

## PUBLIC SERVICE (ADMINISTRATION) ORDER

### SECTION

### CONTENTS

#### PART I PRELIMINARY

- 1 Citation
- 2 Interpretation

#### PART II APPOINTMENTS

- 3 Appointments
- 4 Current appointments

#### PART III DISMISSAL, SUSPENSION AND DISCIPLINE

- 5 Dismissal, suspension and discipline
- 6 Disciplinary procedures not to prejudice any law providing for punishment, etc.
- 7 Disciplinary procedures applicable to Category A officers
- 8 Disciplinary procedures applicable to Category B officers
- 9 Misconduct not warranting dismissal or compulsory retirement
- 10 Misconduct warranting dismissal or compulsory retirement
- 11 Action further to criminal charge
- 12 Retirement in the public interest
- 13 Interdiction from exercise of powers and functions of office
- 14 Disciplinary proceedings to be held over pending determination of charge
- 15 Restriction on punishment if acquitted
- 16 Forfeiture of benefits on dismissal
- 16A Forfeiture or reduction of benefits on compulsory retirement
- 17 *(Repealed)*
- 18 Consultation with Public Service Commission on punishment

#### PART IV MISCELLANEOUS

- 19 Delegation of power
- 20 Representations by officers
- 21 Regulations and directions
- 22 Transitional

- 23 Provisions transitional to the enactment of the Public Service  
(Administration) Order 1997 (Amendment) Order 2000
- 24 Provisions transitional to the enactment of the Public Service  
(Administration) Order (Amendment) Order 2010

# PUBLIC SERVICE (ADMINISTRATION) ORDER

## PART I

### PRELIMINARY

#### 1. Citation

- (1) This Order may be cited as the Public Service (Administration) Order. *(Amended by Executive Order (E.O.) 1 of 2000 s.2)*
- (2) *(Repealed by E.O. 1 of 2000 s.2)*

#### 2. Interpretation

In this Order, unless the context otherwise requires--

"Basic Law" (《基本法》) means the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China;

"Category A Officer" (甲類人員) means an officer who –

- (a) is appointed to and confirmed in an established office; or
  - (b) is a member of the civil service provident fund scheme;
- (Amended by E.O. 1 of 2010 s.2)*

"Category B Officer" (乙類人員) means any officer who--

- (a) holds a non-established office;
  - (b) holds an established office on month-to-month terms; or
  - (c) holds an office on probationary or agreement terms;
- (Amended by E.O. 1 of 2010 s.2)*

"civil service provident fund scheme" (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations; *(Added by E.O. 1 of 2010 s.2)*

"established office" (設定職位) has the meaning assigned to it by section 2 of the Pensions Ordinance (Cap. 89) or section 2 of the Pension Benefits Ordinance (Cap. 99); *(Amended by E.O. 1 of 2010 s.2)*

"government regulations" (政府規例) means the Government Regulations and any other administrative rules or instruments regulating the public service; *(Added by E.O. 1 of 2010 s.2)*

"HKSAR" (特區) means the Hong Kong Special Administrative Region of the People's Republic of China;

"non-established office" (非設定職位) means an office which is not an established office;

"public officer" (公職人員) means public officer within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);

"public servant" (公務人員) and "officer" (人員) mean any person holding an office of emolument under the Government of HKSAR, whether the office is permanent or temporary, and serving in a government bureau or department;

"Public Service Commission" (公務員絀用委員會) means the Public Service Commission established under section 3 of the Public Service Commission Ordinance (Cap. 93);

"punishment" (懲罰)--

(a) includes dismissal, compulsory retirement, fine, reduction in rank, severe reprimand, reprimand, stoppage or deferment of increments and reduction in salary; (*Amended by E.O. 1 of 2010 s.2*)

(b) does not include retirement in the public interest under section 12;

"regulations" (《規例》) means regulations made by the Chief Executive under section 21;

"retirement benefits" (退休福利), in relation to an officer, means –

(a) the pension, gratuity or other allowance of that officer as provided for under the Pensions Ordinance (Cap. 89);

(b) the pension benefits of that officer as provided for under the Pension Benefits Ordinance (Cap. 99); or

(c) the part of that officer's beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government of HKSAR, as employer, in respect of that officer under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits.

