

Public Service (Administration) Order 1997

Introduction

This paper sets out the background to the making of the Public Service (Administration) Order 1997 (PS(A)O) by the Chief Executive under Article 48(4) of the Basic Law, which has replaced and localised the essential provisions in the Letters Patent (LP) and the Colonial Regulations (CRs) relating to the administration of the public service.

Instruments for Administration of Public Service Prior to Reunification

2. Prior to reunification, the administration of the public service was provided for in relevant provisions in the LP, CRs and Civil Service Regulations (CSRs). The LP and CRs were imperial instruments made under Royal Prerogative and lapsed on 1 July 1997 upon the establishment of the Hong Kong Special Administrative Region (HKSAR). CSRs are administrative rules made by the Secretary for the Civil Service under delegated authority for the management of the civil service and remain in force after reunification.

3. Over the years, many provisions in the CRs pertaining to the administrative details of the management of the public service were translated into CSRs. Provisions in the LP and CRs which have not been translated into CSRs relate to the authority to appoint, dismiss and discipline public servants; to act on representations made by public servants; and to make related disciplinary regulations.

4. With the lapsing of the LP and CRs upon reunification, it was necessary to replace and localise those provisions relating to the administration of the public service to maintain continuity. Our objective was to replace and localise the relevant provisions with an instrument which approximates as closely as possible to the LP and CRs, both in nature and in legal status.

Legal Status of the Executive Order

5. As the LP and CRs were imperial instruments, it would not be possible to replace them with mirror arrangements. Enactment of law by the Legislative Council would not have been appropriate as it would have constituted a major departure from the previous system in which the Administration retained full executive authority to administer the public service.

6. An Executive Order issued by the Chief Executive under Article 48(4) of the Basic Law provides the legal backing to enable the HKSAR Government to preserve its executive authority for the continued administration of the public service. This is in line with Article 103 of the Basic Law which provides for continuity in the management of the public service.

7. The PS(A)O was made by the Chief Executive-in-Council to reflect its importance and to ensure the validity of the Order under Article 56 of the Basic Law. It was made by the Chief Executive on 9 July 1997, in exercise of his power under Article 48(4) of the Basic Law and took effect from 1 July 1997. At present, the PS(A)O is the only executive order the Chief Executive has issued.

Judicial Review on the Executive Order

8. The legal status and the constitutionality of the PS(A)O and its retrospectivity were challenged in the Court of First Instance in February 1998 in a judicial review (*Association of Expatriate Civil Servants of Hong Kong [AECS] v Chief Executive*). The court judgment handed down on 3 April 1998 ruled in favour of the Government in respect of the constitutionality and lawfulness of the Executive Order and of its retrospectivity.

9. In the judgment, the court has noted that it was “plainly not possible for instruments to be promulgated which were identical in nature to the colonial instruments which they were replacing”, and “the hallmark of the previous system was that, where procedures were to be established locally, they were established by the Governor by executive action”. The Judge also confirmed that the Executive Order is not in breach of Articles 48(7) and 103 of the Basic Law.

Relevant Provisions of Letters Patent, Colonial Regulations and Public Service (Administration) Order 1997

10. A list of the provisions in the Letters Patent and Colonial Regulations that have been localised and replaced and the corresponding sections of the Public Service (Administration) Order 1997 is attached at *Annex A*. Extracts of the relevant provisions in the Letters Patent and Colonial Regulations, and a full copy of the Public Service (Administration) Order 1997 are attached at *Annexes B, C and D* respectively.

**Provisions in Letters Patent (LP) and Colonial Regulations (CR) Localised
and Corresponding Sections in the Public Service (Administration) Order 1997**

Provisions in LP and CRs	Subject Matter	Corresponding Provisions in PS(A)O
LP XIV	Power to appoint	Sections 3-4
LP XVI	Power to dismiss, suspend and discipline	Section 5
CR 54,56-65	Disciplinary procedures and retirement in the public interest	Section 6-19,21
CR 68-70	Representations to the Governor, Secretary of State and the Queen	Section 20

Civil Service Bureau

19 November 1998

Extract from
Letters Patent

Governor
empowered to
appoint Judges
and other public
officers.

(Amended on
5.2.71.
22.5.91.)

XIV. (1) The Governor may constitute and appoint such Judges, Justices of the Peace, and other public officers as may be lawfully appointed, all of whom shall, unless otherwise provided by law, hold their offices during Our pleasure.

