

WATER POLLUTION CONTROL (SEWERAGE) REGULATION

(Made by the Governor in Council, after consultation with
the Advisory Council on the Environment
under section 46(2) of the Water Pollution
Control Ordinance (Cap. 358))

PART I

PRELIMINARY

1. Interpretation and application

(1) In this regulation -

"Crown land" means unleased land within the meaning of the Crown Land Ordinance (Cap. 28);

(2) In sections 2, 3, 4, 5 and 7 -

"owner", in relation to any land, includes -

(a) where the land is Crown land that is occupied unlawfully or without authorization of the Crown, the occupier of such land; and

(b) where the land is Crown land that is held under a licence or tenancy directly from the Government, the licensee or tenant as the case may be.

PART II
CONNECTION TO SEWERAGE

2. Mandatory connection to communal sewer

For the purpose of enabling connection to a communal sewer the Authority may by service of a notice on the owner of any land or premises require the owner to -

- (a) construct works to convey wastewater from the land or premises to a place specified in the notice and to complete the construction within a time specified in the notice; and
- (b) comply with additional requirements specified in the notice relating to the design and construction of the works, including the installation of pumping systems if the Authority considers it necessary.

3. Authority may construct sewerage connections

(1) For the purpose of connecting wastewater to a communal sewer, the Authority may enter any land or premises and construct sewers, drains and related works.

(2) Not less than 28 days before starting construction the Authority shall -

- (a) serve a notice on the owner of the land or premises on or under which the construction is to be carried out, or through which access is needed to carry out the construction; and
- (b) give notice in writing to the occupier of, or post a notice on, the land or premises referred to in paragraph (a),

stating the nature and probable extent of the works and when they will commence.

(3) Following completion of the construction the Authority shall reinstate the entered land or premises, as far as it is practicable to do so, to the condition it was in before the entry.

4. Maintenance of sewerage works

(1) The owner of any land or premises shall maintain any works constructed pursuant to this regulation for the purpose of conveying wastewater from such land to a place for connection to a communal sewer.

(2) The Authority may by service of a notice on the owner of any land or premises require the owner to carry out any maintenance specified in the notice for which the owner is responsible pursuant to subsection (1), and to do so within a time specified in the notice.

5. Demolition of redunant wastewater treatment facilities

Where, as a result of providing a sewerage connection to any land or premises, wastewater treatment facilities have become redundant the Authority may by service of a notice on the owner of the land or premises require him, within a time specified in the notice, to carry out works to fill in or demolish the facilities and any associated drainage as specified in the notice.

PART III

WASTEWATER TREATMENT FACILITIES

6. Operation and maintenance of wastewater treatment facility

(1) Where the Authority considers that a wastewater treatment facility in a water control zone -

- (a) is being operated or maintained in a manner that results in or is likely to result in the effluent from the facility not complying with licence requirements;
- (b) is being operated or maintained in a manner that is or is likely to be harmful to the health or safety of any person carrying out the operation or maintenance;
- (c) is failing to produce an effluent which is in compliance with the licence; or
- (d) is structurally defective;

he may by service of a notice on the owner of the wastewater treatment facility require the owner to construct works, effect repairs or modify or carry out operations as specified in the notice and to do so within a time specified in the notice.

(2) For the purpose of subsection (1) -

- (a) if there is more than one owner of the wastewater treatment facility, service of a notice on any one of the owners shall be sufficient service; and
- (b) if a wastewater treatment facility is connected to land or premises the owners of which have been incorporated under section 3 of the Building Management Ordinance (Cap. 344), service of a notice on the owners corporation shall be sufficient service.

PART IV

POWER OF AUTHORITY TO UNDERTAKE WORKS ETC.

7. Authority may undertake works

(1) Where any works specified in a notice served under section 2, 4, 5 or 6 have not been carried out or are not completed within the time specified in the notice, the Authority may undertake the works.

(2) For the purpose of undertaking works under subsection (1) the Authority may, subject to subsection (3), at all reasonable times enter upon any land or premises on or under which the works are to be carried out or through which access is needed to carry out the works.

(3) Not less than 28 days before undertaking the works the Authority shall -

- (a) serve a notice on the owner of the land or premises on or under which the works are to be carried out, or through which access is needed to carry out the works;
- (b) give notice in writing to the occupier of, or post notice on, the land or premises to be affected by the works; and
- (c) in the case of works specified in a notice served under section 6, serve a notice on the owner of the wastewater treatment facility,

stating the nature and probable extent of the works and when they will commence.

(4) Following completion of the works the Authority shall reinstate the entered land or premises, as far as it is practicable

to do so, to the condition it was in before the entry.

