

**Legislative Council Panel on Public Service
Public Service (Administration) Order 1997**

Introduction

This paper sets out the Administration's response to the view expressed by a Member at the meeting of the Panel on 30 October 2000 on the making of the Public Service (Administration) Order 1997 (PS(A)O). It also reflects legal advice that the Administration has received on this issue.

Instruments for Administration of Public Service Prior to Reunification

2. Prior to reunification, the administration of the public service was provided for in relevant provisions in the Letters Patent (LP), Colonial Regulations (CRs) and Civil Service Regulations (CSRs). The LP and CRs were imperial instruments made under Royal Prerogative and lapsed on 1 July 1997 upon the establishment of the Hong Kong Special Administrative Region (HKSAR). CSRs are administrative rules made by the Secretary for the Civil Service under delegated authority for the management of the civil service and remain in force after reunification.

3. Over the years, many provisions in the CRs pertaining to the administrative details of the management of the public service were translated into CSRs. Provisions in the LP and CRs which have not been translated into CSRs relate to the authority to appoint, dismiss and discipline public servants; to act on representations made by public servants; and to make related disciplinary regulations.

4. With the lapsing of the LP and CRs upon reunification, it was necessary to replace and localise those provisions relating to the administration of the public service to maintain continuity. Our objective was to replace and localise the relevant provisions with an instrument which approximates as closely as possible to the LP and CRs, both in nature and in legal status.

Legal Status of the Executive Order

5. As the LP and CRs were imperial instruments, it would not be possible to replace them with mirror arrangements. Enactment of law by the Legislative Council would not have been appropriate as it would have constituted a major departure from the previous system in which the Administration retained full executive authority to administer the public service.

6. An Executive Order issued by the Chief Executive under Article 48(4) of the Basic Law provides the legal backing to enable the HKSAR Government to

preserve its executive authority for the continued administration of the public service. This is in line with Article 103 of the Basic Law which provides for continuity in the management of the public service.

7. Prior to making the PS(A)O, the Chief Executive consulted the Executive Council to reflect the importance of the PS(A)O and to ensure the validity of the Order under Article 56 of the Basic Law. It was made by the Chief Executive on 9 July 1997, in exercise of his power under Article 48(4) of the Basic Law and took effect from 1 July 1997.

8. The PS(A)O was amended in April 2000 to streamline the disciplinary procedures of the civil service. At present, the PS(A)O is the only executive order the Chief Executive has issued.

Judicial Review on the Executive Order

9. The legal status and the constitutionality of the PS(A)O and its retrospectivity were challenged in the Court of First Instance in February 1998 in a judicial review (*Association of Expatriate Civil Servants of Hong Kong [AECS] v Chief Executive*). The court judgment handed down on 3 April 1998 ruled in favour of the Government in respect of the constitutionality and lawfulness of the Executive Order and of its retrospectivity.

10. In the judgment, the court has noted that it was “plainly not possible for instruments to be promulgated which were identical in nature to the colonial instruments which they were replacing”, and “the hallmark of the previous system was that, where procedures were to be established locally, they were established by the Governor by executive action”. The Judge also confirmed that the Executive Order is not in breach of Articles 48(7) and 103 of the Basic Law.

Relevant Provisions of Letters Patent, Colonial Regulations and Public Service (Administration) Order 1997

11. A list of the provisions in the Letters Patent and Colonial Regulations that have been localised and replaced and the corresponding sections of the Public Service (Administration) Order 1997 is attached at *Annex*.

**Provisions in Letters Patent (LP) and Colonial Regulations (CR) Localised
and Corresponding Sections in the Public Service (Administration) Order 1997**

Provisions in LP and CRs	Subject Matter	Corresponding Provisions in PS(A)O
LP XIV	Power to appoint	Sections 3-4
LP XVI	Power to dismiss, suspend and discipline	Section 5
CR 54, 56-65	Disciplinary procedures and retirement in the public interest	Section 6-19, 21
CR 68-70	Representations to the Governor, Secretary of State and the Queen	Section 20

