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Paper for the House Committee meeting on 27 June 2008

**Report of the Subcommittee on Building
(Planning) (Amendment) Regulation 2008**

Purpose

This paper reports on the deliberations of the Subcommittee on Building (Planning) (Amendment) Regulation 2008.

Background

2. Regulation 72 of the Building (Planning) Regulations (Cap. 123 sub. leg. F) (the Principal Regulations) provides that, subject to paragraphs (3) and (4) of the regulation, where a building is one to which persons with a disability (PWDs) may reasonably be expected to have access, the building shall be designed in such a manner as to facilitate access to and use of the building and its facilities by PWDs to the satisfaction of the Building Authority (BA).

3. Section 84 of the Disability Discrimination Ordinance (DDO) (Cap. 487) provides that, notwithstanding any provision in any other Ordinance, a public authority, including BA, shall not approve building plans unless he is satisfied that reasonable access for PWDs will be provided to the building. The only exceptions are –

- (a) buildings of 13 m or less in height above ground level which are used, or intended to be used, for occupation by a single family; or
- (b) temporary buildings or contractors' sheds referred to in Part VII of the Principal Regulations.

4. BA issued in 1997, the Design Manual – Barrier Free Access 1997 (DM 1997) to provide guidance to practitioners of the construction industry. In order to enforce the relevant requirements in DM 1997, amendments have been incorporated into the provisions in the Third Schedule to the Principal

Regulations so that new buildings and alteration or addition of existing buildings are required to comply with the requirements (unless exempted under the Buildings Ordinance (Cap. 123) (BO) or otherwise provided in any other enactment).

5. In November 2007, a new version of the Design Manual (to be issued as DM 2008) was finalized to take into account the advancement in building technology, improvement in quality of life of the general public and growing awareness of the community towards the needs of PWDs over the years. Since the design requirements in the existing Third Schedule to the Principal Regulations are based on DM 1997 and the design requirements have been revised, the Administration considers it necessary to amend the Third Schedule to the Principal Regulations to provide for the relevant revised design requirements.

The Amendment Regulation

6. The Administration gazetted the Building (Planning) (Amendment) Regulation 2008 (the Amendment Regulation) on 16 May 2008. The purpose of the Amendment Regulation is to enhance the design requirements governing the provision of facilities for access to and the use of buildings and their facilities by PWDs to tie in with the revised design requirements set out in DM 2008.

7. The Amendment Regulation amends the Principal Regulations to -

- (a) reflect the revised requirements as set out in DM 2008; and
- (b) provide for certain technical amendments.

8. The scrutiny period of the Amendment Regulation has been extended from 18 June 2008 to 9 July 2008 by a resolution of the Council.

9. The Amendment Regulation will come into operation on a date to be appointed by the Secretary for Development by notice published in the Gazette.

The Subcommittee

10. At the meeting of the House Committee on 23 May 2008, members agreed that a Subcommittee should be formed to study the Amendment Regulation.

11. Under the chairmanship of Hon Emily LAU, the Subcommittee held six meetings, including one meeting to receive public views. The membership

list of the Subcommittee is in **Appendix I**. The list of organizations and individual who have provided views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

12. The Subcommittee notes that the following key areas of enhancement have been proposed to the current design requirements –

- (a) introduction of new requirements on the provision of access to backstage facilities of auditoriums, tactile warning strips and braille/tactile guide path for different types of buildings;
- (b) introduction of detailed requirements on the number, size and signage of parking spaces for PWDs;
- (c) revision of door design requirements in terms of width and closing device;
- (d) improvement on directional signage to guide PWDs in way finding;
- (e) specification of minimum illumination levels for corridor, stair and lift lobby for persons with visual impairment;
- (f) incorporation of more detailed requirements for audible and visual fire alarm and emergency call bell in accessible toilets, and the provision of assistive listening systems for persons with hearing impairment; and
- (g) clarification on the extent of application of the design requirements by providing a list of exempted areas in buildings.

A summary of key changes to the current requirements is in **Appendix III**.

13. According to the Administration, it has conducted extensive public consultation to obtain feedback from the stakeholders and the industry in the course of review of DM 1997 and finalizing DM 2008. The consultees have expressed support for the proposals.

14. The Subcommittee also notes that the Amendment Regulation will apply to new buildings and alteration or addition of existing buildings (unless exempted under BO or otherwise provided in any other enactment).

Enforcement and variation of requirements

15. The Subcommittee and deputations generally support the introduction of the Amendment Regulation. Members and some deputations, however, have expressed concern about the application of the Amendment Regulation to buildings where only limited facilities can be provided for PWDs due to physical constraints. Prof Hon Patrick LAU has pointed out that when carrying out renovation works in schools and old domestic buildings as well as preservation works in heritage sites, it is difficult in practice for the owners to comply fully with the obligatory design requirements. For instance, it is technically impossible to provide an accessible lift at these premises in situ. Hon Ronny TONG is concerned about the financial implications on private domestic property owners if they are required to shoulder the costs for carrying out alteration works in order to comply with the obligatory requirements.

16. The Administration advises that certain provisions of DDO provide that it is unlawful for a person to discriminate against a PWD by refusing to provide him or her with facilities or services (for example, access to a place where the public is permitted to enter), unless the provision of such facilities or services will impose unjustifiable hardship on the person who have to provide them, or is technically infeasible. All new buildings and alteration or addition of existing buildings after 1997 are required to provide access and facilities in compliance with the requirements in regulation 72 of the Principal Regulations as amended in 1997. For pre-1997 buildings, BA will consider, on a case-by-case basis upon application for approval of building plans for alteration and addition works, whether there are sufficient grounds for a variation of the requirements in regulation 72 of the Principal Regulations. The Administration further advises that there are special circumstances where proposals for building works are unable to meet the full requirements. Variation of the requirements will be considered by BA after taking into account the merits of individual cases.

