

WATER POLLUTION CONTROL (SEWERAGE) REGULATION
- CHAPTER 358AL

Empowering section VerDate:30/06/1997

(Cap 358 section 46(2))

[3 June 1994]

(L.N. 323 of 1994)

SECT 1

Interpretation VerDate:01/07/1997

Adaptation amendments retroactively made - see 29 of 1998 s. 75

PART I

PRELIMINARY

(1) In this Regulation-
"building" and "building works" have the same meanings as in
the Buildings Ordinance (Cap 123);
"claim" means a claim for compensation under section 14;
"claimant" means a person who has made a claim for compensation;
"compensatable interest" means the estate or interest of-

(a) a person having an unexpired term in land (including any
further term which could be obtained as of right) of not less than one
month or a tenancy or sub-tenancy terminable (whether by virtue of an
Ordinance or otherwise) by either party by not less than one month's
notice;

(b) a mortgagee in possession;

(c) the holder of a valid and subsisting option to purchase an
estate or interest referred to in paragraph (a) or (b);

(d) a purchaser under an agreement for sale and purchase to whom
the benefit of an estate or interest referred to in paragraph (a) or (b)
has already passed;

"Government land" means unleased land within the meaning of the
Land (Miscellaneous Provisions) Ordinance (Cap 28); (29 of 1998 s. 75)

"land" means immovable property;

"mortgage" means a mortgage or charge registrable in the Land
Registry.

(2) In sections 3, 4, 5 and 7-
"owner" in relation to any land, includes-

(a) where the land is Government land that is occupied unlawfully
or without authorization of the Government, the occupier of such land; and
(29 of 1998 s. 75)

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

case may be. (29 of 1998 s. 75)

(3) In this Regulation, except in section 26 and Schedule 2, a reference to the Roads (Works, Use and Compensation) Ordinance (Cap 370) shall be read as a reference to that Ordinance as applied by section 26. (Enacted 1994)

SECT 2

Authority may construct sewerage VerDate:30/06/1997

PART II

CONSTRUCTION OF AND CONNECTION TO SEWERAGE

(1) For the purpose of establishing and maintaining a communal sewer or connecting wastewater to such a sewer, the Authority may construct, maintain, repair or demolish any sewerage and carry out related works.

(2) Subsection (1) does not apply to sewage tunnel works under the Sewage Tunnels (Statutory Easements) Ordinance (Cap 438). (Enacted 1994)

SECT 3

Mandatory connection to communal sewer VerDate:30/06/1997

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 any additional requirement 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. (Enacted 1994)

SECT 4

Maintenance of sewerage works VerDate:30/06/1997

(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 or premises to a place for connection to a communal sewer.

(2) The Authority may by notice served on the owner of any land or premises require the owner to carry out any maintenance for which the owner is responsible pursuant to subsection (1), and to do so within a time specified in the notice. (Enacted 1994)

SECT 5

Demolition of redundant wastewater treatment facilities VerDate:30/06/1997

Where, as a result of providing a sewerage connection to any land or premises, a wastewater treatment facility has 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 facility and any associated drainage as specified in the notice.

(Enacted 1994)

SECT 6

Operation and maintenance of wastewater treatment facility VerDate:30/06/1997

PART III

WASTEWATER TREATMENT FACILITIES

(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 is likely to result in effluent being discharged from the facility otherwise than in compliance 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 producing an effluent which is not in compliance with any licence requirement; 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 8 of the Building Management Ordinance (Cap 344), service of a notice on the owners corporation shall be sufficient service.

(Enacted 1994)

SECT 7

Authority may undertake works VerDate:30/06/1997

PART IV

POWER OF AUTHORITY TO UNDERTAKE WORKS, ETC.

1) Where any works specified in a notice served under section 3, 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, and of any land or premises through which access is needed to carry out the works;

(b) if such land is occupied, give notice in writing to the occupier of, or post a notice on, the land or premises; 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 works under this section are recoverable as a civil debt due to the Government 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" (â·¥ç") means any thing the Authority may require to be done by notice served under section 3, 4, 5 or 6.
(Enacted 1994)

SECT 8

Authority may take over operation of a multi-owner facility VerDate:30/06/1997

(1) This section applies to a wastewater treatment facility in a water control zone where there is more than one owner of the facility (in this section referred to as a "multi-owner facility").

