

**立法會**  
***Legislative Council***

LC Paper No. LS112/01-02

**Paper for the House Committee Meeting on 7 June 2002**

**Legal Service Division Report on the  
Proposed Resolution under Section 54A of the  
Interpretation and General Clauses Ordinance (Cap. 1)**

The Secretary for Constitutional Affairs has given notice to move a motion on 19 June 2002 to pass the above proposed resolution. The purpose of the resolution is to effect a transfer, with effect from 1 July 2002, of statutory functions of certain Secretaries who would be involved in the amalgamation of policy portfolios pursuant to the proposed accountability system for principal officials.

2. Under the proposed accountability system, there would be three Secretaries of Department (i.e. Chief Secretary for Administration, Financial Secretary and Secretary for Justice) and 11 Directors of Bureau. Of the titles of the 11 Directors of Bureau, 4 would be the same as those used for current principal officials, and 7 would be different as a result of an amalgamation of existing policy portfolios to be put under the charge of these 7 Directors. The proposed resolution does not relate to the Chief Secretary for Administration, Financial Secretary, Secretary for Justice, Secretary for the Civil Service, Secretary for Constitutional Affairs, Secretary for Home Affairs and Secretary for Security because there would not be any change of title or redistribution of their existing policy portfolios to the new principal officials holding these titles.

3. The proposed resolution is made under 54A of the Interpretation and General Clauses Ordinance, the relevant parts are extracted below:

**"54A. Power to transfer functions of public officers**

- (1) The Legislative Council may by resolution provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another public officer.
- (2) A resolution under this section may contain such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to the resolution.
- (3) .....
- (4) In this section -

"functions" includes powers and duties."

### **The Draft Resolution**

4. The Administration submitted to Members a draft resolution on 17 April 2002 ("the draft resolution"). The Legal Service Division has scrutinized the draft resolution and made some comments to the Administration on technical aspects. The reply from the Administration is attached in **Annex 1** for Members' reference. Members may note that items (E) to (O), which refer to particular Schedules of the draft resolution, are no longer relevant. The reason is that the numbering has been changed in the proposed resolution to be moved on 19 June 2002, and the drafting points have been addressed in the proposed resolution. The other items on the general points are still relevant.

5. Pursuant to discussions of members of the Subcommittee and comments made by the Legal Service Division, the Administration has made changes to the draft resolution. These include changes to the distribution of portfolios of the policy bureaux and technical amendments.

### **The Subcommittee**

6. At its meeting on 19 April 2002, the House Committee formed the Subcommittee to study the Proposed Accountability System for Principal Officials and Related Issues ("the Subcommittee") to consider the proposed accountability system. Apart from policy aspects, the Subcommittee has also considered certain general legal points. The Legal Adviser has prepared a written advice to the Subcommittee on the general legal points (LC Paper No. LS106/01-02, circulated to Members vide LC Paper No. CB(2)2101/01-02).

7. Advice given by the Legal Adviser on various points are contained in paragraphs 104 to 106 of the Subcommittee's report to the House Committee meeting on 7 June 2002 (LC Paper No. CB(2)2171/01-02).

### **Contents of the Proposed Resolution**

8. The proposed resolution is divided into 14 paragraphs and 13 Schedules. Paragraphs 1 to 13, matched by a Schedule with a corresponding number, specify the statutory provisions under which statutory functions need to be transferred. The statutory functions (which are defined to include powers and duties in section 54A) to be transferred include: -

- (a) power to amend schedules to the ordinances, and to make regulations, orders, rules, technical memoranda and codes of practice etc.;
- (b) power to appoint the commencement date of ordinances or regulations;

- (c) power to nominate persons for appointment, or to appoint members, to boards, committees and panels set up for purposes such as handling appeals and conducting disciplinary investigations;
- (d) power to issue licences and orders and to approve applications;
- (e) power, functions and duties relating to the handling of appeals, objections and claims for compensation;
- (f) power, functions and duties relating to the preparation, approval and publication of forms, plans and schemes;
- (g) power, functions and duties relating to the monitoring of the operation of statutory and public bodies as well as the administration of such bodies; and
- (h) power to enter and inspect, or to authorize public officers to enter and inspect, places for the purposes of carrying out duties under the ordinances; and power to determine rates of remuneration, payments, fees and charges.