17. Some members consider the meaning of unjustifiable hardship too broad, and the Administration should set out clearly the mechanism and criteria for granting variation of the requirements in regulation 72 of the Principal Regulations. The Subcommittee has examined the mechanism and criteria for varying the requirements in regulation 72 of the Principal Regulations.

18. According to the Administration, in considering applications for variation of the requirements, BA has established an advisory committee, the Advisory Committee on Barrier Free Access (ACBFA), to provide a forum for the deliberation and discussion of the proposals. BA will take into account the advice given by ACBFA in making decisions on the applications. In arriving at its advice, ACBFA will consider the following –

- (a) the standards and requirements contained in regulation 72 of the Principal Regulations;
- (b) whether it is practicable to provide such access within the curtilage of the building, bearing in mind the physical location and immediate environs of the building; and
- (c) whether providing such access would impose unjustifiable hardship on the person seeking approval or any other person.

19. The Administration has advised that while an application for variation of the requirements in regulation 72 of the Principal Regulations would be considered on a case-by-case basis taking into account the merits of the case, ACBFA over the years has established the following factors in considering such applications –

- (a) whether there is any topographical constraint;
- (b) whether the works for the provision of facilities for PWDs have to be carried out in an area to which the applicant has no control;
- (c) whether there is structural constraint of the existing building (e.g. presence of structural ground beam rendering the provision of an access ramp not possible);
- (d) whether there is a functional need for the design and whether PWDs are expected to have access to the premises (e.g. guard tower, railway maintenance workshop);
- (e) whether the provision of facilities for PWDs in a very small site would render the proposed works not feasible; and
- (f) whether the proposed alteration and addition works is minor in nature (e.g. removal or addition of partition wall).

20. The Administration further advises that BA may consider waiving or varying the requirements for the provision of facilities for PWDs in the following types of buildings as these buildings are not buildings to which PWDs may reasonably be expected to have access to or full compliance with the specified requirements would impose unjustifiable hardship to the applicants –

- (a) buildings for plant rooms or unmanned electricity sub-stations with no ancillary office accommodation;

- (b) godowns, provided that access and facilities for PWDs are provided at ground floor level and to any office accommodation;
- (c) purpose-built specialized industrial buildings where the manufacturing process is hazardous and unsuitable for PWDs;
- (d) the top floor of a building without communal facilities and not provided with a lift due to a height restriction imposed by the Hong Kong Airport (Control of Obstructions) Ordinance (Cap 301); and
- (e) buildings served by steep access road or driveway.

21. In addition, BA may also consider accepting the following alternative provisions –

- (a) keypad control device for lifts as a replacement of conventional lift buttons in high-rise buildings; and
- (b) vertical lifting platform in lieu of a ramp or disabled lift.

22. The Subcommittee notes that since 2005, of 173 applications for variation of requirements of regulation 72 of the Principal Regulations considered by ACBFA, it has accepted 124 cases. The mechanism and criteria for considering application for variation of the requirements in regulation 72 of the Principal Regulations would remain unchanged after the enactment of the Amendment Regulation. To facilitate compliance with the Amendment Regulation, members consider that the approving authority should explain clearly the new obligatory requirements to the parties concerned.

23. Some deputations have raised concern about the accessibility of facilities for PWDs. As such, the Administration should step up inspections against non-provision and improper use of facilities for PWDs. The Administration has advised that the Amendment Regulation will be enforced in accordance with the existing control mechanism under BO.

Application of requirements in different types of buildings

24. Hon Tommy CHEUNG has expressed grave concern about the inconsistency in the requirements for the provision of facilities to allow access to food premises by PWDs as compared with those to premises with auditorium, hotels and carparks. He has pointed out that, under the Amendment Regulation, not less than four wheelchair spaces are required to be provided in premises with auditorium with not more than 400 fixed seats, and only two wheelchair spaces are required to be provided for every 400 fixed seats or any part thereof. Moreover, the installation of removable seats in the wheelchair

spaces when the spaces are not occupied by wheelchair users is permitted. Similarly, the ratios of accessible guest rooms and parking spaces specified in the Amendment Regulation represent no more than 2% of the total facilities. The food premises are however required to provide barrier free access to PWDs since the coming into force of the obligatory requirements in 1984, notwithstanding that the food business industry has endeavoured to observe and comply with the obligatory requirements. Mr CHEUNG has queried why food premises are subject to more stringent requirement for providing barrier free access to PWDs over the past years.

25. The Administration has explained that the obligatory requirements for the provision of facilities to allow access for PWDs to certain categories of buildings were introduced under BO for the first time 1984. The requirements applied to all new commercial and factory buildings. Domestic buildings were exempted and the requirements were applied to other types of buildings to a limited extent depending upon the extent to which they might be expected to cater for PWDs. Amongst the categories of buildings where limited facilities were required to be provided were places of public entertainment such as cinemas, and hotels. Furthermore, only limited carparking facilities for PWDs had to be provided.

26. The Administration points out that the obligatory requirements have been further amended to introduce new design requirements, as contained in DM 1997, in a number of areas. Places of public entertainment and hotels have remained in the category of buildings where limited facilities for PWDs are to be provided (Part II of the Third Schedule to the Principal Regulations). In addition, only limited carparking facilities are required to be provided for PWDs. The intention of only requiring limited facilities in certain categories of buildings, which is also the practice in many overseas countries, is clear in these legislative amendment exercises in 1984 and 1997.

