

立法會
Legislative Council

LC Paper No. CB(2)1542/00-01
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

**Legislative Council
Panel on Constitutional Affairs**

**Minutes of meeting
held on Monday, 19 March 2001 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon SZETO Wah
Hon Audrey EU Yuet-mee, SC, JP

Members Attending : Hon Cyd HO Sau-lan
Hon IP Kwok-him, JP

Public Officers Attending : Item IV

Mr Joseph W P WONG
Secretary for the Civil Service

Ms Anissa WONG
Deputy Secretary for the Civil Service (1)

Item V

Mr Clement MAK
Deputy Secretary for Constitutional Affairs (1)

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Item VI

Mr Robin IP
Deputy Secretary for Constitutional Affairs (2)

Ms Doris HO
Principal Assistant Secretary for Constitutional Affairs (4)

Mr LI Wing
Chief Electoral Officer of the
Registration and Election Office

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Miss Yvonne YU
Senior Assistant Secretary (2)7

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1033/00-01)

The minutes of the meeting on 15 January 2001 were confirmed.

II. Matters arising

Negative Procedure for vetting of subsidiary legislation (LC Paper No. CB(2)1079/00-01(01))

2. The Chairman said that the subject matter was discussed by the Panel in December 2000. The Administration had now agreed to the Panel's recommendation that the existing "extended by one LegCo meeting" provision should be modified to "21 days, and if there was no Council meeting on the day of expiry of the 21-day period, LegCo might extend the vetting period to the meeting following the 21-day period". The Administration would make arrangements for amendments to the relevant provisions of section 34 of Cap. 1. As the subject would have implications on all Members, the Chairman suggested and members agreed that a report on the deliberations and recommendation of the Panel should be made to the House Committee.

(Post-meeting note : The report was presented to the House Committee on 20 April 2001)

III. Items for discussion at the next meeting on 23 April 2001

(LC Paper Nos. CB(2)1079/00-01(02), CB(2)1079/00-01(03) and CB(2)1057/00-01)

3. Members agreed that the following items be discussed at the next meeting on 23 April 2001-

- (a) Application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive;
- (b) Research report on "Parliamentary handling of non-ordinary bills" prepared by the Research and Library Services Division; and
- (c) Issues on employees of subvented welfare organizations taking up public offices.

4. Referring to LC Paper No. CB(2)1057/00-01 on follow up to the Report of the HKSAR in the light of the International Covenant on Economic, Social and Cultural Rights (ICESCR), The Chairman advised members that only Article 1 of ICESCR was considered relevant to the policy areas of the Panel. On this Article, the HKSAR's Report had only made reference to its 1999 Report in the light of the International Covenant on Civil and Political Rights. The Chairman suggested and members agreed that the matter could be followed up by the Panel in future if considered necessary.

IV. Employment arrangements for principal officials
(LC Paper No. CB(2)1079/00-01(04) and CB(2)1111/00-01)

5. Secretary for the Civil Service (SCS) briefed members on the paper provided by the Administration (LC Paper No. CB(2)1079/00-01(04)). He explained that the appointment and removal of principal officials was governed by the Basic Law. At present, all principal officials were employed and remunerated on the same package as applied to civil servants corresponding to the rank and pay point of their posts, and they were also subject to Government Regulations including the Civil Service Regulations applicable to civil servants. SCS invited members to note the standard Memorandum on Conditions of Service for Officers Appointed on New Agreement Terms in Annex B to the Administration's paper.

Appointment of principal officials on agreement terms

6. Mr CHEUNG Man-kwong said that the public was very concerned about whether Mr Antony LEUNG, the Financial Secretary (FS) designate, had passed the integrity checking prior to his appointment by the Central Peoples' Government (CPG). As more and more principal officials were appointed from outside the civil service on agreement terms, Mr CHEUNG asked whether it was the Government's policy for integrity checking of principal officials to be completed prior to appointment by CPG. He wondered what remedial actions could be taken by the Administration if a principal official who had been appointed by CPG was subsequently found to have failed an integrity checking. In addition, he also queried whether the objective of integrity checking could be achieved if it was conducted after the appointment.

