

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 21 January 2011**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 14 January 2011**

Date of tabling in LegCo : 19 January 2011

Amendment to be made by : 16 February 2011 (or 9 March 2011 if extended by resolution)

PART I MINIMUM IMPOSED LOAD REQUIREMENTS FOR BUILDINGS

Buildings Ordinance (Cap. 123)

Building (Construction) (Amendment) Regulation 2011 (L.N. 3)

The Building Construction Regulations (Cap. 123 sub. leg. B) (the Regulations) are made by the Secretary for Development (Secretary) pursuant to section 38 of the Buildings Ordinance (Cap. 123) (BO). Regulation 17 of the Regulations, which provides for the requirements relating to the imposed loads on buildings, specifies that the imposed load on any building, street, building works or street works shall be the greatest applied load likely to arise from the intended use or purpose of the building, street, building works or street works (including forces exerted by the adjacent ground). Under regulation 2, "imposed load" is defined to mean load other than the weight of walls, floors, roofs, finishes, permanent partitions and other permanent construction (i.e. dead load) or any load due to the effects of wind pressure or suction (i.e. wind load).

2. L.N. 3 is made by the Secretary to amend the Regulations to provide for the following matters –

- (a) Where the floor of a building is used to support any equipment, machinery or display item that will result in a greater imposed load than the minimum imposed load specified in the new Table 1 (as contained in L.N. 3), the load of any of those items has to be

considered in determining the imposed load on the floor. Under the existing provisions of the Regulations, only certain uses of buildings require the consideration of equipment, machinery or display items in determining the minimum imposed loads (section 3(7)).

- (b) The uses of buildings and their corresponding minimum imposed load requirements are re-categorized from the existing 12 classes into eight classes in the new Table 1 (section 3(8)).
- (c) The existing minimum imposed load requirements for certain uses (e.g. domestic use, restaurants, car-parking areas, etc) is reduced. L.N. 3 also specifies the minimum imposed load requirements for some new uses of buildings (e.g. residential care homes for elderly persons, nursing homes, dance practice rooms, karaoke establishments, museums, etc) and present-day building elements (e.g. utility platforms) (section 3(8)).
- (d) No reduction of the imposed loads shall apply with respect to floors used for storage purposes and loads from partitions the positions of which are not indicated on the plan of the building (section 3(11)).
- (e) The allowable reduction of total distributed imposed loads for buildings is revised (as contained in the new Table 2) to allow less load reduction in structural design for high-rise buildings (section 3(12)).
- (f) The minimum horizontal imposed load on protective barriers for areas where people may congregate but overcrowding is not expected is specified in the new Table 3 (section 3(13)).
- (g) The existing formulae for calculating impact forces on vehicle barriers in different areas are substituted by one single formula applicable to all situations (section 3(14)).

3. Under section 39(2) of BO, where at the date of the coming into operation of any regulations made under BO any building works or street works are being carried out or consent to their commencement has been given, the provisions of the law prior to the coming into operation of such regulations shall apply to such works. The effect of this is that the provisions in L.N. 3 will apply to new buildings and alteration and addition works in existing buildings.

4. Members may refer to the LegCo Brief (File Ref: DEVB(PL-B)30/30/16) issued by the Development Bureau dated 13 January 2011 for more information. According to paragraph 4 of the LegCo Brief, apart from modernizing and updating the minimum imposed load requirements for buildings in line with local conditions and international standards, L.N. 3 aims to facilitate the process of structural design of buildings and enhance the efficiency of building control and enforcement. According to paragraph 9 of the LegCo Brief, the Buildings Department has consulted the relevant professional institutions of the building industry and other stakeholders and they were generally supportive of the proposed amendments.

5. The Panel on Development was consulted on the proposed amendments to the Regulations at its meeting on 23 June 2009. At the meeting, a member said that he supported the Administration's proposal in principle because a detailed classification of the floor uses would be beneficial economically, and building materials and construction cost could be saved. In response to the enquiries from another member that whether reducing the required minimum imposed loads of buildings and categorizing the floor uses into eight detailed classes would limit the future uses of the buildings, such as limiting the conversion of floors for residential activities to residential care homes, the Administration explained that existing buildings would not be affected if there was no change of use and the new regulations would be applicable if floors for residential activities were converted to residential care homes in the future.

