

**立法會**  
**Legislative Council**

LC Paper No. CB(1)186/08-09

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**Panel on Public Service**  
**Meeting on 17 November 2008**

**Background Brief**  
**on the delegation of Chief Executive's power under section 20(1) of**  
**the Public Service (Administration) Order**

**Purpose**

This paper sets out the background to the making of the Public Service (Administration) Order (the Order). It also summarizes the views and concerns expressed by Members at meetings of the Panel on Public Service (PS Panel) and the Bills Committee on Adaptation of Laws Bill 1998.

**Background**

2. With the lapsing of the Letters Patent (LP) and Colonial Regulations (CRs) upon reunification on 1 July 1997, the Order was made by the Chief Executive (CE) to replace and localize those provisions relating to the administration of the public service to maintain continuity. The Order was issued by CE under Article 48(4)<sup>1</sup> of the Basic Law on 9 July 1997, which adapted articles in LP on the appointments, concurrent appointments, dismissal, suspension and discipline of public servants. It also adapted regulations in CRs relating to disciplinary procedures and the appeal mechanism. In addition, the Order provided CE with the authority to make regulations and give written directions, subject to the advice of the Executive Council in certain cases. The Order took retrospective effect from 1 July 1997.

3. The Order was amended in April 2000 to streamline the disciplinary procedures of the civil service.

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<sup>1</sup> Article 48(4) of the Basic Law-"The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions: .....(4) To decide on government policies and to issue executive orders; ....."

## **Previous discussions at Committees of the Legislative Council**

4. The Administration advised the Panel on Public Service (PS Panel) at the meetings on 27 January and 24 February 1997 on options to provide for the continuation of the legal authority for the administration of the civil service after reunification. The Administration's proposed adaptation of the reference to "Colonial Regulations" was then scrutinized by the Bills Committee on Adaptation of Laws Bill 1998. Further concern about the Order was raised at the PS Panel meeting on 30 October 2000 when the Panel received a briefing on the major initiatives of the Civil Service Bureau. The major views and concerns expressed by Members and the Administration's responses are summarized in the ensuing paragraphs.

5. Some Members considered that the best alternative way of handling the adaptation in question was to formulate those provisions of CRs which were still applicable into regulations to be made by CE in Council under a civil service ordinance to be enacted by the legislature. This option, which could provide opportunity for public consultation, was preferred to an executive order made by CE. While Article 48(4) of the Basic Law conferred on CE the power to issue executive orders, the scope of such orders was not specified. It was doubtful whether executive orders issued by CE would be equivalent to CRs and whether such orders would be confined to the administration of the public service. In the event that CE promulgated executive orders in relation to other government policies, such promulgation would have far-reaching repercussions from the constitutional point of view.

6. The Administration explained that the proposed adaptation was to retain the provisions in CRs pertaining to the administrative details of the management of the public service. Prior to the reunification, the administration of the public service was provided in the relevant provisions in LP, CRs and Civil Service Regulations. 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. As LP and CRs were imperial instruments, it would not be possible to replace them with a mirror arrangement. An executive order issued by CE under Article 48(4) of the Basic Law provided the legal backing to enable the Hong Kong Special Administrative Region (HKSAR) Government to preserve its executive authority for the continued administration of the public service. 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.

## **The Administration's proposal to amend Section 20(1) of the Order**

7. Section 20 of the order provides for the appeal mechanism to end in HKSAR with representations to CE and provides the public service with an alternative appeal channel within HKSAR. The content of section 20 is as follows:

**20. Representations by officers**

(1) Every officer who has any representations of a public or private nature to make to the Government of the Hong Kong Special Administrative Region should address them to CE. CE shall consider and act upon each representation as public expediency and justice to the individual may require.

(2) CE 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.

8. The Administration proposes to brief the PS Panel at the meeting on 17 November 2008 on the proposed amendment to section 20(1) of the Order to expressly provide for the delegation of CE's power to another public officer.

**Relevant Papers**

9. A list of relevant papers is in **Appendix** for members' reference.

Council Business Division 1  
Legislative Council Secretariat  
11 November 2008

**Delegation of Chief Executive's power under section 20(1) of  
the Public Service (Administration) Order**

**List of relevant papers  
(Position as at 11 November 2008)**

Meeting date	Committee	Paper/Document
27 January 1997	Public Service Panel (PS)	<p>Administration's paper on regulation on the appointment, removal and discipline of Civil Servants after 1997 (LC Paper No. CB(2)1027/96-97(02))</p> <p><a href="http://www.legco.gov.hk/yr96-97/english/panels/ps/papers/ps2701-4.htm">http://www.legco.gov.hk/yr96-97/english/panels/ps/papers/ps2701-4.htm</a></p> <p>Minutes of meeting (Paragraphs 6 to 12) (LC Paper No. CB(2)2293/96-97)</p> <p><a href="http://www.legco.gov.hk/yr96-97/english/panels/ps/minutes/ps270197.htm">http://www.legco.gov.hk/yr96-97/english/panels/ps/minutes/ps270197.htm</a></p>
24 February 1997	PS	<p>Administration's paper on regulation on the appointment, removal and discipline of Civil Servants after 1997 (LC Paper No. CB(2)1027/96-97(02))</p> <p><a href="http://www.legco.gov.hk/yr96-97/english/panels/ps/papers/ps2701-4.htm">http://www.legco.gov.hk/yr96-97/english/panels/ps/papers/ps2701-4.htm</a></p> <p>Minutes of meeting (Paragraphs 7 to 9) (PLC Paper No. CB(2)272)</p> <p><a href="http://www.legco.gov.hk/yr96-97/english/panels/ps/minutes/ps240297.htm">http://www.legco.gov.hk/yr96-97/english/panels/ps/minutes/ps240297.htm</a></p>
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Meeting date	Committee	Paper/Document
--	Bills Committee on Adaptation of Laws Bill 1998	<p>Report of the Bills Committee on Adaptation of Laws Bill 1998 (Paragraphs 10 to 19) (LC Paper No. CB(2)1762/98-99)</p> <p><a href="http://www.legco.gov.hk/yr98-99/english/bc/bc55/reports/1762e.pdf">http://www.legco.gov.hk/yr98-99/english/bc/bc55/reports/1762e.pdf</a></p>
30 October 2000	PS	<p>Administration's paper on Public Service (Administration) Order 1997 (response to member's request at the meeting on 30 October 2000) (LC Paper No. CB(1)195/00-01(01))</p> <p><a href="http://www.legco.gov.hk/yr00-01/english/panels/ps/papers/a195e01.pdf">http://www.legco.gov.hk/yr00-01/english/panels/ps/papers/a195e01.pdf</a></p> <p>Minutes of meeting (Paragraphs 19 to 20) (LC Paper No. CB(1)319/00-01)</p> <p><a href="http://www.legco.gov.hk/yr00-01/english/panels/ps/minutes/ps301000.pdf">http://www.legco.gov.hk/yr00-01/english/panels/ps/minutes/ps301000.pdf</a></p>