(5) All costs incurred by the Authority in carrying out work under this section are recoverable as a civil debt due to the Crown from the person liable to carry out the works specified in the notice referred to in subsection (1), regardless of whether that person has been convicted of an offence under section 27.

(6) In this section, "works" means any thing the Authority may require to be done by notice served under sections 2, 4, 5 or 6.

8. Authority may take over operation of facility

(1) If there is more than one owner of a wastewater treatment facility in a water control zone and the owners have failed to do any of the things required in a notice served under section 6 within the time specified in the notice, the Authority may apply to a Magistrate for an order empowering the Authority, or any authorized officer or agent of the Authority, as from a date specified in the order (the "effective date"), to enter land or premises on which the facility is located and to take over operation of the facility.

(2) The Magistrate shall not make an order under subsection (1) unless he is satisfied that the owners of the facility are unable or unwilling to operate the facility as specified in the Authority's notice served under section 6(1), and the effluent -

- (a) does not comply with licence requirements;
- (b) does or is likely to endanger public health;
- (c) is or is likely to be harmful to the health or safety of any person engaged in the operation of the facility or of the drainage or sewerage system; or
- (d) is or is likely to be harmful to any drainage or sewerage system.

(3) All costs incurred by the Authority in operating the facility under this section are recoverable as a civil debt due to the Crown from any of the owner of the facility regardless of whether the owner has been convicted of an offence under section 27.

(4) Where, on application by any of the owners of a wastewater treatment facility, the Magistrate considers that the owners will properly operate the plant the Authority may return control of the plant to them, subject to any conditions he may think appropriate.

(5) An order made under this section shall not have effect unless there is served on the owners or any one of them a notice of the order and the effective date.

(6) No person shall, in the exercise of any power of entry conferred by an order made under subsection (1), enter upon any land which is occupied without giving to the occupier at least 28 days' notice of his intention to do so unless -

(a) the Authority is of the opinion that an emergency exists which necessitates immediate entry; or

(b) the entry is required for the purpose of inspecting any works, structure or apparatus or carrying out any routine maintenance on them.

(7) Notice under subsection (6) may be given to and shall be deemed to have been received by an occupier if a written notice is affixed to a conspicuous part of the land to be entered.

PART V

RIGHTS TO COMPENSATION

PART VI
COMPENSATION CLAIMS PROCEDURE

14. - 19. [See rider]

PART VII
ASSESSMENT AND AWARD OF COMPENSATION

20. - 24. [See rider]

PART VIII
MISCELLANEOUS

25. Appeals

(1) Any person -

- (a) who, being a person named in a notice issued by the Authority under section 2, 4, 5 or 6 as being required to carry out works, disputes that he is liable under that section to carry out the works; or
- (b) from whom the Authority is seeking to recover under section 7(5) or 8(3) the cost of works carried out and who disputes the amount claimed by the Authority as the cost of such works,

may appeal to an Appeal Board constituted under Part VI of the Ordinance.

(2) An appeal under subsection (1) shall be made by lodging a notice of appeal within 21 days after the person aggrieved has been served with the notice to carry out works or a demand for the cost of the works.

26. Application of Cap. 370

(1) For the purpose of the carrying out of works or the construction, maintenance, repair or demolition of works under the Regulation, or of any matter related or incidental to such purpose, those sections of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) as are specified in column 1 of Part I of Schedule 2 shall apply to this Regulation with the necessary changes and specifically with the modifications and additions, if any, to those provisions specified in column 2 of Part I of that Schedule opposite such provision or in Part II of that Schedule.

(2) Any modification or addition specified in Schedule 2 shall apply for the purposes mentioned in subsection (1) and shall be deemed to be part of the Roads (Works, Use and Compensation) Ordinance (Cap. 370).

27. Contravention of notice

(1) Any person who fails to comply with any requirement specified in a notice issued under section 2, 4(2) or 5 commits an offence and is liable to a fine of \$100,000 and in addition, if the offence is a continuing offence, to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

(2) Any person who fails to comply with any requirement specified in a notice issued under section 6(1) commits an offence and is liable to a fine of \$200,000 and in addition, if the offence is a continuing offence, to a fine of \$10,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

28. Service of notices etc.

(1) Any notice required to be served under this Regulation may be served by serving a copy -

(a) personally; or

(b) by registered post addressed to the last known place of business or residence of the person to be served.

(2) If the address of the person to be served is unknown to the Authority and cannot be ascertained by him after reasonable inquiry, the posting of a copy of the notice in a prominent position on or near the land or premises to be affected shall be deemed to be good service.

(3) The notice shall be in writing in both the English and Chinese languages.

(4) Where service is effected other than in the manner provided in subsection (2), a copy of the notice shall be posted in a prominent position on or near the land to be affected.