(2) If the owners of a multi-owner facility have failed to comply with any requirement specified in a notice served under section 6, and it appears to the Authority that the effluent being discharged from the facility-

(a) does not comply with any licence requirement;

(b) is or is likely to be a danger to 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 the drainage or sewerage system,
the Authority may, as from a date specified in a notice issued under subsection (3), enter the land or premises on which the facility is located and take over operation of the facility.

(3) Before exercising any power conferred under subsection (2) the Authority shall serve on the owners of the land or premises notice of his intention to enter the land or premises and take over the operation of the multi-owner facility, and to do so as from a date specified in the notice.

(4) The date specified in a notice served under subsection (3) shall be a date not before the expiry of 28 days beginning on the day following the day of service of the notice, except that if the Authority is of the opinion that an emergency exists which necessitates the earlier exercise of any power conferred under subsection (2) the date to be specified may be earlier than the date so calculated, but shall not be earlier than is necessary having regard to the exigencies of the situation.

(5) A notice under subsection (3) shall include-

(a) particulars of any requirement specified in the notice served under section 6 which the owners have failed to comply with;

(b) any particulars relied on for the purpose of subsection (2)(a) to (d).

(6) A person proposing to exercise any power of entry conferred under this section in respect of any land that is occupied shall give to the occupier at least 28 days' notice of his intention to do so; except that where-

(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, such shorter notice as may be appropriate in the circumstances may be given.

(7) If the owners of a multi-owner facility which is being operated by the Authority under subsection (2) have satisfied the Authority that they are capable of operating the facility in compliance with the Ordinance or any reasonable requirement that may be imposed under a licence or notice issued under the Ordinance in respect of the facility, the Authority shall as soon as practicable return the operation of the facility to the owners.

(8) The owners of the multi-owner facility shall be jointly and severally liable for any costs incurred by the Authority in taking over and operating the facility under this section, regardless of whether any of the owners has been convicted of an offence under section 27, and such

costs shall be recoverable as a civil debt due to the Crown.
(Enacted 1994)

SECT 9

No right to compel or restrain VerDate:30/06/1997

PART V

RIGHTS TO COMPENSATION

No action, claim or proceedings shall lie or be brought against the Government 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.

(Enacted 1994)

SECT 10

No recovery of money except under this Regulation VerDate:30/06/1997

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.

(Enacted 1994)

SECT 11

Compensation VerDate:30/06/1997

(1) The compensation referred to in section 10 is the right to recover from the Government for the matters set out in column 2 of Part I of Schedule 1 an amount assessed on the basis specified opposite such matters in column 3 of that Part and with regard to Part II of Schedule 1, subject to-

(a) the claim being served on the Secretary within the period specified in column 5 of Part I of Schedule 1; and

(b) the other provisions of this Regulation.

(2) Every person who is described in column 4 of Part I of Schedule 1 has the right to recover compensation for the matters set out opposite such person in column 2 to the extent suffered or incurred by him as assessed under this Regulation.

(3) The rights to compensation mentioned in Schedule 1 shall exist in addition to any benefit accruing to a claimant as a result of the implementation of any subsisting conditions imposed by the Governor in Council under section 11(2) of the Roads (Works, Use and Compensation) Ordinance (Cap 370) as applied by section 26 of this Regulation. (Enacted 1994)

SECT 12

Claims out of time VerDate:30/06/1997

(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 expiry of the period specified in column 5 of Part I 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 column 5 of Part I 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. (Enacted 1994)

SECT 13

Claims out of time where order made under Cap 370 VerDate:30/06/1997

Without prejudice to section 12, where an order has been made under section 13(1), 15(1) or 17(1) of the Roads (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 column 5 of Part I of Schedule 1 for service, and if he does so, the claim shall be deemed to have been served within that period. (Enacted 1994)

SECT 14

Service of claims VerDate:30/06/1997

PART VI

COMPENSATION CLAIMS PROCEDURES

(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 sub-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 I 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).
(Enacted 1994)

SECT 15

Amendment of claims VerDate:30/06/1997

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 Part, 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 Part shall apply accordingly.
(Enacted 1994)

SECT 16

Secretary may request particulars VerDate:30/06/1997

(1) 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.