27. With regard to the requirement for the provision of wheelchair spaces in premises with auditorium, the Administration has pointed out that a fundamental functional requirement of these premises is that the audience should be able to see the stage/performance/speaker from their seats without obstruction. In order to meet this functional requirement, the floor of the auditorium would usually not be leveled but be designed in tiers. In addition, it is common for fixed seating to be provided. It is plain that total accessibility by PWDs on wheelchairs in an auditorium with fixed seating is not compatible with the provision of fixed seating itself and the functional requirement of tiered design. Hence, where fixed seating is provided in an auditorium, accessible wheelchair spaces shall be provided in accordance with section 2 of the existing Third Schedule. If the Amendment Regulation comes into operation, then section 4 of the new Third Schedule should be followed. Where no fixed seating is provided, section 4 of the new Third Schedule will not apply.

28. The Administration has further advised that premises with auditorium (i.e. theatres, cinemas, concert halls, sports stadiums, games halls, lecture halls and conference halls) and related facilities shall be accessible to PWDs including wheelchair users. The related facilities include auditoriums, stages, backstage facilities, changing rooms, rehearsal rooms, dressing rooms, rest rooms, toilets and shower rooms. For the purpose of the Amendment Regulation, an access connecting any two or more of them shall be an accessible route for wheelchair users.

29. As regards the requirements for providing facilities to allow access to hotels and guest rooms, the Administration has explained that in order for all sleeping, bathing and sanitary facilities inside a guest room to be accessible, special design and layout of the room are required and additional accessories other than those normally provided in a guest room would also need to be provided. Two accessible guest rooms shall be provided for every 100 guest rooms or any part thereof in every hotel, hostel or guesthouse. These are additional requirements over and above the basic design requirements of a typical guest room in a hotel, a hostel or a guesthouse.

30. For carparks, the recommended dimensions of a standard parking space for private vehicle is 5m long by 2.5m wide according to the Hong Kong Planning Standards and Guidelines. For a parking space accessible to PWDs, an additional space has to be provided to cater for the getting on/off of the car by PWDs. A number of such specially designed parking spaces are therefore required to be provided in carparks in order to ensure reasonable access to the carpark by PWDs. Again, such requirements are over and above the basic requirements for a standard car parking space. In the Amendment Regulation, the number of parking spaces for PWDs has increased and detailed requirements on dimensions and signage specified. The intention is to enhance the provisions for PWDs.

31. The Administration has further advised that food premises are regarded as non-domestic use and are treated in the same manner as any other types of retail businesses such as shops and department stores. The Administration has stressed that the requirements for barrier free access to buildings are specified on the basic principle that such access as is reasonable in the circumstances to the building or premises is provided for PWDs. The requirements for limited provisions only in some types of buildings/premises are the result of a reasonable balance of the accessibility by PWDs and the special circumstances of the buildings/premises including special functional and design requirements.

Specific design requirements

Tactile guide paths

32. Some deputations representing visually impaired persons have suggested that apart from providing tactile guide paths leading from main entrance to the accessible lift, the nearest accessible toilet and information counter in all new shopping complexes, the tactile guide paths should also lead to escalators. The Administration has explained that the tactile guide paths should not lead to escalators, as the use of escalators by visually impaired persons involve a certain degree of risks.

Provision of ramps in food premises

33. Hon Tommy CHEUNG and deputations representing the food business operators have expressed grave concern about the requirement for the provision of ramps in restaurants and food courts. Having regard to the high rentals, the food business industry is operating at extremely high costs. As the provision of permanent ramps will take up some floor area which can otherwise be used as dining area, the trade deputations have suggested the provision of ramps in a specified percentage of dining area for the purpose of providing access to PWDs in food premises. They also suggest that removable ramps may be used for changes in level of not less than 300mm below or above the floor. Hon Tommy CHEUNG expresses full support for the suggestions. Pointing that the installation of removable seats in wheelchair spaces is allowed in premises with auditorium when the wheelchair spaces are not occupied, Mr CHEUNG considers that similar arrangement can be adopted for licensed food premises.

34. Hon Tommy CHEUNG has further expressed the view that since the implementation of the new licensing procedures for food premises on 18 April 2006, applicants for transfer of food business licences are required to comply with the obligatory requirements in DM 1997, even if the licensees have obtained the food business licences before 1997 and no major alteration has ever been carried out in the food premises concerned. In some cases, the licensees are required to demolish raised platforms in existing restaurants for non-provision of access ramp to the raised platform. Mr CHEUNG takes a strong view that the requirements are unfair to and impose great hardship on the food business industry.

35. In view of the strong views expressed by the food business industry, the Subcommittee has examined the new food business licensing procedures. According to the Administration, to resolve the problem of unauthorized building works (UBWs) in food premises, the Team Clean's Report published

in 2003, proposes that the Food and Environmental Hygiene Department (FEHD) should refuse to issue a licence to any applicant if it comes to FEHD's knowledge that there are UBWs attached to or extending from the premises under applications. For applications for provisional licence, certification from an authorized person that the premises in question are free of UBWs would be required. For existing licensed food premises with UBWs, the transfer of licence will not be allowed unless UBWs are removed. These measures aim to prevent the problem at source and reduce the size of the problem over time by natural attrition.

36. The Administration further advises that before the implementation of the Team Clean initiative on 18 April 2006, BD would not raise adverse comments on restaurant licence applications because of the non-provision of access ramp to raised platform as applications on restaurant licence submitted to FEHD are referred to BD for comments in regard to the suitability of the premises in the following areas only—

- (a) structural safety;
- (b) fire resisting construction;
- (c) means of escape; and
- (d) UBWs affecting public safety.

With effect from 18 April 2006, FEHD requires the submission of a certificate certifying that the premises under application are free of UBWs for restaurant licence. BD in the implementation of the new system has provided guidance notes on the certification and conducts audit-checking of the certificates submitted by authorized persons.