7. SCS said that the employment procedures applicable to civil servants would also be applicable to principal officials including Mr Antony LEUNG. The Civil Service Bureau (CSB) had the responsibility to ensure that Mr LEUNG had completed all the employment procedures including contractual arrangements, integrity checking and medical examination before he was in post on 1 May 2001. Should there be any problem, CSB would consider how to deal with it and would report the matter to the Chief Executive (CE) if considered necessary.

8. Mr CHEUNG Man-kwong requested SCS to advise whether the integrity checking of Mr LEUNG was completed prior to or after his appointment by CPG, and if the reply was in the latter, whether the Administration would consider making it a policy for integrity checking of principal officials to be completed prior to appointment by CPG.

9. SCS explained that the appointment and removal of principal officials was governed by Article 48(5) of the Basic Law, which stipulated that CE was to nominate principal officials to CPG for appointment, and to recommend to

CPG the removal of principal officials. This was distinct from the contractual arrangements on which principal officials were employed and remunerated. He assured members that all employment procedures would be completed by Mr LEUNG before he was in office on 1 May 2001. Mr CHEUNG Man-kwong was dissatisfied with the reply.

10. In response to similar questions from a few members, SCS reiterated that he could not disclose whether the integrity checking of Mr LEUNG had been completed. He could only advise that all the necessary employment procedures would be completed before Mr LEUNG was in office on 1 May 2001.

11. Ms Emily LAU asked about the purpose of integrity checking and whether it would include an investigation of the previous political activities of the person. SCS said that officers subject to integrity checking would be required to provide information including their personal information, referees, occupations, educational background, etc. These information would be referred to the Police for investigation.

12. The Chairman, Mr SZETO Wah and Miss Margaret NG asked whether Mr LEUNG had already entered into an employment contract with the Government, and if so, when did it take place, and whether the employment contract offered to Mr LEUNG was conditional upon the satisfactory completion of the employment procedures including integrity checking. Deputy Secretary for the Civil Service (1) (DSCS(1)) said that all employment procedures would normally be completed before an employment contract was entered into. SCS said that he did not want to confirm whether Mr LEUNG had already entered into an employment contract with the Government. Should members insist that he should give a reply to the question, he would need to seek legal advice.

13. Miss Margaret NG found the reply of SCS unacceptable. As the executive authorities should be accountable to the legislature, she said that the Administration should not refuse to provide factual information to members unless there were strong justifications. Ms Cyd HO echoed Miss NG's view. She said that the Administration's attitude was fundamentally contradictory to CE's proposal of a system of enhanced accountability for principal officials.

14. In response to members' comments, SCS said that integrity checking involved a lot of confidential personal information. On the one hand, he did not want to answer questions which would in turn lead to a series of other questions seeking more details on individual cases. On the other hand, he did not wish to give an impression that there was something wrong with Mr LEUNG's integrity checking. In the circumstances, he could only advise the Panel that he had come across a lot of confidential personal information of Mr LEUNG in the process of conducting the integrity checking, and he had

sufficient reasons to believe that there was absolutely no problem with Mr LEUNG's integrity checking. In further response to members, SCS said that he could confirm that the integrity checking of Mr LEUNG had been completed. However, he would not answer further questions such as when the integrity checking was conducted.

15. Ms Audrey EU asked whether the employment contracts of principal officials appointed on agreement terms could be made public. SCS explained that the Administration had sought legal advice on this point. The advice was that the contracts contained personal data of individual officers which the Government could not disclose. He supplemented that the standard provisions of a contract were set out in Annex B to the Administration's paper. However, the contract would be slightly modified to suit individual circumstances. For example, the provision on housing allowance would not be applicable to the contract of FS who would be provided with an official residence.

16. Ms Audrey EU asked SCS to explain why he could not disclose whether Mr LEUNG had signed the employment contract. SCS reiterated that he did not want to answer questions on specific details of an individual case. If members could explain why it was a matter of important public interest for him to disclose whether Mr LEUNG had already entered into an employment contract with the Government before the date of this meeting, he would reconsider his position.

17. Mr IP Kwok-him asked whether the Government had ever entered into an employment contract with a person, who was subject to integrity checking for employment purposes, prior to the completion of the integrity checking. SCS replied that normally employment contracts were entered into upon completion of all appointment checking procedures.

