

LEGISLATIVE COUNCIL BRIEF

**PROVISION OF MUNICIPAL SERVICES
(REORGANIZATION) BILL**

INTRODUCTION

At the meeting of the Executive Council on 20 April 1999, the Council ADVISED and the Chief Executive ORDERED that the Provision of Municipal Services (Reorganization) Bill should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

Previous Executive Council Discussion

2. At previous meetings of the Executive Council on the Review of District Organizations, it was decided that the following changes to the structure for the delivery of municipal services should be adopted -

- (a) the Administration should assume responsibility for all functions relating to food safety and environmental hygiene and make necessary changes to the government structure, including setting up a new dedicated department and a new policy bureau for the environment and food;
- (b) the key proposals in the Consultancy Report on Arts and Culture and Sports and Recreation Services, including the setting up of a new department under Home Affairs Bureau to take up the Provisional

Municipal Councils' (PMC) main responsibilities in leisure and cultural services, the establishment of a Culture and Heritage Commission, and expanding the membership of the Arts Development Council (ADC) from 22 to 27 and that of the Sports Development Board (SDB) from 13 to 17; and

- (c) the PMCs should be dissolved after the terms of office of the incumbent members expire on 31 December 1999.

Present Position

3. To effect the repeal and necessary amendments to the existing legislation concerning the PMCs, altogether some 58 Ordinances and about 100 subsidiary legislation are likely to be affected, as indicated in the list at **Annex A**.

4. In drafting the Provision of Municipal Services (Reorganization) Bill, we have taken into account the following views expressed by LegCo members at the relevant LegCo Panels in the past few months -

- (a) the Administration should introduce an omnibus bill on the subject to allow Members to have an overall view on the proposed changes; and
- (b) the Administration should take the opportunity to review and update obsolete provisions in the ordinances and by-laws concerned.

5. We have, however, not incorporated into the Bill the proposed changes to the membership of the ADC and SDB. Such changes are not essential to effecting the dissolution of the PMCs. We are preparing two separate bills to amend the membership of the ADC and SDB in the Hong Kong

Arts Development Council Ordinance (Chapter 472) and the Hong Kong Sports Development Board Ordinance (Chapter 1149) respectively.

THE BILL

6. The object of this Bill is to provide for -
- (a) the transfer of all existing property, rights, liabilities, functions and powers of the PMCs to the Government or designated public officers;
 - (b) the repeal of the Provisional Urban Council Ordinance and the Provisional Regional Council Ordinance;
 - (c) the formation of a new Liquor Licensing Board and a Licensing Appeals Board in place of existing boards and committees under the PMCs performing similar licensing and review functions;
 - (d) the formation of a Municipal Services Appeals Board in place of the existing Urban Services Appeals Board and Regional Services Appeals Board;
 - (e) a new fee-setting mechanism for various fees and charges related to municipal services;
 - (f) the deletion of certain obsolete provisions in the Public Health and Municipal Services Ordinance (Chapter 132) and its subsidiary legislation and the repeal of duplicate subsidiary legislation;
 - (g) various transitional provisions and savings to maintain legal and administrative continuity; and
 - (h) consequential amendments in related ordinances and subsidiary legislation.

The main provisions in the Bill are explained in detail in paragraphs 7 to 23 below. **(Note: A copy of the Bill will be distributed to Members by the Government Printer shortly.)**

Dissolution of the PMCs

7. **Clause 3** repeals the Provisional Regional Council Ordinance (Chapter 385) and the Provisional Urban Council Ordinance (Chapter 101) on a day to be appointed by the Secretary for Constitutional Affairs by notice in the Gazette (the “appointed day”). The target appointed date is 1 January 2000.

Transfer of property, rights and liabilities

8. **Clauses 4 to 6** provide for the vesting of all property, rights and liabilities of the PMCs in the Government as from the appointed day.

Transfer of functions

9. **Clause 7** makes the statutory amendments necessary to transfer the functions exercised by the PMCs. Specific details of these amendments are set out in Schedules 1 to 7 of the Bill to be explained in paragraphs 13 to 18 below. **Clause 8** contains detailed transitional and savings provisions which are necessary on account of the amendments made under clause 7.

Savings provisions

10. **Clause 9** saves subsidiary legislation and fees or charges in force before the amendments made under clause 7 come into operation. **Clause 10** preserves the liability for offences committed under a repealed enactment and

the power to prosecute for continuing offences committed under a repealed enactment.

11. **Clause 11** provides that the Chief Executive in Council may by order, subject to the approval of LegCo, make consequential, transitional and savings provisions to give effect to the provisions of this Ordinance if the Ordinance does not make adequate provision. An order made under this clause may have retroactive effect, if it were deemed to be absolutely necessary.

12. **Clause 12** is an avoidance of doubt provision which makes it clear that the provisions of the Bill which continue in force or give effect to acts done under a repealed enactment extends only to acts done lawfully. **Clause 13** provides that the traditional and savings provisions in the Ordinance are not to derogate from Section 23 of the Interpretation and General Clauses Ordinance (Chapter 1).

