

EXECUTIVE ORDER
No. 1 of 1997

I, TUNG Chee-hwa, Chief Executive of the Hong Kong Special Administrative Region of the People's Republic of China, pursuant to the power vested in me by Article 48(4) of the Basic Law, make the following Order—

PART I

PRELIMINARY

1. Citation and commencement

(1) This Order may be cited as the Public Service (Administration) Order 1997.

(2) This Order shall be deemed to have come into operation on 1 July 1997.

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 is appointed to and confirmed in an established office;

“Category B Officer” (乙類人員) means any officer who—

(a) holds a non-established office;

(b) holds an established office either on month-to-month terms or probationary terms; or

(c) holds an office on agreement terms;

“established office” (設定職位) has the meaning assigned to it by section 2 of the Pensions Ordinance (Cap. 89);

“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” (公務員敘用委員會) 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 with pension, gratuity or other allowances or, without such benefits or with reduced benefits, fine, reduction in rank, severe reprimand, reprimand, stoppage or deferment of increments and reduction in salary;

(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.

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 investigation 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 investigation 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.

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 investigation 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 investigation 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 21 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 investigation to be made under subsection (1) and may summarily dismiss the officer.

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 investigation 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 investigation 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).

(4) Where an officer is required to retire under this section, he may be granted a pension, gratuity or other allowance in accordance with any pensions law for the time being in force.

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) investigation 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.

(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 any pension, gratuity or other like benefits and to any other benefits or advantages of an officer.

17. Restriction on departure from HKSAR if interdicted

An officer who is under interdiction may not, without the permission of the Chief Executive, leave HKSAR during the interval before he is reinstated or dismissed.

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 and 9 to 18.

(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.

Made this 9th day of July 1997

TUNG Chee-hwa
Chief Executive