

**Subcommittee to Study the Proposed Legislative Amendments
Relating to the Re-organisation of the Government Secretariat**

Follow up on the issue raised at the meeting on 9 June 2012

As requested by Members at the meeting on 9 June 2012, this paper provides information on the issue of delegation of powers or duties of Secretaries of Departments (“SoDs”) to the Deputy Secretaries of Departments (“DSoDs”).

Delegation of powers and duties

2. We have explained in the Legislative Council (“LegCo”) paper (LC Paper No. CB(2)2328/11-12(01)) (“paper for the Subcommittee”) that the existing resolution does not involve the SoDs and DSoDs. This is due to the fact that the two DSoDs will mainly be tasked to assist the Chief Executive (“CE”), Chief Secretary for Administration and Financial Secretary in formulating long-term plans, co-ordinating the formulation and implementation of policy, as well as assisting in the supervision of the relevant policy bureaux. The performance of such duties generally does not involve the exercise of statutory powers, and thus there is no need to transfer the statutory powers of the SoDs to the two DSoDs.

3. In future, if there is a need to exercise statutory powers in the process of co-ordinating the formulation and implementation of policy, such powers may be exercised by the public officers vested with the powers, or such powers or duties may be conferred or imposed upon the DSoDs pursuant to section 43(1) of the Interpretation and General Clauses Ordinance (Cap. 1).

4. According to section 3 of Cap. 1, “public officer” means any person who holds an office of emolument under the Hong Kong Special Administrative Region Government. As such, when the Finance Committee has approved the creation of the two DSoD posts and the Central People’s Government has appointed the persons concerned as DSoDs pursuant to the Basic Law and on nominations made by the CE, those persons who have taken up the posts of DSoD are “public officers”. Under section 43(1) of the Cap. 1, a specified public officer may, when the need arises, delegate any other public officer to exercise the powers conferred or perform the duties imposed upon the specified public officer by an Ordinance.

5. According to section 54 of Cap. 1, in any Ordinance, any reference to a public officer shall include a reference to any person appointed to act in or perform the duties of such office, or any part of such duties, for the time being. Therefore, as mentioned in the paper for the Subcommittee, during the absence of the SoDs, DSoDs will assume the duties and perform the statutory functions on behalf of SoDs. This arrangement is in line with the current practice.

Restrictions on the delegation of powers and duties

6. Section 43(2) of Cap. 1 provides that nothing in section 43(1) shall authorise a specified public officer to delegate any person to make subsidiary legislation or to hear any appeal.

7. Section 2 of Cap. 1 stipulates that Cap. 1 shall apply to any other Ordinance in force save where the contrary intention appears from the context of any other Ordinance. If there is an Ordinance which expressly provides that SoDs may delegate powers to any other public officers in accordance with the Ordinance, SoDs may, in accordance with the Ordinance, delegate the DSoDs to perform the duties concerned. If an Ordinance expressly provides that the duties concerned must be performed by the SoDs personally, SoDs may not delegate such duties to any other public officers, including DSoDs.

If delegation of duties is required

8. Although we are of the view that, at present, there is no need to transfer any statutory functions to the DSoDs, if there is a need in future to confer statutory functions on the DSoDs through legislation, we will follow the legislative requirements and procedures to submit proposals for amending the Ordinance concerned to the LegCo. We will implement the proposals only after the scrutiny of the LegCo.

Constitutional and Mainland Affairs Bureau
Department of Justice
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