Schedules 1 to 7 of the Bill

13. **Schedules 1 and 2** of the Bill provide for the renaming and repeal of certain subsidiary legislation made under the Public Health and Municipal Services Ordinance as a result of the reorganization. For Members' easy reference, a table setting out the new titles of the subsidiary legislation to be adopted in the Ordinance, with reference to the old or repealed titles, is at **Annex B**.

14. **Schedule 3** sets out the amendments to the Public Health and Municipal Services Ordinance (Chapter 132) and its subsidiary legislation. In particular, it provides for -

- (a) the deletion of certain provisions such as controls of laundries and dry cleaning establishments, labourers' lines, overcrowding and boarding houses which are either obsolete or already covered by other enactments. A note explaining the reasons for deletion is at **Annex C**;
- (b) the reconciliation of differences between the subsidiary legislation made by the Provisional Urban Council and the Provisional Regional Council and transitional arrangements where more time is needed to implement a common policy. In aligning the different By-laws of the PMCs, we generally adopt the more comprehensive version among the two and make necessary adjustments to bridge the differences;
- (c) the transfer of the functions and powers of the PMCs to designated public officers including the new Secretary for the Environment and Food, the Secretary for Home Affairs, the Director of Food and Environmental Hygiene, the Director of Leisure and Cultural Services and the Director of Lands (in respect of street-naming in the urban areas) as appropriate;
- (d) the future fee-setting mechanism described in detail in paragraphs 19 to 20 below; and
- (e) the creation of a Licensing Appeals Board to hear appeals from certain decisions of the licensing authority under the Ordinance in place of the existing self-review mechanism of the PMCs for licensing decisions. The operation of the Board and the reasons for its formation are further explained in paragraphs 21 and 22 below.

15. **Schedule 4** sets out the amendments to the Municipal Services Appeals Boards Ordinance (Chapter 220). The existing Urban Services Appeals Board and the Regional Services Appeals Board are replaced by a Municipal Services Appeals Board which will hear appeals from decisions made under the Public Health and Municipal Services Ordinance (Chapter 132), Places of Public Entertainment Ordinance (Chapter 172) and Dutiable Commodities (Liquor Licensing) Regulations (Chapter 109, sub. leg.) and from decisions of the newly established Licensing Appeals Board mentioned in paragraph 14(e) above.

16. **Schedule 5** sets out the amendments to the Dutiable Commodities Ordinance (Chapter 109) and the Dutiable Commodities (Liquor Licensing) Regulations. It replaces the two existing liquor licensing boards under the PMCs by a new Liquor Licensing Board comprising a Chairman and 10 members appointed by the Chief Executive to issue liquor licences.

17. **Schedule 6** sets out the amendments to the Places of Public Entertainment Ordinance and its subsidiary legislation. The licensing functions of the PMCs under this Ordinance are transferred to the Secretary for Home Affairs (SHA) and officers under his delegated authority. As a temporary arrangement to minimise disruption of services, SHA intends to delegate the actual licensing duty to officers in the proposed Department of Food and Environmental Hygiene since these same officers have been responsible for the day to day issuing of such licences under the two municipal services departments. In the longer term, we will review in detail the licensing arrangements for various entertainment-related licences which are now issued by different authorities including the PMCs, the Television and Entertainment

Licensing Authority (responsible for amusement game centres, mahjong parlours, etc.), and the Office of Licensing Authority in the Home Affairs Department (responsible for clubs) with a view to rationalising the system and streamlining the licensing procedures.

18. **Schedule 7** contains various consequential and related amendments to a number of ordinances and subsidiary legislation.

Fees and Charges

19. The PMCs now charge a total of some 900 different types of fees and charges which will come under general revenue after the reorganisation. As noted in paragraph 10 above, **clause 9** saves the fees and charges immediately in force before the reorganisation, including different pricing levels between the two PMCs in some cases. They will be preserved until they are revised. We estimate that the realignment exercise would take one or two years to complete.

20. As regards the future fee-setting mechanism set out in **Schedule 3** to the Bill (**paragraph 63 of the Schedule**), fees for licences and permits, mainly related to food and environmental hygiene services, will be prescribed in regulations made by the Policy Secretary and subject to LegCo's negative vetting. Other fees and charges, mainly admission and course fees for cultural and recreational programmes and hire charges of cultural and recreational venues, are currently set at heavily subsidized levels on policy considerations such as promoting arts, culture and sports. Nevertheless, price setting is often based on a "market oriented" approach, taking into account various factors such as the locations of venues, popularity of programmes, and users' affordability.

As a result, there is an enormous diversity of price levels for the same type of leisure and cultural services. Thus we propose that these fees and charges should be determined by the Director of Leisure and Cultural Services subject only to the approval of the Financial Secretary. In addition, to allow for fee reduction or waiver under specific schemes or on a case by case basis (such as group-booking discounts), the Financial Secretary or any public officer under his delegated authority may generally or in particular case reduce or waive any of the fees or charges.