9. The precise contents of individual paragraphs and Schedules, and our comments in relation to them where applicable, are set out below. Members may note copies of all LC Papers referred to in this report have been circulated to Members previously under separate cover.

Paragraph 1 and Schedule 1:

10. Transfer of functions exercisable by the Secretary for Commerce and Industry by virtue of the Ordinances specified to the new Secretary for Commerce, Industry and Technology.

11. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2141/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Commerce and Industry which are to be transferred to the new Secretary for Commerce, Industry and Technology, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 2 and Schedule 2:

12. Transfer of functions exercisable by the Secretary for Information Technology and Broadcasting by virtue of the Ordinances specified to the new Secretary for Commerce, Industry and Technology.

13. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2142/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Information Technology and Broadcasting which are to be transferred to the new Secretary for Commerce, Industry and Technology, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 3 and Schedule 3:

14. Transfer of functions exercisable by the Secretary for Economic Services by virtue of the Ordinances specified to the new Secretary for Economic Development and Labour.

15. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2143/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Economic Services which are to be transferred to the new Secretary for Economic Development and Labour, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 4 and Schedule 4:

16. Transfer of functions exercisable by the Secretary for Education and Manpower by virtue of the Ordinances specified to the new Secretary for Economic Development and Labour.

17. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2144/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Education and Manpower which are to be transferred to the new Secretary for Economic Development and Labour, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 5 and Schedule 5:

18. Transfer of functions exercisable by the Secretary for the Environment and Food by virtue of the Ordinances specified to the new Secretary for the Environment, Transport and Works.

19. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2154/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for the Environment and Food which are to be transferred to the new Secretary for

the Environment, Transport and Works, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 6 and Schedule 6:

20. Transfer of functions exercisable by the Secretary for Transport by virtue of the Ordinances specified to the new Secretary for the Environment, Transport and Works.

21. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2152/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Transport which are to be transferred to the new Secretary for the Environment, Transport and Works, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 7 and Schedule 7:

22. Transfer of functions exercisable by the Secretary for Works by virtue of the Ordinances specified to the new Secretary for the Environment, Transport and Works.

23. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2151/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Works which are to be transferred to the new Secretary for the Environment, Transport and Works, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 8 and Schedule 8:

24. Transfer of functions exercisable by the Secretary for Financial Services by virtue of the Ordinances specified to the new Secretary for Financial Services and the Treasury.

25. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2122/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Financial Services which are to be transferred to the new Secretary for Financial Services and the Treasury, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 9 and Schedule 9:

26. Transfer of functions exercisable by the Secretary for the Treasury by virtue of the Ordinances specified to the new Secretary for Financial Services and the Treasury.

27. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2123/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for the Treasury which are to be transferred to the new Secretary for Financial Services and the Treasury, and marked-up copies of various Ordinances which contain the functions to be transferred.

28. Members may note that the effect of item 1 in Schedule 9 is that "Financial Secretary" in section 3 of Cap. 1 would in future mean the Financial Secretary and the Secretary for Financial Services and the Treasury. Therefore, in law, the functions exercisable by the Financial Secretary in various Ordinances would also be exercisable by the Secretary for Financial Services and the Treasury. The Legal Adviser has advised the Subcommittee that the matter involved policy consideration of whether it is appropriate for another principal official to be able to exercise the statutory functions of the Financial Secretary who is also a principal official under the accountability system and who does not have a supervisory role over that other principal official.

Paragraph 10 and Schedule 10:

29. Transfer of functions exercisable by the Secretary for the Environment and Food by virtue of the Ordinances specified to the new Secretary for Health, Welfare and Food.

30. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2154/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for the Environment and Food which are to be transferred to the new Secretary for Health, Welfare and Food, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 11 and Schedule 11:

31. Transfer of functions exercisable by the Secretary for Health and Welfare by virtue of the Ordinances specified to the new Secretary for Health, Welfare and Food.

32. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2153/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Health and Welfare which are to be transferred to the new Secretary for Health, Welfare and Food, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 12 and Schedule 12:

33. Transfer of functions exercisable by the Secretary for Housing by virtue of the Ordinances specified to the new Secretary for Housing, Planning and Lands.

34. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2121/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Housing which are to be transferred to the new Secretary for Housing, Planning and Lands, and marked-up copies of various Ordinances which contain the functions to be transferred.

Paragraph 13 and Schedule 13:

35. Transfer of functions exercisable by the Secretary for Planning and Lands by virtue of the Ordinances specified to the new Secretary for Housing, Planning and Lands.

36. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members vide LC Paper No. CB(2)2120/01-02(01). The paper contains a table setting out the major statutory functions presently exercisable by the Secretary for Planning and Lands which are to be transferred to the new Secretary for Housing, Planning and Lands, and marked-up copies of various Ordinances which contain the functions to be transferred.

37. Paragraph 13 and Schedule 13 have not dealt with the reference to "Secretary for Lands and Works" in section 21(3) of the Eastern Harbour Crossing Ordinance (Cap. 215) and section 16(3) of the Tate's Cairn Tunnel Ordinance (Cap. 393). The Administration has confirmed that the reference would be repealed and substituting "Secretary for Housing, Planning and Lands" by way of a Committee Stage amendment to Clause 131 of the Statute Law (Miscellaneous Provisions) Bill 2001 after passing of the proposed resolution.

38. Item 10 of Schedule 13 of the proposed resolution proposes to transfer the functions of the Secretary for Planning and Lands under the Land Drainage Ordinance (Cap. 446) to the Secretary for Housing, Planning and Lands. Under Clause 131 of the Statute Law (Miscellaneous Provisions) Bill 2001, it is the intent that those functions be transferred to the Secretary for Works. The Administration has clarified that :

- (a) the proposed resolution would transfer the functions under that Ordinance to the Secretary for Housing, Planning and Lands; and
- (b) after the passing of the proposed resolution, a Committee Stage amendment would be made to Clause 131 of the Statute Law (Miscellaneous Provisions) Bill 2001 to transfer the functions under that Ordinance to the Secretary for the Environment, Transport and Works.

Paragraph 14:

39. This paragraph contains transitional and savings provisions. These provisions seek to preserve certain acts and legal position of a Secretary from whom any function is transferred for the purposes of transfer to a new Secretary. Details are contained in the briefing paper prepared by the Constitutional Affairs Bureau, submitted to Members as LC Paper No. CB(2)2092/01-02(01).

40. The Legal Service Division has asked the Administration whether the inclusion of the transitional and savings provisions could be justified in the light of section 54A(2) of Cap. 1. The reply of the Administration is in item (P) of Annex 1. Essentially, the Administration's view is that section 54A(2) is wide enough to cover transitional and savings provisions.

**Conclusion**

41. The resolution proposed by the Secretary for Constitutional Affairs is in order from the legal point of view.

Prepared by

Legal Service Division  
Legislative Council Secretariat  
5 June 2002

Encl.



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27 May 2002

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Dear Mr. Lee,

**Draft Resolution on the Proposed  
Accountability System for Principal Officials**

Thank you for your letter dated 16 May 2002. Our replies to the questions raised in your letter are set out in the following paragraphs.

**(A) Functions of other secretaries**

**Q: The Chief Secretary for Administration, the Secretary for Justice and the Financial Secretary have various functions and powers in the ordinances included in the Schedules to the draft resolution and other ordinances. Please confirm if their said functions and powers are intended to remain unchanged despite the proposed transfers of functions in the new accountability system.**

**A: The implementation of the accountability system will be accompanied by the re-organization of a number of policy bureaux. The Resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) seeks to transfer statutory functions exercisable by the existing bureau secretaries to the**

bureau secretaries who will take charge of the relevant re-organized policy bureaux following the re-organization of bureaux. The statutory powers of the Chief Secretary for Administration (CS), the Financial Secretary (FS) and the Secretary for Justice (SJ), and of those bureau secretaries whose portfolios have not been re-organized, will continue to be exercised by them.

