an inside service to reimburse the person for the specified charges, or a proportionate portion of the specified charges, for water used by the specified user in the premises in which the inside service exists.
- (6) A person who contravenes subregulation (1) commits an offence and is liable on a first conviction to a fine at level 3, and on a subsequent conviction to a fine at level 4.
- (7) On the conviction of a person (*seller*) of an offence under subregulation (6) for selling water from the waterworks to another person (*buyer*), the magistrate may, in addition to imposing a fine, order the seller to repay to the buyer any money received from the buyer for the water in excess of that the seller may lawfully receive by reason of subregulation (4).
- (8) In this regulation—
  - specified charges* (指明收費), in relation to water used in any premises, means charges for the water calculated at a rate not exceeding the specified rate for the premises;
  - specified rate* (指明收費率), in relation to any premises, means a rate specified in Part 3 of Schedule 1 that corresponds to the consumption in the premises;
  - specified user* (指明用者), in relation to an inside service, means a person who—
    - (a) occupies the premises in which the inside service exists; and
    - (b) uses in the premises water supplied through the inside service.”.

**5. Regulations 47A, 47B, 47C and 47D added**

After regulation 47—

**Add****“47A. Water Authority’s supplementary powers for regulation 47**

- (1) For the purposes of regulation 47, the Water Authority may by notice request any relevant person of any premises to provide any information relating to, or any reference document for, the premises to the Water Authority.
- (2) The Water Authority may also specify in the notice—
  - (a) the time and place at which any information or reference document is to be provided; or
  - (b) the way and form in which any information or reference document is to be provided.
- (3) A person who, without reasonable excuse, fails to comply with a request made under subregulation (1) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) The Water Authority may disclose any information or reference document obtained for the purposes of regulation 47 to a specified person if the Water Authority considers that the disclosure will enable or assist the specified person to exercise a power (including a right) conferred, or perform a function (including a duty) imposed, on the person by—
  - (a) regulation 47, 47B or 47C; or
  - (b) Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

(5) In this regulation—

**reference document** (參考文件), in relation to any premises—

- (a) means a document relating to—
  - (i) a tenancy of the premises; or
  - (ii) any consumption in the premises; and
- (b) includes a tenancy in writing and an invoice, a bill, demand note, payment record, and receipt, for rent or charges for water;

**relevant person** (相關人士), in relation to any premises, means—

- (a) an owner or a former owner of the premises;
- (b) a consumer or former consumer of the inside service that exists in the premises;
- (c) a person other than the Water Authority who has charged an occupier or a former occupier of the premises for using water supplied through the inside service that exists in the premises;
- (d) a tenant or former tenant, or sub-tenant or former sub-tenant, of the premises;
- (e) an occupier or a former occupier of the premises; or
- (f) an agent or a former agent of a person referred to in paragraph (a), (b), (c), (d) or (e);

**specified person** (指明人士) means—

- (a) a magistrate; or
- (b) a public officer acting in the capacity of a public officer.



**47B. Providing false or misleading information or documents**

- (1) A person commits an offence if the person—
  - (a) in purported compliance with a request made under regulation 47A(1) to provide any information or document to the Water Authority—
    - (i) says or states anything (when providing the information or document) that is false or misleading in a material particular; or
    - (ii) provides any document that is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether or not, the thing said or stated, or the information or document, is false or misleading in a material particular.
- (2) A person who commits an offence under subregulation (1) is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

**47C. Duties to give, and keep copies of, receipts for charges for water**

- (1) This regulation applies if—
  - (a) a person other than the Water Authority charges a specified user of an inside service for using water supplied through the inside service; and
  - (b) the specified user pays the person (*payee*) an amount of charges.
- (2) The payee must give a receipt to the specified user for the amount within 7 days after the date on which the amount is paid.

