

LEGISLATIVE COUNCIL BRIEF

DELEGATION OF THE CHIEF EXECUTIVE'S POWER UNDER SECTION 20(1) OF THE PUBLIC SERVICE (ADMINISTRATION) ORDER

PUBLIC SERVICE (ADMINISTRATION) ORDER (AMENDMENT) ORDER 2008

INTRODUCTION

At the meeting of the Executive Council on 9 December 2008, the Council ADVISED and the Chief Executive ORDERED that the Public Service (Administration) Order (Amendment) Order 2008 (here below referred to as the "Amendment Order") at **Annex** be approved to expressly enable the Chief Executive ("CE") to delegate his power under section 20(1) of the Public Service (Administration) Order ("PS(A)O") with effect from the gazettal date of the Amendment Order on 19 December 2008.

JUSTIFICATIONS

2. The PS(A)O is an executive order made by the CE under Article 48(4) of the Basic Law. It sets out, among other things, the Administration's authority to appoint, dismiss and discipline public officers; to act on representations made by public officers; and to make related disciplinary regulations.

3. Section 20 of the PS(A)O is concerned with representations made by public officers to the HKSAR Government. In particular, section 20(1) stipulates that –

“Every officer who has any representations of a public or private nature to make to the Government of HKSAR should address them to the CE. The CE shall consider and act upon each representation as public expediency and justice to the individual may require.”

4. All along, the Administration had operated section 20(1) of the PS(A)O on the basis that the CE had an implied power to delegate his authority to other public officers. The CE’s authority under section 20(1) of the PS(A)O was delegated to Chief Secretary for Administration (“CS”) and Secretary for the Civil Service (“SCS”) when the PS(A)O came into force on 1 July 1997. The scope of delegation was extended to the representatives of SCS in 2002.

5. In the judgment handed down in July 2008 in Mr Michael Rowse’s judicial review on his misconduct finding and associated discipline punishment over his supervision of Harbour Fest by the Administration¹, the Court of First Instance did not accept that there was an implied power for the CE to delegate his authority under section 20 of the PS(A)O. In view of the court’s judgment and to ensure the continued effective and efficient handling of representations made under section 20(1) of the PS(A)O, the Administration considers it necessary to amend the PS(A)O to expressly state that the CE may delegate his power under section 20(1) to other public officers to consider and act on representations.

THE AMENDMENT ORDER

6. The Amendment Order at Annex amends the delegation of powers provision in section 19(1) of the PS(A)O by adding to it a reference to section 20(1), thereby enabling the CE to delegate his authority under section 20(1) of the PS(A)O.

¹ In his judgment handed down on 4 July 2008, Hartmann J. quashed, among others, the CE’s decision to delegate to CS his authority to consider and act on the representation made by Mr Michael Rowse concerning his disciplinary punishment.

IMPLICATIONS OF THE PROPOSAL

7. The proposal does not require additional financial and staffing resources. It is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, environmental or sustainability implications.

CONSULTATION

8. We have consulted the staff sides and they have raised no objection to the proposal. The Legislative Council Panel on Public Service was consulted on 17 November 2008 and had no comment on the proposal.

PUBLICITY

9. We will gazette the Amendment Order at Annex on 19 December 2008. A spokesman will be available to answer media enquiries.

ENQUIRIES

10. Enquiries on this brief should be referred to Mr Aaron Liu, Principal Assistant Secretary (Civil Service) (Conduct and Discipline), at telephone number 2810 2140.

Civil Service Bureau
17 December 2008

Explanatory Note

This Executive Order 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.