(2) The powers conferred on the Governor by this Article may, save in the case of the office of judge of the Supreme Court or judge of the District Court or the office of Chief Secretary, Attorney General or Financial Secretary and subject to such conditions and restrictions (if any) as the Governor may specify, be exercised on behalf of the Governor by any person authorized, whether by name or by reference to an office, to exercise those powers by the Governor. Any such authorization, condition or restriction shall be notified in the Hong Kong Government Gazette.

Concurrent
appointments.
(Amended on
1.3.55.)

XIVA. (1) When the holder of the Office of Governor or of any office constituted under Article XIV of these Letters Patent is on leave of absence pending relinquishment of his office, it shall be lawful for another person to be appointed substantively to the same office.

(2) When two or more persons are holding the same office by reason of an appointment made pursuant to paragraph (1) of this Article, then for the purposes of Articles XVII and XVIIA of these Letters Patent and for the purpose of any function conferred upon the holder of that office, the person last appointed to the office shall be deemed to be the holder of the office.

XVI. Subject to the provisions of Article XVIIA, the Governor may, subject to such instructions as may from time to time be given to him by Us through one of Our Principal Secretaries of State, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any person holding any public office within the Colony, or, subject as aforesaid, may take such other disciplinary action as may seem to him desirable.

Dismissal and
suspension of
officers.

(Amended on
30.4.38.
17.11.67.)

Colonial Regulations 54, 56-65, 68-70

54. (1) Regulations 54 to 66 shall apply only to officers confirmed to the pensionable establishment.
- (2) Disciplinary procedure in relation to other officers shall be carried out in accordance with regulations made by the Governor.
- (3) For the purposes of regulation 56 to 66, punishment includes dismissal, compulsory retirement with pension, gratuity or other allowances, without such benefits or with reduced benefits, fine, reduction in rank, severe reprimand, reprimand, stoppage or deferment of increments and reduction in salary, but not retirement in the public interest under regulation 59.
- (4) Regulations 55 to 66 are without prejudice to any law providing for the punishment of officers by the Governor or any other officer or authority.
- (5) The Governor may delegate to any public officer any of the powers or duties conferred or imposed upon him by regulations 56 to 66, save that he shall not delegate the power to make regulations, nor, save with the approval of the Secretary of State, the power to dismiss an officer or to require him to retire under regulation 59.
- (6) Regulations 54 to 66 shall not apply to a judge of the Supreme Court or the District Court.
56. (1) If it is represented to the Governor that an officer has been guilty of misconduct, and the Governor is of opinion that the misconduct alleged is not serious enough to warrant proceedings under regulation 57, he may cause an investigation to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Governor and approved by the Secretary of State.
- (2) If after such investigation the Governor is of opinion that the officer has been guilty of misconduct, he may inflict such punishment, other than dismissal or compulsory retirement, upon the officer as may seem to him to be just.

57. (1) If it is represented to the Governor that an officer has been guilty of misconduct, and the Governor is of opinion that the misconduct alleged may be serious enough to warrant the dismissal or compulsory retirement of the officer, he may cause an investigation to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Governor and approved by the Secretary of State.

(2) If after such investigation the Governor is of opinion that the officer has been guilty of misconduct, he may inflict such punishment upon the officer as may seem to him to be just.

(3) Where an officer is absent from duty without leave for a period exceeding 21 days and it is reported to the Governor that -

(a) the officer cannot be traced ; or

(b) on being required by notice in writing (sent to an address or addresses through which it may be reasonably expected to reach him) to give, within the period specified in the notice, an excuse for his absence, the officer has failed to give any excuse or to give an excuse that is acceptable,

the Governor may dispense with an investigation under paragraph (1) and summarily dismiss the officer".

58. (1) If an officer has been convicted on a criminal charge the Governor may, upon a consideration of the proceedings of the Court on such charge, inflict such punishment upon the officer as may seem to him to be just, without any further proceedings.

(2) Action may be taken under this regulation if an officer is charged with a criminal offence and the court finds the charge proved but exercises its power not to enter a conviction. Such a finding may be regarded as a conviction for the purpose of this regulation.

59. (1) The Governor may at any time, if it is represented to him that the retirement of an officer is desirable in the public interest, call for a report from the Head of any department in which the officer has served. The officer shall be informed of the grounds on which his retirement is contemplated under this regulation and be given an opportunity to make representations.

(2) The Governor may, upon a consideration of the report and of any representations submitted under paragraph (1) of this regulation, require the officer to retire from the service, if he is of opinion that, having regard to conditions of the public service, the usefulness of the officer thereto and all other circumstances of the case, the termination of the officer's service is desirable in the public interest and his service shall accordingly terminate on such date as the Governor may specify.