(5) A certificate purporting to be signed by a public officer shall be prima facie evidence of the facts stated in the certificate relating to the service, giving, publication or affixing of any notice.

29. Certain Ordinances not to apply

(1) Except to the extent that provision is otherwise made in this Regulation -

(a) the Crown Lands Resumption Ordinance (Cap. 124) shall not apply to any claim for a determination, award or payment of compensation for the resumption of any land ordered under this Regulation; and

(b) the Buildings Ordinance (Cap. 123) shall not apply to anything done under this Regulation for the purpose of giving rise to any claim for compensation.

(2) Part VIII of the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap. 123 sub. leg.) shall not apply to anything done pursuant to this Regulation.

SCHEDULE 1

COMPENSATION RIGHTS AND ASSESSMENT

[See rider]

SCHEDULE 2

APPLICATION OF PROVISIONS OF CAP. 370 TO THE ORDINANCE

PART I

Section
applied

Modification or addition

2 (a) In subsection (1) -

(i) Add -

"Authority" has the same meaning as in the
Water Pollution Control Ordinance
(Cap. 358)";

(ii) In the definition of "claim", delete
"section 29" and substitute "the Water
Pollution Control (Sewerage) Regulations
(Cap. 358 sub. leg.)";

(iii) In the definition of "Secretary", delete "Transport" and substitute "Planning, Environment and Lands";

(iv) Delete the definition of "use" and substitute -

(v) Delete the definition of "works" and substitute -

"works" means any thing which may be done by the Authority or may be required by the Authority to be done under or pursuant to Part II, III or IV of the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg.);

(b) Delete subsections (2) to (4).

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4 Delete subsection (1)(b)(i).

5 In paragraph (b)(i), delete "and the use to which he intends the road will be put".

6 In 6(2)(b), delete "and" and substitute "or".

8, 9

10 In subsection (1), delete everything after "both" and
substitute a full stop.

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15 Delete subsections (5) and (6) and substitute -

"(5) No person shall, in the exercise of any power of entry referred to in subsection (3), enter upon any land which is occupied without giving to the occupier at least 28 days' notice of his intention to do so unless -

- (a) the Authority is of the opinion that an emergency exists which necessitates immediate entry; or
- (b) the entry is required for the purpose of inspecting any works, structure or apparatus or carrying out any routine maintenance on them.

(6) Notice under subsection (5) may be given to and shall be deemed to have been received by an occupier if a written notice is affixed to a conspicuous part of the land to be entered."

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24 Delete "\$5,000" and substitute "\$10,000".

36 Delete paragraph (c)(ii).

37,

- 38 (a) in paragraph (a), delete "nor to any claim for a determination, award or payment of compensation for such resumption;
- (b) in paragraph (b), delete "; and" and substitute a full-stop;
- (c) delete paragraph (c).

PART II

1. In section 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 (except 14(2)(f)), 15, 16 (except 16(2)(f)), 18 (except 18(2)(e)), 19, 20, 21 (except 21(3)(d)), 22 and 36, delete "Secretary" wherever occurring and substitute "Authority".

2. In section 14(2)(f), 16(2)(f), 18(2)(e) and 21(3)(d), delete everything after "under" and substitute -

"the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg.) may serve a written claim upon the Secretary."

3. A reference in any section specified in column 1 of

Part I -

- (a) to another provision of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) shall be read as a reference to the other provision in that Ordinance;
- (b) to "this Ordinance" shall be read as a reference to the Roads (Works, Use and Compensation) Ordinance (Cap. 370).

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PART V

RIGHTS TO COMPENSATION

9. No right to compel or restrain

No action, claim or proceedings shall lie or be brought against the Crown or any other person to restrain the doing of anything which is authorized by or under this Regulation or to compel the doing of anything which may be omitted to be done under this Regulation.

10. No recovery of money except under this Regulation

No action, claim or proceedings shall lie or be brought against the Crown or any other person to recover damages, compensation or costs for -

- (a) damage or disturbance to or loss of or in the value of any land, chattel, trade or business;
- (b) personal disturbance or inconvenience;
- (c) extinguishment, modification or restriction of rights;
- (d) the costs of effecting or complying with any requirement or condition imposed by the Authority,

which is authorized by or under this Regulation or arises from any act or omission so authorized, except in pursuance of one of the

rights to compensation provided for in section 11.

11. Compensation

(1) The compensation referred to in section 10 is the right to recover from the Crown for the matters set out in the first column of Part II of Schedule 1 an amount assessed on the basis specified opposite thereto in the second column thereof and with regard to Part I of Schedule 1, subject to -

(a) the claim being served on the Secretary within the period specified in the fourth column of Part II of Schedule 1; and

(b) the other provisions of this Regulation.

