

**Subcommittee to Study the Proposed Accountability System
for Principal Officials and Related Issues**

Appeals to the Chief Executive in Council

Introduction

At the meeting of the Subcommittee on 7 May 2002, a member asked for further information concerning the removal of certain appeals from the then Governor in Council in the 1990s. This paper sets out the Administration's response.

Initial transfer to the AAB

2. When the Administrative Appeals Board Bill was introduced into the Legislative Council in 1993, there were over 100 provisions in the Laws of Hong Kong providing a right of appeal against an administrative decision to the Governor in Council, the Governor, or another authority.

3. The LegCo brief explained that –

“Many of the appeals which now go to the Council involve matters of a relatively minor nature, such as the issue, renewal and revocation of various minor licences. These minor appeals should be devolved from the Council to give Members more time to focus on the important policy and strategic issues of the day. Moreover, the hearing of appeals by an independent appeals board will allow a more open and uniform appeal procedure to be introduced. The board will be able to conduct its hearings in public, allow the appellant the right to attend, and permit representation by counsel. This will not only improve the transparency of the determination of appeals but will also enhance the quality of the administration of justice.”

“The AAB should not, however, be overwhelmed by appeals in its early days. We therefore propose that, to begin with, only appeals of a general and simple nature should be transferred to it. Appeals which may have important policy and political implications will continue to be dealt with by ExCo. Branches have reviewed the Ordinances under their responsibilities and have

identified 28 types of appeal which are considered suitable for immediate transfer to the AAB.”

4. When the Bill was enacted in 1994, it provided for appeals under 25 Ordinances to be transferred to the AAB. A list of the Ordinances and the decisions involved is at annex.

1995 Review by AGC

5. In 1995, as part of its review of the statute book following the enactment of the Bills of Rights Ordinance, the former Attorney General’s Chambers considered the appropriateness of appeals being heard by the Governor in Council. At the time, there were 92 statutory provisions providing for some form of appeal or objection to the Governor in Council.

6. The study by the AGC involved a review of the jurisprudence concerning Article 10 of the Bills of Rights. That Article provides that –

“... In the determination ... of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law ...”

7. The study concluded as follows -

- (a) The provision of a statutory right of appeal or review to the Governor in Council probably does not, to the extent that a “determination” of a person’s “rights and obligations” is involved, meet the requirements of Article 10 of the Bills of Rights;
- (b) A determination of rights will be involved where the Governor in Council is empowered to decide a dispute about the suspension or revocation of a licence to undertake an economic activity (it is less clear as to whether a dispute about the initial grant of a licence involves a “right” within the meaning of Article 10 but this hardly matters in the present context since it would be impracticable to have two different appeal mechanisms, one for the grant and the other for the suspension or revocation of a licence);
- (c) A determination of rights and obligations will not be involved where the Governor in Council is empowered to consider objections in a legislative context;

- (d) The availability of judicial review as a means of challenging a decision of the Governor in Council will not generally meet the requirements of Article 10;
- (e) It is unclear to what extent the Hong Kong courts might accept the notion of implied limitations on the guarantees under Article 10; they are most likely to do so, however, where significant public interest considerations are at stake.

8. In the light of these conclusions, the provisions relating to appeals to the Governor in Council were reviewed both for consistency with Article 10 of the Bills of Rights, and with a view to removing from the Governor in Council minor decision-making. As a result of that review, and other legislative initiatives, the number of appeals and objections to ExCo has been reduced.

SCHEDULE [ss. 3, 4 & 22]

Item	Ordinance	Decision
1.	Apprenticeship Ordinance (Cap. 47)	A decision of the Director of Apprenticeship or any public officer in the performance or exercise of any function, duty or power under the Ordinance.
2.	Boilers and Pressure Vessels Ordinance (Cap. 56)	The revocation or suspension of an appointment as a boiler inspector, air receiver inspector or pressurized fuel container inspector under section 5A.
3.	Employment Ordinance (Cap. 57)	A decision of the Commissioner for Labour under section 53(1) to refuse to issue or renew or to revoke a licence to operate an employment agency.
4.	Factories and Industrial Undertakings Ordinance (Cap. 59)	(a) An exemption by the Commissioner for Labour under section 7(4) of an industrial undertaking from any regulation. (b) An order by the Commissioner for Labour under section 7(4), for an industrial undertaking to adopt special precautions in addition to any precautions required by any regulation. (c) Under section 9A— (i) the issue by the Commissioner for Labour of a prohibition notice in respect of a notifiable workplace; (ii) a refusal by the Commissioner for Labour to cancel a prohibition notice; (iii) the giving by the Commissioner for Labour of any direction upon the cancellation of a prohibition notice.
5.	Quarries (Safety) Regulations (Cap. 59 sub. leg.)	(a) A refusal by the Commissioner for Labour to approve any person as a supervisor or deputy supervisor under regulation 4(1) or 6(1). (b) A withdrawal by the Commissioner for Labour of his approval of a supervisor or deputy supervisor under regulation 10(1).
6.	Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59 sub. leg.)	(a) A refusal by the Commissioner for Labour to register a person as a safety officer under regulation 7. (b) The cancellation by the Commissioner for Labour of a person's registration as a safety officer under regulation 9. (c) The suspension by the Commissioner for Labour of a person's registration as a safety officer under regulation 10.
7.	Weights and Measures Ordinance (Cap. 68)	A decision of the Commissioner, as defined in section 2, or of an authorized officer which is taken in the exercise or performance of any function under the Ordinance.
8.	Miscellaneous Licences Ordinance (Cap. 114)	The decision under section 5 of any officer authorized to issue a licence under the Ordinance as to the grant of a licence, the renewal of a licence or the revocation of a licence.

