

LEGISLATIVE COUNCIL BRIEF

Rehabilitation of Offenders Ordinance (Chapter 297)

REHABILITATION OF OFFENDERS ORDINANCE (AMENDMENT OF SCHEDULE) ORDER 1999

INTRODUCTION

A At the meeting of the Executive Council on 1 June 1999, the Council ADVISED and the Chief Executive ORDERED that the Rehabilitation of Offenders Ordinance (Amendment of Schedule) Order 1999, at Annex A, should be made under section 9(2) of the Rehabilitation of Offenders Ordinance.

BACKGROUND AND ARGUMENT

General Background

2. Section 2 of the Rehabilitation of Offenders Ordinance (the Ordinance) provides for the protection of rehabilitated individuals and, subject to the specified conditions, an individual's conviction, or his failure to disclose it, shall not constitute a lawful or proper ground for dismissing or excluding him from any office or for prejudicing him in any way in that office. However, under section 4 of the Ordinance, the protection does not apply to, inter alia : -

- (a) disciplinary proceedings against a person holding a prescribed office;
- (b) proceedings related to a person's suitability to be appointed to, or continue in, any prescribed office;
- (c) any question asked by any person, in the course of his duties, or any obligation to disclose information to that person in the course of those duties, in order to assess the

suitability of another person for appointment to any prescribed office; and

- (d) any dismissal or exclusion of an individual from any prescribed office.

Correctional Services Department

3. A “prescribed office” in the Correctional Services Department (CSD) is defined in Part 1 of the Schedule to the Ordinance as “Any office in the Correctional Services Department to which a person is appointed under section 3 of the Prisons Ordinance .” Under section 3 of the Prisons Ordinance, the Chief Executive has the power to appoint fit persons to be the Commissioner of Correctional Services (C of CS) and such other officers for the service of the prisons as the Chief Executive may think necessary. Since September 1981, the former Governor’s (now the Chief Executive’s) power has also been delegated to the Chief Secretary (now the Chief Secretary for Administration), the Secretary for Security and the Secretary for the Civil Service, but not the C of CS. On the other hand, the C of CS has been appointing officers to the ranks of Assistant Officer II and Officer, and subsequently appointing them, on promotion, to other non-directorate disciplined service ranks, namely Senior Superintendent and below, with delegated authority under Article XIV of the lapsed Letters Patent before reunification and Article 48(7) of the Basic Law after reunification.

4. In other words, all officers from the rank of Assistant Officer II to Senior Superintendent appointed by the C of CS do not hold a “prescribed office” in the context of the Ordinance. Since they do not hold a prescribed office, they will be rendered “ faultless” by virtue of section 2 of the Ordinance even if they have withheld any information concerning any previous criminal convictions.

Government Flying Service

5. Part 1 of the Schedule to the Ordinance does not cover officers in the Government Flying Service (GFS). GFS was established in 1993 as one of disciplined service departments, after the enactment of the Ordinance. For consistency with other disciplined service departments, GFS officers in the

disciplined service ranks should not be able to take advantage of the protection given under section 2 of the Ordinance.

Other Disciplined Service Departments

6. All disciplined service ranks of other disciplined service departments namely, the Hong Kong Police Force, Customs and Excise Department, Fire Services Department and Immigration Department, are unable to take advantage of the protection given under section 2 of the Ordinance. The proposed legislative amendment seeks to provide the same arrangement for serving officers in the disciplined service ranks in CSD and GFS, and future candidates for appointment to these ranks. This will plug the existing legislative loophole. There will not be any immediate action taken by CSD and GFS that may affect serving members of staff. CSD and GFS will, however, be in a position to take into account spent criminal records of candidates when considering staff advancement.

Removal of Police Cadet

7. Part 1 of the Schedule to the Ordinance includes Police cadet as a prescribed office. Since the Police Cadet School was closed in February 1989, the reference to Police cadet has become obsolete and should be removed.

THE ORDER

8. The Order is to include all disciplined service ranks of CSD and GFS as prescribed offices and to remove Police cadet as a prescribed office. The existing Schedule is at Annex B for Members' reference.

B

PUBLIC CONSULTATION

9. The Office of the Privacy Commissioner for Personal Data has been consulted on the proposal and advised that the amendment is not in conflict with the provisions of the Personal Data (Privacy) Ordinance.

10. Members of the Departmental Consultative Committees of CSD and GFS have been briefed and they have expressed support to the proposed amendment.