(2) If any particulars that are requested under subsection (1) 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 to such claim.

(Enacted 1994)

SECT 17

Admission or rejection of claim by Secretary VerDate:30/06/1997

(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 section, 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; and the Secretary may at any time state further reasons for rejection of the 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.

(Enacted 1994)

SECT 18

Reference to the Lands Tribunal VerDate:30/06/1997

(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 requested 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.
- (Enacted 1994)

SECT 19

Settlement after reference to Lands Tribunal VerDate:30/06/1997

(1) At any time after proceedings have been commenced in the Lands Tribunal but before compensation is finally assessed-

- (a) the Secretary may make an offer in writing of the kind described in section 17(2)(a); or
- (b) 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 of the offer 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)(a), 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 an amount which he is willing to accept under subsection (1)(b) which is not paid by the Secretary and the compensation assessed by the Lands Tribunal is not less than that amount, 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.

(Enacted 1994)

SECT 20

Jurisdiction of Lands Tribunal VerDate:30/06/1997

PART VII

ASSESSMENT AND AWARD OF COMPENSATION

(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 section 12(2) of this Regulation and section 23(2) of the Roads (Works, Use and Compensation) Ordinance (Cap 370).

(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 afterwards 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.

(Enacted 1994)

SECT 21

Payment to mortgagees VerDate:01/07/1997

Amendments retroactively made - see 25 of 1998 s. 2; 29 of 1998 s. 105

(1) Subject to subsection (2), a mortgagee of land which reverts to the Government or vests in The Financial Secretary Incorporated under the Roads (Works, Use and Compensation) Ordinance (Cap 370) as applied by section 26 of 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. (29 of 1998 s. 105)

(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 Court of First Instance under subsection (4).

(4) The claimant or any mortgagee may apply to the Court of First Instance 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).

(25 of 1998 s. 2)

SECT 22

Interest VerDate:12/04/2001

For the validation of interest payments and application provisions relating to the amendments made by 6 of 2001, see section 13 of 6 of 2001.

(1) The Lands Tribunal may direct that interest be paid on compensation (but not on costs)- (6 of 2001 s. 8)

(a) in the case of compensation payable under item 1 of Part I of Schedule 1, as if the claim were made under the Lands Resumption Ordinance (Cap 124) for land resumed under that Ordinance; and (29 of 1998 s. 76)

(b) in any other case, from a date and for a period that it considers appropriate and, subject to subsection (2), at such rate as it may fix. (6 of 2001 s. 8)

(2) The rate of interest fixed under subsection (1)(b)-

(a) in respect of a working day must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on that day; and

(b) in respect of a non-working day must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on the last working day before that day. (6 of 2001 s. 8)

(3) In the section, "non-working day" "note-issuing bank" and "working day" have the meanings assigned to them respectively by paragraph 8(3) of the Second Schedule to the Ordinance.

(6 of 2001 s. 8)

(Enacted 1994)

SECT 23

Compensation payable out of general revenue VerDate:30/06/1997

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.

(Enacted 1994)

SECT 24

Surrender of title documents VerDate:30/06/1997

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.
(Enacted 1994)

SECT 25

Appeals VerDate:30/06/1997

PART VIII

MISCELLANEOUS

(1) A person-

(a) who, being a person named in a notice served by the Authority under section 3, 4, 5 or 6 as being required to carry out works, disputes that he is liable under that section to carry out the works;

(b) from whom the Authority is seeking to recover under section 7(5) the cost of works carried out and who disputes the amount claimed by the Authority as the cost of such works; or

(c) who is aggrieved by a requirement or decision of the Authority under section 8,
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 in the prescribed manner and form within 21 days after the person aggrieved has received notice of the requirement or decision.