37. The Administration has pointed out to the Subcommittee that A Guide to Application for Restaurant Licences (the Guide) issued by FEHD states that nothing contained therein shall be taken as in any way derogating from the powers of the Director of Buildings under BO. The Guide draws the applicant's attention to DDO with regard to the provision of access and facilities for PWDs. The Guide also states that unauthorized removal or alteration of existing approved access and facilities for PWDs may be subject to enforcement action under BO.

38. The Administration has further pointed out that as raised platforms within the licensed premises not provided with access ramp required by the regulations under BO in force at the time of construction of the platforms are UBWs, removal of such platforms is required under the new licensing system upon the implementation of the Team Clean initiative. For raised platforms constructed before the introduction of legislative requirement for access ramp

and which do not contravene any provision of BO (including its subsidiary legislation) in force at the time of construction, they are not UBWs and need not be removed under the new restaurant licensing system. In addition, the provision of raised platforms in the seating areas of food premises is not a basic functional design requirement but only a choice of design of the restaurant operator. It is, therefore, not unreasonable for the freedom of choice for permanent raised platforms to go with the requirement for the provision of barrier free access to the raised platforms.

39. Hon Tommy CHEUNG is unconvinced of the Administration's explanation. He proposes to amend section 14 in Division 5 of the new Third Schedule to the effect that ramps shall be provided at all changes in level in the area where customers are served with food or beverage, and in the facilities that are available to customers, only if the total horizontal area of such changes in level exceeds 50% of the total floor area of the area where customers are served with food or beverage, and the facilities that are available to customers. A removable ramp may be substituted for a ramp to be provided for all changes in level only if such changes in level does not exceed 300mm in height.

40. Hon Abraham SHEK shares Mr CHEUNG's views that the installation of ramps leading to a higher floor level is difficult, if not impossible, in small food premises because of the limited floor area.

41. The Administration considers that if a removable ramp can physically be provided on site, there is little justification why a permanent ramp cannot be provided. The concern of PWDs is that, if the removable ramp is intended to be provided only as and when required and that the space so vacated is used for other purposes, such as seating area, the intended purpose for provision of ramps to facilitate barrier free access by wheelchair and other users in need will be defeated. As the requirement for the provision of ramps has been in force for more than two decades, reasonable time has been allowed for the food business industry to comply with the requirement. Where unjustifiable hardship is demonstrated in individual cases, variation of requirements may be considered on a case-by-case basis in accordance with the established mechanism. The Administration stresses that the Amendment Regulation has not imposed more stringent requirement in this respect. The objective of the Amendment Regulation is to enhance the design requirements in the light of the advancement in building technology and growing awareness of the community towards the needs of PWDs. Mr CHEUNG's proposal is a major retrograde step against the overall direction in the development of a barrier free physical environment for PWDs. The requirement in relation to the provision of ramps not only applies to food business, but is also generally applicable to other non-domestic premises such as shopping complexes, department stores, indoor markets, hospitals etc as well as the common area of the domestic parts of a building. Given that an established and effective mechanism is already in place to allow for variation of requirement for cases with unjustifiable hardship,

there are no justifiable grounds for making a general relaxation of the requirement for the food business.

42. Dr Hon Fernando CHEUNG disagrees with the suggestion regarding the provision of ramps in specified percentage of dining area. He considers that the provision of ramps and barrier free access to PWDs in restaurants and food premises is not new. Applicants for food business licences should comply with the relevant provisions in BO and the Principal Regulations at the time of submitting the applications. Dr CHEUNG stresses that PWDs should be provided with an equal opportunity to patronize food premises as other customers.

43. Hon Ronny TONG considers that the licensing regime for food premises is beyond the scope of the Amendment Regulation and should be followed up by the relevant Panel. In his view, building works, including raised platforms, should not have been carried out in contravention of the provisions of BO in force at the time of construction of the platforms. Although BD does not comment on UBWs when processing applications for restaurant licence prior to the implementation of the new licensing procedures on 18 April 2006, it does not imply that UBWs are permissible building structures. If the raised platforms are UBWs, they will still be subject to enforcement action under BO. He holds the view that non-provision of access ramp to raised platform in the existing restaurants should not be allowed, and platforms which are UBWs should not be tolerated simply because the food premises have been issued a food business licence prior to the introduction of the new restaurant licensing system.

44. While understanding the difficulties faced by the food business industry, most members acknowledge that the Administration has conducted extensive consultation in the course of reviewing DM 1997, including meeting with the Panel on Welfare Services on four occasions. Given that the review has taken almost seven years and DM 2008 has been finalized after incorporating the views of relevant stakeholders, most members take the view that fresh consultation with the stakeholders may be required if amendments to the Amendment Regulation which will lead to substantive changes to the design requirements are proposed. However, as this will unduly delay the enactment of the Amendment Regulation, most members are not in favour of proposing substantive changes to the requirements in the Amendment Regulation without further consulting the concerned parties.

Drafting aspects of the Amendment Regulation

Division 1 – Auditorium and related facilities

45. Members have expressed concern on whether the meaning of "conference hall" and "auditorium" should be defined in the Amendment

Regulation. The Administration advises that according to the ordinary meaning, the expression "conference hall" in the Amendment Regulation would be interpreted to mean generally any hall/room for conferences or meetings. As for the expression "auditorium", it would be interpreted to mean generally a part of any premises where the audience sits. It is the policy intention that the two expressions, "conference hall" and "auditorium", be construed according to their respective ordinary meanings in the Amendment Regulation. Therefore, it is not necessary to define the two expressions in the Amendment Regulation.

