

立法會
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LC Paper No. LS2/15-16

**Paper for the House Committee Meeting
on 16 October 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 October 2015**

Tabling in LegCo : Council meeting of 14 October 2015

Amendment to be made by : Council meeting of 11 November 2015 (or that of 2 December 2015 if extended by resolution)

**Building (Standards of Sanitary Fitments, Plumbing,
Drainage Works and Latrines) (Amendment) Regulation
2015**

(L.N. 191)

**Building (Administration) (Amendment) (No. 2) Regulation
2015**

(L.N. 192)

Background

Enacted in 1959, the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap. 123I) prescribes the minimum standard of sanitary fitments (including the number of waterclosets and urinals) to be provided in respect of the following buildings: residential buildings, places of public entertainment, cinemas, restaurants, and offices, industrial undertakings and other places of work (regulated buildings). The standard is prescribed with reference to the number of male and female persons that are present (or likely to be present) in a regulated building so that at least a certain number of sanitary fitments is present in the building concerned. As the number of persons reaches different levels (threshold levels), the prescribed number of sanitary fitments required is increased accordingly.

2. According to paragraphs 2 and 21 of the Legislative Council (LegCo) Brief (File Ref: DEVB(PL-B) 30/30/98) issued by the Development Bureau in October 2015, the Administration is of the view that Cap. 123I has become outdated. As such, the Administration plans to adopt a two-stage approach to amend Cap. 123I. The first stage concerns the amendments to Cap. 123I to

enhance the standards for the provision of sanitary fitments in public places. The second stage concerns amendments to enhance requirements on the construction of drainage system, transformation of the prescriptive requirements under Cap. 123I, etc. L.N. 191 covers the first stage amendments to Cap. 123I.

L.N. 191 and L.N. 192

3. L.N. 191, made by the Secretary for Development under section 38 of the Buildings Ordinance (Cap. 123), amends Cap. 123I to:-

- (a) update the requirements on the numbers and standards of sanitary fitments in respect of the regulated buildings by changing the ratio of male to female persons or threshold levels that is adopted in respect of these buildings;
- (b) add four new types of buildings (i.e. sports stadia, shopping arcades and department stores, religious institutions and funeral parlours) and prescribe the requirements on the numbers and the standards of sanitary fitments in these buildings;
- (c) replace the type of building which is considered as "offices, industrial undertakings and other places of work" by "workplace", which is defined to include, among other things, a shop that is neither within a shopping arcade nor a department store and a food room of a restaurant; and
- (d) amend certain definitions (including the substitution of the definition of "usable floor space" with "usable floor area").

4. The effect of the above amendments is that the number of female sanitary fitments in respect of the regulated buildings is increased when the number of persons in a building concerned reaches a certain threshold level. In addition, the requirements in respect of sanitary fitments in a restaurant under L.N. 191 are also aligned with the relevant licensing requirements for restaurants.

5. L.N. 192 amends regulation 8(1)(k)(i) of the Building (Administration) Regulations (Cap. 123A) by replacing "usable floor space" with "usable floor area" consequential to the amendments made by L.N. 191 to Cap. 123I.

Public Consultation

6. According to paragraph 16 of the LegCo Brief, the Administration has consulted certain committees, professional bodies and relevant organisations, including the Building Sub-committee of the Land and Development Advisory Committee and the Hong Kong Federation of Women. They were supportive of the amendments.

Consultation with LegCo Panel

7. As advised by the Clerk to the Panel on Development, the Administration briefed the Panel on 5 January 2015. Members supported in principle the proposed amendments. Some members expressed concerns on the possible difficulties for owners of aged commercial buildings and restaurant operators to comply with the proposed new requirements. The Administration explained that the amendments would only be applicable to new buildings or an existing building which underwent major alteration or addition works after L.N. 191 and L.N. 192 came into operation, and to new restaurant licence applications.

Commencement

8. L.N. 191 and L.N. 192 come into operation on 14 December 2015.

Pharmacy and Poisons (Amendment) (No. 5) Regulation 2015

(L.N. 193)

9. L.N. 193 is made by the Pharmacy and Poisons Board (Board) under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health. L.N. 193 adds 12 substances to Division A of the First Schedule to the Pharmacy and Poisons Regulations (Cap. 138A), Division A of the Third Schedule to Cap. 138A and Division A of Part I of the Poisons List set out in Schedule 10 to Cap. 138A respectively so that the substances are subject to the restrictions imposed under Cap. 138 and Cap. 138A.

10. Substances included in the First Schedule to Cap. 138A are subject to restrictions concerning their sale, supply, labeling and storage. Substances included in the Third Schedule to Cap. 138A can only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Poisons containing substances listed in Part I of the Poisons List set out in Schedule 10 to Cap. 138A can only be sold, among other applicable requirements, on registered premises of an authorized seller of poisons

by a registered pharmacist or in the presence and under the supervision of a registered pharmacist.