(*Added by E.O. 1 of 2010 s.2*)

## PART II

### APPOINTMENTS

#### 3. Appointments

(1) Subject to Article 48(5) of the Basic Law, the Chief Executive may by virtue of Article 48(7) of the Basic Law appoint and promote public servants in accordance with this Order.

(2) In making his selection of persons for appointment or promotion, the Chief Executive shall take account of any advice tendered by the Public Service Commission under or by virtue of the Public Service Commission Ordinance (Cap. 93).

#### 4. Concurrent appointments

(1) The Chief Executive may, when a public servant is on leave of absence pending relinquishment of his office, appoint substantively another person to the same office.

(2) When 2 or more persons are holding the same office by reason of an appointment made under subsection (1) the person last appointed to the office shall, for the purposes of

any function conferred upon the holder of that office, be deemed to be the holder of that office.

### **PART III**

#### **DISMISSAL, SUSPENSION AND DISCIPLINE**

##### **5. Dismissal, suspension and discipline**

Subject to article 48(5) of the Basic Law, the Chief Executive may by virtue of article 48(7) of the Basic Law, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any public servant or take such other disciplinary action, in accordance with this Order and regulations as may seem to him desirable.

##### **6. Disciplinary procedures not to prejudice any law providing for punishment, etc.**

This Order and regulations are without prejudice to any law providing for the punishment of officers by the Chief Executive or any other officer or authority.

##### **7. Disciplinary procedures applicable to Category A Officers**

Sections 9 to 18 shall apply only to Category A Officers.

##### **8. Disciplinary procedures applicable to Category B Officers**

Disciplinary procedure in relation to Category B Officers shall be carried out in accordance with regulations and any directions given by the Chief Executive under section 21(3).

##### **9. Misconduct not warranting dismissal or compulsory retirement**

(1) If it is represented to the Chief Executive that an officer has been guilty of misconduct, and the Chief Executive is of the opinion that the misconduct alleged is not serious enough to warrant proceedings under section 10, he may cause an inquiry to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Chief Executive under section 21(2).

(2) If after such inquiry the Chief Executive is of the opinion that the officer has been guilty of misconduct, he may inflict such punishment, other than dismissal or compulsory retirement, upon the officer as may seem to him to be just.

*(Amended by E.O. 1 of 2000 s.3)*

## **10. Misconduct warranting dismissal or compulsory retirement**

(1) If it is represented to the Chief Executive that an officer has been guilty of misconduct, and the Chief Executive is of the opinion that the misconduct alleged may be serious enough to warrant the dismissal or compulsory retirement of the officer, he may cause an inquiry to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Chief Executive under section 21(2).

(2) If after such inquiry the Chief Executive is of the opinion that the officer has been guilty of misconduct, he may inflict such punishment upon the officer as may seem to him to be just.

(3) Where an officer is absent from duty without leave for a period exceeding 14 days and it is represented to the Chief Executive that the officer--

(a) cannot be traced; or

(b) on being required by notice in writing (sent by post to his last known address) to give, within the period specified in the notice, an excuse for his absence, has failed to give any excuse or to give an excuse that is reasonable,

the Chief Executive need not cause an inquiry to be made under subsection (1) and may summarily dismiss the officer.

*(Amended by E.O. 1 of 2000 s.4)*

## **11. Action further to criminal charge**

If an officer has been convicted on a criminal charge the Chief Executive may, upon a consideration of the proceedings of the court on such charge, inflict such punishment upon the officer as may seem to him to be just, without any further proceedings.

