

立法會 *Legislative Council*

LC Paper No. LS76/11-12

Paper for the House Committee Meeting on 8 June 2012

Legal Service Division Report on Proposed Resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1)

Background

The Secretary for Constitutional and Mainland Affairs (the Secretary) has given notice to move a motion (the proposed resolution) on 20 June 2012 to effect the transfer from 1 July 2012 of the statutory functions of four Directors of Bureaux to the Directors of four re-organised Bureaux and a new Director of Bureau (the Secretary for Culture), and the transfer of functions of two affected Permanent Secretaries pursuant to the proposal to re-organise the Government Secretariat by the Chief Executive-elect.

2. At the meetings of the Panel on Constitutional Affairs on 9 and 15 May 2012, the Administration briefed Members on the proposal. Members expressed various views and concerns.

3. At the House Committee meeting on 11 May 2012, Members agreed to form a subcommittee to study the legislative amendments relating to the proposed re-organisation, which include the proposed resolution and a draft order to be made by the Chief Executive in Council. The Subcommittee to Study the Proposed Legislative Amendments Relating to the Re-organisation of the Government Secretariat, which has subsequently been formed, has been studying the proposed resolution in detail. The Chairman of the Subcommittee will make an oral report on the work of the Subcommittee to the House Committee at its meeting on 8 June 2012.

The proposed resolution

4. According to the draft speech of the Secretary, the re-organisation proposal includes –

- (a) the creation of two Deputy Secretary of Department posts (i.e. the Deputy Chief Secretary for Administration and Deputy Financial Secretary) and a new Director of Bureau (i.e. the Secretary for Culture);
 - (b) the re-structuring of the existing Commerce and Economic Development Bureau into two bureaux, namely, the Commerce and Industries Bureau and the Technology and Communications Bureau;
 - (c) re-structuring of the existing Development Bureau and the Transport and Housing Bureau into a Housing, Planning and Lands Bureau and a Transport and Works Bureau; and
 - (d) re-structuring of the Home Affairs Bureau so that part of its functions are transferred to the Culture Bureau.
5. The provisions of the proposed resolution are contained mainly in Schedule 1 to Schedule 4 under which the functions exercisable by –
- (a) the Secretary for Commerce and Economic Development under each of the enactments specified in column 2 of Part 1 of Schedule 1 are to be transferred to the Secretary for Commerce and Industries, Secretary for Technology and Communications and Secretary for Culture;
 - (b) the Secretary for Development under each of the enactments specified in column 2 of Part 1 of Schedule 2 are to be transferred to the Secretary for Housing, Planning and Lands, Secretary for Transport and Works and Secretary for Culture;
 - (c) the Secretary for Home Affairs under each of the enactments specified in column 2 of Part 1 of Schedule 3 are to be transferred to the Secretary for Culture; and
 - (d) the Secretary for Transport and Housing under each of the enactments specified in column 2 of Part 1 of Schedule 4 are to be transferred to the Secretary for Housing, Planning and Lands, Secretary for Transport and Works, and the Secretary for Commerce and Industries.

The relevant legal principles

6. The proposed resolution is to be made under section 54A(1) of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO), which allows LegCo by resolution to provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another public officer. Section 54A(2) provides that the resolution may contain such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to the resolution.

7. The proposed resolution will be moved and debated under Part G of the Rules of Procedure. Subject to Rule 31, amendments may be proposed. As the proposed resolution, if passed, will be made under section 54A of IGCO, any amendment must fall within the scope of the matters that are set out in the proposed resolution, and in the context of section 54A(1) and (2).

8. The last re-organisation exercise was conducted by the Administration similarly by resolution made under section 54A of IGCO to effect the transfer of statutory functions from 1 July 2007 to tie in with the commencement of the third term of HKSAR Government pursuant to the re-organisation proposals by the Chief Executive. Certain amendments were proposed by Members. On 14 June 2007, LegCo passed the resolution without any amendment.

Draft order to be made by the Chief Executive in Council

9. According to the LegCo Brief issued by the Constitutional and Mainland Affairs Bureau in May 2012 (File Ref.: CMAB F19/6/3/2), after the passing of the proposed resolution, the Chief Executive in Council will make an order under section 62(3) of IGCO to repeal Schedule 6 to IGCO and substitute it with a new one. The draft order is attached to the LegCo Brief, which provides that it will come into force on 1 July 2012.

10. Under section 62(1) of IGCO, where any ordinance confers a power or imposes a duty upon the Chief Executive to make any subsidiary legislation or appointment, give any directions, issue any order, authorize any thing or matter to be done, grant any exemption, remit any fee or penalty, or exercise any other power or perform any other duty, the exercise of such power or performance of such duty may be signified by any public officer specified in Schedule 6 to IGCO.

11. The draft order aims to include the post titles of the two new Deputy Secretaries and the new Secretary for Culture, and to reflect the new post titles of the Directors for the four re-organised Bureaux in Schedule 6 to IGCO so that they may signify the exercise of power or performance of duty by the Chief Executive.

12. The draft order is a piece of subsidiary legislation subject to the negative vetting procedure in section 34 of IGCO. Section 34(2) provides that where an item of subsidiary legislation has been laid on the table of LegCo, the Council may, by resolution passed at a meeting held not later than 28 days after the meeting at which it was so laid, amend (by way of repeal, addition, or variation) the subsidiary legislation in any manner consistent with the power to make the subsidiary legislation. If the scrutiny period would expire after the lasting sitting before the end of a session but on or before the day of the second sitting of LegCo in the next session, it shall be deemed to extend to and expire on the day after the second sitting of the next session. LegCo may also, by passing a resolution, extend the scrutiny period by 21 days, or to the Council meeting immediately following the 21 days if there is no Council meeting on the 21st day.

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