(3) If upon consideration of

(a) an investigation into the conduct of an officer under regulation 56 or 57; or

(b) the proceedings of a court by which an officer has been convicted of a criminal charge,

the Governor is of opinion that the officer does not deserve to be punished but that the investigation or proceedings disclose grounds for requiring him to retire in the public interest, the Governor may require the officer to retire from the service under this regulation, and in such a case it shall not be necessary for the Governor to comply with the procedure prescribed in paragraphs (1) and (2) of this regulation.

(3A) Action may be taken under this regulation if an officer is charged with a criminal offence and the court finds the charge proved but exercises its power not to enter a conviction. Such a finding may be regarded as a conviction for the purpose of this regulation.

(4) Where an officer is required to retire under this regulation, he may be granted a pension, gratuity or other allowance in accordance with any pensions law for the time being in force in the Territory.

60. (1) The Governor may interdict an officer from the exercise of powers and functions of his office if :-

(a) proceedings have been, or are to be, taken against him under regulation 57; or

(b) criminal proceedings have been, or are likely to be, instituted against him; or

(c) investigation of his conduct is being undertaken and it is contrary to the public interest for him to continue to exercise the powers and functions of his office.

(2) An officer who has been interdicted under :-

(a) Paragraph (1)(a) shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Governor shall think fit; or

(b) Paragraph (1)(b) shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Governor shall think fit, until such time as he may be convicted on a criminal charge serious enough to warrant his dismissal from the service, whereupon he shall not receive any such emoluments pending the consideration of his case by the Governor; or

(c) Paragraph (1)(c) shall be allowed to receive the full amount of the emoluments of his office.

(3) If the proceedings against any such officer do not result in any punishment of the officer, he shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted.

(4) If a punishment other than dismissal is inflicted, he may be paid such proportion of the emoluments withheld as a result of his interdiction as the Governor shall think fit.

61. If criminal proceedings are instituted against an officer, disciplinary proceedings based upon any grounds involved in the criminal charge shall not be taken pending the determination of the criminal proceedings.

62. An officer acquitted of a criminal charge shall not be punished in respect of any charges upon which he has been acquitted, but he may nevertheless be punished on any other charges arising out of his conduct in the matter which do not raise substantially the same issues as those on which he has been acquitted and the appropriate proceedings may be taken for the purpose.

63. An officer who is dismissed forfeits all claim to any pension, gratuity or other like benefits and to any other benefits or advantages of an officer.

64. An officer who is under interdiction may not, without the permission of the Governor, leave the Territory during the interval before he is reinstated or dismissed.

65. Except as may be provided by regulations made by the Governor and approved by the Secretary of State, and except in the case of an officer who is one of the officers designated in Section 6(2) of the Public Services Commission Ordinance, the Governor shall not inflict any punishment upon an officer under regulation 56, 57 and 58 or require an officer to retire under regulation 59 without first consulting the Public Services Commission.

68. Every officer who has any representations of a public or private nature to make to the Government should address them to the Governor. The duty of the Governor is to consider and act upon each representation as public expediency and justice to the individual may appear to require, with the assistance in certain cases of his Executive Council; and if he doubts what steps to take thereupon, or if public advantage may appear to require it, he shall refer the matter to the Secretary of State.

69. Any officer in a Territory has the right to address the Secretary of State, if he thinks proper; in which case he must transmit such communication, unsealed and in triplicate, to the Governor, requesting him to forward it in due course to the Secretary of State. Every letter, memorial or other document which may be received by the Secretary of State from a Territory otherwise than through the Governor will be referred back to the Governor for his report or returned to the writer. The rule requiring transmission of communications to the Secretary of State through the Governor is based on the strongest grounds of public convenience, in order that all communications may be duly verified, as well as reported on, before they reach the Secretary of State. It extends, therefore, to communications relating to public affairs as well as to the concerns of the writer.

70. Petitions addressed to The Queen or The Queen in Council and memorials to officers or to departments of Her Majesty's Government in the United Kingdom must be in like manner sent to the Governor for transmission to the Secretary of State.

