

LEGISLATIVE COUNCIL BRIEF

Housing Ordinance
(Chapter 283)

HOUSING (AMENDMENT) BILL 2002

INTRODUCTION

At the meeting of the Executive Council on 12 November 2002, the Council ADVISED and the Chief Executive ORDERED that the Housing (Amendment) Bill 2002 should be introduced into the Legislative Council.

JUSTIFICATIONS

2. The Report of the Committee on the Review of the Institutional Framework for Public Housing (RIFPH) issued in June 2002 recommended, among other things, that the relevant Principal Official (i.e. the Secretary for Housing, Planning and Lands (SHPL)) should be appointed Chairman of the Hong Kong Housing Authority (CHA) ex officio following an appropriate change to the relevant legislation.

3. All the recommendations of the RIFPH Report were endorsed by the Executive Council at its meeting on 18 June 2002.

Chairmanship of the Hong Kong Housing Authority

4. Under the Housing Ordinance, only non-official members of the Hong Kong Housing Authority (HA) are eligible for appointment by the Chief Executive (CE) as CHA. The RIFPH Report envisages that the HA will eventually become an advisory body and recommends that SHPL be appointed CHA *ex officio*. We propose to amend the Housing Ordinance such that the CE may appoint either an official or a non-official HA member to become CHA.

5. Under the accountability system introduced since 1 July 2002, Principal Officials are responsible for all aspects of their portfolios – from determining policy objectives and goals, to policy initiation, policy formulation, policy implementation and policy outcome. They are responsible to the CE and take part in the decision making process and the allocation of resources of the Government as a whole. An important area of work of Principal Officials is to review advisory and statutory bodies relating to their portfolios.

6. In accordance with the accountability system, the statutory and advisory bodies relating to housing should respond to SHPL. The new arrangement whereby SHPL becomes CHA will serve to integrate the operations of the HA into the Government's overall policy making process. It will enable SHPL to have full authority over and therefore be able to take responsibility for all aspects of the formulation and implementation of policy. It will also allow for greater accountability to the Legislative Council and the public on our housing policies and programmes.

Appeal panel and tribunals

7. Section 7A of the Housing Ordinance empowers SHPL to appoint appeal panel to hear appeals against termination of public housing tenancies. Prior to 1995, the authority to appoint appeal panel was vested in the HA. Members of the appeal panel comprised a mix of HA members and co-opted members. This arrangement had given rise to concern over possible conflict of interest in that HA members would be reviewing tenancy decisions of the HA. This might compromise the independence and objectivity of the appeal process and was unsatisfactory from a Bill of Rights perspective.

8. To address this, the Housing Ordinance was amended in 1995 to empower the Secretary for Housing to appoint persons who are not HA members to the appeal panel and make rules regulating the appeal process. With the introduction of the accountability system since 1 July 2002, such power has been transferred from the former Secretary for Housing to SHPL.

9. Should SHPL be appointed CHA, the pre-1995 situation may arise whereby SHPL will have the power to appoint appeal panel to review decisions of the HA of which he is the Chairman. This may give rise to a challenge that such an appeal process is not an independent one. We therefore propose that section 7A should be amended to transfer the power of appointment of appeal panel to the CE, and to transfer the power to make rules regulating the appeal process to the Chief Executive in Council.

THE BILL

10. The main purpose of the Bill, at Annex A, is to amend the Housing Ordinance to –

- (a) enable the CE to appoint a public officer to become CHA (clause 2); and
- (b) transfer to the CE the power of SHPL to appoint a panel for hearing appeals (clause 3).

A provision for transitional arrangements for pending appeals is also included (clause 4). The provisions which are being amended are at Annex B.

LEGISLATIVE TIMETABLE

11. The legislative timetable, as approved by the Chief Executive in Council, is as follows –

Publication in the Gazette	22 November 2002
First Reading and commencement of Second Reading debate	4 December 2002
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial, productivity, environmental or sustainability implications. It has no impact on the civil service system and has no staffing implications.

PUBLIC CONSULTATION

13. Extensive public consultations were conducted prior to and after release of the RIFPH Report. The public was generally supportive of the RIFPH recommendations including the one for the relevant Principal Official to assume the HA chairmanship. Some had suggested that a non-official HA member should be considered for appointment to the chairmanship after HA becomes an advisory body. This suggestion has been fully addressed in the legislative proposals.

14. The Legislative Council Panel on Housing was consulted on the proposal on 4 November 2002 and raised no objection.

PUBLICITY

15. A press release will be issued shortly. A spokesman will be available to answer media and public enquiries.

OTHERS

16. Enquiries may be directed to Mr Stephen CHUNG, Assistant Director of Housing (Corporate Services), at telephone no. 2761 5048.

**Housing Department
Housing, Planning and Lands Bureau
20 November 2002**

A BILL

To

Amend the Housing Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Housing (Amendment) Ordinance 2002.

