

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

**Resolution under Section 54A of the
Interpretation and General Clauses Ordinance**

Transfer of Statutory Functions

Introduction

This paper sets out the legislative amendments to be introduced to effect the necessary transfer of statutory functions arising from the reorganization of certain bureaux.

Background

2. The implementation of the accountability system will be accompanied by the reorganization of a number of policy bureaux. The reorganization will involve a change in the public officers who are to exercise the relevant statutory functions. Legislative amendments are required to transfer relevant statutory functions to the bureau secretaries who will take charge of the relevant re-organized policy bureaux following the introduction of the accountability system.

The Resolution

3. Pursuant to section 54A¹ of the Interpretation and General Clauses Ordinance (Cap. 1), the Legislative Council may by resolution provide for the transfer of statutory functions vested in one public officer to another public officer.

Transfer of statutory functions

4. The Resolution provides that, with effect from 1 July 2002,

¹ Section 54A(1) of Cap. 1 provides that,
“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.”

the functions currently exercisable by each relevant bureau secretary by virtue of the ordinances specified in the relevant Schedule to the Resolution be transferred to the relevant bureau secretary who will take charge of the relevant policy responsibilities following the reorganization of policy bureaux. The statutory functions (including powers and duties) to be transferred include the following: -

- (a) power to amend schedules to the ordinances and make regulations, orders, rules, technical memoranda and codes of practice etc.;
- (b) power to appoint the commencement date for 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;
- (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
- (i) power to determine rates of remuneration, payments, fees and charges.

Textual amendments

5. To give full effect to the Resolution, incidental, consequential and supplemental amendments, as appropriate, to the relevant Ordinances are also provided for in the Resolution. Generally speaking, textual amendments to the relevant Ordinances can be categorized into the following: -

- (a) deleting references to the present bureau secretaries in the relevant provisions and substituting references to the relevant bureau secretaries of the reorganized bureaux in both the English and Chinese texts (example at Annex A);
- (b) for ordinances where a definition of “Secretary” appears in only in the English text, a corresponding definition will be added to the Chinese text (example at Annex B);
- (c) for ordinances referred to in (b), the full title of the relevant bureau secretary (i.e. XXXX 局長) in the Chinese text will be deleted and substituted by references to “局長” (example at Annex C). In these cases, the provisions specified in the Schedule in relation to the relevant ordinance refer to those in the Chinese text only.

6. There are two other types of textual amendments which warrant attention. First, in ordinances where “Secretary” is defined as the relevant bureau secretary, the full title of the relevant bureau secretary may still appear in certain provisions of the ordinances as a matter of drafting convention. Most of such provisions relate to the power of the bureau secretary to appoint a commencement date for an ordinance or a regulation, or the power to amend a schedule to an ordinance. For these provisions, the full title of the relevant bureau secretaries will be replaced by the full title of the bureau secretaries of the reorganized bureaux.

7. Second, references to bureau secretaries which are historical in nature (i.e. the relevant functions had already been exercised by the relevant bureau secretaries) need not be amended and have therefore not been included in the Resolution. An exception is historical reference

found in ordinances where the definition of “Secretary” is provided for. For these provisions, we will replace the reference to “Secretary” with the reference to the existing full title of the relevant bureau secretary so as to avoid any confusion on the meaning of “Secretary” in the historical references in these ordinances.

The present draft Resolution

8. The present draft of the Resolution seeks to cover all legislation enacted on or before 12 April 2002. The draft will need to be amended in case any provision that requires amendment is found to be missing, or where any legislation which is enacted after 12 April 2002 contains references to existing bureau secretaries that should be amended under this exercise. We will deal with these amendments before the Resolution is formally introduced into the Legislative Council.

Advice Sought

9. Members are invited to study the draft Resolution and to report their findings to the House Committee as soon as practicable.

Constitutional Affairs Bureau
May 2002

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