- (3) The payee must specify the following in the receipt—
  - (a) the names of the specified user and the payee;
  - (b) the address of the specified user;
  - (c) the amount of charges paid;
  - (d) the period to which the charges relate;
  - (e) the date of payment.
- (4) The payee must keep a copy of the receipt for 2 years beginning on the date of payment specified in the receipt.
- (5) If the payee, without reasonable excuse, contravenes subregulation (2), (3) or (4), the payee commits an offence and is liable on conviction to a fine at level 3.
- (6) In this regulation—  
*specified user* (指明用者) has the meaning given by regulation 47(8).

#### **47D. Burden of proof**

In criminal proceedings for an offence under regulation 47A(3) or 47C(5)—

- (a) the burden of establishing that a person has a reasonable excuse referred to in that regulation lies on the person; and
- (b) the person is taken to have established the reasonable excuse if—
  - (i) there is sufficient evidence to raise an issue with respect to the reasonable excuse; and
  - (ii) the contrary is not proved by the prosecution beyond reasonable doubt.”.

**6. Regulation 51 amended (penalty)**

(1) Regulation 51(1)—

**Repeal**

everything after “10,”

**Substitute**

“11(1), 12(1), 13, 15(2) or (3), 21(2), 23(1) or (2), 24, 26(4) or 39(1), (2) or (3), or any requirement of the Water Authority under regulation 15(1), 21(1) or 32(2) or (4), commits an offence.”.

(2) Regulation 51(2)—

**Repeal**

everything after “who”

**Substitute**

“commits an offence under subregulation (1) is liable on conviction to a fine at level 3.”.

**7. Schedule 1 amended**

Schedule 1—

**Repeal**

“& 46AB]”

**Substitute**

“, 46AB & 47]”.

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## **Part 4**

### **Related Amendment to Landlord and Tenant (Consolidation) Ordinance (Cap. 7)**

- 8. Section 120AAZZA amended (Commissioner may disclose information)**

After section 120AAZZA(1)(a)—

**Add**

“(ab) regulation 47, 47A, 47B or 47C of the Waterworks Regulations (Cap. 102 sub. leg. A);”.

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## Explanatory Memorandum

The main object of this Bill is to amend the Waterworks Ordinance (Cap. 102) (*principal Ordinance*) and the Waterworks Regulations (Cap. 102 sub. leg. A) (*Cap. 102A*) to—

- (a) increase the penalty for the offence of selling or offering for sale water from the waterworks without permission (*targeted offence*);
  - (b) provide for the related powers of the Director of Water Supplies (*Water Authority*); and
  - (c) provide for related offences.
- 2. Clause 1 sets out the short title and provides for commencement.
- 3. Clause 3 amends section 37 of the principal Ordinance to—
  - (a) add certain matters as matters for which regulations may be made; and
  - (b) increase the maximum penalty that may be provided under a regulation made under that section.
- 4. Clause 4 amends regulation 47 of Cap. 102A to provide that a person who commits the targeted offence is liable on a first conviction to a fine at level 3 and on a subsequent conviction to a fine at level 4, as well as (in the case of sale) to repay any excess amount of money received as ordered by a magistrate. That regulation is also amended to set out the scope of the targeted offence in more details.
- 5. Clause 5 adds the following 4 new regulations to Cap. 102A—
  - (a) regulation 47A empowers the Water Authority to request certain information or document for the

purposes of regulation 47 of Cap. 102A and to disclose certain information or document, and makes it an offence for a person to, without reasonable excuse, fail to comply with the Water Authority's request;

- (b) regulation 47B makes it an offence for a person to, in purported compliance with the Water Authority's request, say or state anything, or provide any document, that is false or misleading in a material particular;
- (c) regulation 47C provides for the duties of a person (other than the Water Authority) to give, and keep copies of, receipts for charges for water in some cases;
- (d) regulation 47D sets out the burden of proof for an offence under the new regulation 47A or 47C.

- 6. Clauses 6 and 7 make consequential and minor amendments to regulation 51 of, and Schedule 1 to, Cap. 102A respectively.
- 7. Clause 8 amends section 120AAZZA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (**Cap. 7**) to enable the Commissioner of Rating and Valuation to disclose information obtained under Part IVA of Cap. 7 to certain persons for the purposes of regulation 47, 47A, 47B or 47C of Cap. 102A.