

**Subcommittee on Legislative Amendments Relating to the Proposed
Re-organisation of Policy Bureaux of the Government Secretariat**

**Resolution under Section 54A of the
Interpretation and General Clauses Ordinance (Cap. 1)**

**Transfer of Statutory Functions Currently Exercisable by the
Secretary for Home Affairs**

Introduction

This paper sets out the transfer of some statutory functions currently exercisable by the Secretary for Home Affairs (SHA) to the Secretary for the Constitutional and Mainland Affairs or the Secretary for Development with effect from 1 July 2007.

Background

2. Pursuant to the re-organisation plan announced by the Chief Executive on 3 May 2007 and set out in the Legislative Council brief issued to Members on the same day, the following portfolios currently under the SHA will be taken up by two other Directors of Bureau with effect from 1 July 2007 :

- (a) matters relating to human rights and access to information will be transferred to the Secretary for Constitutional and Mainland Affairs; and
- (b) matters relating to development-related heritage conservation will be transferred to the Secretary for Development.

The relevant statutory functions currently vested in SHA will be transferred to these two Directors of Bureau accordingly.

3. The transfer of statutory functions is to be effected by way of a resolution made under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1). The Administration gave notice on 23 May 2007 in accordance with Rule 29(1) of the Rules of Procedure of the intention to move the Resolution at the Legislative Council meeting of 13 June 2007, and the latest version of the Resolution was attached to the notice. Paragraph (10) of the Resolution, at **Annex A**, provides that statutory functions currently exercisable by the SHA by virtue of the specified ordinances be transferred to the Secretary for the Constitutional and Mainland Affairs or the Secretary for Development respectively.

4. The Resolution will not involve substantive amendments to the statutory functions (including powers and duties) provided for in the relevant ordinances. The Resolution will provide for the simple substitution of the current title of the SHA by the new title of the relevant Directors of Bureau in whom policy responsibility for the provisions in question is to be vested with effect from 1 July 2007.

5. A summary of the major statutory functions of the SHA under existing legislation to be transferred to the relevant Directors of Bureau and the textual amendments to the relevant ordinances is at **Annex B**.

Advice Sought

6. Members are invited to consider paragraph (10) of the Resolution.

Constitutional Affairs Bureau
Home Affairs Bureau
May 2007

(10) the functions exercisable by the Secretary for Home Affairs by virtue of -

(a) the Antiquities and Monuments Ordinance (Cap. 53) be transferred to the Secretary for Development and, for the purpose of giving full effect to such transfer, that Ordinance be amended in the definition of "Authority" in section 2 by repealing "Secretary for Home Affairs" and substituting "Secretary for Development";

(b) the Sex Discrimination Ordinance (Cap. 480) (except the function under section 35(5) of that Ordinance) be transferred to the Secretary for Constitutional and Mainland Affairs and, for the purpose of giving full effect to such transfer -

(i) the Sex Discrimination Ordinance (Cap. 480) be amended in the following provisions by repealing "Secretary for Home Affairs" wherever it appears and substituting "Secretary for Constitutional and Mainland Affairs" -

(A) section 65(3);

(B) section 89(1);

(C) section 4 of Schedule 6;

(D) section 14(1) of Schedule 6;

(E) section 14(2)(b) of Schedule

6;

(F) section 16(2) of Schedule 6;

(G) section 16(3) of Schedule 6;

(H) section 17(2) of Schedule 6;

(ii) the Specification of Public Office (L.N. 192 of 2003) be amended -

(A) in column 2 of the Schedule by repealing "Sex Discrimination Ordinance (Chapter 480), section 65(3) and Schedule 6 (sections 16(2) and (3) and 17(2)).";

(B) in the Schedule by adding at the end -

"Secretary for	Sex
Constitutional	Discrimination
and Mainland	Ordinance
Affairs	(Chapter 480),
	section 65(3)
	and Schedule 6
	(sections 16(2)
	and (3) and
	17(2)).";

(c) the Personal Data (Privacy) Ordinance (Cap. 486) be transferred to the Secretary for Constitutional and Mainland Affairs and, for the purpose of giving full effect to such transfer -

(i) the Personal Data (Privacy) Ordinance (Cap. 486) be amended in the following provisions by repealing "Secretary for Home Affairs" wherever it appears and substituting "Secretary for Constitutional and Mainland Affairs" -