附表 (第3、4及22條)

項	法例	決定
1.	《學徒制度條例》(第47章)	學徒事務專員或任何公職人員履行或行使條例下的任何職能、責任或權力時所作的決定。
2.	《鍋爐及壓力容器條例》(第56章)	根據第5A條撤銷或暫時撤銷鍋爐檢驗員、空氣容器檢驗員或壓力燃料容器檢驗員的委任。
3.	《僱傭條例》(第57章)	勞工處處長根據第53(1)條拒絕發出經辦職業介紹所的牌照或將牌照續期，或撤銷牌照。
4.	《工廠及工業經營條例》(第59章)	(a) 勞工處處長根據第7(4)條豁免工業經營，使其不受任何規例規限。 (b) 勞工處處長根據第7(4)條命令工業經營除須採取規例所規定的預防措施外，並須採取特別的預防措施。 (c) 根據第9A條—— (i) 勞工處處長就應呈報工場發出禁止通知書； (ii) 勞工處處長拒絕撤銷禁止通知書； (iii) 勞工處處長在撤銷禁止通知書時發出的任何指示。
5.	Quarries (Safety) Regulations (第59章，附屬法例)	(a) 勞工處處長根據第4(1)或6(1)條拒絕批准任何人成為主管或副主管。 (b) 勞工處處長根據第10(1)條撤回對主管或副主管的批准。
6.	Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (第59章，附屬法例)	(a) 勞工處處長根據第7條拒絕某人註冊為安全主任。 (b) 勞工處處長根據第9條取消某人作為安全主任的註冊。 (c) 勞工處處長根據第10條暫時取消某人作為安全主任的註冊。
7.	《度量衡條例》(第68章)	第2條所指的地點或獲授權人員行使或履行條例下的任何職能時所作的決定。
8.	《雜項牌照條例》(第114章)	任何根據條例獲授權發出牌照的人員，根據第5條就發出牌照、將牌照續期或撤銷牌照所作的決定。

Item	Ordinance	Decision
9.	Acetylating Substances (Control) Ordinance (Cap. 145)	A decision of the Commissioner, as defined in section 2(1), under the Ordinance, relating to— (a) the issue of a licence or permit; (b) the refusal to issue a licence or permit; (c) the cancellation or suspension of a licence or permit; (d) the cancellation or variation of any condition or the specification of a new condition in a licence or permit.
10.	Gambling Ordinance (Cap. 148)	The decision under section 22 of the Commissioner for Television and Entertainment Licensing as to the grant of a licence, the renewal of a licence, the imposition of conditions of a licence or the cancellation of a licence.
11.	Chinese Temples Ordinance (Cap. 153)	(a) The refusal by the Chinese Temples Committee under section 4 to grant an exemption from section 4(1). (b) The withdrawal by the Chinese Temples Committee under section 4 of an exemption granted under section 4(1).
12.	Weapons Ordinance (Cap. 217)	A decision of the Commissioner of Police under section 9(1) to order the delivery up to him or seizure of any martial arts weapon.
13.	Travel Agents Ordinance (Cap. 218)	A decision of the Registrar of Travel Agents— (a) to refuse to grant a licence under section 12(1); (b) to impose conditions on a licence under section 11(1) or 18; (c) to refuse consent to a change of ownership or control under section 18(c); (d) to suspend or revoke a licence under section 19.
14.	Firearms and Ammunition Ordinance (Cap. 238)	(a) A decision of the Commissioner of Police refusing to grant a licence under section 30 or to renew a licence under section 32. (b) A decision of the Commissioner of Police, under section 33, cancelling a licence or varying or revoking any condition attached thereto or adding any further condition or deleting any premises from a dealer's licence at which business may be carried on. (c) The imposition of a condition of licence which is considered to be unreasonable.
15.	Massage Establishments Ordinance (Cap. 266)	A decision of the licensing authority under section 6, 7, 8 or 9.
16.	Grant Schools Provident Fund Rules (Cap. 279 sub. leg.)	A question of interpretation or application of the Rules.
17.	Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg.)	A decision of the Board under the Rules.