(3) A notice under section 3, 4, 5, 6 or 8 shall be suspended and cease to have effect as from the day on which notice of appeal in respect of a decision or request under that section is duly given to the Authority and until the appeal is disposed of, withdrawn or abandoned.

(4) Where notice of an appeal under subsection (1)(b) or in respect of a claim under section 8(8) has been given, no enforcement or further action for the recovery of costs shall be taken under section 7(5) or 8(8) until the appeal is disposed of, withdrawn or abandoned.

(5) For the purpose of Part VI of the Ordinance an appeal under this section shall be treated as an appeal brought under section 29 of the Ordinance.
(Enacted 1994)

SECT 26

Application of Cap 370 VerDate:30/06/1997

(1) For the purpose of the carrying out of works or the construction, maintenance, repair or demolition of works under this Regulation, or of any matter related or incidental to such purpose, the provisions of the Roads (Works, Use and Compensation) Ordinance (Cap 370) specified in Part I of Schedule 2 shall apply with any necessary

modification and subject to the modifications and additions specified in Part II of that Schedule.

(2) Any modification or addition specified in Part II of 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) for the purposes of this section.
(Enacted 1994)

SECT 27

Contravention of notice VerDate:30/06/1997

(1) Any person who fails to comply with any requirement specified in a notice served under section 3, 4(2) or 5 commits an offence and is liable to a fine of \$100000 and in addition to \$5000 for each day during which it is proved to the satisfaction of the court that the person has continuously since the date of the offence failed so to comply.

(2) Any person who fails to comply with any requirement specified in a notice served under section 6(1) commits an offence and is liable to a fine of \$200000 and in addition to \$10000 for each day during which it is proved to the satisfaction of the court that the person has continuously since the date of the offence failed so to comply.
(Enacted 1994)

SECT 28

Service of notices VerDate:30/06/1997

(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 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 or premises to be affected.

(5) A document purporting to state any fact relating to the service, giving, publication or affixing of any notice under this Regulation and purporting to be certified by a public officer shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof and-

(a) in the absence of evidence to the contrary the court before

which such document is produced shall presume-

- (i) that the document is certified by such person; and
- (ii) that the facts stated in the document relating to such notice are true; and
- (b) such document shall be evidence of all matters contained in the document.
(Enacted 1994)

SECT 29

Certain Ordinances not to apply VerDate:01/07/1997

Amendments retroactively made - see 29 of 1998 s. 76

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

(a) the 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 (29 of 1998 s. 76)

(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.
(Enacted 1994)

SCHEDULE 1

COMPENSATION RIGHTS AND ASSESSMENT VerDate:17/07/1998

[sections 11, 12, 13, 14 & 22]

PART I

COMPENSATION RIGHTS AND ASSESSMENT

[sections 11, 12, 13, 14 & 22]

PART I

Item 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 shall be served on the Secretary

1. (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, but only if attributable to the negligence of the Authority. 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. Any person owning a compensatable

interest in the land or building. Before the expiration of 1 year from the date of the completion of the works.

(b) Disturbance resulting from the structural damage mentioned in paragraph (a). A disturbance payment. Same as in paragraph (a). Same as in paragraph (a).

2. The resumption of land under section 13 of the Roads (Works, Use and Compensation) Ordinance (Cap 370). 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 under that Ordinance. Before the expiration of 1 year from the date of resumption.

3. (a) The creation of an easement or other permanent right or a right of temporary occupation under section 15 of the Roads (Works, Use and Compensation) Ordinance (Cap 370). (i) In the case of an easement or other permanent right, the amount by which the open market value of the claimant's interest in the land is diminished. Any person owning a compensatable interest in the land. Before the expiration of 1 year from the date on 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 the claimant's interest in the land occupied during the period of the easement.

(b) Disturbance resulting from the creation of an easement or other permanent right or a right of temporary occupation under section 15 of the Roads (Works, Use and Compensation) Ordinance (Cap 370). A disturbance payment.

Same as in paragraph (a). Same as in paragraph (a).