18. The Chairman said that members were concerned about the system of appointment of principal officials on civil service agreement terms, not the appointment of individual principal officials per se. The case of Mr Antony LEUNG was only quoted as an example to assist members to understand the system. He said that it would be illogical for integrity checking to be conducted after appointment was made by CPG. Pointing out that the "employment procedures" were part and parcel of the whole "appointment system", the Chairman was dissatisfied that the Administration had tried to departmentalize the discussion of the matter, and the Constitutional Affairs Bureau did not send any representatives to the meeting.

19. Mr CHEUNG Man-kwong said that the protracted discussion was caused by the refusal of SCS to reply at the outset whether it was the Government's policy for integrity checking of principal officials appointed on agreement terms to be completed prior to the appointment by CPG. Mr

CHEUNG further said that the matter under discussion involved important public interest as any principal officials appointed by CPG must be of high integrity and credibility. There would be serious implications if a principal official, who had been appointed by CPG, was later found to be unsuitable for appointment to the post.

20. Ms Emily LAU said that one would have thought that all the necessary employment procedures such as the integrity checking would have been completed before a principal official was nominated by CE for appointment by CPG. She requested SCS to clarify whether the integrity checking of all principal officials appointed on civil service agreement terms such as Ms Elsie LEUNG and Dr YEOH Eng-kiong were completed after their appointment by CPG. If this was the case, she asked whether the Administration would consider reviewing the arrangement.

21. SCS declined to reply and explained that he had already tried to respond to questions raised by members, although members might not find the answers satisfactory. In order not to give the public a wrong perception, he had also disclosed that Mr LEUNG's integrity checking was found to be satisfactory. As regards the question on the timing for conducting the integrity checking, SCS reiterated that the appointment of principal officials was stipulated under the Basic Law, and he was only responsible for the employment arrangements of principal officials.

22. Referring to the reply of SCS to Ms Cyd HO's LegCo question of 7 March 2001, the Chairman said that he could not accept that information relating to employment contracts could not be disclosed. The Chairman was also dissatisfied that the Administration's paper had failed to respond to a number of questions raised at the last meeting, such as the differences in employment contracts offered by the former Government (to persons such as Mr Michael Thomas, former Attorney General and Sir John Henry Bremridge, former Financial Secretary) and those offered by the HKSAR Government (to principal officials such as Mr Antony LEUNG, Ms Elsie LEUNG and Dr YEOH Eng-kiong). The Chairman added that to enable members to understand the system of appointment of principal officials, the Administration should also explain the policy and arrangement for principal officials converted from pensionable terms to agreement terms as a result of opting to receive marriage gratuity such as Mrs Lily YAM (Secretary for the Environment and Food) and Mrs Katherine FOK (former principal official), and whether the terms and conditions of these employment contracts were the same as those offered to persons appointed on civil service agreement terms at an equivalent rank.

23. In response to Miss Margaret NG's question, DSCS(1) said that new recruits would be offered terms and conditions prevailing at the time of their appointment. For new recruits who were first offered appointment on or after

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1 June 2000, the Memorandum on Conditions of Service attached in Annex B to the Administration's paper would apply. In further response to Ms Cyd HO, SCS advised that the conditions of service of principal officials were consistently applied to both officers on agreement or on permanent and pensionable terms. He undertook to confirm this point after checking.

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Other issues

24. Mr James TIEN asked about the circumstances under which a civil servant would be subject to integrity checking. He further asked whether the same integrity checking would apply to a new recruit.

25. DSCS(1) explained that new recruits on appointment and civil servants on promotion would be required to undergo an integrity checking, the extent of which would depend on the requirement of the posts under consideration. Civil servants posted to some designated posts would be required to undergo an in-depth integrity checking, irrespective of the rank of these posts.

26. Mr TIEN asked whether any civil servant had ever declined to be promoted in order to avoid undergoing an integrity checking. SCS said that he was not aware of any such cases. SCS further explained that if the Police had identified any elements of criminality in the course of conducting the integrity checking, it would seek the advice of the Department of Justice.

27. Dr YEUNG Sum asked whether the Government would consider instituting a mechanism whereby the service of a principal official appointed on civil service agreement terms could be terminated if he had committed a serious mistake so as to enhance the accountability of principal officials.