6. L.N. 3 will come into operation on 1 August 2011.

7. The Legal Service Division is seeking clarification from the Administration on certain technical issues. A further report may be issued if necessary. Since the load requirements for buildings and building works might have implications on safety of building, members may wish to consider whether to set up a subcommittee to examine this item of subsidiary legislation.

PART II FEE REVISION

Buildings Ordinance (Cap. 123)

Building (Oil Storage Installations) (Amendment) Regulation 2011 (L.N. 4)

8. Section 38(1A) of the Buildings Ordinance (Cap. 123) (BO) provides that the Chief Executive in Council may by regulation provide for the imposition of fees in respect of any matter with regard to which provision is made in the BO or in regulations made thereunder. Regulations 6(3) and 7(2) of the Building (Oil Storage Installations) Regulations (Cap. 123 sub. leg. K) prescribe fees for the granting and renewal of oil storage installation licences.

9. Under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1), the Financial Secretary (which means also the Secretary for Financial Services and the Treasury by virtue of section 3 of Cap. 1) may by subsidiary legislation vary the amount of fees or charges which have previously been fixed by subsidiary legislation made by the Chief Executive in Council.

10. L.N. 4 is made by the Secretary for Financial Services and the Treasury to reduce by 13.7% the fee for the grant of a licence for an oil storage installation from \$45,250 to \$39,050 and increases by 6.28% the fee for the renewal of such licence for one year from \$23,100 to \$24,550. These fees were last revised in 2005.

11. Members may refer to the LegCo Brief (File Ref: DEVB(PL-B) 30/30/31) issued by the Development Bureau dated 13 January 2011 for more information. According to paragraph 3 of the LegCo Brief, the relevant fees are set at levels sufficient to recover the full cost of providing the services in line with the "user pays" principle.

12. According to paragraph 10 of the LegCo Brief, the Administration has consulted the Standing Advisory Committee (Oil Storage Installations) (comprising representatives from the Oil Industry Representative Committee and the Government departments concerned) and other relevant professional bodies on the proposed fee revisions and no objection was raised.

13. At the Development Panel meeting on 16 December 2010, an information paper (LC Paper No. CB(1)713/10-11(01)) on the proposed fee revision was circulated to members of the Panel. The paper was not discussed by the Panel.

14. L.N. 4 will come into operation on 11 March 2011.

Shipping and Port Control Ordinance (Cap. 313)
Shipping and Port Control (Amendment) Regulation 2011 (L.N. 5)

Merchant Shipping (Seafarers) Ordinance (Cap. 478)
Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2011 (L.N. 6)

15. The Thirteenth Schedule to the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) (the Thirteenth Schedule) sets out the port dues and fees payable under the Shipping and Port Control Ordinance (Cap. 313) in respect of vessels entering the waters of Hong Kong or using any port facilities. Under section 80 of Cap. 313, these port dues and fees are prescribed by the Chief Executive in Council. Under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1), the Financial Secretary (which means also the Secretary for Financial Services and the Treasury by virtue of section 3 of Cap. 1) may vary fees by subsidiary legislation which have previously been fixed by subsidiary legislation made by the Chief Executive in Council.

16. Under section 133(1) of the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (the Seafarers Ordinance), the Financial Secretary (which means also the Secretary for Financial Services and the Treasury by virtue of section 3 of Cap. 1) may by regulation prescribe or provide for fees to be paid in respect of registration or the grant of certificates, clearances, licences, permits and other documents under the Seafarers Ordinance. The various fees payable are set out in the Schedule to the Merchant Shipping (Seafarers) (Fees) Regulation (Cap. 478 sub. leg. AB) (the Seafarers Fees Regulation).

17. L.N. 5 is made by the Secretary for Financial Services and the Treasury to amend the Thirteenth Schedule to reduce the port facilities and light dues charged on high speed passenger crafts plying within the river trade limits and ocean-going vessels by about 22% and 20% respectively. The respective fees were last revised in 1995 and 2005.

18. L.N. 6 amends the Schedule to the Seafarers Fees Regulation to –

- (a) reduce 22 items of fees relating to the examination fees for certificates of competency as Deck Officers and Marine Engineer Officers by about 20%; and
- (b) repeal six items of fees relating to the oral examination fees for licences as Deck Officers and Marine Engineer Officers which have become obsolete as those oral examinations are no longer held.