4. (a) The extinction, by the operation of section 13(3) of the Roads (Works, Use and Compensation) Ordinance (Cap 370), of any easement in favour of land not resumed when adjacent or contiguous land is resumed. The expense fairly and reasonably incurred in remedying or mitigating the effect of the extinction of the easement, as far as 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. Any person owning a compensatable interest in the land not resumed. Before the expiration of 1 year from the date of resumption of the adjacent or contiguous land.

(b) Disturbance resulting from the extinction of that easement. A disturbance payment. Same as in paragraph (a). Same as in paragraph (a).

5. The closure of, or extinction, modification or restriction of a private right in respect of, a road or part of a road under section 17 of the Roads (Works, Use and Compensation) Ordinance (Cap 370), so that access to any land is adversely affected. (a) The expense fairly and reasonably incurred in 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. Any person owning a compensatable interest in the land. Before the expiration of 1 year from the closure, extinction, modification or restriction.

(b) A disturbance payment.

6. (a) The extinction, modification or restriction of any private right over Crown foreshore or sea-bed under section 17 of the Roads (Works, Use and Compensation) Ordinance (Cap 370). 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 adjacent or contiguous land, any diminution in the open market value of that interest. Any person in whom the private right is vested. Before the expiration of 1 year from the date of extinction, modification or restriction.

(b) Disturbance resulting from that extinction, modification or restriction. A disturbance payment. Same as in paragraph (a). Same as in paragraph (a).

7. (a) Physical or structural damage to any land or building resulting from the exercise of any power contained in section 19 of the Roads (Works, Use and Compensation) Ordinance (Cap 370). 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. Any person owning a compensatable interest in the land or building. Before the expiration of 1 year from the date of completion of the operations carried out under section 19 of the Roads (Works, Use and Compensation) Ordinance (Cap 370) from which the damage is alleged to have resulted.

(b) Disturbance resulting from the exercise of any power contained in section 19 of the Roads (Works, Use and Compensation) Ordinance (Cap 370). A disturbance payment. Same as in paragraph (a). Same as in paragraph (a).

8. (a) The removal, under section 21 of the Roads (Works, Use and Compensation) Ordinance (Cap 370), of any object or structure which was erected and maintained without the contravention of any Ordinance or Crown lease. Any diminution in the open market value of the 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. Any person owning a compensatable interest in the land or building. Before the expiration of 1 year from the date of removal.

(b) Reinstating an object or structure described in paragraph (a) or of replacing the same with a similar object or structure. The expense fairly and reasonably incurred in so doing in so far as that expense is not taken into account under paragraph (a). Same as in paragraph (a). Before the expiration of 1 year from the date of reinstatement or replacement.

(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. The amount which is fairly and reasonably estimated as the value of the object or structure. Any person owning a share or interest in the object or structure. 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 the Roads (Works, Use and Compensation) Ordinance (Cap 370). A disturbance payment. Same as in paragraph (a). Same as in paragraph (a).

9. An amendment required or a condition imposed, under section 22(1)(c) or (d) of the Roads (Works, Use and Compensation) Ordinance (Cap 370), (other than a condition mentioned in section 22(6) of that Ordinance), 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

(ii) professional fees and expenses,

which loss, expense, fees and expenses are attributable solely to compliance with the amendment required or the condition imposed. (L.N. 281 of 1998) 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 works.

10. Physical or structural damage or 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 damage attributable to the negligence of the Authority. Same as in item 1(a) and (b).

Same as in item 1(a) and (b). Same as in item 1(a) and (b).

PART II

1. General effect of this Part

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

(a) be in addition to such of the provisions of the Lands Resumption Ordinance (Cap 124) as apply, by virtue of Part I, to the assessment of compensation; and (29 of 1998 s. 76)

(b) prevail over any provision referred to in paragraph (a) which is inconsistent or in conflict with a provision in this Part.