行政命令
1997年第一號

本、基本法、中華人民共和國香港特別行政區行政長官，現依據《基本法》第四十八(四)條賦予本人的權力作出以下命令——

第一部
導言

1. 引稱及生效日期

- (1) 本命令可引稱為《1997年公務人員(管理)命令》。
- (2) 本命令當作自1997年7月1日起實施。

2. 釋義

在本命令中，除文意另有所指外——

“乙類人員”(Category B Officer)指任何下述人員——

- (a) 擔任非設定職位的人員；
- (b) 以按月僱用條款或試用條款擔任設定職位的人員；或
- (c) 按合約條款擔任職位的人員；

“公務人員”(public servant)及“人員”(officer)指任何在特區政府下擔任受薪職位(不論該職位屬永久或臨時性質)，並在政府任何局或部門服務的人；

“公務員裁用委員會”(Public Service Commission)指根據《公務員裁用委員會條例》(第93章)第3條設立的公務員裁用委員會；

“公職人員”(public officer)指《釋義及通則條例》(第一章)第3條所指的公職人員；

“甲類人員”(Category A Officer)指獲委任並已獲確實受聘擔任設定職位的人員；

“非設定職位”(non-established office)指並非設定職位的職位；

“特區”(HKSAR)指中華人民共和國香港特別行政區；

EXECUTIVE ORDER
No. 1 of 1997

- I, TUNG Chee-hwa, Chief Executive of the Hong Kong Special Administrative Region of the People's Republic of China, pursuant to the power vested in me by Article 48(4) of the Basic Law, make the following Order—

PART I
PRELIMINARY

1. Citation and commencement

- (1) This Order may be cited as the Public Service (Administration) Order 1997.
- (2) This Order shall be deemed to have come into operation on 1 July 1997.

2. Interpretation

In this Order, unless the context otherwise requires—

“Basic Law” (《基本法》) means the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China;

“Category A Officer” (甲類人員) means an officer who is appointed to and confirmed in an established office;

“Category B Officer” (乙類人員) means any officer who—

- (a) holds a non-established office;
- (b) holds an established office either on month-to-month terms or probationary terms; or
- (c) holds an office on agreement terms;

“established office” (設定職位) has the meaning assigned to it by section 2 of the Pensions Ordinance (Cap. 89);

“HKSAR” (特區) means the Hong Kong Special Administrative Region of the People's Republic of China;

“non-established office” (非設定職位) means an office which is not an established office;

“public officer” (公職人員) means public officer within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);

- “《基本法》”(Basic Law)指《中華人民共和國香港特別行政區基本法》；
- “《規例》”(regulations)指行政長官根據第21條訂立的規例；
- “設定職位”(established office)具有《退休金條例》(第89章)第2條給予該詞的涵義；
- “懲罰”(punishment)——
- 包括承職、在保留退休金、酬金或其他津貼的情況下迫令退休、或在保留該等福利的情況下迫令退休、或在保留經扣減福利的情況下迫令退休、罰款、降級、職權譴責、譴責、停止或延遲增薪及減薪；
 - 不包括第12條所指的為公眾利益首肯而退休。

第II部

任用

3. 任用

- 在符合《基本法》第四十八(五)條的規定下，行政長官可憑藉《基本法》第四十八(七)條並按照本命令任用和提升公務人員。
- 行政長官就任用或提升任何人而作出甄選時，須考慮公務員敍用委員會根據或憑藉《公務員敍用委員會條例》(第93章)提交的任何意見。

4. 同時委任

- 如有公務人員在卸任其職位前休假，則行政長官可委任另一人以實質擔任該職位。
- 如因根據第(1)款作出的委任而引致同一職位有2名或多於2名人士擔任，則就擔任該職位的人所獲授予的任何職能而言，最後獲委任的人須當作為擔任該職位的人。

- “public servant” (公務人員) and “officer” (人員) mean any person holding an office of emolument under the Government of HKSAR, whether the office is permanent or temporary, and serving in a government bureau or department;
- “Public Service Commission” (公務員敍用委員會) means the Public Service Commission established under section 3 of the Public Service Commission Ordinance (Cap. 93);
- “punishment” (懲罰)——
- includes dismissal, compulsory retirement with pension, gratuity or other allowances or, without such benefits or with reduced benefits, fine, reduction in rank, severe reprimand, reprimand, stoppage or deferment of increments and reduction in salary;
 - does not include retirement in the public interest under section 12;
- “regulations” (《規例》) means regulations made by the Chief Executive under section 21.

PART II

APPOINTMENTS

3. Appointments

- Subject to Article 48(5) of the Basic Law, the Chief Executive may by virtue of Article 48(7) of the Basic Law appoint and promote public servants in accordance with this Order.
- In making his selection of persons for appointment or promotion, the Chief Executive shall take account of any advice tendered by the Public Service Commission under or by virtue of the Public Service Commission Ordinance (Cap. 93).