11. According to paragraph 4 of the LegCo Brief (File Ref: FHB/H/23/4) issued by the Food and Health Bureau in October 2015, the Board considers that the addition of the 12 substances to the said Schedules to Cap. 138A is appropriate in view of the potency, toxicity and potential side effects of the substances. Members may refer to Annex B to the LegCo Brief for details on the 12 substances.

12. L.N. 193 came into operation on the date of publication in the Gazette, i.e. 9 October 2015.

13. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 193.

Electronic Transactions (Exclusion) (Amendment) Order 2015

(L.N. 194)

14. According to section 5 of the Electronic Transactions Ordinance (Cap. 553), if a rule of law requires or permits information to be or given in writing, the use of electronic records containing the information satisfies that rule of law. Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553B) sets out the statutory provisions which are excluded from the application of section 5 of Cap. 553.

15. L.N. 194 is made by the Permanent Secretary for Commerce and Economic Development (Communications and Technology) under section 11(1) of Cap. 553 to remove item 18 (which consists of sections 16(2), 17(1) and 24(1) of the Town Planning Ordinance (Cap. 131)) from Schedule 1 to Cap. 553B. Section 16(2) of Cap. 131 concerns an application to the secretary to the Town Planning Board (TP Board) for the grant of permission for any purpose as provided for in a draft or approved plan. Section 17(1) of Cap. 131 concerns an application for review of a decision of the TP Board under or in respect of section 16. Section 24(1) of Cap. 131 concerns an application to the Secretary for Development for review of a decision of the Director of Planning. The effect of L.N. 194 is that submission of the above applications in electronic form will be permissible.

16. Members may refer to the LegCo Brief (File Ref: GCIO 107/4/3 XXVI) issued by the Office of the Government Chief Information Officer and the Commerce and Economic Development Bureau in October 2015 for further information.

17. According to the Clerks to the Panel on Information Technology and Broadcasting and the Panel on Commerce and Industry, the Panels have not been consulted on L.N. 194.

18. L.N. 194 comes into operation on 18 December 2015.

**Road Traffic Ordinance (Amendment of Schedule 3) (No. 2)
Order 2015**

(L.N. 195)

**Road Traffic Ordinance (Amendment of Schedule 8) Order
2015**

(L.N. 196)

19. L.N. 195 is made by the Secretary for Financial Services and the Treasury (SFST) under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of section 86(2) of the Road Traffic Ordinance (Cap. 374) to increase the fees specified in Part 2 of Schedule 3 to Cap. 374 by 9% to 11%. In essence, the fees concern examination fees payable in respect of certain types of vehicles (including any private car, taxi, light bus, single-decked and double-decked bus) that are conducted at government vehicle examination centres. The fees were last revised in 1995. Members may refer to Annex C to the LegCo Brief (File Ref THB(T)CR 25/5591/79) issued by the Transport and Housing Bureau in October 2015 for further information.

20. L.N. 196 is made by SFST under section 88H(2) of Cap. 374 to adjust the fees which are specified in Schedule 8 to Cap. 374. The adjustments concern the increase in the fees payable for an initial examination and a re-examination carried out under Part 9A of Cap. 374, the increase in the fees payable for the issue of a duplicate copy of a certificate of roadworthiness and the reduction in fees payable for the supply of a form of a certificate of roadworthiness. In relation to the fees which are increased by L.N. 196, those fees are increased by 9% to 10% and they were last revised in 1995. As regards the fees which are reduced by L.N. 196, the fees are reduced by about 72% and were last revised in 1998. Members may refer to Annex D to the LegCo Brief for further information.

21. According to paragraph 5 of the LegCo Brief, the above fees are revised with a view to achieving full cost recovery. According to the Administration, the fees payable for the supply of a form of a certificate of roadworthiness are reduced as these fees have been recovered more than the full cost.

22. As advised by the Clerk to the Panel on Transport, the Panel was consulted on 27 February 2015 on the proposed fee revision. Members in general agreed to the revision to gradually recover the full cost of providing the service.

23. L.N. 195 and L.N. 196 come into operation on 7 December 2015.

**Electronic Health Record Sharing System Ordinance
(Commencement) Notice 2015**

(L.N. 197)

24. L.N. 197 appoints 2 December 2015 as the day on which the Electronic Health Record Sharing System Ordinance (Ord. No. 15 of 2015) (other than those provisions that are specified in L.N. 197) comes into operation.

25. Ord. No. 15 of 2015 provides for, among other things, the establishment of the Electronic Health Record Sharing System (EHRSS) and the sharing, using and protection of data and information in EHRSS. The provisions which will not come into operation on 2 December 2015 mainly relate to sharing restriction requests and the use of data and information contained in EHRSS for carrying out research or preparing statistics.