## **12. Retirement in the public interest**

(1) The Chief Executive may, at any time if it is represented to him that the retirement of an officer is desirable in the public interest, call for a report from the head of any department in which the officer has served. The officer shall be informed of the grounds on which his retirement is contemplated under this section and be given an opportunity to make representations.

(2) The Chief Executive may, upon a consideration of the report and of any representations submitted under subsection (1), require the officer to retire from the service, if he is of the opinion that, having regard to conditions of the public service, the usefulness of the officer thereto and all other circumstances of the case, the termination of the officer's service is desirable in the public interest and the officer's service shall accordingly terminate on such date as the Chief Executive may specify.

(3) If upon consideration of--

(a) an inquiry into the conduct of an officer under section 9 or 10; or

(b) the proceedings of a court by which an officer has been convicted of a criminal charge,

the Chief Executive is of the opinion that the officer does not deserve to be punished but that the inquiry or proceedings disclose grounds for requiring him to retire in the public interest, the Chief Executive may require the officer to retire from the service under this section, and in such

a case it shall not be necessary for the Chief Executive to comply with the procedure mentioned in subsections (1) and (2). *(Amended by E.O. 1 of 2000 s.5)*

(4) Where an officer is required to retire under this section, he may be granted retirement benefits. *(Amended by E.O. 1 of 2010 s.3)*

### **13. Interdiction from exercise of powers and functions of office**

(1) The Chief Executive may interdict an officer from the exercise of powers and functions of his office if--

- (a) proceedings have been, or are to be, taken against him under section 10; or
- (b) criminal proceedings have been, or are likely to be, instituted against him; or
- (c) inquiry of his conduct is being undertaken and it is contrary to the public interest for him to continue to exercise the powers and functions of his office.  
*(Amended by E.O. 1 of 2000 s.6)*

(2) An officer who has been interdicted under--

- (a) subsection (1)(a) shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Chief Executive shall think fit; or
- (b) subsection (1)(b) shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Chief Executive shall think fit until such time as he may be convicted on a criminal charge serious enough to warrant his dismissal from the service whereupon he shall not receive any such emoluments pending the consideration of his case by the Chief Executive; or
- (c) subsection (1)(c) shall be allowed to receive the full amount of the emoluments of his office.

(3) If the proceedings against any officer do not result in any punishment of the officer, he shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted.

(4) If a punishment other than dismissal is inflicted, the officer may be paid such proportion of the emoluments withheld as a result of his interdiction as the Chief Executive shall think fit.

### **14. Disciplinary proceedings to be held over pending determination of charge**

If criminal proceedings are instituted against an officer, disciplinary proceedings based upon any grounds involved in the criminal charge shall not be taken pending the determination of the criminal proceedings.

### **15. Restriction on punishment if acquitted**

An officer acquitted of a criminal charge shall not be punished in respect of any charges upon which he has been acquitted, but he may nevertheless be punished on any other charges arising out of his conduct in the matter which do not raise substantially the same issues as those on which he has been acquitted and the appropriate proceedings may be taken for the purpose.

## **16. Forfeiture of benefits on dismissal**

An officer who is dismissed forfeits all claims to retirement benefits or other like benefits and to any other benefits or advantages of an officer.

*(Amended by E.O. 1 of 2010 s.4)*

## **16A. Forfeiture or reduction of benefits on compulsory retirement**

If an officer is compulsorily retired, the officer may be granted retirement benefits or other like benefits in full, or those benefits may be reduced or not be granted to the officer, and may be granted any other benefits or advantages that the officer is eligible to receive.

*(Added by E.O. 1 of 2010 s.5)*

**17.** *(Repealed by E.O. 1 of 2000 s.7)*

## **18. Consultation with Public Service Commission on punishment**

Except as may be provided by regulations made by the Chief Executive under section 21(2) and except in the case of an officer who is one of the officers designated in section 6(2) of the Public Service Commission Ordinance (Cap. 93), the Chief Executive shall not inflict any punishment upon an officer under sections 9 to 11 or require an officer to retire under section 12 without first consulting the Public Service Commission.

