

**Legislative Council Panel on Economic Services**

**TRANSFER OF CERTAIN STATUTORY POWERS AND FUNCTIONS  
OF THE CHIEF SECRETARY FOR ADMINISTRATION  
AND THE FINANCIAL SECRETARY TO THE  
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR**

**Purpose**

This paper responds to questions raised by Members on the proposed transfer of certain statutory powers and functions of the Chief Secretary for Administration (CS) and the Financial Secretary (FS) to the Secretary for Economic Development and Labour (SEDL) covered by LC Paper No. CB(1)1302/03-04(04), and informs Members of the related consultations.

**Background**

2. At the meeting of the Panel on Economic Services on 24 May 2004, Members considered the proposed transfer of certain statutory powers and functions of the CS and the FS to the SEDL. Members supported the proposal in principle but were concerned about the consultation work and raised questions on certain issues for further discussion.

**Questions raised by Members**

*Handling of appeals*

3. Regulation 18(2) of the Merchant Shipping (Pleasure Vessels) Regulations (Cap. 313G) provides that, on consideration of an objection lodged

in accordance with Regulation 18(1)<sup>1</sup>, the CS may confirm, vary or reverse the decision, act or omission of the D of M or authorized officer or substitute therefore such other decision or make such other order as he thinks fit. We proposed that SEDL should henceforth assume such power. Members asked whether it is appropriate for SEDL to take over from CS the power to rule on appeals.

4. Under the Accountability System, Directors of Bureau assume full responsibility of their policy portfolio. They should hence have the authority to manage the statutory functions of their policy portfolio. A conflict of interest would not arise if the power to determine appeals against the decisions of a department under the portfolio of a Director of Bureau is transferred to the latter, unless the Director of Bureau concerned has been involved or consulted in the process of making the decisions. Save for these cases in which there may be a conflict of interest, the statutory powers to determine appeals against the decisions of a department, such as the power proposed to be transferred from the CS to SEDL under Regulation 18(2) of Cap. 313G, fall clearly within the policy purview and responsibility of the Director of Bureau concerned. The LegCo Panel on Constitutional Affairs (CA Panel) was briefed on 17 November 2003 on the general guidelines for the transfer of statutory powers and functions of the CS and the FS. Paragraphs 5 to 8 of the paper discussed at the CA Panel (at **Annex I**) are relevant.

#### *Implementation timetable of other Bureaux*

5. Members noted that, until now, only the Housing, Planning and Lands Bureau and the Economic Development and Labour Bureau have implemented or proposed relevant transfer of powers and functions. Members asked about the timetable of the other Bureaux in implementing the transfer of powers and functions.

6. As explained in **Annex I**, Directors of Bureaux have been working with the Department of Justice to identify the appropriate legislative vehicle and will draw up the necessary legislative programme to effect the transfer of those statutory powers or functions that fulfil the above general guidelines. Directors

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<sup>1</sup> Regulation 18(1) provides that any person aggrieved by a decision, act or omission of the Director of Marine (D of M) or an authorized officer made or done in the exercise of any powers or the performance of any duties under these regulations may, within 14 days after the date when he was informed of the decision, act or omission or when the decision, act or omission became known to him (whichever is the later), or within such further period as the CS may allow in any particular case, by notice in writing lodge an objection to the decision, act or omission with the CS. SEDL will assume the power to receive the objections after the proposed transfer of power.

of Bureaux will brief the relevant LegCo panels on their transfer proposals and timetables before introducing the respective legislative proposals.

### *Re-transfer of powers and functions*

7. Members enquired whether the LegCo will be asked to pass another similar resolution should future developments of the political system necessitate the re-transferring of the relevant powers and functions to the CS and the FS.

8. Section 54A(1) of the Interpretation and General Clauses Ordinance provides that the LegCo may by resolution provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another public officer. The current proposal arises from the implementation of the Accountability System by the Second Special Administrative Region (SAR) Government. If future SAR Governments consider that there is a need, for one reason or another, to re-distribute the statutory powers and functions among public officers, such changes will have to be effected by way of a LegCo resolution pursuant to section 54A(1). In which event, the Government of the day will definitely consult the LegCo before taking the matter forward.

### **Consultation**

9. We have consulted relevant parties and persons on the proposed transfer of power under the Travel Agents Ordinance and the four marine-related ordinances. The feedback is that they have no objection to the proposed transfer. The list of parties approached is at **Annex II**.

Economic Development and Labour Bureau  
May 2004

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For information  
on 17 November 2003

## **Legislative Council Panel on Constitutional Affairs**

### **Transfer of Statutory Powers and Functions of the Chief Secretary for Administration and the Financial Secretary**

#### **Introduction**

As reported to the Legislative Council Panel on Constitutional Affairs in July 2003, we have completed an internal review of the transfer of statutory powers and functions currently vested in the offices of the Chief Secretary for Administration (CS) and the Financial Secretary (FS) to the responsible Directors of Bureaux. The proposed transfer of powers and functions is to better reflect the latter's policy portfolios and responsibilities pursuant to the implementation of the accountability system. This paper sets out the general principles and guidelines governing the internal review for Members' information.