Section 4 of the new Third Schedule – wheelchair spaces

46. Section 4(1) of the new Third Schedule provides for the general rule for providing wheelchair spaces in premises to which Division 1 of Part 2 of the new Third Schedule applies. The general rule is that two wheelchair spaces shall be provided for every 400 fixed seats or any part thereof. It is also stated in section 4(1) that the general rule is however subject to the provision in section 4(2) which requires that in any event there shall not be less than 4 wheelchair spaces at spectator level in an auditorium. Members have expressed concern about the readability of sections 4(1) and 4(2) and have requested the Administration to review the drafting to refine the provisions.

47. Having considered members' views, the Administration advises that it will move an amendment to section 4 of the new Third Schedule.

Section 7, Division 12 in Part 2 and Part 4 of the new Third Schedule

48. The Subcommittee notes that a hotel, hostel or guesthouse is used for habitation and hence is regarded as a domestic building or the domestic part of a composite building. While section 7 of the new Third Schedule provides for the provision of accessible guest rooms in hotels, hostels and guesthouses, Part 4 of the new Third Schedule has only included the common areas of a domestic building or the domestic part of a composite building to be subject to the provision of access and facilities for PWDs. In order to put it beyond doubt that the accessible guest rooms referred to in section 7 of the new Third Schedule have to be provided in a hotel, hostel or guesthouse, the Administration advises that it will amend Part 4 of the new Third Schedule to specifically include the accessible guest rooms in hotels, hostels and guesthouses to be places that need to be designed in such a manner as to facilitate access and use by PWDs.

49. The Subcommittee also notes that Division 12 of Part 2 of the new Third Schedule is intended to provide for the design requirements of bathrooms and shower compartments in accessible guest rooms in hotels, hostels and guesthouses. To avoid ambiguity on the extent of application of this Division, the Administration will move an amendment to make it clear that this Division is only applicable to accessible guest rooms which are required to be provided

in hotels, hostels and guesthouses under section 7 of the new Third Schedule which is in line with the relevant requirements set out in DM 2008.

Extent of application of the Amendment Regulation

50. The Subcommittee notes that buildings belonging to the Government or certain public authorities are exempt from the provisions of BO. Most members take the view that the requirements for the provision of facilities for access to and the use of buildings by PWDs should also be applicable to the Government and public buildings.

51. The Administration has explained that section 41 of BO provides that buildings belonging to the Government or certain public authorities are exempt from the provisions of BO. Notwithstanding this, the Administration points out that by virtue of section 84 of DDO, a public authority shall not approve building plans unless the public authority is satisfied that reasonable access to the building will be provided for PWDs. Public authority as defined under the section includes the Director of Lands, BA, the Housing Authority and the Director of Architectural Services.

52. The Subcommittee has expressed concern over whether or not the existence of section 84 of DDO alone provides sufficient safeguards that buildings to be built by Government departments or public authorities will also comply with the requirements set out in the Amendment Regulation. The Subcommittee notes that an amendment will have to be made to section 41 of BO before the provisions of BO could apply to buildings belonging to the Government, but the Administration advises that this is beyond the scope of the Amendment Regulation. Most members strongly urge the Administration to formulate a concrete plan for amending BO with a view to extending its application to government buildings. Dr Hon Fernando CHEUNG also urges the Administration to set a good example and observe also the standards stipulated in the Best Practice Section of DM 2008 in government buildings and expedite the improvement programmes on the access and facilities of pre-1997 buildings.

53. The Equal Opportunities Commission (EOC) advises that the new design requirements under the Amendment Regulation will become enforceable legal requirements under regulation 72(1) of the Principal Regulations which are applicable to private buildings. Should members consider the need for similar enforceable legal requirements for Government and public buildings, consideration may be given to amending section 41 of BO. EOC has pointed out that given the Government's long history of experience in complying with the mandatory requirements in DM 1997 and its clear indication that Government departments and public authorities will also make reference to the Amendment Regulation in the design and construction of government and public buildings, EOC sees no difficulties for the Government and public

authorities concerned to comply with the new requirements in the Amendment Regulation.

54. The Administration stresses that the Government fully observes the requirements in DM 1997, and will continue to comply with the standards stipulated in Amendment Regulation and make reference to the Best Practice Section of DM 2008 as far as practicable in the design and construction of new government buildings and refurbishment of existing government buildings.

Commencement date

55. The Subcommittee notes that the Amendment Regulation shall come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette. According to the Administration, the original intention is to commence the Amendment Regulation in October 2008. While members consider that the Amendment Regulation should come into force as early as possible, they agree that it will be for Members of the Fourth Legislative Council (LegCo) to decide whether a subcommittee should be formed to study the Commencement Notice after it is tabled in LegCo. The Administration agrees that as the scrutiny period of the Amendment Regulation has been extended to 9 July 2008 by a resolution at the Council, it is prudent for the Administration to publish the Commencement Notice in the Gazette after the completion of the vetting period on 9 July 2008. As such, the Commencement Notice will be tabled in the first Council meeting in the 2008-2009 session. To allow time for the scrutiny of the Commencement Notice in accordance with the Interpretation and General Clauses Ordinance (Cap.1), the Amendment Regulation will likely come into operation in December 2008.

56. Members comment that the undesirable arrangement could have been avoided if the Amendment Regulation was gazetted on an earlier date.

Legislative timetable

57. Given that the Administration has proposed the conduct of a review of DM 1997 in as early as 2001 and LegCo has had lengthy discussions on the revised DM 1997 thereafter, the Subcommittee expresses dissatisfaction that the Administration has taken almost seven years to review and revise DM 1997. Members are strongly of the view that the introduction of the Amendment Regulation has been long overdue, and it is unsatisfactory that the Administration has only introduced the Amendment Regulation into LegCo in as late as May 2008.