2. Definitions applicable to Part I

In this Schedule-

"date of resumption" (æ"¶ā>žæ—ŸæœŸ) means the day on which land reverts to the Government or vests in The Financial Secretary Incorporated under section 13(3) of the Roads (Works, Use and Compensation) Ordinance (Cap 370); (29 of 1998 s. 105)

"disturbance" (é"·æ"¼) 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" (é·æ“¾èfœå,,Ÿé‡‘) 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 I; 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 I,

except 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" (å...-é-<å,,å 'åf¹å€¼) means the amount which the land, if sold in the open market by a willing seller, might reasonably be expected to realize;

"owner" (æ“□æœ%å°), in relation to land, means the person holding that land-

(a) directly under a Government lease; or

(b) under another title directly from the Government registered in the Land Registry; (29 of 1998 s. 105)

"sea-bed" (æµ·å°S) includes any Government land covered with water in any tidal river or channel connected with the waters of Hong Kong; (29 of 1998 s. 105)

"works" (å·Ÿç“ç) means anything 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 this Regulation.

3. Fluctuations in value of land

Subject to sections 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 of any sewerage, whether before or after the completion of any works (including the existence of any sewerage whether or not in relation to any use to which it is put).

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 Government lease or other instrument under which land built upon is held.

(29 of 1998 s. 105)

6. Compensation where damage results only partly from the works

The compensation assessed under item 1, 7 or 10 of Part I 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 the Roads (Works, Use and Compensation) Ordinance (Cap 370), nothing in item 8 of Part I 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 3, 4, 5, 6, 8 or 9 of Part I has been paid in respect of the diminution in value of any land and such land or part of such land is subsequently resumed by the Government under this Regulation or any other enabling power, then notwithstanding section 3 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 diminution in value thereof.

(29 of 1998 s. 105)

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 I 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 the Roads (Works, Use and Compensation) Ordinance (Cap 370) 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 column 3 of Part I, 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 column 2 of Part I; and the person entitled to claim shall be the person fitting the description mentioned in column 4 of Part I on that date.

13. No double compensation

(1) Subject to subsection (2), 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.

(2) 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 certain operations

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.

APPLICATION OF THE ROADS (WORKS, USE AND COMPENSATION) ORDINANCE
VerDate:01/07/2002

[sections 1 & 26]

PART I

PROVISIONS OF THE ROADS (WORKS, USE AND
COMPENSATION) ORDINANCE APPLIED

Sections 2 to 24 and 36 to 38.

PART II

General Modifications and Additions

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

(2) In section 13(5), repeal "The Secretary" and substitute "The
Authority".

(3) In section 20(3), repeal "Secretary's" and substitute
"Authority's".

2. In sections 14(2)(f), 16(2)(f), 18(2)(e) and 21(3)(d), repeal
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 (except section 4) specified in 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).

Particular Modifications and Additions

Section
applied Modification or addition

2 (a) In subsection (1)-

(i) add-
""Authority" (ç>£ç£) has the same meaning as in the Water Pollution Control
Ordinance (Cap 358);";

(ii) in the definition of "claim", repeal "section 29" and substitute "the Water Pollution Control (Sewerage) Regulation (Cap 358 sub. leg.)";

(iii) (Repealed L.N. 106 of 2002)

(iv) in the definition of "use", repeal "road" where it twice occurs and substitute "sewerage";

(v) repeal the definition of "works" and substitute-
""works" (â-Ÿç`<) 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) Repeal subsections (2) to (4).

4 (a) Repeal subsection (1)(a).

(b) In subsection (3), repeal "this Ordinance" and substitute "the Water Pollution Control (Sewerage) Regulation (Cap 358 sub. leg.)". (L.N. 281 of 1998)

5 (a) (Repealed L.N. 281 of 1998)

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

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

15 Repeal subsection (5) 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."

24 Repeal "\$5000" and substitute "\$10000".

36 (a) (Repealed L.N. 281 of 1998)

(b) Repeal paragraph (c)(i).

38 (a) In paragraph (a), repeal "nor to any claim for or determination, award or payment of compensation for such resumption;" and substitute "; and".

(b) In paragraph (b), repeal "; and" at the end and substitute a

full stop.

(c) Repeal paragraph (c).
(Enacted 1994. L.N. 281 of 1998)