- (A) section 1(2);
- (B) section 11(2)(b);
- (C) section 11(3);
- (D) section 11(4);
- (E) section 14(6);
- (F) section 70(1);
- (G) section 2(2) of Schedule 2;
- (H) section 2(3) of Schedule 2;
- (I) section 3(2) of Schedule 2;

(ii) the Specification of Public Office (L.N. 192 of 2003) be amended -

- (A) in column 2 of the Schedule by repealing "Personal Data (Privacy) Ordinance (Chapter 486), section 14(6) and Schedule 2 (sections 2(2) and (3) and 3(2)).";
- (B) in column 2 of the Schedule by adding -
"Personal Data (Privacy)

Ordinance (Chapter 486),
section 14(6) and Schedule
2 (sections 2(2) and (3) and
3(2))."

after -

"Sex Discrimination Ordinance
(Chapter 480), section
65(3) and Schedule 6
(sections 16(2) and (3) and
17(2)).";

- (d) the Family Status Discrimination Ordinance
(Cap. 527) be transferred to the Secretary
for Constitutional and Mainland Affairs
and, for the purpose of giving full effect
to such transfer, that Ordinance be amended
in section 67(1) by repealing "Secretary
for Home Affairs" and substituting
"Secretary for Constitutional and Mainland
Affairs";

**Statutory functions presently exercisable by the Secretary for Home Affairs (SHA)
which will be transferred to the Secretary for Constitutional and Mainland Affairs
and the Secretary for Development (SDEV)**

(I) Statutory functions transferred to SCMA

The Resolution	Cap	Description	Textual amendments provided for in the Resolution
Paragraph (10)(b)(i)	480 Sex Discrimination Ordinance	<p>This ordinance is to render unlawful certain kinds of sex discrimination, discrimination on the ground of marital status or pregnancy, and sexual harassment; and to provide for the establishment of the Equal Opportunities Commission.</p> <p>Major functions to be transferred from SHA to SCMA are :</p> <ul style="list-style-type: none">■ To give approval for the Equal Opportunities Commission to provide financial assistance to other persons to undertake research or educational activities related to the performance of its functions;■ To make regulations;■ To determine fees and allowances payable to members of the Commission or its committee;■ To give directions to the Commission in relation to the amount of money which may be borrowed by the Commission by way of overdraft;■ To give approval for the Commission to borrow money other than by way of overdraft; and	<p><u>English and Chinese texts</u></p> <p>The following sections are amended by repealing “Secretary for Home Affairs” / “民政事務局局長” and substituting “Secretary for Constitutional and Mainland Affairs” / “政制及內地事務局局長” :</p> <ul style="list-style-type: none">■ Section 65(3);■ Section 89(1);■ Section 4 of Schedule 6;■ Section 14(1) of Schedule 6;■ Section 14(2)(b) of Schedule 6;■ Section 16(2) of Schedule 6;

The Resolution	Cap	Description	Textual amendments provided for in the Resolution
		<ul style="list-style-type: none"> ■ To approve the forms of investment in which the Commission may invest money not immediately required to be expended. 	<ul style="list-style-type: none"> ■ Section 16(3) of Schedule 6; and ■ Section 17(2) of Schedule 6.
Paragraph (10)(b)(ii)	1C Specification of Public Offices	<p>Cap 1C sets out the public officers who may delegate to another public officer the powers conferred or duties imposed on him / her by any particular ordinance. Particulars of specifications made after 1 July 1997 are set out under the Note to Cap 1C.</p> <p>Major function to be transferred from SHA to SCMA is to delegate to another public officer the powers provided for in sections 65(3) and Schedule 6 (sections 16(2) and (3) and 17(2)) of the Sex Discrimination Ordinance (Cap 480).</p>	<p><u>English and Chinese texts</u></p> <p>The Specification of Public Office (L.N. 192 of 2003) is amended by repealing the reference to “Secretary for Home Affairs” / “民政事務局局長” and substituting “Secretary for Constitutional and Mainland Affairs” / “政制及內地事務局局長”.</p>