26. According to paragraphs 4 to 6 of the LegCo Brief (File Ref: FH CR 1/1/3781/10) issued by the Food and Health Bureau in October 2015, the commencement of the sections other than those specified in L.N. 197 enables the Administration to start the process of voluntary registration of participating healthcare providers and healthcare recipients, and later sharing of health records. The provisions relating to sharing restriction request and the use of data contained in EHRSS have not been brought into operation as the Administration plans to study the relevant matters further.

27. As advised by the Clerk to the Panel on Health Services, in the course of scrutinizing the relevant Bill, the Administration had advised that those provisions relating to sharing restriction would come into operation only upon completion of the study and after the relevant feature was technically ready for implementation. The Bills Committee raised no objection in this regard. As regards those provisions relating to the use of the data and information contained in an electronic health record for research and statistics purpose, the Bills Committee had not been advised of the Administration's plan to commence these provisions at a later stage.

**Insurance Companies (Amendment) Ordinance 2015
(Commencement) Notice 2015**

(L.N. 198)

28. L.N. 198 appoints 7 December 2015 as the day on which the provisions of the Insurance Companies (Amendment) Ordinance (Ord. No. 12 of 2015) that are specified in L.N. 198 come into operation.

29. Ord. No. 12 of 2015 was enacted in July 2015 to amend the Insurance Companies Ordinance (Cap. 41) to provide for, among other things, the establishment of an Insurance Authority (IA), and a licensing system and conduct requirements for insurance intermediaries. The provisions which will come into operation on 7 December 2015 mainly relate to the establishment of the Provisional Insurance Authority (PIA), its powers, checks and balances on PIA and the appointment of the Industry Advisory Committees. Members may wish to note that PIA will not be vested with any regulatory powers before it becomes the IA, which is an independent statutory body, to take over the duties of the Office of the Commissioner of Insurance (OCI).

30. According to paragraphs 4 and 5 of the LegCo Brief (File Ref: INS/2/3C(2015)) issued by the Financial Services and the Treasury Bureau on 7 October 2015, the Administration plans to commence Ord. No. 12 of 2015 in three stages. The provisions covered in L.N. 198 relate to the first stage of commencement of Ord. 12 of 2015. The second and third stages (which are aimed to be completed in no more than three years after the commencement of the first stage) mainly relate to the replacement of OCI by IA and the implementation of the statutory licensing regime and regulation of insurance intermediaries.

31. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 198. During the scrutiny of the Insurance Companies (Amendment) Bill 2014, to ensure a smooth transition to the new regulatory regime under the Bill, members stressed the importance for the Administration to continue discussion with the stakeholders in working out the implementation details, including formulating rules and codes or guidelines on various requirements and transitional arrangements. Members also emphasized the need to make proper arrangements for existing employees of OCI.

Mandatory Provident Fund Schemes (Amendment)

Ordinance 2015 (Commencement) (No. 2) Notice 2015

(L.N. 199)

32. L.N. 199 appoints 1 February 2016 as the day on which the uncommenced provisions of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (Ord. No. 1 of 2015) come into operation.

33. Ord. No. 1 of 2015 was enacted in January 2015 to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) to provide for, among other things, phased withdrawal of accrued mandatory provident fund (MPF) benefits, withdrawal of accrued MPF benefits on the ground of terminal illness and certain compliance requirements in respect of MPF schemes. The provisions that will come into operation on 1 February 2016 relate to, among other things, withdrawal of accrued benefits by instalments upon retirement (and early retirement) of a MPF scheme member and the requirement that MPF scheme

trustees may not charge a scheme member any fee or impose any penalty for the payment of accrued benefits other than that which is permitted by Ord. No. 1 of 2015. Members may refer to the letter¹ (File Ref: CB(1) 1300/14-15(01)) dated 7 October 2015 issued by SFST to the Panel on Financial Affairs for further details.

34. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 199. During the scrutiny of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (Commencement) Notice 2015 (L.N. 98 of 2015), the Administration and the MPF Schemes Authority undertook to roll out targeted publicity and education programmes to enhance public understanding of the new withdrawal option and operational arrangements. Such programmes include making leaflets in relation to the new withdrawal options and arrangements available to all MPF scheme members and conducting relevant briefings for various stakeholder groups such as labour unions and employers.

Concluding Observations

35. No difficulties have been identified in the legal and drafting aspects of L.N. 193 to L.N. 199. The Legal Service Division is scrutinizing L.N. 191 and L.N. 192. A further report will be made, if necessary.

Prepared by

LEE Hoi-see, Evelyn
Assistant Legal Adviser
Legislative Council Secretariat
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¹ No LegCo Brief in relation to L.N. 199 is provided by the Administration. However, a letter was issued by the Administration to the Panel on Financial Affairs stating that the Administration would publish, in the Gazette, a Commencement Notice in respect of Ord. No.1 of 2015 on 9 October 2015. The letter was circulated to all LegCo Members on 9 October 2015.