# **PART IV**

## **MISCELLANEOUS**

## **19. Delegations of power**

(1) Subject to subsection (2), the Chief Executive may delegate to any public servant or any other public officer any powers or duties conferred or imposed on him by sections 3, 9 to 18 and 20(1). *(Amended by E.O. 1 of 2008 s.2)*

(2) The Chief Executive shall not delegate the power to make regulations under section 21(2).

(3) All delegations to a public servant or other public officer of powers or duties (similar to those referred to in subsection (1)) vested in or exercisable by the Governor which were in force immediately before 1 July 1997 shall on and after that date continue in force and be deemed to have been made by the Chief Executive to the corresponding public servant or public officer, as the case may be, in the HKSAR.

## **20. Representations by officers**

(1) Every officer who has any representations of a public or private nature to make to the Government of HKSAR should address them to the Chief Executive. The Chief Executive shall



consider and act upon each representation as public expediency and justice to the individual may require.

(2) The Chief Executive 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.

## **21. Regulations and directions**

(1) Subject to subsection (2), the Chief Executive may make regulations--

(a) for prescribing anything to be prescribed by regulations; and

(b) generally for regulating practice and procedure, under this Order.

(2) The Chief Executive may, with the advice of the Executive Council, make regulations referred to in sections 9(1), 10(1) and 18.

(3) The Chief Executive may give written directions regulating matters relating to the conditions of service and terms of appointment for officers as well as conduct and discipline matters, and generally providing for such matters as are contemplated by or necessary for giving full effect to this Order and for the due administration of the public service.

(4) Regulations and directions given under subsection (3) shall be deemed to have come into operation on 1 July 1997 or such other dates as may be specified by the Chief Executive and shall apply to any proceedings instituted under the Colonial Regulations or regulations or directions by the Governor in exercise of the powers conferred by the Letters Patent or the Colonial Regulations before 1 July 1997 pending determination.

(5) Regulations and directions given under subsection (3) shall not be subsidiary legislation within the meaning of that expression in the Interpretation and General Clauses Ordinance (Cap. 1).

## **22. Transitional**

Anything done under--

(a) the Letters Patent;

(b) the Colonial Regulations; or

(c) any other regulations or directions by the Governor in exercise of the powers conferred by the Letters Patent or the Colonial Regulations,

shall, if in force on or immediately prior to the commencement of this Order, continue in force and have effect as if done under the provisions of this Order or regulations.

## **23. Provisions transitional to the enactment of the Public Service (Administration) Order 1997 (Amendment) Order 2000**

(1) The amendment made under section 4 (b) (i) of the Amendment Order does not apply in the case of an officer whose period of absence from duty without leave for the purposes of section 10(3) began before the commencement date, and section 10(3) as applying immediately before the commencement date continues to apply to the case as if that amendment had not been made.

(2) To avoid doubt, it is declared that this Order as amended applies in relation to an investigation made under this Order as applying before amendment and which has not been

completed before the commencement date, as it applies in relation to an inquiry made under this Order as amended on or after the commencement date, and, accordingly, on and after the commencement date, such an investigation or anything done in relation to such an investigation shall be deemed to be an inquiry or done in relation to an inquiry, as the case may be, under this Order as amended.

(3) In this section -

“Amendment Order” (《修訂命令》) means the Public Service (Administration) Order 1997 (Amendment) Order 2000 (Executive Order No. 1 of 2000);

“commencement date” (生效日期) means the date on which the Amendment Order comes into operation;

“Order as amended” (《經修訂命令》) means the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997) as amended by the Amendment Order;

“Order as applying before amendment” (《修訂前命令》) means this Order as it applied immediately before the commencement date.