(2) Every person who is described in the third column of Part II of Schedule 1 has the right to recover compensation for the matters set out opposite thereto in the first column to the extent suffered or incurred by him as assessed under this Regulation.

12. Claims out of time

(1) Subject to subsection (2) and section 13, if a claim or an amendment to a claim is not served on the Secretary before the expiration of the period specified in the fourth column of Part II of Schedule 1 in respect of that matter, the right to claim compensation for the matter is barred.

(2) The period referred to in subsection (1) may, on application made to the Lands Tribunal either before or after the expiry of that period, be extended in accordance with this section.

(3) Notice of an application under subsection (2) shall be given to the Secretary by the applicant.

(4) The Lands Tribunal may extend the period within which a claim must be served on the Secretary if it considers that the delay in serving the claim was caused by mistake of fact or law (other than the relevant provision in the fourth column of Part II of Schedule 1) or by any other reasonable cause or that the Crown is not materially prejudiced in the conduct of its case or otherwise by the delay.

(5) An extension may be granted by the Lands Tribunal under subsection (4), with or without conditions for a period it considers appropriate but not in any case exceeding 6 years from the time when the right to compensation first arose.

13. Claims out of time where order made under Cap. 370

(1) Without prejudice to section 12, where an order has been made under section 13(1), 15(1) or 17(1) of the Road (Works, Use and Compensation) Ordinance (Cap. 370) and notice of the order has not been served in accordance with section 14(1)(a), 16(1)(a) or 18(1)(a) respectively of that Ordinance, the Secretary may, if satisfied that the claimant has not had actual notice of the order, accept service of a claim after the period specified in the fourth column of Part II of Schedule 1 for service, and if he does so, the claim shall be deemed to have been served within that period.

(2) A reference in subsection (1) to the Roads (Works, Use and Compensation) Ordinance (Cap. 370) shall be read as a reference to that Ordinance as applied to this Regulation by section of this Regulation.

PART VI
COMPENSATION CLAIMS PROCEDURES

14. Service of claims

(1) Any person who claims to be entitled to compensation under this Regulation shall serve on the Secretary a written claim setting out such of the following particulars as are applicable to his claim

- (a) the name of the claimant, and his address for service of notices;
- (b) a full description of the land to which the claim relates including any covenants, easements, rights or restrictions affecting the land;
- (c) the nature of the claimant's interest in the land including, in the case of a sub-lessee or sub-tenant, his landlord's name and address and details of the sub-lease or tenancy;
- (d) details of any mortgage, including the principal still owing and name and address of the mortgagee;
- (e) if the claimant has let the land or any part of it, the name and address of each tenant and details of his lease or tenancy;
- (f) particulars of the claim showing -
 - (i) the amount of the claim;
 - (ii) under which item of Part II of Schedule 1 the claim is made; and
 - (iii) how the amount claimed under each item is calculated.

(2) The Secretary shall in writing acknowledge receipt and the date of receipt of every claim served on him under subsection (1).

15. Amendment of claims

If a claimant amends his claim before proceedings are commenced in the Lands Tribunal and the Secretary considers the amendment to be substantial, the Secretary may, within 28 days after the receipt of the amended claim, notify the claimant that he elects to treat the claim, for the purposes of this section, as if it were a new claim served under section 14(1) on the date on which the amendment was received by the Secretary, and this section shall apply accordingly.

16. Secretary may request particulars

The Secretary may by notice in writing to the claimant request him to give further particulars of and in support of his claim or in respect of any aspect of his claim and if any such particulars are not given to the Secretary within a period of 28 days after the date of the notice, or within a further period that the Secretary may in writing allow, the claim or the particular aspect about which the particulars are requested shall be deemed to be rejected and section 17(1) shall not apply thereto.

17. Admission or rejection of claim
by Secretary

(1) The Secretary shall within 6 months after the service of a claim on him or, if he has requested further particulars under section 16, within 6 months after the day on which they are given in accordance with that subsection, notify the claimant in writing that

he -

- (a) admits the entire claim;
- (b) rejects the entire claim; or
- (c) admits a specified part or parts and rejects the remainder,

and in the case at paragraph (b) or (c) shall briefly state his reasons for rejection so that the claimant is adequately informed of those reasons:

Provided that the Secretary may at any time state further reasons for rejection of claim.

(2) Where the Secretary has rejected a claim or any part of a claim under subsection (1) or where a claim or any part of a claim is deemed to have been rejected under section 16 the Secretary may -

- (a) by notice in writing offer to the claimant such amount, including costs as agreed or taxed, as the Crown is willing to pay in full and final settlement of the claim or any part of the claim;
- (b) commence proceedings in the Lands Tribunal, to have the claim or any part of the claim in respect of which no offer is made heard and determined by it in accordance with this Regulation; or
- (c) commence such proceedings in the Lands Tribunal where an offer under paragraph (a) is not accepted by the claimant within 28 days after the date of the offer.