19. Members may refer to the LegCo Brief (File Ref: MA 10/66) issued by the Transport and Housing Bureau dated 12 January 2011 for more information. Annex C to the LegCo Brief is a summary (in table form) showing the relevant fees and the changes as contained in L.N. 5 and L.N. 6. According to paragraph 3 of the LegCo Brief, the relevant fees are set at levels sufficient to recover the full cost of providing the services in line with the "user pays" principle. Paragraph 10 of the LegCo Brief states that the Administration has consulted the port and maritime industry which indicated support for the proposals.

20. The Panel on Economic Development was consulted on the proposed revision of fees and charges under the purview of the Marine Department at the meeting on 14 December 2010. Members supported the proposals.

21. Both L.N. 5 and L.N. 6 will come into operation on 12 March 2011.

PART III CONTROL OF DANGEROUS DRUGS AND CHEMICALS

Dangerous Drugs Ordinance (Cap. 134)

Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2011 (L.N. 7)

22. Part I of the First Schedule to the Dangerous Drugs Ordinance (Cap. 134) (DDO) contains a list of "dangerous drugs" which are subject to the strict control on trafficking, manufacture, possession, supply, import and export under DDO. Under section 50 of DDO, the Chief Executive may by order published in the Gazette amend the First Schedule to DDO.

23. L.N. 7 adds "derivatives of piperazine", "synthetic cannabinoids", and "derivatives of cathinone" to Part I of the First Schedule to DDO. The effect of this is that these three substances will be subject to the control under DDO.

24. Members may refer to the LegCo Brief on L.N. 7 (File Ref: NCR 2/1/8 SF 4) issued by the Narcotics Division of the Security Bureau dated 12 January 2011 for more information. According to paragraph 2 of the LegCo Brief, these substances, which are not currently controlled by the laws of Hong Kong, exhibit psychoactive properties with propensity for abuse and their harms are commensurate with other psychotropic dangerous drugs such as ecstasy, cannabis or amphetamines.

Control of Chemicals Ordinance (Cap. 145)

Control of Chemicals Ordinance (Amendment of Schedule 2) Order 2011 (L.N. 8)

25. Under section 2A of the Control of Chemicals Ordinance (Cap. 145) (CCO), no person shall have in his possession, manufacture, transport or distribute any substance specified in Schedule 2 to CCO, knowing or having reasonable grounds for believing that it is to be used in or for the unlawful production of a dangerous drug as defined in section 2 of the Dangerous Drugs Ordinance (Cap. 134). The import, export and manufacture of those substances are also prohibited under CCO. Under section 18A of CCO, the Secretary for Security may by order amend Schedule 2 to CCO.

26. L.N. 8 adds 1-[(2-Chlorophenyl)-N-(methylimino)methyl]cyclopentanol (1-經基環戊基-2-氯苯基-N-甲基亞胺基酮) and its salts (the substances) to Schedule 2 to CCO. The effect of L.N. 8 is that the substances will be subject to the control under the various provisions of CCO.

27. Members may refer to the LegCo Brief on L.N. 8 (File Ref: NCR 2/1/8 SF 4) issued by the Narcotics Division of the Security Bureau dated 12 January 2011 for more information. According to paragraph 4 of the LegCo Brief, the substances can be used in the production of the dangerous drug ketamine, which is classified as a dangerous drug under the control of DDO.

28. The Panel on Security was consulted on the legislative proposals in L.N. 7 and L.N. 8 at the meeting on 11 November 2010. Members generally supported these proposals.

29. L.N. 7 and L.N. 8 will come into operation on 1 April 2011.

Concluding Remarks

30. Except for the matters relating to L.N. 3 as mentioned in paragraph 7 above, no difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

PART IV LEGAL NOTICES NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Côte d'Ivoire) Regulation 2011 (L.N. 9)

United Nations Sanctions (Arms Embargoes) Regulation (Repeal) Regulation (L.N. 10)

United Nations Sanctions (Sierra Leone) (Immigration Control) Regulation (Repeal) Regulation (L.N. 11)

31. L.N. 9 to L.N. 11 were made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (UNSO) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

United Nations Sanctions (Côte d'Ivoire) Regulation 2011 (L.N. 9)

32. Since 2004, the United Nations Security Council (UNSC) has made several resolutions imposing sanctions against Côte d'Ivoire or renewing certain sanctions upon their expiry. These resolutions have been implemented by regulations made under UNSO, the last one being the United Nations Sanctions (Côte d'Ivoire) Regulation 2010 (Cap. 537 sub. leg. AO), which expired at midnight on 31 October 2010.