BASIC LAW IMPLICATIONS

11. The Department of Justice advises that the Order is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

12. The Department of Justice advises that the Order has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

13. There are no financial or staffing implications arising from the proposal.

BINDING EFFECT OF THE ORDER

14. The amendment will not affect the current binding effect of the Ordinance.

LEGISLATIVE TIMETABLE

15. The legislative timetable is –

Publication in the Gazette	4 June 1999
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Tabling at the Legislative Council	9 June 1999
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PUBLICITY

16. A press release will be issued on 4 June 1999.

ENQUIRIES

17. For any enquiries on the Order, please contact Ms Rita Kwok, Assistant Secretary for Security (B)3 on 2810 2002.

Security Bureau
4 June 1999

REHABILITATION OF OFFENDERS ORDINANCE (AMENDMENT OF SCHEDULE) ORDER 1999

(Made by the Chief Executive in Council under section 9(2) of the Rehabilitation of Offenders Ordinance (Cap. 297))

1. Prescribed offices

Part 1 of the Schedule to the Rehabilitation of Offenders Ordinance (Cap. 297) is amended-

- (a) in item 2, by repealing ", including a cadet,";
- (b) by repealing item 3 and substituting -
 - "3. Any office in the Correctional Services Department the holder of which is remunerated by reference to the General Disciplined Services Pay Scale.";
- (c) by adding -
 - "14. Any office of Senior Officer or Officer in the Government Flying Service mentioned in Schedule 1 to the Government Flying Service (General) Regulation (Cap. 322 sub. leg.)."

Clerk to the Executive Council

COUNCIL CHAMBER

1999

Explanatory Note

This Order amends the Schedule to the Rehabilitation of Offenders Ordinance (Cap. 297) ("the Ordinance").

2. Section 1(a) removes the office of cadet from the schedule of prescribed offices under the Ordinance.

3. At present, only offices to which a person is appointed under section 3 of the Prisons Ordinance (Cap. 234) are prescribed offices for the purpose of the Correctional Services Department under the Ordinance. Section 1(b) replaces item 3 in Part 1 of the Schedule to the Ordinance so as to provide that prescribed offices include offices in the Correctional Services Department the holder of which is remunerated by reference to the General Disciplined Services Pay Scale. Section 1(c) adds a new item 14 to include offices of Senior Officer and Officer in the Government Flying Service as prescribed offices. The effect of section 1(b) and (c) is that certain provisions for protection of rehabilitated persons do not apply to disciplinary proceedings against persons holding such offices, proceedings relating to continuation in such offices, questions relating to the appointment to such offices or dismissal from such offices

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Schedule: 1	Heading: PRESCRIBED OFFICES	Version Date: 12/03/1999

[section 9]

PART 1

PUBLIC OFFICES

(Replaced 10 of 1996 s. 8)

1. Any judicial office.
2. Any office of police officer, including a cadet, in the Royal Hong Kong Police Force or the Royal Hong Kong Auxiliary Police Force.
3. Any office in the Correctional Services Department to which a person is appointed under section 3 of the Prisons Ordinance (Cap 234).
4. Any office of principal probation officer or probation officer to which a person is appointed under section 9 of the Probation of Offenders Ordinance (Cap 298).
5. Any office in the Customs and Excise Service mentioned in Schedule 1 to the Customs and Excise Service Ordinance (Cap 342). (Amended 68 of 1995 s. 2)
6. Any office in the Immigration Service mentioned in the Schedule to the Immigration Service Ordinance (Cap 331).
7. Any office occupied, or to be occupied, by an officer on or above Point 27 on the Master Pay Scale. (Amended 10 of 1996 s. 8)
8. Any office occupied, or to be occupied, by an officer on the Directorate or Directorate (Judicial/Legal Group) Pay Scale.
9. Any person holding any rank in the Fire Services Department set out in the Sixth Schedule to the Fire Services Ordinance (Cap 95).
10. Any office of the Directorate staff, the Commission Against Corruption Officer grade staff or in the Operations Department of the Independent Commission Against Corruption. (Added 10 of 1996 s. 8)
11. Any office occupied by the executive, professional, managerial, technical or secretarial staff of the Hong Kong Monetary Authority. (Added 10 of 1996 s. 8)
12. Any office of the insurance officer grade staff (including the Commissioner or Assistant Commissioner) or the secretarial staff of the Office of the Commissioner of Insurance. (Added 10 of 1996 s. 8)
13. Any office occupied by the executive, professional, managerial, technical, inspectorate or secretarial staff of the Mandatory Provident Fund Schemes Authority. (Added 4 of 1998 s. 11)

PART 2

OTHER OFFICES

1. Any office occupied by the executive staff (including the Executive Directors) or the secretarial staff of the Securities and Futures Commission.

(Part 2 added 10 of 1996 s. 8)