*(Added by E.O. 1 of 2000 s.8)*

#### **24. Provisions transitional to the enactment of the Public Service (Administration) Order (Amendment) Order 2010**

(1) The provisions of this Order as amended by the Amendment Order apply in relation to an officer who, after the commencement of the Amendment Order, is –

- (a) found guilty of misconduct for which the officer is punished under section 10(2), even though the misconduct was committed before the commencement;
- (b) absent from duty without leave for which the officer is summarily dismissed under section 10(3), even though the officer’s absence began before the commencement;
- (c) convicted on a criminal charge for which the officer is punished under section 11, even though the offence that the officer was convicted of on the criminal charge was committed before the commencement;
- (d) on the grounds referred to in section 12(2) required to retire from the service under section 12, even though those grounds on which the retirement is contemplated came into existence before the commencement; or
- (e) on the grounds referred to in section 12(3) required to retire from the service under section 12, even though the conduct of the officer into which the inquiry has been made was committed before the commencement or the offence that the officer has been convicted of in the proceedings of the court on the criminal charge was committed before the commencement.

(2) In this section, “Amendment Order” (《修訂命令》) means the Public Service (Administration) Order (Amendment) Order 2010 (Executive Order No. 1 of 2010).

*(Added by E.O. 1 of 2010 s.6)*

*Explanatory Note*  
*Amendments to the Public Service (Administration) Order 1997*

1. The Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997) (“Principal Order”) has been amended by the Public Service (Administration) Order 1997 (Amendment) Order 2000 (Executive Order No. 1 of 2000) (“Amendment Order”). The amendments will come into operation on 17 April 2000.
2. For ease of reference, editorial notes setting out the sources of amendments have been inserted to the provisions of the revised Principal Order where amendments have been made. These notes are in *italic*.
3. The principal amendments introduced by the Amendment Order are as follows.
  - (a) The citation of the Principal Order is amended and the revised Principal Order may be cited as the Public Service (Administration) Order.
  - (b) Section 10(3) of the Principal Order is amended in order to reduce from 21 days to 14 days the period of unauthorised absence for which summary dismissal action may be taken.
  - (c) Section 17 of the Principal Order is repealed to ensure consistency with the Hong Kong Bill of Rights Ordinance (Cap. 383).
  - (d) Transitional provisions are inserted to provide for transitional arrangements in connection with the making of the Amendment Order.
  - (e) All references to “investigation” in the Principal Order are replaced with “inquiry”.

*Explanatory Note*  
*Public Service (Administration) Order (Amendment) Order 2008*

The Public Service (Administration) Order (Amendment) Order 2008 (Executive Order No. 1 of 2008) amends section 19(1) of the Public Service (Administration) Order (Executive Order No. 1 of 1997). The purpose of the amendment is to empower the Chief Executive to delegate to any public servant or any other public officer his duty to consider and act upon representations made to him by any officer as public expediency and justice to the individual may require.

*Explanatory Note*  
*Public Service (Administration) Order (Amendment) Order 2010*

The Public Service (Administration) Order (Amendment) Order 2010 (Executive Order No. 1 of 2010) amends the Public Service (Administration) Order (Executive Order No. 1 of 1997) so that its provisions apply to any public officer who is a member of the Civil Service Provident Fund Scheme (“CSPF officer”) as follows –

- (a) if a CSPF officer is required to retire in the public interest, the officer may be granted the part of the beneficial interests that is attributable to sums derived from the voluntary contributions made by the Government of HKSAR, as employer, in respect of that officer under the Scheme (“GVC beneficial interests”);
- (b) if a CSPF officer is dismissed, the GVC beneficial interests and other benefits or advantages will not be granted to the officer; or
- (c) if a CSPF officer is compulsorily retired, the GVC beneficial interests may be granted to the officer in full or may be reduced or forfeited, and the officer may be granted other benefits or advantages that the officer is eligible to receive.