Recommendation

58. Subject to the amendments to be made by the Administration (**Appendix IV**), the Subcommittee supports the Building (Planning) (Amendment) Regulation 2008.

59. The Subcommittee notes that Hon Tommy CHEUNG may consider amending section 14 of the new Third Schedule to the Amendment Regulation at the Council meeting to be held on 9 July 2008.

Advice sought

60. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
26 June 2008

Subcommittee on Building (Planning) (Amendment) Regulation 2008

Membership List

Chairman

Hon Emily LAU Wai-hing, JP

Members

Hon Abraham SHEK Lai-him, SBS, JP

Hon Tommy CHEUNG Yu-yan, SBS, JP

Dr Hon Fernando CHEUNG Chiu-hung

Hon CHEUNG Hok-ming, SBS, JP

Hon Ronny TONG Ka-wah, SC

Prof Hon Patrick LAU Sau-shing, SBS, JP

(Total : 7 Members)

Clerk

Miss Betty MA

Legal adviser

Mr Stephen LAM

Date

30 May 2008

List of organizations/individual which/who have/has given views to the Subcommittee on Building (Planning) (Amendment) Regulation 2008

1. 1st Step Association
2. Association of Restaurant Managers
3. Disable and Carer Concern Group
4. Direction Association for the Handicapped
5. Environmental Advisory Service
6. Equal Opportunities Commission
7. Hong Kong Catering Industry Association
8. Hong Kong Federation of Handicapped Youth
9. Hong Kong Federation of Restaurants and Related Trades
10. Hong Kong Joint Council for People with Disabilities
11. Hong Kong Occupational Therapy Association
12. Maxim's Caterers Limited
13. Pizza Hut
14. Rehabilitation Alliance Hong Kong
15. Retina Hong Kong
16. The Hong Kong Council of Social Service
17. The Hong Kong Institute of Architects
18. The Hong Kong Institute of Surveyors
19. The Parents' Association of Pre-school Handicapped Children
20. The Salvation Army Carer Association
21. Mr Joseph KWAN

Written submission only

1. Mass Transit Railway

Summary of key changes – Amendment Regulation on Barrier Free Access

(19.5.2008)

Third Schedule / Section		Provisions for Physical Impairment	Provisions for Hearing Impairment	Provisions for Visual Impairment
PART 1 Interpretation	S1	<ul style="list-style-type: none"> ● A new term “accessible” is introduced. ● “Persons with ambulant disabilities” is introduced. ● “Wheelchair users” is introduced 	“Assistive listening system” is introduced.	
PART 2 Division 1 Auditorium and related facilities	<ul style="list-style-type: none"> ● S2 ● S4(8) ● S6 	<ul style="list-style-type: none"> ● New obligatory design requirement on access to auditoriums, stages, backstage facilities, changing rooms, rehearsal rooms, dressing rooms, rest rooms, toilets and shower rooms is added. ● Removable seats can be installed when wheelchair spaces are not occupied. 	Nil	New obligatory design requirements of tactile warning strips and Braille and tactile maps are added. (S6)
Division 2 Hotels, hostels and guesthouses	S7 + Division 12	New obligatory design requirements for bathroom and shower facilities to accessible guest room are introduced.	Nil	Nil
Division 3 Carparks	S8 to S10	Detailed requirements for accessible carparks in terms of number, size, signage and size of loading / unloading area have been introduced.	Nil	Nil
Division 4 Access route	<ul style="list-style-type: none"> ● S11(3) ● S12(1) 	<ul style="list-style-type: none"> ● Alternative vehicular access from lot boundary is introduced to cater for sloping site or steep road. ● Minimum clear access route requirement of 1050mm and free from barriers are added. 	Nil	Detailed requirements of tactile tiles / blocks are provided. (Fig 4 of PART 3)
Division 5 Ramps	● S17	● A ramp at 1:10 or 1:8 in gradient is to be accepted for minor rises of 150mm and 75mm respectively.	Nil	Nil
Division 6 Dropped kerbs	<ul style="list-style-type: none"> ● S21(c) ● S22 + 23 	<ul style="list-style-type: none"> ● Maximum gradient changed from 1:6 to 1:10. ● The recommended design requirements of DM 1997 on location of dropped kerb and avoidance of raised traction strip have been moved to mandatory section. 	Nil	Nil
Division 7 Steps and staircases	<ul style="list-style-type: none"> ● S25(7) ● S25(1)(b) & (5)(b) 	<ul style="list-style-type: none"> ● The provision of handrails should be on both sides instead of at least one side previously. ● The requirements for external steps & stairs are introduced. 	Nil	Requirements of tactile warning strips at landings in PNAP 247 have been incorporated in the mandatory section. (Fig 6 of PART 3)
Division 8 Handrails	<ul style="list-style-type: none"> ● S28(4) ● S30 	Maximum diameter of handrails relaxed from 40mm to 50mm.	Nil	Braille and tactile information shall be provided.
Division 9 Corridors, lobbies and paths	<ul style="list-style-type: none"> ● S33 ● S36 	<ul style="list-style-type: none"> ● The requirements for gratings are added. ● The requirements for headroom are added. 	Nil	Nil
Division 10 Doors	<ul style="list-style-type: none"> ● S38 ● S39(1)(a) ● S42(a) ● S45 	<ul style="list-style-type: none"> ● Door width increased from 750mm to 800mm. ● Unobstructed area adjacent to the door handle adjusted from 380mm to 330mm. ● Door threshold reduced from 25mm to 20mm high. 	Nil	Location of the marking on frameless glass doors is added. (S44)

