

**立法會**  
**Legislative Council**

LC Paper No. LS46/20-21

**Paper for the House Committee Meeting  
on 12 March 2021**

**Legal Service Division Report on  
Proposed Resolution under section 2(3) of the  
Buildings Ordinance (Cap. 123)**

The Secretary for Development ("the Secretary") has given notice to move a motion under section 2(3) of the Buildings Ordinance (Cap. 123) at the Legislative Council ("LegCo") meeting of 24 March 2021. The motion seeks to amend Schedule 8 to Cap. 123 to include an additional 11 types of existing unauthorized buildings or building works as prescribed buildings or building works ("PBWs") so that such PBWs could be retained for continued use.

2. The 11 types of PBWs proposed to be added to Schedule 8 to Cap. 123<sup>1</sup> are among the items set out in the list of minor works under Part 3 of Schedule 1 to the Building (Minor Works) Regulation (Cap. 123N).<sup>2</sup> These proposed 11 types of PBWs are as follows:

- (a) supporting structure for a building services installation, or metal casing for such an installation, of a prescribed type;
- (b) supporting structure for a radio base station of a prescribed type;
- (c) supporting frame for an air-conditioning unit, or for a light fitting, of a prescribed type;
- (d) solid fence wall of a prescribed type;
- (e) mesh fence or metal railing of a prescribed type;
- (f) pole of a prescribed type;
- (g) metal gate of a prescribed type;
- (h) canopy of a prescribed type;
- (i) retractable awning of a prescribed type;
- (j) trellis of a prescribed type; and
- (k) metal ventilation duct or any associated supporting frame of a prescribed type.

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<sup>1</sup> At present, only one type of PBW (i.e. signboard of a kind prescribed under section 38(1)(ke)(ic) of Cap. 123) is designated in Schedule 8 to Cap.123.

<sup>2</sup> Cap. 123N, as amended by the Building (Minor Works) (Amendment) Regulation 2020 (L.N. 60 of 2020), provides for the implementation of the minor works control system under which building owners may carry out designated minor works in accordance with simplified requirements prescribed in the rules and regulations made under Cap. 123 without the need to obtain prior approval and consent to the commencement of such works from the Building Authority.

3. Under section 39C(1A) of Cap. 123, the Building Authority ("BA") must not serve a demolition order under section 24 or a warning notice under 24C of Cap. 123 for a PBW specified in Schedule 8 to Cap. 123 on the ground that the PBW has been completed or carried out without the prior approval and consent of BA or not in compliance with the simplified requirements under Cap. 123N, if (a) PBW was completed or carried out before a date prescribed in Cap. 123N; (b) the requirements in section 39C(2), (3) and (4) of Cap. 123 (i.e. inspection, reinforcement or rectification works (if required) and certification of safety by a registered inspector or a registered general building contractor etc.) are complied with; and (c) periodical compliance with those requirements as required under Cap. 123N are complied with.<sup>3</sup>

4. The effect of the proposed resolution, if passed, is that enforcement action by the issue of a demolition order or warning notice under sections 24 and 24C of Cap. 123 respectively will not be taken by BA against the proposed 11 types of PBWs if they were completed or carried out before a date, and subject to compliance with the descriptions and requirements, to be prescribed by the Secretary under Cap. 123N. According to paragraph 8 of the LegCo Brief (without file reference number) issued by the Development Bureau in March 2021, these matters will be prescribed in the Building (Minor Works) (Amendment) Regulation 2021 to be tabled in LegCo for negative vetting after the passage of the proposed resolution.

5. According to paragraph 12 of the LegCo Brief, the Administration has consulted the Building Sub-Committee of the Land and Development Advisory Committee, the Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers Committee and the Technical Committee of the Minor Works Control System on the proposed legislative amendments. Members of these committees, comprising different professional bodies, associations of the building and construction industry and trade associations, have generally supported the proposed legislative amendments.

6. As advised by the Clerk to the Panel on Development, the Administration consulted the Panel at its meeting on 26 February 2019 on proposals to revamp Cap.123N, including the proposal of designating additional types of existing unauthorized minor amenity features as PBWs under the validation scheme for certain unauthorized minor works by making corresponding amendments to Schedule 8 to Cap. 123. While one member enquired whether the proposal was intended to deal with the unauthorized building works in sub-divided units under the extended validation scheme, the Panel raised no objection to the proposal.

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<sup>3</sup> Under section 38(1)(ke)(ia) and (ic) of Cap. 123, the Secretary may by regulation prescribe matters relating to section 39C including the prescription of a date in relation to any PBW for the purposes of section 39C(1A)(a) and the prescription of details in relation to any PBW specified in Schedule 8.

7. The proposed resolution, if passed by LegCo, would come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

8. No difficulties have been identified in relation to the legal and drafting aspects of the proposed resolution.

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10 March 2021

LS/R/3/20-21