Licensing Appeals Board

21. Under section 125(9) of the Public Health and Municipal Services Ordinance, the PMCs have each set up a Review Committee to review, upon applications from dissatisfied licence applicants, licensing decisions made by the municipal services departments on behalf of the PMCs. The Review Committee is akin to a first tier appeal mechanism and can hold hearings on the review applications and uphold, reverse or modify the original licensing decisions. Those who remain dissatisfied with the Review Committee's decision may take their case to the Municipal Services Appeals Boards which involves formal submissions from both parties and very often legal representation.

22. To preserve the right of access to a less formal first tier appeal mechanism and to avoid the future Municipal Services Appeals Board being inundated with too many appeal cases, we accept the recommendation of the consultant in the Consultancy Report on Food and Environmental Hygiene Services that a Licensing Appeals Board should be established as a first tier appeal mechanism. Under the proposal in **Schedule 3** to the Bill (**paragraph 66 of the Schedule**), the Board will consist of a Chairman and not less than 14 members

appointed by the Chief Executive. Each appeal is heard by a panel comprising the Chairman and four members. The Chairman on the advice of the Board may make rules to regulate the making of appeals and the procedures are intended to be less formal. The secretary and other staff of the Board are appointed by the Secretary for the Environment and Food.

BASIC LAW IMPLICATIONS

23. Article 97 of the Basic Law provides that “district organisations which are not organs of political power may be established in the HKSAR, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.” The Department of Justice advises that since Article 97 being an empowering provision, is couched in broad terms and provides sufficient flexibility to enable changes to be made to the functions of district organisations as provided for in the Bill. On this basis, the Department of Justice advises that the proposed legislation is consistent with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

24. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE NEW LEGISLATION

25. The amendments to the various Ordinances and subsidiary legislation under this Bill will not affect the binding effect of these Ordinances and subsidiary legislation. Nevertheless, the Bill binds the Government of the

Hong Kong Special Administration Region in that the property, rights and liabilities of the PMCs will be transferred to the Government.

FINANCIAL AND STAFFING IMPLICATIONS

26. The dissolution of the PMCs would yield some immediate savings. These include the costs of the PMCs' Secretariats, allowances for PMC members, provisions for elections and net savings in staff costs as a result of the reorganisation. The total savings that could be realized in year 2000 are estimated to be in the region of \$300 million. There would be scope for further streamlining and improved efficiency in the medium term mainly through more contracting out of services. We estimate that additional annual savings in the region of \$500 million could be achieved by 2003/2004.

27. The total costs for planned but uncommitted projects in the PMCs' current five years programmes amount to some \$20 billion. We are re-assessing the priorities of the projects. The deletion or deferral of some of these projects would reduce pressure on public spending in terms of both capital outlay and recurrent staff and running costs.

28. Some incidental expenses for setting up the new Bureau and Departments may also have to be incurred and funds would be sought in the normal way.

29. With regard to the additional cost arising from setting up of the new Environment and Food Bureau and strengthening the establishment of the Home Affairs Bureau to take up additional policy responsibilities, we estimate that an

extra provision of around \$30 million per annum will be required. This has been taken into account in calculating the total net savings of some \$300 million in year 2000 quoted in paragraph 26 above. We are working on details of the new organisational structure and will seek the approval of LegCo Finance Committee and its Establishment Subcommittee after the passage of the Bill.

STAFF RELATIONS IMPLICATIONS

30. The reorganisation will result in the deletion of some 400 posts in year 2000 under various streamlining proposals. We aim to minimise redundancies and redeploy the affected staff as far as possible. Staff of the two municipal services departments have expressed concern over the impact of the reorganisation on their job security and career prospects. We will continue to brief them on the reorganisation and address their concerns.

ENVIRONMENTAL IMPLICATIONS

31. We do not expect any adverse environmental implications as a result of the reorganisation. In the short term, there should be some modest environmental gains as a result of rationalisation of services. In the longer term, more significant gains are anticipated.

PUBLIC CONSULTATION

32. The decision to dissolve the PMCs and set up a new structure for the delivery of municipal services was made after extensive public consultation and debate on the review of district organisations during 1998. Further public consultation on the new administrative framework for arts and culture, and sports and recreation services was held in November and December 1998.

Members were informed of the outcome of the public consultation exercises in previous discussion at the relevant Panels.

LEGISLATIVE TIMETABLE

33. The legislative timetable approved by the Chief Executive in Council is as follows -

Publication in the Gazette	23 April 1999
First Reading and commencement of Second Reading debate	28 April 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

After passage of the Bill, we will seek LegCo Finance Committee's approval of the new organisational structure and establishment ceilings and creation and redeployment of directorate posts, as well as to make necessary transitional arrangements, so that the new bureau and departments can function from 1 January 2000.

PUBLICITY

34. A press release will be issued and a press briefing held to explain the main features of the Bill when it is gazetted.

ENQUIRIES

35. For enquiries relating to this Bill, please contact Mr John Leung,

Principal Assistant Secretary (Constitutional Affairs), Tel. No. 2810 2123, Fax No. 2523 4889.

Constitutional Affairs Bureau

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