

## **LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE**

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

#### **PURPOSE**

This paper seeks Members' views on the Administration's plan to amend the Public Service (Administration) Order ("PS(A)O") to expressly state that the Chief Executive ("CE") may delegate his authority under section 20(1) of the PS(A)O to consider and act on representations made by civil servants.

#### **BACKGROUND**

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 civil servants; to act on representations made by civil servants; and to make related disciplinary regulations.

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

*“Every officer<sup>1</sup> 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

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<sup>1</sup> Section 2 of the PS(A)O defines the term “officer” as meaning 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.”

authority to other public officers. The CE's authority under section 20(1) of the PS(A)O was delegated to the Chief Secretary for Administration and Secretary for the Civil Service when the order came into force on 1 July 1997. In practice, most of the representations were considered and decided by the Secretary for the Civil Service (or his representatives in the Civil Service Bureau). Where a representation was concerned with a decision taken personally by the Secretary for the Civil Service, it might be considered and decided by the Chief Secretary for Administration if the circumstances warranted. This arrangement had worked effectively to ensure that the representations concerned were dealt with as required by public expediency and justice to the individuals concerned.

5. In the judgment handed down in July 2008 in Mr Mike Rowse's application for judicial review, the Court of First Instance did not accept there was an implied power for the CE to delegate his authority under section 20 of the PS(A)O.

6. In view of the court's judgement and to ensure the continued effective and efficient handling of representations made under section 20(1) of the PS(A)O, we consider 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.

## **AMENDMENT TO THE PS(A)O**

7. We note section 19(1) of the PS(A)O is concerned with the delegation of authority, and reads as follows –

“...the CE may delegate to any public servant or any other public officer any powers or duties conferred or imposed on him by sections 3 and 9 to 18<sup>2</sup>.”

8. We intend to amend section 19(1) of the PS(A)O by adding at the end of it reference to section 20(1).

## **STAFF CONSULTATION**

9. We have consulted the staff sides on the Administration's plan to amend the PS(A)O as explained in this paper, and they have raised no

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<sup>2</sup> Sections 3 and 9 to 18 of the PS(A)O refer to the CE's power to appoint and discipline (and the procedures related thereto) public officers.

objection.

**ADVICE SOUGHT**

10. Members' advice is sought on the Administration's plan to amend the PS(A)O as explained in this paper.

Civil Service Bureau  
November 2008