

立法會
Legislative Council

LC Paper No. LS119/20-21

**Paper for the House Committee Meeting
on 24 September 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 10 September 2021**

Tabling in LegCo	:	Council meeting of 15 September 2021
Amendment to be made by	:	Council meeting of 13 October 2021 (or the first meeting of the next session if extended by resolution)
Building (Administration) (Amendment) Regulation 2021		(L.N. 222)
Building (Minor Works) (Amendment) (No. 2) Regulation 2021		(L.N. 223)
Building (Inspection and Repair) (Amendment) Regulation 2021		(L.N. 224)
Electronic Transactions Ordinance (Amendment of Schedule 3) (No. 2) Order 2021		(L.N. 225)
Electronic Transactions (Exclusion) (Amendment) (No. 2) Order 2021		(L.N. 226)

L.N. 222 to L.N. 226 are made to implement the electronic submission and processing of plans, documents and applications under the Buildings Ordinance (Cap. 123) and its subsidiary legislation ("Electronic Submission System") in three stages.

L.N. 222

2. L.N. 222 is made by the Secretary for Development ("SD") under section 38 of Cap. 123 to amend the Building (Administration) Regulations (Cap. 123A) mainly to the effect that:

- (a) at the commencement of stage 1 of the implementation of the Electronic Submission System on 31 March 2022 ("Stage 1"), some of the documents prescribed by regulation 8, 9 or 33(1) of Cap. 123A

("Building Documents") (i.e. those relating to building works and street works) are excluded from the Electronic Submission System;

- (b) at the commencement of stage 2 of the implementation of the Electronic Submission System to be appointed by notice published in the Gazette ("Stage 2"), some Building Documents which are excluded in Stage 1 will no longer be excluded from the Electronic Submission System; and
- (c) at the commencement of stage 3 of the implementation of the Electronic Submission System to be appointed by notice published in the Gazette ("Stage 3"), all Building Documents will no longer be excluded from the Electronic Submission System (i.e. all Building Documents could be submitted electronically).

L.N. 223 and L.N. 224

3. L.N. 223 and L.N. 224 are made by SD under section 38 of Cap. 123 to amend the Building (Minor Works) Regulation (Cap. 123N) and the Building (Inspection and Repair) Regulation (Cap. 123P) respectively to the effect that the requirement of drawing or reproducing a plan of minor works, or the requirement of preparing and presenting report or proposal, on a suitable and durable material applies only to a plan, report or proposal that is submitted in hard copy form.

L.N. 225

4. Section 5A of the Electronic Transactions Ordinance (Cap. 553) provides that if a rule of law under a provision set out in Schedule 3 to Cap. 553 requires or permits a document to be served on a person by personal service or by post, the provision shall be construed as also providing that service of the document in the form of an electronic record to an information system designated by the person satisfies the requirement or is permitted under the provision if the information contained in it is accessible so as to be usable for subsequent reference.

5. L.N. 225 is made by the Secretary for Innovation and Technology under section 50 of Cap. 553 to:

- (a) add, at the commencement of Stage 1, new items 13 to 15 containing the relevant provisions under Cap. 123¹, Cap. 123A² and

¹ Sections 3(11), (11A)(b) and (11C), 8C(6)(b) and 35(1)(a) and (b) of Cap. 123.

² Regulation 6(1) of Cap. 123A (to the extent to which it relates to a document that is not one specified under regulation 6A(1)(a)).

Cap. 123N³ respectively to Schedule 3 to Cap. 553 to the effect that the relevant documents referred to in those provisions for implementing Stage 1 may be served in the form of an electronic record; and

- (b) amend, at the commencement of Stage 3, item 14 of Schedule 3 to Cap. 553 to the effect that all Building Documents may then be served in the form of an electronic record for implementing Stage 3.

L.N. 226

6. Section 5 of Cap. 553 provides that if a rule of law requires or permits information to be or given in writing, an electronic record satisfies the requirement if the information contained in the electronic record is accessible so as to be usable for subsequent reference. 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. Its items 9 to 11 currently contain certain specified provisions under Cap. 123, Cap. 123A and the Building (Planning) Regulations (Cap. 123F).