18. Reference to the Lands Tribunal

(1) If, after the expiry of 7 months after the receipt of a claim by the Secretary, it has not been settled by agreement, either

the claimant or the Secretary may commence proceedings in the Lands Tribunal to have the claim, or any part of it that is still then in dispute heard and determined by it under this Regulation.

(2) In any case where the claimant has failed to supply further particulars required by the Secretary in accordance with section 16, the Lands Tribunal may on the hearing of the claim consider the merits of the Secretary's request for further particulars and the claimant's failure to supply them and may, if it thinks fit -

- (a) order the claimant to supply some or all of the particulars;
- (b) adjourn the hearing until the order is complied with and the particulars are considered by the Secretary; and
- (c) make any further order it considers appropriate as to the costs of either party caused by the Secretary's request for and the claimant's failure to supply the further particulars.

19. Settlement after reference to Lands Tribunal

(1) At any time after proceedings have been commenced in the Lands Tribunal but before compensation is finally assessed the Secretary may make an offer in writing of the kind described in section 17(2)(a) or the claimant may by notice to the Secretary state an amount (inclusive or exclusive of costs) which he is willing to accept in full and final settlement of his claim or any rejected part of his claim.

(2) Where an offer made by the Secretary pursuant to section 17(2)(a) or by the Secretary or the claimant pursuant to subsection

(1) is not accepted by the other party, no part of the contents thereof which relates to any part of a claim before the Lands Tribunal shall be disclosed to the Tribunal until the amount of compensation for that part is assessed by it; but a copy of the offer enclosed in a sealed envelope may be lodged with the registrar of the Lands Tribunal and opened by it after it has made its assessment.

(3) Where the Secretary has made any offer under section 17(2)(a) or subsection (1), including costs as agreed or taxed, which is not accepted by the claimant and the compensation assessed by the Lands Tribunal does not exceed the amount of compensation comprised in the offer, the Lands Tribunal shall, unless for special reason it thinks it proper not to do so, order the claimant to bear his own costs and to pay the costs of the Secretary in so far as the costs are incurred after the making of the offer.

(4) Where the claimant states a sum which he is willing to accept under subsection (1) which is not paid by the Secretary and the compensation assessed by the Lands Tribunal is not less than that sum, the Lands Tribunal shall, unless for special reason it thinks it proper not to do so, order the Secretary to bear his own costs and to pay the costs of the claimant.

PART VII

ASSESSMENT AND AWARD OF COMPENSATION

20. Jurisdiction of Lands Tribunal

(1) The Lands Tribunal has jurisdiction to hear and determine in accordance with this Regulation -

- (a) all claims for compensation which the Secretary or the claimant may refer to it under section 17(2) or 18; and
- (b) applications provided for by sections 12(2) and section 23(2) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) as applied to this Regulation by section _____ of this Regulation.

(2) The Lands Tribunal also has jurisdiction to award full or partial compensation to a claimant if at the time of the award it has no notice or intimation of any dispute as to his entitlement; but the making of such an award does not affect the entitlement to receive compensation under this Regulation of any other person who may afterward be held by a court of competent jurisdiction to have a better title to all or part of the compensation than the person to whom it was awarded.

(3) An award of compensation under subsection (2) does not in any way affect the entitlement of a mortgagee to be paid compensation in accordance with section 21.

21. Payment to mortgagees

(1) Subject to subsection (2), a mortgagee of land which reverts to the Crown or vests in The Financial Secretary Incorporated under this Regulation shall, in so far as he has priority as against any other mortgagee, be entitled to be paid so much of any compensation as is required to discharge his mortgage debt including any interest on it.

(2) If compensation is payable under this Regulation otherwise than for land resumed or if the land to which compensation relates

is part only of the mortgage security a mortgagee shall, in so far as he has priority as against any other mortgagee, be entitled to be paid so much of the compensation as is necessary to reduce his mortgage debt to an amount which is adequately secured by the land or the remaining land as the case may be.

(3) The payment of compensation as required by subsections (1) and (2) shall be made in accordance with the written agreement of the claimant and every mortgagee of the land or failing such agreement in accordance with an order of the Supreme Court under subsection (4).

(4) The claimant or any mortgagee may apply to the High Court for an order as to the payment of unpaid compensation and the Court may make an order that it thinks just and equitable having regard to the requirements of subsections (1) and (2).

22. Interest

The Lands Tribunal may direct that interest be paid on compensation (but not on costs) -

- (a) in the case of compensation payable under item 1 of Part II of Schedule 1, as if the claim were made under the Crown Lands Resumption Ordinance (Cap. 124) for land resumed under that Ordinance; and
- (b) in any other case, from a date and for a period that it considers appropriate and at a rate that it may fix but not below the lowest rate payable during that period by members of the Hong Kong Association of Banks on time deposits.