33. United Nations Sanctions (Côte d'Ivoire) Regulation 2011 is made to implement UNSC Resolution 1946 adopted on 15 October 2010 to renew until 30 April 2011 the prohibition against –

- (a) the supply, sale, transfer or carriage of arms or related materiel to Côte d'Ivoire;
- (b) the provision of advice, assistance or training related to military activities in certain circumstances;
- (c) importation of rough diamonds from Côte d'Ivoire;
- (d) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (e) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and
- (f) entry into or transit through Hong Kong by certain persons.

34. A new provision has been added to L.N. 9 to the effect that the above prohibition against supply, sale or transfer of arms or materiel does not apply to the supplies of non-lethal equipment intended solely to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order as approved in advance by a committee of UNSC. References to Resolution 1946 in certain provisions of L.N. 9 have also been made.

35. Apart from the provisions mentioned in paragraph 4 above, the provisions of L.N. 9 are similar to the provisions in the United Nations Sanctions (Côte d'Ivoire) Regulation 2010.

36. L.N. 9 has come into operation when it was published in the Gazette on 14 January 2011. It will expire at midnight on 30 April 2011.

37. Members may refer to a paper prepared by the Commerce and Economic Development Bureau in January 2011 for the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee) (LC Paper No. CB(1)1086/10-11(01)) for further information.

United Nations Sanctions (Arms Embargoes) Regulation (Repeal) Regulation (L.N. 10)

United Nations Sanctions (Sierra Leone) (Immigration Control) Regulation (Repeal) Regulation (L.N. 11)

38. L.N. 10 and L.N. 11 were made to implement UNSC Resolution 1940 adopted on 29 September 2010 in relation to Sierra Leone by repealing the United Nations Sanctions (Arms Embargoes) Regulation (Cap. 537 sub. leg. E) (the Arms Embargoes Regulation) and the United Nations Sanctions (Sierra Leone) (Immigration Control) Regulation (Cap. 537 sub. leg. G) (the Immigration Control Regulation).

39. Sierra Leone has been subjected to UNSC sanctions since October 1997. The Arms Embargoes Regulation was made to implement arms embargoes against several African countries including Sierra Leone. However, Sierra Leone is the only country which was still subject to the prohibitions of the Arms Embargoes Regulation before the making of L.N. 10. The Immigration Control Regulation was made to implement the sanctions in relation to the prohibition against entry into or transit through Hong Kong by certain persons designated by a committee appointed by UNSC.

40. Having considered the current situations in Sierra Leone, UNSC adopted Resolution 1940 (2010) on 29 September 2010 to terminate with immediate effect the sanctions implemented through the Arms Embargoes Regulation and the Immigration Control Regulation.

41. L.N. 10 and L.N. 11 have come into operation when they were published in the Gazette on 14 January 2011.

42. Members may refer to a paper prepared by the Commerce and Economic Development Bureau in January 2011 for the Subcommittee (LC Paper No. CB(1)1086/10-11(02)) for further information.

Concluding Remarks

43. Under section 3(5) of UNSO, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under UNSO. Therefore, L.N. 9 to L.N. 11 are not subject to amendment by the Legislative Council. However, since they come within the terms of reference of the Subcommittee, Members may consider referring them to the Subcommittee for further consideration.

44. No difficulties have been identified in the legal or drafting aspects of L.N. 9 to L.N. 11. However, L.N. 10 is erroneously gazetted as "L.N. 10 of 2010". Upon our enquiry, the Administration has indicated that a corrigendum will be gazetted on 21 January 2011 to rectify the error.

Prepared by

Kitty CHENG (L.N. 3 - 8)
LEE Ka-yun, Kelvin (L.N. 9 - 11)
Assistant Legal Advisers
Legislative Council Secretariat
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