When the principal officials under the accountability system have settled into their respective positions, the Administration will review the statutory functions currently vested in CS and FS to see if any such functions should be transferred to the relevant bureau secretaries or delegated to them. In the meantime, CS and FS will continue to exercise those statutory functions. No legal lacuna will arise.

**(B) Controlling Officers in estimates laid before the Legislative Council**

**Q: Under the Public Finance Ordinance (Cap. 2), estimates of expenditure laid before the Legislative Council shall designate a controlling officer who shall be responsible and accountable for all expenditure from any head or subhead. When and how would the functions of the controlling officers be transferred?**

A: Section 8 of the Public Finance Ordinance (Cap. 2) provides for changes to the approved estimates of expenditure with the approval of the Finance Committee upon a proposal of the Financial Secretary. We will seek Finance Committee's approval of the change of controlling officers in early June. The changes will be effective from 1 July 2002.

**(C) Powers and duties delegated by the Chief Executive to existing secretaries**

**Q: Section 63 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that where any Ordinance confers powers or imposes duties upon the Chief Executive (CE), he may delegate another person to exercise such powers or perform such duties on his behalf. Pursuant to this power the CE has made delegations to certain secretaries. How would transfer of these delegated powers and duties be effected?**

A: Pursuant to section 63 of the Interpretation and General Clauses Ordinance (Cap. 1), the Chief Executive (CE) has delegated certain powers conferred on, or duties imposed upon, him to the existing bureau secretaries. Following the re-organization of bureaux, fresh delegation of such powers and duties by the CE to the bureau secretaries responsible for the relevant re-organized bureaux will be made. The Administration will make the necessary arrangements for the fresh delegations to come into effect on 1 July 2002.

**(D) Powers and duties delegated by existing secretaries to other public officers**

**Q: Section 43 of Cap. 1 provides that where any Ordinance confers powers or imposes duties upon a specified public officer, he may delegate any other public officer or the person for the time being holding any office designated by him to exercise such powers or perform such duties on his behalf. Pursuant to this power existing secretaries have made delegations. Would the delegation be valid if the office of the delegating secretary no longer exists with his functions transferred? If not, how would the delegations be effected?**

A: Where the exercise of statutory powers or the performance of statutory duties has previously been delegated to any public officer by an existing bureau secretary, by virtue of section 43 of the Interpretation and General Clauses Ordinance (Cap. 1), that delegation has been lawfully done by the existing bureau secretary. Under paragraph (14)(a) of the section 54A Resolution, from 1 July 2002, the delegation shall be regarded as done by the relevant bureau secretary who from that date has the statutory responsibility to exercise the powers or perform the duties. The public officers to whom the statutory functions or duties have been delegated may therefore continue to exercise such powers or perform such duties. Fresh delegations will not be required.

**(E) References in non-statutory instruments**

**Q: In various non-statutory instruments or documents such as codes of practice and technical memoranda made under different ordinances, there are references to various existing secretaries. When and how would these references be adapted?**

A: References in any non-statutory instruments or documents which have legal effect will be covered by paragraph (14)(c) of the Resolution. That provision will ensure that in all instruments and documents, references to the existing secretaries shall be read as references to the new secretaries. Instruments or documents which do not have legal effect, but which are merely for the information of members of the public may be amended without express authority. Since neither category of instrument or document is statutory, once the Resolution has been enacted, the documents and instruments may be amended without any further formality, by the issue of a supplement to the Code of Practice, Technical Memorandum or other document, as the case may be.