23. Compensation payable out of general revenue

All compensation (including interest on compensation) and all costs -

(a) agreed to be paid to the claimant by the Secretary; or

(b) awarded by the Lands Tribunal against the Crown,

shall be paid out of the general revenue within 3 months after the agreement or final award unless there is a dispute as to the person entitled to the compensation.

24. Surrender of title documents

The Secretary may require a claimant to whom compensation is payable for land resumed under this Ordinance to surrender his documents of title to the Secretary as a condition of payment being made; and in any case where the documents of title relate also to land not resumed, the Secretary shall return them to the claimant after the resumption has been noted in the register of the land kept in the Land Registry.

SCHEDULE 1

[sections 11 & 12]

PART I

1. General effect of this Part

The provisions in this Part shall, where applicable, have effect for the purpose of assessing compensation under Part II of this Schedule and shall-

- (a) be in addition to such of the provisions of the Crown Lands Resumption Ordinance (Cap. 124) as apply, by virtue of Part II, to the assessment of compensation; and
- (b) prevail over any provision referred to in sub-paragraph (a) which is inconsistent or in conflict with a provision in this Part.

2. Definitions applicable to Part II

In this Schedule-

"Cap. 370 as applied" means the Roads (Works, Use and Compensation) Ordinance (Cap. 370) as applied by section of this Regulation;

"date of resumption" means the day on which land reverts to the Crown or vests in The Financial Secretary Incorporated under section 13(3) of Cap. 370 as applied;

"disturbance" means the dispossession of a person of land or the interruption of or interference with a trade or business, whether such dispossession, interruption or interference is temporary or permanent;

"disturbance payment" means a sum equal to-

- (a) the expenditure and loss of money actually and reasonably incurred or to be reasonably incurred and arising from the dispossession of a person of land by reason of the matter for which the claimant is entitled to claim compensation under Part II of the Schedule; and
- (b) in the case of disturbance of a trade or business on any land, the expenditure and loss of money actually and reasonably incurred or to be reasonably incurred and arising from the disturbance of that trade or business by reason of the matter for which the claimant is entitled to claim compensation under Part II of the Schedule:

Provided that a disturbance payment shall not include any expenditure or loss which would not be recoverable, on the grounds that the expenditure or loss was too remote or was not caused by the disturbance, if that disturbance were a tort;

"open market value" means the amount which the land, if sold in the open market by a willing seller, might reasonably be expected to realize.

3. Fluctuations in value of land

Subject to paragraphs 8 and 10, where the open market value of any land is relevant for the purposes of assessing compensation under this Regulation, no account shall be taken of any increase or decrease in that value which is attributable to anything done or proposed to be done under this Regulation [or to the use].

4. Disturbance payments

(1) For the purposes of assessing the amount to be awarded to a claimant in respect of a disturbance payment, the Lands Tribunal shall, in respect of any expenditure or loss to be incurred and in respect of which the claimant is entitled under this Regulation to be compensated, assess the value of that expenditure or loss at the time of the award as if that expenditure or loss formed part of a claim for damages in tort.

(2) No disturbance payment shall be payable in respect of any interference with a trade or business in any case in which such interference does not subsist for a period exceeding 14 days.

5. Unlawful building [or development] works

Compensation may be reduced so far as may be just and equitable in respect of any building [or development] or part thereof[,] which has been constructed or modified, or on which building works have been carried out, so as to amount to a contravention of the Buildings Ordinance (Cap. 123) [or the Town Planning Ordinance (Cap. 131)] being a contravention within the meaning of that Ordinance or to a contravention of a Crown lease or other instrument under which land built upon is held.

6. Compensation where damage results only partly from the works

The compensation assessed under item 6 or 7 of Part II of this Schedule shall be reduced to such extent as may be just and equitable having regard to the share in the responsibility for the loss or damage not reasonably attributable to or connected with the works.

7. No compensation under item 8 for loss of advertising

Where a sign advertising any business, product, service or activity is removed under section 21 of Cap. 370 as applied, nothing in item 8 of Part II of this Schedule shall be construed as conferring upon any person a right to compensation for the loss of any benefit which might have accrued to him from the advertising of that business, product, service or activity if the sign had not been removed.

8. Set off where compensation paid for loss of value and land later resumed

Where compensation under item 2, 3, 4, 5, 8 or 9 of Part II of this Schedule has been paid in respect of the diminution in value of any land and such land or part thereof is subsequently resumed by the Crown under this Regulation or any other enabling power, then notwithstanding paragraph 3 of this Part of this Schedule or any other provision of law to the same or similar effect, that diminution in value shall be taken into account to reduce the compensation for the resumption of that land in so far as it was taken into account in the assessment of compensation for the diminishing in value thereof.