4. Concurrent appointments

- The Chief Executive may, when a public servant is on leave of absence pending relinquishment of his office, appoint substantively another person to the same office.
- When 2 or more persons are holding the same office by reason of an appointment made under subsection (1) the person last appointed to the office shall, for the purposes of any function conferred upon the holder of that office, be deemed to be the holder of that office.

第 III 部

革職、暫時停職及紀律

PART III

DISMISSAL, SUSPENSION AND DISCIPLINE

5. 革職、暫時停職及紀律

在符合《基本法》第四十八(五)條的規定下，行政長官如覺得有充分理由，可憑藉《基本法》第四十八(七)條並按照本命令及《規例》將任何公務人員革職或暫時停職，或按照本命令及《規例》採取他認為適宜的其他紀律行動。

6. 紀律程序並不損害任何就懲罰作出規定的法律等

本命令及《規例》並不損害任何就由行政長官或任何其他人員或主管當局對任何人員施加懲罰作出規定的法律。

7. 適用於甲類人員的紀律程序

第 9 至 18 條適用於甲類人員。

8. 適用於乙類人員的紀律程序

對乙類人員所進行的紀律程序須按照《規例》及行政長官根據第 21(3) 條所作出的任何指示而進行。

9. 不足以成為革職或迫令退休理由的行為不當

(1) 如有人向行政長官作出申述，謂任何人員行為不當，而行政長官認為該指稱的行為不當並非嚴重至足以成為根據第 10 條提起程序的理由，則行政長官可安排按由他根據第 21(2) 條訂立的《規例》訂明的方式對該人員的行為進行調查。

(2) 如在上述調查後行政長官認為該人員行為不當，則行政長官可對該人員處以他認為公正的懲罰，但該懲罰並不包括革職或迫令退休。

5. Dismissal, suspension and discipline

Subject to article 48(5) of the Basic Law, the Chief Executive may by virtue of article 48(7) of the Basic Law, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any public servant or take such other disciplinary action, in accordance with this Order and regulations as may seem to him desirable.

6. Disciplinary procedures not to prejudice any law providing for punishment, etc.

This Order and regulations are without prejudice to any law providing for the punishment of officers by the Chief Executive or any other officer or authority.

7. Disciplinary procedures applicable to Category A Officers

Sections 9 to 18 shall apply only to Category A Officers.

8. Disciplinary procedures applicable to Category B Officers

Disciplinary procedure in relation to Category B Officers shall be carried out in accordance with regulations and any directions given by the Chief Executive under section 21(3).

9. Misconduct not warranting dismissal or compulsory retirement

(1) If it is represented to the Chief Executive that an officer has been guilty of misconduct, and the Chief Executive is of the opinion that the misconduct alleged is not serious enough to warrant proceedings under section 10, he may cause an investigation to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Chief Executive under section 21(2).

(2) If after such investigation the Chief Executive is of the opinion that the officer has been guilty of misconduct, he may inflict such punishment, other than dismissal or compulsory retirement, upon the officer as may seem to him to be just.

10. 足以成為革職或迫令退休理由的行為不當

(1) 如有人向行政長官作出申述，謂任何人員行為不當，而行政長官認為該指稱的行為不當可能嚴重至足以成為該人員被革職或迫令退休的理由，則行政長官可安排按他根據第 21(2) 條訂立的《規例》所訂明的方式而對該人員的行為進行調查。

(2) 如在上述調查後行政長官認為該人員行為不當，則行政長官可對該人員處以他認為公正的懲罰。

(3) 凡任何人員擅離職守為期超過 21 天並有人向行政長官作出申述，謂——

(a) 該人員的下落無法追尋；或

(b) 該人員據獲郵遞寄往其最後為人所周知地址的書面通知，規定他在通知書所指明的期限內就他擅離職守一事作出辯解，而他沒有作出辯解或沒有作出合理的辯解。

則行政長官可無須根據第 (1) 款安排進行調查而將該人員即時革職。

11. 刑事檢控後的進一步行動

如任何人員被裁定犯了刑事罪行，則行政長官在考慮法院就該項控罪進行的法律程序後，可對該人員處以他認為公正的懲罰而無須提起進一步的程序。

12. 為公眾利益着想而退休

(1) 如有人向行政長官作出申述，謂某人員適宜為公眾利益着想而退休，則行政長官可於任何時間向該人員任職的任何部門的首長索取報告。該人員須通知預期會根據本條指令他退休所據的理由，並須獲給予作出申述的機會。