**(F) Schedule 1**

**Q: There is a reference of “Secretary for Commerce and Industry” in section 43 of Schedule 2 to the Copyright Ordinance (Cap. 528) which is not included in the proposed transfer of function in item 4 of Schedule 1. Should the function be also transferred?**

A: The reference to “Secretary for Commerce and Industry” in section 43 of Schedule 2 of the Copyright Ordinance (Cap. 528) will be included in the revised Resolution.

**(G) Schedule 2**

**Q: Section 6BA(17) of the Factories and Industrial Undertakings Ordinance (Cap. 59) provides that the Secretary for Education and Manpower may appoint a commencement date. The relevant commencement date has been appointed by the Secretary, should the function of Secretary for Education and Manpower in section 6BA be transferred to the proposed new Secretary too?**

A: The Secretary for Education and Manpower (SEM) is empowered by section 6BA(17) of the Factories and Industrial Undertakings Ordinance (Cap. 59) to appoint a day on which certain provisions of this Ordinance shall come into operation. As the relevant provisions have already come into force, there is no need to transfer SEM's function under this section to the relevant new bureau secretary, and to amend the reference to "SEM" in this section.

**(H) Schedule 3**

**Q: There is a reference of "Secretary for Economic Services" in section 1(2) of the Travel Agents (Amendment) Ordinance (Ord. No. 10 of 2002). The statutory function of appointing a commencement date has not been included in the proposed transfer. Should the function be transferred too?**

A: The Travel Agents (Amendment) Ordinance (10 of 2002) was published in the Gazette on 3 May 2002 i.e. after the draft Resolution was prepared. That being the case, this Ordinance and the reference to "Secretary for Economic Services" in section 1(2) of the Ordinance have not been included in the present draft Resolution. Amendments to the draft Resolution, where appropriate, may be made to accommodate this piece of newly enacted legislation.

**(I) Paragraph (6)**

**Q: Paragraph (6)(b)(iii)(A) repeals "Secretary" wherever it appears in Part 1 of Schedule 1 to the Water Pollution Control (Sewage) Regulation (Cap. 358 sub. leg.). It is observed that there is only one reference to "Secretary" in that Schedule. Should the reference be more specific rather than "wherever it appears"?**

A: It is true that the reference to "Secretary" only appears once in Part I of Schedule 1 to the Water Pollution Control (Sewage) Regulation (Cap. 358AL) if one searches through the Bilingual Law Information System (BLIS). But if one refers to the Loose-leaf Edition of the Law of Hong Kong or the gazette version of Cap. 359AL (L.N. 323 of 1994), the reference appears at the top right hand corner of every page as Part 1 of Schedule 1 continues.

It is on this basis that we have proposed to use the wording of “wherever it appears” in the Resolution.

**(J) Schedule 6**

**Q: Under section 30 of the Veterinary Surgeons Registration Ordinance (Cap. 529), the Secretary for the Environment and Food has power to appoint a veterinary surgeon to the Veterinary Surgeons Board. This function is not transferred in item 30 of Schedule 6. Should it be included?**

A: Section 30 of the Veterinary surgeons Registration Ordinance (Cap. 529) provides for a transitional arrangement whereby the Secretary for the Environment and Food (SEF) is allowed to appoint a veterinary surgeon who is not a registered veterinary surgeon to the Veterinary Surgeons Board. This function had already been exercised by SEF and no action is required to be taken by SEF in future by virtue of the section in question. In other words, the reference to “SEF” in section 30 of Cap. 529 is historical in nature and therefore no amendment to this section is called for.

**(K) Schedule 7**

**Q: Item 32 of Schedule 7, the proposed change in section 2, Chinese Medicine Ordinance (Cap. 549) is a change of title instead of a transfer of function. Should this change be made in paragraph (7) of the resolution, same as what has been done in other paragraphs?**

A: On the first point, the proposed change to section 2 of the Chinese Medicine Ordinance (Cap. 549) is a textual amendment consequential to the transfer of statutory functions from the Secretary for Health and Welfare to the Secretary for the Environment, Health and Welfare. On the second point, whether an item should be included in the schedule or the corresponding paragraph is a question of format. Item 32 of Schedule 7 (i.e. Chinese Medicine Ordinance) differs from the other cases in that the definition reads “Secretary (局長)” as opposed to “Secretary”. There is no need to include a subparagraph in paragraph (7) to replace the existing definition for the purpose of introducing the Chinese translation of “Secretary” (i.e. “局長”).