28. SCS said that the civil service contract scheme would provide greater flexibility, e.g. the Government could terminate the service of an officer at any time during the appointment by giving him three months' notice or by paying him one month's salary in lieu of notice without recourse to disciplinary procedure and without any reasons being given. As to whether commission of a serious mistake could be considered as a sufficient reason for termination of an appointment, SCS responded that it would depend on the particular circumstances of the case.

29. As time was over-run, Mr James TIEN suggested members to continue discussion on the item at a special meeting to be scheduled. The Chairman agreed to adjourn the discussion.

(Post-meeting note : On the instruction of the Chairman, the Administration was requested on 22 March 2001 to give a written response to various questions raised by members.)

V. Restrictions on activities undertaken by a former Chief Executive

30. Deputy Secretary for Constitutional Affairs (1) (DSCS(1)) gave a verbal report on this item. DSCS(1) said that there was no restriction imposed on commercial or political activities to be undertaken by a former holder of the office of CE in and outside HKSAR under the present legislation. The Administration was studying the issue and in the process would look into existing arrangements applicable to senior government officials and overseas practices.

31. DSCS(1) said that on overseas practices, the initial research conducted by the Administration covered the United Kingdom, United States, Australia, Canada and Japan. While he would share some of the findings with members of the Panel, he stressed that the information so far obtained was incomplete. DSCS(1) said that there was no restriction on the political activities to be undertaken by former Presidents or Prime Ministers of these countries. They could enjoy all political rights as ordinary citizens. As regards commercial activities, different approaches were adopted. The United States and Japan did not have any regulations to govern the commercial activities to be undertaken by their former Presidents or Prime Ministers. On the other hand, the United Kingdom and Canada had codes to impose restrictions on the commercial activities to be undertaken by their former ministers including Prime Ministers. For example, if a minister of Canada had direct and significant involvement with a private company in the course of his duties within one year before his departure from office, he could not be employed by that company or appointed as a director of that company for two years after his departure from office. If a minister including the Prime Minister of the United Kingdom wished to be employed by a private company within two years after his departure from office, he had to seek the prior approval of an independent committee which was specifically established to handle such matters.

32. Mr James TIEN asked whether the minister of Canada referred to in paragraph 31 above was also debarred from providing consultancy services to the company in question. DSCA(1) said that there should be restrictions imposed on the scope of activities referred to by Mr TIEN, but he was unable to advise at this point in time in the absence of the relevant document in hand.

33. Ms Cyd HO said that she was dissatisfied that the Administration did not provide a paper on the item to facilitate discussion by members. She said that some of the information provided by DSCA(1) was different from the information she had obtained, e.g. former public officials in Canada were not allowed to disclose to their future customers or employers any restricted information that had come to their knowledge in the course of their duties. DSCA(1) reiterated that the information obtained by the Administration at this stage was preliminary and incomplete. Ms HO requested the Administration to provide members with a detailed written report on its research findings after

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the meeting.

34. Ms Cyd HO expressed concern about the time frame for the Administration to complete the study as the term of office of the first term CE would expire in 15 months' time. A few members were of the view that the Administration should complete the study as early as possible. While DSCA(1) agreed that the Administration would expedite the progress of the study, he could not provide a specific timetable at this stage. In further response to Miss Margaret NG, DSCA(1) undertook to complete the study within a reasonable period of time before the expiry of the term of office of the first term CE.

35. Ms HO also urged the Administration to consider whether it was necessary to amend the Pensions Ordinance or to include appropriate provisions in the CE Election Bill to provide for a retirement protection scheme for CE.

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36. The Chairman asked the Administration to consider the authority which should be responsible for giving the final approval to the recommendations of the study. DSCA(1) noted this request.

37. Ms Emily LAU suggested that the Research and Library Services Division of the LegCo Secretariat should be requested to conduct a research study on the same subject. The Chairman opined that the focus of the research study should be more or less the same, irrespective of whether it was undertaken by the Administration or the Secretariat. He was concerned about duplication of efforts. DSCA(1) suggested that any information obtained by the Administration on overseas practices could be provided to the Panel for information.