(2) 行政長官在考慮根據第 (1) 款呈交的報告和作出的任何申述後，並在顧及公務人員的服務條件、該人員對公務人員隊伍的作用及該個案的所有其他情況後，如認為適宜為公眾利益着想而終止該人員的服務，可指令該人員退休，而該人員的服務須按此而在行政長官指明的日期終止。

10. Misconduct warranting dismissal or compulsory retirement

(1) If it is represented to the Chief Executive that an officer has been guilty of misconduct, and the Chief Executive is of the opinion that the misconduct alleged may be serious enough to warrant the dismissal or compulsory retirement of the officer, he may cause an investigation to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Chief Executive under section 21(2).

(2) If after such investigation the Chief Executive is of the opinion that the officer has been guilty of misconduct, he may inflict such punishment upon the officer as may seem to him to be just.

(3) Where an officer is absent from duty without leave for a period exceeding 21 days and it is represented to the Chief Executive that the officer

(a) cannot be traced; or

(b) on being required by notice in writing (sent by post to his last known address) to give, within the period specified in the notice, an excuse for his absence, has failed to give any excuse or to give an excuse that is reasonable,

the Chief Executive need not cause an investigation to be made under subsection (1) and may summarily dismiss the officer.

11. Action further to criminal charge

If an officer has been convicted on a criminal charge the Chief Executive may, upon a consideration of the proceedings of the court on such charge, inflict such punishment upon the officer as may seem to him to be just, without any further proceedings.

12. Retirement in the public interest

(1) The Chief Executive may, at any time if it is represented to him that the retirement of an officer is desirable in the public interest, call for a report from the head of any department in which the officer has served. The officer shall be informed of the grounds on which his retirement is contemplated under this section and be given an opportunity to make representations.

(2) The Chief Executive may, upon a consideration of the report and of any representations submitted under subsection (1), require the officer to retire from the service, if he is of the opinion that, having regard to conditions of the public service, the usefulness of the officer thereto and all other circumstances of the case, the termination of the officer's service is desirable in the public interest and the officer's service shall accordingly terminate on such date as the Chief Executive may specify.

(3) 行政長官——

- (a) 在考慮根據第9或10條對某人員的行為進行的調查後；或
 (b) 在考慮某人員在法院被裁定犯了刑事罪行的法律程序後，

如認為該人員不應受懲罰，但該項調查或該等法律程序披露了首令該人員為公眾利益著手而退休的理由，則行政長官可根據本條首令該人員退休，而在該情況下，行政長官必須進行第(1)及(2)款所述的程序。

(4) 凡任何人員根據本條被首令退休，他可按照當時施行的任何退休金法律而獲發給退休金、酬金或其他津貼。

(3) If upon consideration of—

- (a) an investigation into the conduct of an officer under section 9 or 10; or
 (b) the proceedings of a court by which an officer has been convicted of a criminal charge,

the Chief Executive is of the opinion that the officer does not deserve to be punished but that the investigation or proceedings disclose grounds for requiring him to retire in the public interest, the Chief Executive may require the officer to retire from the service under this section, and in such a case it shall not be necessary for the Chief Executive to comply with the procedure mentioned in subsections (1) and (2).

(4) Where an officer is required to retire under this section, he may be granted a pension, gratuity or other allowance in accordance with any pensions law for the time being in force.

13. 停止行使職位的權力及職能

(1) 在以下情況下，行政長官可首令任何人員停止行使其職位的權力及職能——

- (a) 已經或行將根據第10條對該人員而提起程序；或
 (b) 已經或相當可能會對該人員而提起刑事法律程序；或
 (c) 該人員的行為正受調查，而讓他繼續行使其職位的權力及職能是違背公眾利益的。

(2) 任何人員如——

- (a) 根據第(1)(a)款被停職，該人員須獲發給行政長官認為合適而不少於其職位薪酬一半的部分薪酬；或
 (b) 根據第(1)(b)款被停職，該人員須獲發給行政長官認為合適而不少於其職位薪酬一半的部分薪酬，直至該人員就一項嚴重至足以成為該人員被革職的理由的刑事控罪被裁定罪名成立為止，屆時該人員在其個案等候行政長官考慮的期間不得獲發給任何該等薪酬；或
 (c) 根據第(1)(c)款被停職，該人員須獲發給其職位薪酬的全數。

(3) 如針對任何該等人員的程序沒有導致對該人員被處以任何懲罰，則他有權收取假如沒有被停職時本會獲發給的薪酬的全數。

13. Interdiction from exercise of powers and functions of office

(1) The Chief Executive may interdict an officer from the exercise of powers and functions of his office if—

- (a) proceedings have been, or are to be, taken against him under section 10; or
 (b) criminal proceedings have been, or are likely to be, instituted against him; or
 (c) investigation of his conduct is being undertaken and it is contrary to the public interest for him to continue to exercise the powers and functions of his office.