9. Claim by a mortgagee in possession

Where under this Regulation a claim for compensation may be made by a mortgagee in possession-

- (a) such claim may include compensation in respect of the whole interest which comprises the mortgage security; and
- (b) compensation received by a mortgagee in possession shall

be applied by him firstly, to the settlement or reduction of the debt due under the mortgage and then to the payment of any excess to the mortgagor.

10. Limitation on compensation payable under item 9

Compensation shall be payable under item 9 of Part II of this Schedule only to the extent that the carrying out of building works in accordance with an amendment required, or condition imposed, under section 22(1)(c) or (d) of Cap. 370 as applied does not increase the open market value of the land on which the building works are carried out.

11. Apportionment of compensation

Where there is a dispute between persons owning compensatable interests in any land or building as to the apportionment of the compensation payable or paid, the Lands Tribunal shall, on the application of any such person, apportion that compensation amongst such persons in such manner as may be just and equitable having regard to their respective rights and interests in the land or building.

12. Date of valuation and interest

Where, under the second column of Part II of this Schedule, compensation is to be assessed on the basis of the value of land, or the value of a claimant's interest in land, or of a rent, that value or that rent shall be assessed as at the date of the happening of the relevant event mentioned in the first column of Part II of this

Schedule; and the person entitled to claim shall be the person fitting the description mentioned in the third column of Part II of this Schedule on that date.

13. No double compensation

Nothing in this Regulation shall enable any person to recover compensation-

- (a) in respect of a loss or expense which he has not suffered or incurred; or
- (b) which is greater than the loss suffered or expense incurred by him:

Provided that in assessing compensation under this Regulation, no account shall be taken of any amount recovered by the claimant under a policy of insurance.

14. Crown may undertake work

Where, under this Regulation, a person is entitled to claim compensation and that compensation is to be assessed on the basis of an expense incurred, the Crown may, on written notice to that person, carry out the operations in respect of which the expense would otherwise be claimable.

PART II

Matters for which compensation may be claimed	Basis on which compensation is to be assessed	Persons who may claim compensation for their respective losses	Period within which the claim must be served on the Secretary
1. The resumption of land under section 13 of Cap. 370 as applied.	As if the claim were made under the Crown Lands Resumption Ordinance (Cap. 124) for land resumed under that Ordinance.	Any person who would be entitled to claim compensation for land resumed under the Crown Lands Resumption Ordinance (Cap. 124) if the land had been resumed thereunder.	Before the expiration of 1 year from the date of resumption.
2. (a) The creation of an easement or other permanent	(a) (i) In the case of an easement or other permanent	(a) Any person owning a compensatable interest in the land.	(a) Before the expiration of 1 year from the date on

right or a right
of temporary
occupation under
section 15 of
Cap. 370 as
applied.

right, the amount
by which the open
market value of the
claimant's interest
in the land is
diminished.

which the
easement or right
is created.

(ii) In the case
of the creation of
a right of
temporary
occupation, the
amount of an open
market rent for
claimant's interest
in the land
occupied during the
period of the
easement.

- | | | | |
|--|--|--|--|
| <p>(b) Disturbance resulting from the creation of an easement or other permanent right or a right of temporary occupation under section 15 of Cap. 370 as applied.</p> | <p>(b) A disturbance payment</p> | <p>(b) Same as in <u>item 2(a)</u>.</p> | <p>(b) Same as in <u>item 2(a)</u>.</p> |
| <p>3. (a) The extinction, by the operation of section 13(3) of Cap. 370 as applied, of any easement in favour of land not resumed when</p> | <p>(a) The expense fairly and reasonably incurred in remedying or mitigating the effect of the extinction of the easement, as far as</p> | <p>(a) Any person owning a compensatable interest in the land not resumed.</p> | <p>(a) Before the expiration of 1 year from the date of resumption of the adjacent or contiguous land.</p> |

adjacent or
contiguous land
is resumed.

may be practicable,
and any diminution
in the open market
value of the
claimant's interest
in the land not
resumed after such
expense has been
incurred.

(b) Disturbance
resulting from
the extinction
of that easement.

(b) A disturbance
payment.

(b) Same as in item 3(a). (b) Same as in item
3(a).

4. The closure of, or
extinction,
modification or

(a) The expense fairly
and reasonably
incurred in

Any person owning a
compensatable interest
in the land.

Before the expiration
of 1 year from the
closure, extinction,

restriction of a private right in respect of, a road or part of a road under section 17 of Cap. 370 as applied, so that access to any land is adversely affected.

remedying or mitigating the effect of such closure, extinction, modification or restriction, as far as may be practicable, and any diminution in the open market value of the claimant's interest in the land after such expense has been incurred.

modification or restriction.