項	法例	決定
9.	《乙酰化物(管制)條例》(第145章)	第2(1)條所指的總監根據條例就下列事項所作的決定— (a) 發出牌照或許可證; (b) 拒絕發出牌照或許可證; (c) 取消或暫時取消牌照或許可證; (d) 取消或更改任何牌照或許可證條件,或指明任何新的條件。
10.	《賭博條例》(第148章)	影視及娛樂事務管理處處長根據第22條發出牌照,將牌照續期、施加牌照條件或取消牌照。
11.	《華人廟宇條例》(第153章)	(a) 華人廟宇委員會根據第4條拒絕豁免第4(1)條對華人廟宇的規管。 (b) 華人廟宇委員會根據第4條撤回華人廟宇不受第4(1)條規管的豁免。
12.	《武器條例》(第217章)	警務處處長根據第9(1)條所作的決定,命令向他交出任何武術兵器,或命令檢取任何武術兵器。
13.	《旅行代理商條例》(第218章)	旅行代理商註冊主任— (a) 根據第12(1)條拒絕發出牌照; (b) 根據第11(1)或18條施加牌照條件; (c) 根據第18(c)條拒絕同意變更擁有權或控制權; (d) 根據第19條暫時繳銷或繳銷牌照。
14.	《火器及彈藥條例》(第238章)	(a) 警務處處長根據第30條拒絕發出牌照或根據第32條拒絕將牌照續期。 (b) 警務處處長根據第33條取消牌照或更改或撤銷牌照所附帶的任何條件,或增添其他條件,或從經營人牌照上刪去任何營業地點。 (c) 施加持牌人認為不合理的牌照條件。
15.	《按摩院條例》(第266章)	發牌當局根據第6、7、8或9條所作的決定。
16.	Grant Schools Provident Fund Rules (第279章,附屬法例)	規則的詮釋及適用的問題。
17.	Subsidized Schools Provident Fund Rules (第279章,附屬法例)	委員會根據規則所作的決定。

Item	Ordinance	Decision
18.	Mining Ordinance (Cap. 285)	The cancellation of an Authorized Buyer's Licence under section 41.
19.	Mining (General) Regulations (Cap. 285 sub. leg.)	A decision of the Commissioner of Mines under regulation 30(4A)(a) specifying the rate per tonne at which royalty shall be payable in respect of minerals and the period for which it shall be payable.
20.	Dangerous Goods Ordinance (Cap. 295)	A decision under section 9 of an officer authorized under the Ordinance to issue a licence— (a) to refuse to grant a licence; (b) to refuse to renew a licence; or (c) to revoke a licence.
21.	Dangerous Goods (General) Regulations (Cap. 295 sub. leg.)	Prohibiting or imposing conditions on the continued use of a storage tank under regulation 127.
22.	Business Registration Ordinance (Cap. 310)	An assessment of a business registration fee under section 3(4) or 9(5).
23.	Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)	A decision of the Commissioner for Transport under the Ordinance.
24.	Animals (Control of Experiments) Ordinance (Cap. 340)	A refusal to issue a licence, endorsement or permit under section 7, 8, 9, 10 or 14.
25.	Chinese Permanent Cemeteries Rules (Cap. 1112 sub. leg.)	A decision of the Board of Management of the Chinese Permanent Cemeteries not to withdraw a notice in rule 12(2) regarding reversion of a subscriber lot to the Board. Note: The Board of Management of the Chinese Permanent Cemeteries is specified for the purposes of section 22(5) of this Ordinance.

Time within which appeals are to be made

An appeal under any item mentioned in this Schedule shall be made within 28 days after receipt of notice of the decision to which the appeal relates.

項	法例	決定
18.	《贖務條例》(第285章)	根據第41條取消獲授權買家的牌照。
19.	Mining (General) Regulations (第285章·附屬法例)	礦務處處長根據第30(4A)(a)條指明就贖物所須繳付的贖產稅稅率(按每公噸計算)及繳稅的期間。
20.	《危險品條例》(第295章)	根據條例獲授權發出牌照的人員根據第9條所作的決定—— (a) 拒絕發出牌照; (b) 拒絕將牌照續期;或 (c) 撤銷牌照。
21.	Dangerous Goods (General) Regulations (第295章·附屬法例)	根據第127條禁止繼續使用儲存缸或就繼續使用儲存缸施加條件。
22.	《商業登記條例》(第310章)	根據第3(4)或9(5)條而評定商業登記費。
23.	《汽車(首次登記稅)條例》(第330章)	運輸署署長根據條例所作的決定。
24.	《動物(實驗管制)條例》(第340章)	根據第7·8·9·10或14條拒絕發出牌照·拒絕作出加簽或拒絕發出許可證。
25.	Chinese Permanent Cemeteries Rules (第1112章·附屬法例)	華人永遠墳場管理委員會所作不撤回第12(2)條所指明有關向委員會歸還預購地段的公佈的決定。 備註: 現指明華人永遠墳場管理委員會為本條例第22(5)條適用的機構。

上訴的期限

本附表所提及的任何項目的上訴·須在收到有關決定的通知後28日內提出。