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**(ACE Paper 24/98)**  
**for advice**

## **Water Pollution Control (Sewerage) (Amendment) Regulation 1998**

### **Introduction**

This paper seeks Members' advice on the proposals to amend the Water Pollution Control (Sewerage) Regulation (Cap. 358, sub. leg.) (the Sewerage Regulation), to :

- (a) enable the Director of Environmental Protection (DEP) to close roads on a limited scale for carrying out sewerage works without having to go through the gazettal procedure; and
- (b) rectify a minor error in Column 3 of Item 9, Part I of Schedule 1.

A copy of the Water Pollution Control (Sewerage) (Amendment) Regulation 1998 (the Sewerage (Amendment) Regulation 1998) is at Annex A.

### **Proposals**

*To enable DEP to execute sewerage works which require road closure of a limited scale without having to go through the gazettal procedure*

2. The execution of sewerage works would normally require road closure, the extent of which varies from project to project. Under the existing Sewerage Regulation, the powers to close roads are derived from the application of the relevant sections of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) (the Roads Ordinance).

3. Under Section 4 of the Roads Ordinance, the Secretary for Transport (S for T) may execute, without having to go through the gazettal procedure, any road works which, in his opinion, are minor in respect of any physical or structural operations involved (Section 4(1)(a)); and in respect of which the only powers required by him are :

- (a) to close a road which does not serve any useful or lawful purpose (Section 4(1)(b)(i));

- (b) to close a road for a period not exceeding 14 days in any period of 3 months (Section 4(1)(b)(ii));
- (c) to close part of the width of a road to use but not to such an extent as will interfere unreasonably with the normal flow of traffic on that road and for no longer than is reasonably necessary to execute the works (Section 4(i)(b)(iii)).

The whole Section 4, which also includes Sections 4(2) and 4(3), has however not been applied for the purpose of carrying out works under the Sewerage Regulation. The reasons are explained in para. 5 below.

4. As regards other road works (i.e. major road works), S for T would have to seek the exercise of the power of road closure under Section 17 of the Roads Ordinance. A scheme and plan are required to be prepared under Section 5 of the Roads Ordinance. Both Sections have been applied for the purpose of carrying out works under the Sewerage Regulation.

5. When drafting the Sewerage Regulation, consideration had been given to apply Section 4 of the Roads Ordinance to authorise DEP to execute minor road works without having to go through the gazettal procedure. However, no consensus could be reached during the drafting stage to differentiate sewerage works into “minor” or “major” categories. Also, it was the Administration’s perception during the drafting stage that DEP had already been authorised to close roads on a limited scale by exercising the power under Section 2 of the Sewerage Regulation, which stated that the Authority (i.e. DEP) may construct, maintain, repair or demolish any sewerage and carry out related works. Section 4 had therefore not been applied.

6. After the Sewerage Regulation was enacted in June 1994, efforts were made to sort out the detailed implementation arrangements. The question of whether DEP could really authorise sewerage works which require limited road closure by exercising Section 2 of the Sewerage Regulation was raised. The then AGC’s advice was that Section 2 of the Sewerage Regulation did not empower DEP to close roads and that the only power available to close roads for the purpose of sewerage works was conferred by Section 17 of the Roads Ordinance as applied by Section 26 of the Sewerage Regulation.

7. As the gazettal procedure is a time-consuming process, it is desirable to amend the Sewerage Regulation to enable DEP to close roads on a limited scale for executing sewerage works without having to go through the gazettal procedure. This could be achieved by applying Sections 4(1)(b)(i) to (iii), 4(2) and 4(3) of the Roads Ordinance.

To rectify a minor error in sub-paragraphs (i) and (ii) of Column 3 of Item 9 of Part I, Schedule 1

8. To address matters related to compensation, Item 9 of Part II of the Schedule to the Roads Ordinance (Annex B) has been adopted by the Sewerage Regulation and becomes Item 9 of Part I of Schedule 1 to the Sewerage Regulation (Annex C). The two Items were therefore intended to read the same. However, due to a typing error which had not been spotted during the drafting process, the latter part of Column 3 of Item 9 of Part I, Schedule 1 to the Sewerage Regulation, which begins with "which loss, expense, fees ...." (the shaded area in Annex C) and which should qualify both sub-paragraphs (i) and (ii) preceding it has been indented into the preceding sub-paragraph (ii) so that it now qualifies sub-paragraph (ii) only. The implication of this is that the basis for assessing the compensation specified under Item 9 is broader than intended, as sub-paragraph (i) is not within the bounds of the qualifying clause.

9. We propose that the opportunity of this legislative exercise be taken to also rectify this error.

**The Sewerage (Amendment) Regulation 1998**

10. Clause 1 of the Amendment Regulation amends Column 3 of Item 9 of Part I of Schedule 1 in such a way that it will be identical in meaning to the corresponding Column 3 of Item 9 of Part II of the Schedule to the Roads Ordinance.

11. Clause 2 amends Schedule 2 so as to apply the relevant part of Section 4 of the Roads Ordinance, which specifies the type of road closure which gazettal is not required. It also provides for the various consequential amendments as required. A copy of Schedule 2 to the existing Sewerage Regulation, which will be affected by the proposed amendments, is enclosed at Annex D for Members' reference.

**Implementation**

12. Subject to this Council's endorsement, we plan to submit the Sewerage (Amendment) Regulation 1998 to the Executive Council for endorsement in June 1998 and table to the new Legislative Council session for negative vetting in July 1998.

**Economic Implications**

13. The proposal to exempt sewerage works which involve road closure of a limited scale from the gazettal requirement would help expedite the provision of sewerage infrastructure and would give greater certainty to the construction programme of sewerage projects. This should enhance our position to provide an efficient sewerage network to support the economic and social developments of the community, including the need to meet the long-term housing production target.

**Environmental Implications**

14. There are no environmental implications associated with the amendment proposals.

**Advice Sought**

15. Members are invited to endorse the Water Pollution Control (Sewerage) (Amendment) Regulation 1998 as at Annex A.

**Planning, Environment and Lands Bureau  
May 1998**