

立法會
Legislative Council

LC Paper No. LS37/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 10 January 2020**

Tabling in LegCo : Council meeting of 15 January 2020

Amendment to be made by : Council meeting of 12 February 2020 (or that of 18 March 2020 if extended by resolution)

Building (Construction) Regulation (L.N. 5)

Building (Administration) (Amendment) Regulation 2020 (L.N. 6)

Building (Ventilating Systems) (Amendment) Regulation 2020 (L.N. 7)

Building (Construction) Regulations (Repeal) Regulation (L.N. 8)

L.N. 5 to L.N. 8 are made by the Secretary for Development under section 38 of the Buildings Ordinance (Cap. 123) to replace the existing Building (Construction) Regulations (Cap. 123B) with a new regulation and to make consequential amendments to two other items of subsidiary legislation, namely, the Building (Administration) Regulations (Cap. 123A) and the Building (Ventilating Systems) Regulations (Cap. 123J).

L.N. 5 and L.N. 8

2. The existing Cap. 123B sets out the requirements regarding the design and construction of buildings, streets, building works and street works. L.N. 5 is a new regulation which comprises 12 parts and a Schedule to replace the existing Cap. 123B. L.N. 5 sets out the revised requirements in relation to the following matters:

- (a) materials used in building works and street works (Part 2);
- (b) dead loads, imposed loads and wind loads in building design and construction so as to prevent overloading (Part 3 and the Schedule);
- (c) the design methodology, strength and serviceability, stability, construction methods and procedures (Part 4);

- (d) site investigations, foundations, site formation works, retaining walls and bulk excavation (Parts 5 to 7);
- (e) external walls, cladding and curtain walls as well as protection against moisture and water (Parts 8 and 9);
- (f) fire resisting construction, protective barriers and lifts and escalators (Parts 10 and 11); and
- (g) ground treatments, wells, chimneys and flues, fireplaces, preventing places for habitation by vermin, and ducts (Part 12).

3. It is noted that when compared with the existing Cap. 123B, L.N. 5:

- (a) replaces certain prescriptive provisions in Cap. 123B with performance-based provisions so that the new provisions specify objectives and functional requirements rather than detailed technical requirements (e.g. regulation 9A (Building design and construction in connection with lifts and escalators) of Cap. 123B is replaced by sections 40 and 41 of L.N. 5);
- (b) introduces new requirements for the provision of adequate means of access to the exterior or outer surface of buildings for maintenance or repair (e.g. sections 27(2), 28(5) and 31(3) of L.N. 5);
- (c) removes obsolete and redundant provisions (e.g. definitions of "masonry" and "plain concrete" in regulation 2 of Cap. 123B are removed); and
- (d) re-organizes the structure of the existing Cap. 123B (e.g. re-organizing the three tables regarding imposed loads under regulation 17 of Cap. 123B into a Schedule to L.N. 5).

4. Neither the existing Cap. 123B nor L.N. 5 contains any offence or penalty provision for non-compliance with their requirements. Upon our enquiry, the Administration confirmed that such non-compliance may be dealt with under Cap. 123 which, among others, empowers the Building Authority to refuse approval of any plans of building works or to refuse consent to the commencement of building works or street works where the relevant requirements prescribed in any regulation made under Cap. 123 are not complied with.¹

5. L.N. 8 repeals Cap. 123B in view of the making of L.N. 5.

¹ Sections 14 and 16 of Cap. 123.

6. According to paragraphs 3 and 4 of the Legislative Council ("LegCo") Brief (without file reference) issued by the Development Bureau dated 8 January 2020, most of the provisions in the existing Cap. 123B have been in use for some 30 years. Having taken into account the outcome of a review conducted on the existing Cap. 123B and the concerns of the industry, the legislative amendments are made to facilitate innovations and advancements in building technology as well as to provide flexibility. Members may refer to the LegCo Brief for further details.

L.N. 6 and L.N. 7

7. Upon the making of L.N. 5, L.N. 6 and L.N. 7 make consequential amendments to Cap. 123A and Cap. 123J respectively.

8. Cap. 123A provides for the administration of various matters including plans, certificates and notices in relation to building works and street works. Regulation 8 of Cap. 123A sets out the requirements for the plans in respect of the building works and contains references to two relevant regulations under Cap. 123B. L.N. 6 amends regulation 8 of Cap. 123A to replace such references with references to the corresponding provisions in L.N. 5.

9. Cap. 123J sets out the requirements in relation to the ventilating systems installed in certain buildings. Regulation 4(1)(e)(iii) of Cap. 123J provides that where the size of a ventilating duct is sufficient to allow a person to enter, the duct must be fitted with access openings to allow a person to enter and must be constructed to bear the weight of the person. L.N. 7 repeals regulation 4(1)(e)(iii) of Cap. 123J as section 47 in Part 12 of L.N. 5 already prescribes the same requirement.

Consultation

10. According to paragraph 11 of the LegCo Brief, the Administration had consulted the Building Sub-Committee of the Land and Development Advisory Committee as well as the Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers Committee on the legislative proposal. Members of these two committees were generally supportive of the proposal.

11. As advised by the Clerk to the Panel on Development, on 26 February 2019, the Administration consulted the Panel on the legislative proposal. While the Panel members supported in principle the proposal, they considered that it was not sufficient to safeguard the workers' safety by merely including in the revamped Cap. 123B (i.e. L.N. 5) performance-based provisions to require the provision of adequate means of access for maintenance to external features. A motion was passed by the Panel to urge the Administration to mandate in the new regulation the provision of platforms as

passageways at newly completed buildings with air-conditioners installed on the external walls (except for window-type air-conditioners) for workers to carry out the installation and maintenance works safely. The Administration responded that the Building Authority would issue a new code of practice on design for safety for external maintenance and promulgate detailed guidelines² to implement the relevant requirements.

Commencement

12. L.N. 5 to L.N. 8 come into operation on 1 February 2021. According to paragraph 8 of the LegCo Brief, the commencement of L.N. 5 to L.N. 8 on a day which is more than 12 months from the date of gazettal would allow sufficient time for the stakeholders to familiarize themselves with the changes.

Concluding observations

13. No difficulties have been identified in relation to the legal and drafting aspects of the above four items of subsidiary legislation.

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² "The Code of Practice on Design for Safety - External Maintenance" was issued in September 2019. Available from: <https://www.bd.gov.hk/doc/en/resources/codes-and-references/code-and-design-manuals/DSEM2019e.pdf> [Accessed in January 2020].