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38. After discussion, members agreed that the Research and Library Services Division and the Administration should work in collaboration with a view to providing as much relevant information as possible on the subject for the reference of the Panel, pending outcome of the study being conducted by the Administration. The Administration should aim at completing the study as early as possible and consult the Panel on its preliminary proposals before arriving at any decision on the matter.

VI. Review of electoral system for LegCo election

(LC Paper No. CB(2)126/00-01(06))

39. Deputy Secretary for Constitutional Affairs (2) (DSCA(2)) referred members to the Administration's paper presented to the Panel in October 2000 and advised that the Administration would conduct a comprehensive review on the electoral system including the mechanism on withdrawal of candidature.

Withdrawal of candidature

40. Ms Emily LAU said that the existing mechanism was too rigid and should be reviewed to allow a validly nominated candidate to withdraw from the election after close of nomination in unforeseen circumstances. She also suggested that appropriate measures should be introduced to avoid abuse of the new system.

41. Miss Margaret NG said that a mechanism for withdrawal of candidature was proposed for the CE election. In the circumstances, she suggested that the review of the mechanism on withdrawal of candidature in LegCo election should take into account the outcome of the deliberations of the Bills Committee formed to study the CE Election Bill.

42. The Chairman was of the view that the same withdrawal mechanism should apply to both the LegCo election and the CE election. The Chairman also pointed out that there was wisdom behind the existing system for imposing restriction on withdrawal of candidature in LegCo election in that it was effective in preventing candidates from engaging in corrupt conduct by offering advantage to other candidates as an inducement for them to withdraw. The same argument could apply to the CE election, particularly in view of the fact that the size of its electorate was much smaller.

43. DSCA(2) said that the Administration had yet to form any view on this issue as the next LegCo election would be held in 2004. The Administration would welcome views from members.

Voting system for the LegCo geographical constituency election

44. Ms Emily LAU proposed that the Administration should consider adopting Panachage, one of the variations to the list voting system, as the voting system for future LegCo elections. Panachage allowed an elector to cast as many votes as there were seats to be returned in his constituency. She said that from the experience of the two previous LegCo elections, many electors would like to support more than one candidate in his geographical constituency. Ms LAU also pointed out that tactical voting could result in uncertainty in voting results, especially when an elector was misled by opinion poll results that the candidate he supported had secured sufficient votes to win and had therefore decided to vote for another candidate. She asked the Administration to seriously consider her proposal so that electors could fully exercise their voting rights.

45. Ms Emily LAU further asked whether the voting system adopted for LegCo elections could be reviewed as some electors might prefer the "single-seat, single-vote" system.

46. DSCA(2) responded that the list voting system, which was stipulated in the LegCo Ordinance, had been operating well in the last two LegCo elections. The Administration had not received any views suggesting that a fundamental change should be made to the voting system.

47. Dr YEUNG Sum did not agree with DSCA(2). He said that the results of opinion surveys had indicated that many electors preferred the "single-seat, single-vote" system. The Administration was reluctant to pay heed to public views and to make any changes. The Chairman supplemented that the Administration had failed to explain why the list voting system was adopted for the LegCo election, whereas the "single-seat, single-vote" system was adopted for the District Councils election.

48. Dr YEUNG Sum asked the Administration when it could report progress of the review on the electoral system to the Panel. Ms Emily LAU asked whether the Administration would issue a Green Paper on the matter for public consultation.

49. DSCA(2) said that as the Administration had to first deal with the CE election and the District Councils election which would be held in 2002 and 2003 respectively, it had yet to devise a timetable for the review on the electoral system for the LegCo election in 2004. In line with the existing practice, the Panel would be consulted on any proposals arising from the review before introduction of the necessary legislative amendments into LegCo.

50. The Chairman said that when reporting back to the Panel on the outcome of the review on the electoral system, the Administration should set out the pros and cons of each voting system considered and other relevant information to facilitate consideration by members.

VII. Role and functions of the District Councils (LC Paper No. CB(2)1079/00-01(05))

51. Members agreed that the item be deferred to a future meeting.

VIII. Date of next meeting

52. Members noted that the next meeting would be held on 23 April 2001 at 2:30 pm.

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53. The meeting ended at 4:35 pm.

Legislative Council Secretariat

15 May 2001