#### **Background**

2. In the course of discussing the accountability system, the Administration undertook to review the statutory powers and functions vested in the offices of the CS and the FS to see if some of these functions should continue to be vested in them, or if such functions should be transferred to the Directors of Bureaux taking charge of the respective policy portfolios. Members were informed via the Administration's "Twelve-month Report on Implementation of the Accountability System for Principal Officials" issued to the Legislative Council in July 2003 that we have completed the review.

#### **Internal Review**

3. In consultation with all Bureaux, we conducted an internal review of the statutory powers and functions vested in the offices of the CS and the FS with a view to determining whether some should be transferred to the responsible Directors of Bureaux under the accountability system. The review does not affect the important powers and functions vested in the Chief Executive (CE) or the Chief Executive-in-Council (CE-in-Council). In these cases, it remains the prerogative of the CE to delegate to the responsible principal officials his statutory powers and functions on a need basis.

4. Pursuant to the implementation of the accountability system in July 2002, Directors of Bureaux are directly appointed by and held accountable to the CE for their respective policy portfolios. In conducting the review, a basic principle for consideration of transfer of a statutory power or function is that the power or function falls tidily and clearly within the Director of Bureau's policy portfolio and is essential for the Director of Bureau to perform his/her functions effectively. In other words, the transfer is necessary to enable the Director of Bureau to assume full responsibility and authority in managing his/her statutory functions and policy portfolios. Under this basic principle, we have, in consultation with Bureaux, developed a set of general guidelines to ensure a consistent and coherent approach among the Bureaux. The general guidelines governing the review are set out in paragraphs 5 to 8 below.

#### ***Transfer of the CS' powers to Directors of Bureaux***

5. As a general rule, except for the important powers held by the CE or the CE-in-Council, all those statutory powers and functions that fall clearly within the policy purview and responsibility of a Director of Bureau should be considered for transfer to the latter. Examples include -

- (a) routine, procedural or administrative functions such as certification of non-official membership of Government boards and committees, tabling of annual reports of statutory authorities housekept by the Director of Bureau at the Legislative Council;
- (b) save for important boards or committees or in cases where a conflict of interest by the Director of Bureau may arise (see paragraph 6(d) below), appointment of members to panels or tribunals to hear and determine complaints relating to operational matters under the policy portfolio of a Director of Bureau; or
- (c) save for cases where a conflict of interest by the Director of Bureau may arise, power to determine appeals against the decisions of a Head of Department under the portfolio of a Director of Bureau, such as appeals against the decision of a Department Head to refuse to grant a permit to sell any commodity in a country park or to issue a licence in respect of a pleasure vessel.

#### ***Powers to remain with the CS***

6. Statutory powers and functions of the following nature should continue to be vested in the office of the CS to facilitate effective cross-bureaux coordination or implementation, or reflect the appropriate level of representation within the Government on such matters -

- (a) functions that involve privileges and immunities or an international dimension such as consular matters or matters concerning international organisations;
- (b) functions that do not pertain to any specific Director of Bureau but reflect the Government's position as a whole such as matters concerning the Government's relationship with the Legislative Council;
- (c) functions that cut across the work of more than one Bureau or Department such as receiving reports on contravention of pollution control provisions by various Departments under the environment-related Ordinances; or
- (d) functions that should not be undertaken by the Director of Bureau himself/herself to avoid conflict of interest or to ensure impartiality of a Government decision, such as the determination of appeals against the decision of a Director of Bureau.

***Powers vested in the FS***

7. As a general rule, the FS would not transfer to Directors of Bureaux those statutory powers and functions that –

- (a) are central to the Government's annual budgets such as the preparation of the annual estimates of expenditure and revenue, and in-year changes to the estimates;
- (b) relate to Government incomes and assets;
- (c) may have significant impact on Government expenditure or revenue such as financial matters of major publicly-funded organizations;
- (d) should be exercised centrally so as to ensure necessary consistency such as write-off and surcharge, or to provide some central services such as investment of Government money and the Financial Secretary Incorporated; or
- (e) relate to the FS' portfolio on the monetary and financial systems as well as the Exchange Fund.

8. Statutory powers and functions that fall clearly outside the above parameters and are within the policy purview and responsibility of a Director of Bureau would be transferred to the latter. Examples include the remuneration of members of boards and committees, regulation of utilities and corporations, and payment of certain fees.

### **Way Forward**

9. Directors of Bureaux have been working with the Department of Justice to identify the most appropriate legislative vehicle and draw up the necessary legislative programme to effect the transfer of those statutory powers or functions that fulfill the above general guidelines. Directors of Bureaux will brief the relevant Legislative Council Panels on their transfer proposals and timetables before introduction of the respective legislative proposals.

Administration Wing,  
Chief Secretary for Administration's Office  
Financial Services and Treasury Bureau  
November 2003

**List of Parties Consulted with regard to the  
Proposed Transfer of Statutory Powers and Functions**

**I. In relation to the Travel Agents Ordinance**

1. Travel Industry Council of Hong Kong
2. Travel Industry Compensation Fund Management Board

**II. In relation to the four Marine-related Ordinances**

1. Committee on Boating and Yachting
2. Seafarers' Advisory Board
3. Consultative Committee, Ship Personnel Management
4. Port Operations Committee
5. Provisional Local Vessels Advisory Committee