The Resolution	Cap	Description	Textual amendments provided for in the Resolution
Paragraph (10)(c)(i)	486 Personal Data (Privacy) Ordinance	<p>This ordinance is to protect the privacy of individuals in relation to personal data.</p> <p>Major functions to be transferred from SHA to SCMA are :</p> <ul style="list-style-type: none"> ■ To appoint a day for the Ordinance to come into operation by notice in gazette; ■ To appoint members of the Personal Data (Privacy) Advisory Committee and specify the period and terms of their appointments; ■ To approve the exercise of power by the Privacy Commissioner for Personal Data (the Commissioner) to specify places which are Government offices, at which data user returns are available and can be obtained by data users;. ■ To make regulations; ■ To give directions to the Commissioner in relation to the amount of money which may be borrowed by the Commissioner by way of overdraft; ■ To give approval for the Commissioner to borrow money other than by way of overdraft; and ■ To approve the forms of investment whereby the Commissioner may invest his surplus funds. 	<p><u>English and Chinese texts</u></p> <p>The following sections are amended by repealing “Secretary for Home Affairs” / “民政事務局局長” and substituting “Secretary for Constitutional and Mainland Affairs” / “政制及內地事務局局長” :</p> <ul style="list-style-type: none"> ■ Section 1(2); ■ Section 11(2)(b); ■ Section 11(3); ■ Section 11(4); ■ Section 14(6); ■ Section 70(1); ■ Section 2(2) of Schedule 2; ■ Section 2(3) of Schedule 2; and ■ Section 3(2) of Schedule 2.

The Resolution	Cap	Description	Textual amendments provided for in the Resolution
Paragraph (10)(c)(ii)	1C Specification of Public Offices	<p>Cap 1C sets out the public officers who may delegate to another public officer the powers conferred or duties imposed on him / her by any particular ordinance. Particulars of specifications made after 1 July 1997 are set out under the Note to Cap 1C.</p> <p>Major function to be transferred from SHA to SCMA is to delegate to another public officer the powers provided for in section 14(6) and Schedule 2 (sections 2(2) and (3) and 3(2)) of the Personal Data (Privacy) Ordinance (Cap 486).</p>	<p><u>English and Chinese texts</u></p> <p>The Specification of Public Office (L.N. 192 of 2003) is amended by repealing the reference to “Secretary for Home Affairs” / “民政事務局局長” and substituting “Secretary for Constitutional and Mainland Affairs” / “政制及內地事務局局長”.</p>
Paragraph (10)(d)	527 Family Status Discrimination Ordinance	<p>This ordinance is to render unlawful discrimination against persons on the ground of family status and to extend the jurisdiction of the Equal Opportunities Commission to include such discrimination and for connected purposes.</p> <p>Major function to be transferred from SHA to SCMA is to make regulations.</p>	<p><u>English and Chinese texts</u></p> <p>Section 67(1) is amended by repealing “Secretary for Home Affairs” / “民政事務局局長” and substituting “Secretary for Constitutional and Mainland Affairs” / “政制及內地事務局局長”.</p>

(II) Statutory functions transferred to SDEV

The Resolution	Cap	Description	Textual amendments provided for in the Resolution
Paragraph (10)(a)	53 Antiquities and Monuments Ordinance	<p>This ordinance is to provide for the preservation of objects of historical, archaeological and palaeontological interest and for matters ancillary thereto and connected therewith.</p> <p>Major functions to be transferred from SHA to SDEV are :</p> <ul style="list-style-type: none"> ■ To declare a place, building, site or structure to be a proposed monument, proposed historical building, or proposed archaeological or palaeontological site or structure; ■ To accept and refuse an application for withdrawal of declaration of proposed monument; ■ To declare a place, building, site or structure to be a monument, historical building or archaeological or palaeontological site or structure; ■ To serve notice in writing of the Authority's intention to declare a monument within private land; ■ To exercise control of monuments as specified in section 5 of the ordinance; ■ To declare any proposed monument or monument to be exempt from section 6 of the ordinance; ■ To grant a sum which the Authority thinks fit to a person who proposes to carry out work for the maintenance, preservation or restoration of a monument; 	<p><u>English and Chinese texts</u></p> <p>Section 2 is amended by repealing “Secretary for Home Affairs” / “民政事務局局長” and substituting “Secretary for Development” / “發展局局長”.</p>

The Resolution	Cap	Description	Textual amendments provided for in the Resolution
		<ul style="list-style-type: none"> <li data-bbox="792 352 1536 491">■ To pay compensation to the owner or lawful occupier of a proposed monument or monument in respect of financial loss suffered or likely to be suffered by reasons as specified in section 8 of the ordinance; <li data-bbox="792 515 1406 547">■ To disclaim ownership of a relic discovered; <li data-bbox="792 571 1536 643">■ To award to a person who makes a report on the discovery of antiquity or supposed antiquity; and <li data-bbox="792 667 1536 730">■ To grant licence to excavate and search for antiquities and cancel such licence. 	