(2) An officer who has been interdicted under—

- (a) subsection (1)(a) shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Chief Executive shall think fit; or
 (b) subsection (1)(b) shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Chief Executive shall think fit until such time as he may be convicted on a criminal charge serious enough to warrant his dismissal from the service whereupon he shall not receive any such emoluments pending the consideration of his case by the Chief Executive; or
 (c) subsection (1)(c) shall be allowed to receive the full amount of the emoluments of his office.

(3) If the proceedings against any officer do not result in any punishment of the officer, he shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted.

(4) 如任何人員被處以革職以外的懲罰，則他可按行政長官認為合適的比率費支付因被停職而被扣起的薪酬。

14. 在等候控罪裁定期間暫延紀律處分程序

如有刑事法律程序針對任何人員提起，則在等候該刑事法律程序裁決期間，不得基於該刑事控罪涉及的任何理由採取紀律處分程序。

15. 對獲裁定無罪的人員處以懲罰的限制

就刑事控罪被裁定罪名不成立的人員不得就他已被裁定罪名不成立的控罪而受懲罰，但如有其他指控因他在該事宜上的行為而引起，而該等指控所產生的事論點實質上並非其他獲裁定罪名不成立所關乎的同一事論點，則該人員可就該等指控被懲罰而適當的程序亦可為該目的而提起。

16. 被革職即喪失福利

被革職的人員喪失對任何退休金、酬金或其他類似的福利及對任何其他福利或利益的中索權。

17. 對被停職人員離開特區的限制

正被停職的人員在復職或被革職之前的期間內，未經行政長官准許不得離開特區。

18. 就懲罰事宜諮詢公務員銜用委員會

行政長官未經諮詢公務員銜用委員會，不得根據第9至11條對任何人員處以懲罰或根據第12條晉令該人員退休，但如行政長官根據第21(2)條訂立的《規例》另有規定及該人員屬《公務員銜用委員會條例》第6(2)條指定的人員之一，則屬例外。

(4) If a punishment other than dismissal is inflicted, the officer may be paid such proportion of the emoluments withheld as a result of his interdiction as the Chief Executive shall think fit.

14. Disciplinary proceedings to be held over pending determination of charge

If criminal proceedings are instituted against an officer, disciplinary proceedings based upon any grounds involved in the criminal charge shall not be taken pending the determination of the criminal proceedings.

15. Restriction on punishment if acquitted

An officer acquitted of a criminal charge shall not be punished in respect of any charges upon which he has been acquitted, but he may nevertheless be punished on any other charges arising out of his conduct in the matter which do not raise substantially the same issues as those on which he has been acquitted and the appropriate proceedings may be taken for the purpose.

16. Forfeiture of benefits on dismissal

An officer who is dismissed forfeits all claims to any pension, gratuity or other like benefits and to any other benefits or advantages of an officer.

17. Restriction on departure from HKSAR if interdicted

An officer who is under interdiction may not, without the permission of the Chief Executive, leave HKSAR during the interval before he is reinstated or dismissed.

18. Consultation with Public Service Commission on punishment

Except as may be provided by regulations made by the Chief Executive under section 21(2) and except in the case of an officer who is one of the officers designated in section 6(2) of the Public Service Commission Ordinance (Cap. 93), the Chief Executive shall not inflict any punishment upon an officer under sections 9 to 11 or require an officer to retire under section 12 without first consulting the Public Service Commission.