		<ul style="list-style-type: none"> ● New requirement on automatic main entrance door to one of the common main entrances of some buildings. 		
Division 11 Toilets & W.C. cubicles	<ul style="list-style-type: none"> ● S47 ● S49(2) ● S55 	<ul style="list-style-type: none"> ● Accessible unisex toilet is introduced. ● New requirement clear manoeuvring space of 1.5m x 1.5m measured at 350mm level within the accessible water closet cubicle is introduced. ● The requirement of urinal is added. 	Nil	Nil
Division 12 Bathrooms and shower compartments	S56 to S63	A new section on bathrooms and shower compartments with requirements of bathtubs, faucets and controls, shower heads, shower stalls grab rails, thresholds and shower seats is introduced.	Nil	Nil
Division 13 Signs	S64 to S68	The requirements of international symbol are elaborated. (S64)	<ul style="list-style-type: none"> ● Requirements of sign for persons with hearing impairment are added. (S67) ● Special obligatory design requirements to assist person with hearing impairment enhanced. (Division 14) 	<ul style="list-style-type: none"> ● Braille and tactile requirements are added. (S68) ● Special obligatory design requirements to assist person with visual impairment enhanced. (Division 14)
Division 15 Public information / service counters	S70 & S71	More detailed requirements for service / information counters are incorporated.	At least one information/service counter is provided with an assistive listening system for noisy background or screened counter.	Nil
Division 16 Illumination	S72 to S74	Nil	Nil	New obligatory requirements of 85/120 lux at various locations of an accessible building are introduced.
Division 17 Emergency call bells in accessible toilets	S75 to S76	Emergency call bell relocated and with detailed requirements.	Nil	Nil
Division 18 Assistive listening systems	S77	Nil	The term "assistive listening system" is introduced and covers the current "induction loop system".	Nil
Division 19 Lifts	<ul style="list-style-type: none"> ● S78(1)(b) & (2)(b) ● S78(2)(a) 	<ul style="list-style-type: none"> ● Clear door width increased from 750mm to 850mm. ● A larger disabled lift required where there are more than 3 lifts. 	Nil	<ul style="list-style-type: none"> ● New requirements of audible signals to signify door closing. (S79(2)) ● More detailed requirements for lift button. (location, Braille etc) (S80) ● Putonghua has been added to signify the stopping floor in addition to Cantonese and English. (S82(3))
Division 20 Escalators and passenger conveyors	S85 & Fig 8 of PART 3	Nil	Nil	New requirement of tactile warning strips at top and bottom of escalator is added.
Division 21 Extent of application of additional assistive provisions	S86	Extent of application is introduced in the form of a table for various uses of buildings.		

PART 4		Buildings with limited application and exempted areas pursuant to Building (Planning) Regulation 72 are covered in this part. All types of buildings are covered.
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Amendments proposed by the Administration

4. Wheelchair spaces

~~(1) Subject to subsection (2), 2 wheelchair spaces shall be provided in premises to which this Division applies for every 400 fixed seats or any part thereof.~~

(1) On any premises with an auditorium with not more than 800 fixed seats at spectator level, not less than 4 wheelchair spaces shall be provided at spectator level.

~~(2) Not less than 4 wheelchair spaces shall be provided at spectator level in an auditorium.~~

(2) On any premises with an auditorium with more than 800 fixed seats at spectator level, not less than 2 wheelchair spaces shall be provided at spectator level for every 400 fixed seats or any part thereof.

(3) A wheelchair space shall be adjacent to at least one other wheelchair space.

(4) Wheelchair spaces shall be adjacent to fixed seats.

(5) A wheelchair space shall have unobstructed view of the spot at which the relevant activity takes place.

(6) The side of a wheelchair space facing the spot at which the relevant activity takes place shall be not less than 800 mm and the other side shall be not less than 1 300 mm.

(7) A passage leading to a wheelchair space from an accessible entrance of an auditorium shall be not less than 1 500 mm in width.

(8) Nothing in this section prohibits the installation of readily removable seats in the wheelchair spaces when the spaces are not occupied by wheelchair users.

**Division 12 – Bathrooms and Shower Compartments in Accessible
Guest Rooms**

55A. Application: Division 12, Part 2

This Division applies to bathrooms and shower compartments in accessible guest rooms required under section 7.

TABLE

Uses of buildings	Required additional assistive provisions				
	Braille and tactile floor plan [section 69(2)]	Tactile guide path [sections 13 and 69(3)]	Visual display board [section 69(4)]	Accessible public information or service counter [section 70]	Assistive listening system [section 77]
1. Department store and shopping complex	Applicable	Applicable	Not applicable	Applicable	Not applicable
2. Hotel, hostel, guesthouse and bank	Applicable	Not applicable	Not applicable	Applicable	Not applicable
3. Place for worship	Applicable	Not applicable	Not applicable	Applicable	Not applicable
4. Cinema, theatre, concert hall, stadium, museum, theme park and purpose-built family amusement centre	Applicable	Applicable	Applicable	Applicable	Applicable

Uses of buildings	Required additional assistive provisions				
5. School, college, university and public library	Applicable	Applicable	Not applicable	Applicable	Not applicable
6. Factory, workshop <u>workshop</u> and place for industrial use	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
7. Sports complex and public swimming pool complex	Applicable	Applicable	Not applicable	Applicable	Not applicable
8. Restaurant and food court	Applicable	Not applicable	Not applicable	Not applicable	Not applicable
9. Indoor market and supermarket	Applicable	Not applicable	Not applicable	Not applicable	Not applicable
10. Hospital and purpose-built clinic	Applicable	Applicable	Applicable	Applicable	Applicable