**(L) Schedule 9**

**Q: Item 1 refers to changes of a definition instead of a transfer of function. Should the change in definition be effected in paragraph (9) instead of in Schedule 9?**

**A:** Whether an item should be included in the schedule or the corresponding paragraph is a question of format. We consider that it is appropriate to put the relevant amendment in Schedule 9 instead of in paragraph (9) of the Resolution.

**(M) Schedule 10**

**Q: Section 7(5)(a) of the Estate Agents (Licensing) Regulation (Cap. 511 sub. leg.) contains a power of the Secretary for Housing to approve training courses. Should this power be transferred under item 2?**

**A:** The necessary amendment to section 7(5)(a) of the Estate Agents (Licensing) Regulation (Cap. 511A) is effected by paragraph (10)(b)(iii) of the draft Resolution.

**(N) Schedule 11**

**Q: Please confirm whether the reference to “Secretary for Lands and Works” in section 21(3) of the Eastern Harbour Crossing Ordinance (Cap. 215) and section 16(3) of the Tate’s Cairn Tunnel Ordinance (Cap. 393) would be amended. It is proposed under Clause 131 of the Statute Law (Miscellaneous Provisions) Bill 2001 that both references be repealed and substituting “Secretary for Planning and Lands”.**

**Please clarify the Administration’s policy with regard to the definition of “Secretary” in the Land Drainage Ordinance (Cap. 446)(item 9 of Schedule 11). Under Clause 131 of the Statute Law (Miscellaneous Provisions) Bill 2001, it is proposed that “Secretary for Planning and Lands” be repealed and substituting “Secretary for Works”. We enclose an extract (Annex) of the Administration’s letter dated 8 May 2002 to the Clerk to the Bills Committee, the contents of which**

**have been discussed by the Bills Committee at the meeting on 9 May 2002.**

A: We will move that the Resolution be made by the Legislative Council at the sitting of 19 June 2002, and it is expected that the Statute Law (Miscellaneous Provisions) Bill 2001 will be enacted only after the approval of the Resolution. Committee Stage Amendments (CSAs) will be moved to amend clause 131 of the Bill by replacing the references to “Secretary for Planning and Lands” with references to “Secretary for Housing, Planning and Lands” after the approval of the Resolution.

As explained in D of J’s letter dated 8 May 2002, it is the Administration’s intention to transfer the policy responsibility for flood prevention under the Land Drainage Ordinance (Cap. 446) to the Secretary for Works. However, “Secretary for Planning and Lands” is now referred to in the definition of “Secretary” in this Ordinance. The Resolution therefore provides for the transfer of statutory function vested in “Secretary for Planning and Lands” under Cap. 466 to the new “Secretary for Housing, Planning and Lands”. Subject to the approval of the Resolution by the Legislative Council, CSAs to the Statute Law (Miscellaneous Provisions) Bill 2001 will be moved to change the references to “Secretary for Works” in clause 131 of the Bill to “Secretary for Transport and Works”.

**(O) Schedule 12**

**Q: The following has been observed to be omitted. Please confirm the reason for leaving them out in the changes:**

**(a) In item 5, “運輸局局長” in the Chinese text of section 7(2) and (3) of the Eastern Harbour Crossing Ordinance (Cap. 215) is not covered in the change from “運輸局局長” to “局長”**

A: (a) The New Hong Kong Tunnel Company Ltd. had assigned to the Eastern Harbour Crossing Company Ltd. the benefits of its franchise in accordance with section 7(2) and (3) of the Eastern Harbour Crossing Ordinance (Cap. 215) in August 1986. Therefore, the references to “Secretary” in the English text, and “運輸局局長” in the Chinese text, are



historical in nature. While there is no need to amend “運輸局局長”, we will replace references to “Secretary” in the English text with references “Secretary for Transport” (S for T) so as to avoid any confusion over the meaning of “Secretary” in these sections. This is because after the passage of the Resolution, any references to “Secretary” in this Ordinance will mean “Secretary for Transport and Works”.