(b) A disturbance payment.

5. (a) The extinction, modification or restriction of any private right over Crown foreshore or seabed under section 17 of Cap. 370 as applied.
- (a) The amount which is fairly and reasonably assessed to be the open market value of the right and, where the claimant has a compensatable interest in contiguous or adjacent land, any diminution in the open market value of that interest.
- (a) Any person in whom the private right is vested.
- (a) Before the expiration of 1 year from the date of extinction, modification or restriction.
- (b) Disturbance resulting from that extinction,
- (b) A disturbance payment.
- (b) Same as in item 5(a).
- (b) Same as in item 5(a).

modification or
restriction.

6. (a) Physical or structural damage to any land or building resulting from any works undertaken by the Authority -
- (i) under Part II of this Regulation;
 - or
 - (ii) under Part IV of this Regulation

(a) The expense which is fairly and reasonably incurred in repairing the damage and any expense fairly and reasonably incurred in preventing or mitigating the damage.

(a) Any person owning a compensatable interest in the land or building.

(a) Before the expiration of 1 year from the date of the completion of the works.

if caused by
negligence
of the
Authority
(but not
otherwise).

(b) Disturbance
resulting from
the structural
damage mentioned
in item 6(a).

(b) A disturbance
payment.

(b) Same as in item 6(a). (b) Same as in item
6(a).

7. (a) Physical or
structural
damage to any
land or building
resulting from

(a) The expense which
is fairly and
reasonably incurred
in repairing the
damage and any

(a) Any person owning a
compensatable
interest in the land
or building.

(a) Before the ex-
piration of 1 year
from the date of
completion of the
operations

the exercise of any power contained in section 19 of Cap. 370 as applied.

expense fairly and reasonably incurred in preventing or mitigating the damage.

carried out under section 19 from which the damage is alleged to have resulted.

(b) Disturbance resulting from the exercise of any power contained in section 19 of Cap. 370 as applied.

(b) A disturbance payment.

(b) Same as in item 7(a). (b) Same as in item 7(a).

8. (a) The removal, under section 21 of Cap. 370 as

(a) Any diminution in the open market value of the

(a) Any person owning a compensatable interest in the land

(a) Before the expiration of 1 year from the date of

applied, of any object or structure which was erected and maintained without the contravention of any Ordinance or Crown lease.

claimant's interest in the land or building; and the expense which is fairly and reasonably incurred in moving the object or structure and making good that part of the building from which it is removed.

or building.

removal.

(b) Reinstating an object or structure described in item 8(a) or of replacing the

(b) The expense fairly and reasonably incurred in so doing in so far as that expense is not taken into account

(b) Same as in item 8(a).

(b) Before the expiration of 1 year from the date of reinstatement or replacement.

same with a similar object or structure. under item 8(a).

(c) The loss sustained in respect of an object or structure which was erected and maintained without the contravention of any Ordinance or Crown lease and is not to be reinstated or replaced with a similar object or structure.

(c) The amount which is fairly and reasonably estimated as the value of the object or structure.

(c) Any person owning a share or interest in the object or structure.

(c) Before the expiration of 1 year from the date of removal.

(d) Disturbance resulting from the exercise of any power contained in section 21 of Cap. 370 as applied.	(d) A disturbance payment.	(d) Same as in <u>item 8(a)</u> .	(d) Same as in <u>item 8(a)</u> .
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9. An amendment required or a condition imposed, under section 22(1)(c) or (d) of Cap. 370 as applied, (other than a condition mentioned in section 22(6)), to avoid incompatibility with the works.	The amount which is fairly and reasonably estimated as the loss to the claimant, including - (i) any additional expense fairly and reasonably incurred in carrying out building works; and	The owner of the land on which the building works are carried out.	Before the expiration of 1 year from the completion of the building.
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(ii) in respect of
 professional fees
 and expenses,
 which loss, expense,
 fees and expenses are
 attributable solely to
 compliance with the
 amendment required or
 the condition imposed.

- | | | | |
|----------------------|------------------------------|--------------------------------------|------------------------|
| 10. [Physical or | Same as <u>item 6(a) and</u> | Same as in <u>item 6(a) and (b).</u> | Same as in <u>item</u> |
| structural damage or | <u>(b).</u> | | <u>6(a) and (b).</u> |
| disturbance | | | |
| resulting from the | | | |
| restoration of | | | |
| waters undertaken by | | | |
| the Authority under | | | |
| section 13A of the | | | |
| Ordinance, but in | | | |

the case of a person
convicted of an
offence referred to
in subsection (1) of
that section,
limited to loss
caused by the
negligence of the
Authority.]

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