Uses of buildings	Required additional assistive provisions				
11. Residential home for the elderly and welfare centre	Applicable	Applicable	Not applicable	Applicable	Not applicable
12. Club house	Applicable	Not applicable	Not applicable	Applicable	Not applicable
13. Transport station, interchange and passenger terminal	Applicable	Applicable	Applicable	Applicable	Applicable
14. Carpark	Applicable	Not applicable	Not applicable	Not applicable	Not applicable

PART 4

BUILDING WHERE LIMITED FACILITIES FOR PERSONS WITH A DISABILITY ARE TO BE PROVIDED

Category of Buildings	Extent of application of regulation 72
1. Domestic buildings	<p>(a) All common areas of such buildings of more than 4 storeys.</p> <p>(b) Main entrance and common areas of the ground floor and means of access to buildings which do not exceed 4 storeys.</p> <p>(c) The areas mentioned in paragraphs (a) and (b) shall not include the parts of the building used for the following purposes –</p> <p>(i) areas only used for building services and maintenance (testing, inspections, verification, repair and overhaul) including –</p> <p>(A) a plant, cooling tower and power plant;</p> <p>(B) equipment and lift motor room, and electrical transformer room and switch room, a battery room, a machinery room, a plant room and a pump room;</p> <p>(C) a boiler room;</p>

- (D) non-tenantable spaces accessed only by ladders, catwalks or crawl spaces;
 - (E) an access route for maintenance, pits, lift shafts and ventilation shafts; and
 - (F) a sub-station, telecommunications equipment room, metering area or the like;
- (ii) mezzanine floor used only for storage, plant and equipment installations or the like;
 - (iii) raised platform used primarily for the purposes of security or safety management, including but not limited to, guard tower or fixed lifeguard stand;
 - (iv) swimming pool (the water-containing pool only); and
 - (v) any path providing access only to an area used for the purposes as stated in subparagraphs (i) to (iv) above.

(d) All guest rooms required under section 7.

2. Non-domestic buildings All parts of such buildings, excluding the parts used for the following purposes –
- (a) commercial kitchen, cold room and cinema projector room;
 - (b) areas only used for building services

and maintenance (testing, inspections, verification, repair and overhaul)

including –

- (i) a plant, cooling tower and power plant;
 - (ii) equipment and lift motor room, and electrical transformer room and switch room, a battery room, a machinery room, a plant room and a pump room;
 - (iii) a boiler room;
 - (iv) non-tenantable spaces accessed only by ladders, catwalks or crawl spaces;
 - (v) an access route for maintenance, pits, lift shafts and ventilation shafts; and
 - (vi) a sub-station, telecommunications equipment room, metering area or the like;
- (c) areas used for storage of raw materials or produce or for bulk storage where –
- (i) the stored materials are hazardous; or
 - (ii) the public is not permitted to enter, such as waste containment area, chemical store or the like;
- (d) mezzanine floor used only for storage, plant and equipment installations or the

like;

- (e) raised platform used primarily for the purposes of security or safety management, including but not limited to, guard tower or fixed lifeguard stand;
- (f) swimming pool (the water-containing pools only); and
- (g) any path providing access only to an area used for the purposes as stated in paragraphs (a) to (f) above.

3. Composite buildings

- (a) All common areas of the domestic parts of such buildings if the domestic parts are more than 4 storeys.
- (b) Main entrance and common areas of the ground floor and means of access to buildings if the domestic parts of which do not exceed 4 storeys.
- (c) The areas mentioned in paragraphs (a) and (b) shall not include the parts of the building used for the following purposes –
 - (i) areas only used for building services and maintenance (testing, inspections, verification, repair and overhaul) including –
 - (A) a plant, cooling tower and power

- plant;
 - (B) equipment and lift motor room, and electrical transformer room and switch room, a battery room, a machinery room, a plant room and a pump room;
 - (C) a boiler room;
 - (D) non-tenantable spaces accessed only by ladders, catwalks or crawl spaces;
 - (E) an access route for maintenance, pits, lift shafts and ventilation shafts; and
 - (F) a sub-station, telecommunications equipment room, metering area or the like;
- (ii) mezzanine floor used only for storage, plant and equipment installations or the like;
 - (iii) raised platform used primarily for the purposes of security or safety management, including but not limited to, guard tower or fixed lifeguard stand;
 - (iv) swimming pool (the water-containing pool only); and
 - (v) any path providing access only to an area used for the purposes as stated in

subparagraphs (i) to (iv) above.

- (d) All non-domestic parts of such buildings, excluding the parts used for the following purposes –
- (i) commercial kitchen, cold room and cinema projector room;
 - (ii) areas only used for building services and maintenance (testing, inspections, verification, repair and overhaul) including –
 - (A) a plant, cooling tower and power plant;
 - (B) equipment and lift motor room, and electrical transformer room and switch room, a battery room, a machinery room, a plant room and a pump room;
 - (C) a boiler room;
 - (D) non-tenantable spaces accessed only by ladders, catwalks or crawl spaces;
 - (E) an access route for maintenance, pits, lift shafts and ventilation shafts; and
 - (F) a sub-station, telecommunications equipment room, metering area or the like;

- (iii) areas used for storage of raw materials or produce or for bulk storage where –
 - (A) the stored materials are hazardous;
or
 - (B) the public is not permitted to enter, such as waste containment area, chemical store or the like;
- (iv) mezzanine floor used only for storage, plant and equipment installations or the like;
- (v) raised platform used primarily for the purposes of security or safety management, including but not limited to, guard tower or fixed lifeguard stand;
- (vi) swimming pool (the water-containing pools only); and
- (vii) any path providing access only to an area used for the purposes as stated in subparagraphs (i) to (vi) above.”.

(e) All guest rooms required under section 7.”.