第IV部

雜項條文

19. 權力的轉授

- (1) 除第(2)款另有規定外，行政長官可將第3、9至18條授予他的權力或委于他的職責轉授于任何公務人員或任何其他公職人員。
- (2) 行政長官不得將根據第21(2)條訂立規例的權力轉授。
- (3) 凡賦予總督或由總督行使的權力或職責(與第(1)款所提述者相類似)轉授于公務人員或其他公職人員，該等轉授如在緊接1997年7月1日之前是有效的，則在該日及之後繼續有效，並當作是由行政長官向特區的相應公務人員或公職人員(視屬何情況而定)作出的。

20. 人員的申述

- (1) 任何人員如有公開或私人性質的申述向特區政府作出，應將其申述向行政長官提出。行政長官須視乎對公眾有利和對個人公正的需要而就每項申述作出考慮和行事。
- (2) 行政長官可委出一個覆核委員會，就授予他的某些他認為合適的而關於公務人員的任命、革職和紀律事宜的申述提供意見。

21. 規例及指示

- (1) 除第(2)款另有規定外，行政長官可為以下事宜訂立規例——
- (a) 訂明根據本命令須循規例訂明的任何事情；及
- (b) 概括而言，規管本命令下的常規及程序。
- (2) 行政長官可在諮詢行政會議後訂立在第9(1)、10(1)及18條中提述的規例。
- (3) 行政長官可作出書面指示，以規管關於人員的服務條件及任用條款及紀律的事宜，並為使本命令全面生效和為妥善管理公務人員而前期或需要的事宜作出一般的規定。

PART IV

MISCELLANEOUS

19. Delegations of power

- (1) Subject to subsection (2), the Chief Executive may delegate to any public servant or any other public officer any powers or duties conferred or imposed on him by sections 3 and 9 to 18.
- (2) The Chief Executive shall not delegate the power to make regulations under section 21(2).
- (3) All delegations to a public servant or other public officer of powers or duties (similar to those referred to in subsection (1)) vested in or exercisable by the Governor which were in force immediately before 1 July 1997 shall on and after that date continue in force and be deemed to have been made by the Chief Executive to the corresponding public servant or public officer, as the case may be, in the HKSAR.

20. Representations by officers

- (1) Every officer who has any representations of a public or private nature to make to the Government of HKSAR should address them to the Chief Executive. The Chief Executive shall consider and act upon each representation as public expediency and justice to the individual may require.
- (2) The Chief Executive may appoint a review board to advise him on such representations addressed to him relating to appointment, dismissal and discipline of public servants as he thinks fit.

21. Regulations and directions

- (1) Subject to subsection (2), the Chief Executive may make regulations—
- (a) for prescribing anything to be prescribed by regulations; and
- (b) generally for regulating practice and procedure, under this Order.
- (2) The Chief Executive may, with the advice of the Executive Council, make regulations referred to in sections 9(1), 10(1) and 18.
- (3) The Chief Executive may give written directions regulating matters relating to the conditions of service and terms of appointment for officers as well as conduct and discipline matters, and generally providing for such matters as are contemplated by or necessary for giving full effect to this Order and for the due administration of the public service.

(4) 《規例》及根據第(3)款作出的指示當作自1997年7月1日或行政長官所指明的其他日期起實施，並適用於任何在1997年7月1日前根據《殖民地規例》提起的或根據總督行使《英皇制誥》或《殖民地規例》授予的權力所訂立的規例或作出的指示而提起的有待裁決的程序。

(5) 《規例》以及根據第(3)款作出的指示並非《釋義及通則條例》(第1章)中“附屬法例”一詞所指的附屬法例。

22. 過渡性條文

任何根據——

(a) 《英皇制誥》；

(b) 《殖民地規例》；或

(c) 總督行使《英皇制誥》或《殖民地規例》所賦予的權力而訂立的規例或作出的指示，

而作出的事情，如在本命令生效日期當日或緊接該日期之前是有效的，則該等事情須繼續生效和具有效力，猶如是很據本命令或《規例》作出的一樣。

於1997年7月9日訂立

行政長官
董建華

(4) Regulations and directions given under subsection (3) shall be deemed to have come into operation on 1 July 1997 or such other dates as may be specified by the Chief Executive and shall apply to any proceedings instituted under the Colonial Regulations or regulations or directions by the Governor in exercise of the powers conferred by the Letters Patent or the Colonial Regulations before 1 July 1997 pending determination.

(5) Regulations and directions given under subsection (3) shall not be subsidiary legislation within the meaning of that expression in the Interpretation and General Clauses Ordinance (Cap. 1).

22. Transitional

Anything done under—

(a) the Letters Patent;

(b) the Colonial Regulations; or

(c) any other regulations or directions by the Governor in exercise of the powers conferred by the Letters Patent or the Colonial Regulations,

shall, if in force on or immediately prior to the commencement of this Order, continue in force and have effect as if done under the provisions of this Order or regulations.

Made this 9th day of July 1997

TUNG Chee-hwa
Chief Executive