**Q: (b) In item 9, “Secretary for Transport” and its Chinese rendition “運輸局局長” in section 2A(2), (3) and (5) of the Peak Tramway Ordinance (Cap. 265) is not covered in paragraph (12)(b)(i) of the draft Resolution**

A: (b) The functions conferred on S for T under section 2A(2), (3) and (5) of the Peak Tramway Ordinance (Cap. 265) have a time limit which has been spent already. As such, the references to “Secretary for Transport” as well as “運輸局局長” in this section are historical in nature and no change to these references are required.

**Q: (c) In item 11, “運輸局局長” in the Chinese text of section 42(2), (3) and (4) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) is not covered in the change from “運輸局局長” to “局長”**

A: (c) Section 42 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) provides, inter alia, for the transitional arrangements in relation to the repeal of the Street (Alteration) Ordinance. Functions conferred upon S for T under this section had already been exercised by S for T, and therefore the references to “Secretary” in the English text, and “運輸局局長” in the Chinese text, in this section are historical in nature. While there is no need to amend “運輸局局長”, we will substitute references to “Secretary” in the English text with references “Secretary for Transport” so as to avoid any confusion over the meaning of “Secretary” in this section. This is because after the passage of the Resolution, any references to “Secretary” in the Ordinance will mean “Secretary for Transport and Works”.

**Q: (d) In item 22, “運輸局局長” in the Chinese text of section 45(1) and (4) of the Railways Ordinance (Cap. 519) is not covered in the change from “運輸局局長” to “局長”**

**A: (d) The Secretary for Transport has already appointed a date as the “appointed date” in accordance with section 45 of the Railway Ordinance (Cap. 519). Therefore, the references to “Secretary” in the English text, and “運輸局局長” in the Chinese text, in this section are historical in nature. While there is no need to amend “運輸局局長”, we will substitute references to “Secretary” in the English text with references to “Secretary for Transport” so as to avoid any confusion over the meaning of “Secretary” in this section. This is because after the passage of the Resolution, any references to “Secretary” in this Ordinance will mean “Secretary for Transport and Works”.**

**(P) Paragraph 14**

**Q: Paragraph 14 seeks to preserve certain acts and legal positions of a secretary from whom any function is transferred (“former officer”) for the purposes of transfer to a new secretary (“new officer”). Section 54A(2) allows the resolution to contain “such incidental, consequential and supplemental provisions as may be necessary and expedient for the purpose of giving full effect to the resolution”. The purpose of any such provisions should be limited to for giving full effect to the resolution rather than for purposes incidental, consequential or supplemental to the transfer. Would you please advise how the inclusion of these provisions would be justified in the light of section 54A(2)? The said preservation provision has not been included in former transfers of functions under section 54A (e.g. transfers effected by L.N. 206 of 1998 and L.N. 218 of 2000) and Members may be interested to know why such preservation is necessary on this occasion.**

**A: It is our view that paragraph (14) of the Resolution is within the scope of section 54A(2). Section 54A(2) is very wide and allows the Resolution to contain such incidental, consequential and supplemental provisions as may be necessary and expedient for the purpose of giving full effect to the Resolution. We do not accept that there is a difference between giving full effect to the**

Resolution as distinct from giving full effect to the transfer. What is consequential to the transfer is necessarily consequential to the Resolution. Precedents for a section 54A Resolution which contained a transitional and savings provision may be found at L.N. 370 of 1981 and L.N. 76 of 1982.

Yours sincerely,

( Miss Katy Fong )  
for Secretary for Constitutional Affairs