7. Section 6 of Cap. 553 provides that if a rule of law requires the signature of a person on a document, an electronic or digital signature of that person satisfies that requirement if the conditions set out in section 6 are complied with. Schedule 2 to Cap. 553B lists out the statutory provisions which are excluded from the application of section 6 of Cap. 553. Its item 5 currently contains regulation 12(1), (2), (3) and (5) of Cap. 123A.

8. L.N. 226 is made by the Permanent Secretary for Innovation and Technology under section 11(1) of Cap. 553 to:

- (a) amend, at the commencement of Stage 1, items 9 and 10 of Schedule 1 to Cap. 553B to the effect that an electronic record may not be used in relation to the relevant documents referred to in the provisions contained in those items which are excluded from Stage 1;⁴
- (b) amend, at the commencement of Stage 2, item 11 of Schedule 1 to Cap. 553B to the effect that for implementing Stage 2:

³ Section 46(2)(a) of Cap. 123N.

⁴ The provisions are (i) Column B in the table to section 17(1) (to the extent to which the conditions and requirements set out in that Column relate to a document specified under regulation 6A(1)(b) of Cap. 123A), sections 20(2) and 21(2) of Cap. 123; and (ii) regulation 6(1) (to the extent to which it relates to a document specified under regulation 6A(1)(b)) of Cap. 123A.

- (i) certain plans such as plans of hoardings and applications for relevant permits referred to in regulation 64(1) and (2) of Cap. 123F may be submitted to the Building Authority in the form of an electronic record; and
 - (ii) an electronic record may not be used in relation to an application for a permit for the erection of a temporary building under regulation 51(1) of Cap. 123F; and
- (c) repeal, at the commencement of Stage 3, items 9 to 11 of Schedule 1 to Cap. 553B, with the result that no provisions referred to in subparagraphs (a) and (b)(ii) above will then be specified in Schedule 1 to Cap. 553B (i.e. documents under those provisions could be submitted in the form of an electronic record).
9. In addition, L.N. 226:
- (a) amends, at the commencement of Stage 1, item 5 of Schedule 2 to Cap. 553B to the effect that an electronic or digital signature may not be used in relation to certain plans (including foundation plans and geotechnical plans), and related documents such as structural details and calculations, geotechnical details and site investigation reports, referred to in regulation 12(1), (2), (3) and (5) of Cap. 123A which are excluded from Stage 1; and
 - (b) repeals, at the commencement of Stage 3, item 5 of Schedule 2 to Cap. 553B, with the result that no provisions referred to in subparagraph (a) above will then be specified in Schedule 2 to Cap. 553B (i.e. electronic or digital signature could be used in relation to those provisions).

Consultation

10. As stated in paragraph 18 of the Legislative Council Brief (without file reference) issued by the Development Bureau on 8 September 2021, the Administration has consulted the Building Sub-Committee of the Land and Development Advisory Committee, and the Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers Committee on the legislative proposals, and their members have generally indicated supported for the proposals.

11. As advised by the Clerk to the Panel on Development, an information paper provided by the Administration on the legislative proposals was circulated to members of the Panel on 27 July 2021. No request for discussion on the legislative proposals at a Panel meeting has been received.

Commencement

12. Parts 1 and 2 of L.N. 222, L.N. 223, L.N. 224, L.N. 225 (except section 3(2)) and L.N. 226 (except sections 3(2) and (3) and 4(2)) (i.e. the provisions covered under Stage 1) come into operation on 31 March 2022. Part 3 of L.N. 222 and section 3(2) of L.N. 226 (i.e. the provisions covered under Stage 2) come into operation on a day to be appointed by SD by notice published in the Gazette. Part 4 of L.N. 222, section 3(2) of L.N. 225, and sections 3(3) and 4(2) of L.N. 226 (i.e. the provisions covered under Stage 3) come into operation on a day to be appointed by SD by notice published in the Gazette.

Concluding observations

13. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 222 to L.N. 226.

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