2. Establishment and constitution of the Housing Authority

Section 3(3)(a) of the Housing Ordinance (Cap. 283) is amended by adding "or (c)" after "(2)(b)".

3. Appeal panel and tribunals

Section 7A is amended -

(a) in subsection (1) -

(i) by repealing "Secretary for Housing, Planning and Lands" and substituting "Chief Executive";

(ii) by repealing "Secretary thinks" and substituting "Chief Executive thinks";

(b) in subsection (3), by repealing "Secretary for Housing, Planning and Lands" and substituting "Chief Executive";

- (c) in subsection (7), by repealing "Secretary for Housing, Planning and Lands" and substituting "Chief Executive in Council".

4. Transitional provision

Any appeal which is commenced under section 20(1) of the Housing Ordinance (Cap. 283) before the commencement of this Ordinance and is not disposed of on such commencement may be continued and disposed of as if section 3 of this Ordinance had not been enacted.

Explanatory Memorandum

The main purpose of this Bill is to amend the Housing Ordinance (Cap. 283) ("the Ordinance") to -

- (a) enable the Chief Executive to appoint any public officer appointed by him as a member of the Hong Kong Housing Authority as the Chairman of the Authority (clause 2);
- (b) transfer to the Chief Executive the power of the Secretary for Housing, Planning and Lands to appoint a panel for hearing appeals under section 20(1) of the Ordinance (clause 3).

2. Clause 4 provides for transitional arrangements for pending appeals under section 20(1) of the Ordinance.

Annex B

Chapter:	283	Title:	HOUSING ORDINANCE	Gazette Number:	44 of 2000
Section:	3	Heading:	Establishment and constitution of the Housing Authority	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 44 of 2000 s. 3

(1) There is hereby established a Housing Authority to be known as "the Hong Kong Housing Authority".

(2) The Authority shall consist of-

- (a) the Director of Housing; (Amended 16 of 1988 s. 2)
- (b) such number of persons, other than public officers as the Chief Executive may appoint; (Amended 15 of 1982 s. 3)
- (c) such number of public officers, not exceeding 3, as the Chief Executive may appoint. (Amended 16 of 1988 s. 2; 44 of 2000 s. 3)

(3) The Chief Executive shall appoint- (Amended 44 of 2000 s. 3)

- (a) one of the persons appointed under subsection (2)(b) as the Chairman of the Authority; and
- (b) one of the persons referred to in subsection (2) as the Vice-Chairman of the Authority. (Replaced 16 of 1988 s. 2)

(4) The members of the Authority, other than public officers, shall be appointed for a period of 2 years and shall be eligible for reappointment.

(5) Any member of the Authority who is not a public officer may at any time by notice in writing to the Chief Executive resign from the Authority. (Amended 44 of 2000 s. 3)

(6) 9 members of the Authority shall form a quorum at any meeting of the Authority. (Amended 16 of 1988 s. 2)

(7) At any meeting of the Authority, the Chairman or, in his absence, the Vice-Chairman, or, in the absence of both of them, such member as the members present shall select, shall preside.

(8) The Chairman or the person presiding in his absence shall have a vote on all matters coming before the Authority; and in the case of an equality of votes he shall also have a casting vote.

(9) Subject to this Ordinance, the Authority may make rules regulating the procedure at meetings of the Authority or of any committee appointed under section 7.

Chapter:	283	Title:	HOUSING ORDINANCE	Gazette Number:	L.N. 106 of 2002
Section:	7A	Heading:	Appeal panel and tribunals	Version Date:	01/07/2002

(1) For the purpose of hearing appeals under section 20(1), the Secretary for Housing, Planning and Lands shall appoint a panel of persons ("the panel") comprising a chairman and such number of members as the Secretary thinks fit, none of whom shall be a public officer. (Amended 24 of 1998 s. 3; L.N. 106 of 2002)

(2) (a) A person who for the time being holds an appointment under subsection (1) shall be ineligible for membership of the Authority.

(b) A person who for the time being is a member of the Authority shall be ineligible for appointment under subsection (1).

(3) A person who holds an appointment under subsection (1) may surrender his appointment by letter addressed to the Secretary for Housing, Planning and Lands. (Amended L.N. 106 of 2002)

(4) Subject to subsection (3), an appointment under subsection (1) shall remain in force for such period as is specified in the appointment, being a period of not more than 2 years beginning on the date of the appointment.

(5) Where an appointment under subsection (1) expires, the person concerned shall be eligible for reappointment.

(6) Where a person appeals to the panel under section 20(1), the chairman of the panel shall appoint from the members thereof a tribunal consisting of a chairman and not less than 2 other members, to determine the appeal.

(7) The Secretary for Housing, Planning and Lands may make rules regulating the procedure for appeals to the panel. (Amended L.N. 106 of 2002)

(Replaced 24 of 1995 s. 4)