

立法會
Legislative Council

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**Establishment Subcommittee of the Finance Committee
of the Legislative Council**

**Minutes of the 7th meeting
held at the Legislative Council Chamber
on Thursday, 6 June 2002, at 4:30 pm**

Members present:

Hon CHAN Kwok-keung (Chairman)
Hon NG Leung-sing, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Bernard CHAN
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon LAU Ping-cheung

Members absent:

Hon James TIEN Pei-chun, GBS, JP
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon LI Fung-ying, JP

Non-Subcommittee Members attending:

Hon Fred LI Wah-ming, JP
Hon IP Kwok-him, JP

Public Officers attending:

Mr Stanley YING, JP	Deputy Secretary for the Treasury
Mr K K LAM	Principal Executive Officer (General), Finance Bureau
Mrs Jessie TING, JP	Deputy Secretary for the Civil Service (2)
Mr Michael SUEN, GBS, JP	Secretary for Constitutional Affairs
Mr Clement MAK, JP	Deputy Secretary for Constitutional Affairs
Mr Joseph W P WONG, GBS, JP	Secretary for the Civil Service
Ms Anissa WONG, JP	Deputy Secretary for the Civil Service (1)
Mr Stephen LAM, JP	Information Coordinator
Mr Bobby CHENG	Deputy Private Secretary to Chief Executive
Mr Ian WINGFIELD, GBS, JP	Law Officer (Civil Law)

Clerk in attendance:

Miss Polly YEUNG Chief Assistant Secretary (1)3

Staff in attendance:

Mr Jimmy MA Legal Adviser
Ms Pauline NG Assistant Secretary General 1
Ms Alice AU Senior Assistant Secretary (1)5

EC(2002-03)02

Proposed creation of 14 non-civil service principal official positions under the accountability system, offset by deletion of three civil service directorate posts of the Chief Secretary for Administration, the Financial Secretary and the Secretary for Justice; and creation of one non-civil service position of Director of Chief Executive's Office, offset by deletion of the civil service post of Information Coordinator with effect from 1 July 2002 to facilitate implementation of the accountability system for principal officials

Members noted that the Subcommittee to study the Proposed System of Accountability for Principal Officials and Related Issues formed under the House Committee (the Subcommittee) had held 14 meetings to discuss various aspects of the accountability system. A motion in support of the system was passed at the Legislative Council (LegCo) meeting on 29 May 2002.

Proposed creation of 14 non-civil service principal official positions under the accountability system

Provision of Permanent Secretary posts

2. Members noted that at the request of the Subcommittee for more information on the 16 Permanent Secretary posts underpinning the Directors of Bureau, the Administration had provided a paper listing the number of Permanent Secretaries under each Director of Bureau (LC Paper No. CB(2)2147/01-02(01)) and a Supplementary Note (LC Paper No. CB(2)2185/01-02(01)) on the arrangements for the Permanent Secretary posts under the accountability system. The Secretariat had also been requested to prepare some background information to facilitate members' consideration of the present proposal (LC Paper No. ESC37/01-02 and LS114/01-02 issued vide LC Paper Nos. CB(2)2217/01-02 and CB(2)2220/01-02 (English and Chinese versions respectively)).

3. At the Chairman's invitation, Assistant Secretary General 1 (ASG1) presented the background brief (ESC37/01-02) which set out the scope of staffing proposals requiring scrutiny by the Establishment Subcommittee (ESC), with emphasis on proposals relating to major re-shuffling of duties and re-organization of policy bureaux. She also invited members to note the major changes to the terms of reference (TOR) of ESC in past years, and the delegation of powers by the Financial Secretary to Controlling Officers to create supernumerary directorate posts for periods of up to 12 months subject to certain conditions as approved by the Finance Committee (FC) on 9 March 1983.

4. The Legal Adviser (LA) referred to the paper on “Legal Issues relating to the Provision of Permanent Secretary posts under the Accountability System for Principal Officials” (LS114/01-02) which he prepared in response to the queries raised by some members of the Subcommittee at its meeting on 4 June 2002 on the legality of establishing the posts of Permanent Secretary by way of re-titling the 16 existing D8 civil service posts from Director of Bureau to Permanent Secretary and the creation of supernumerary posts.

5. LA took members through the paper and advised that as far as the re-titling of posts was concerned, it did not appear that approval of the FC was required. No approval would be required because the re-titling would not result in any change to the approved estimates of expenditure which only provided information on the overall number of posts and the total amount of personal emolument under each head of expenditure rather than a detailed breakdown of grading and ranking of posts and their respective costs. However, it would remain a matter for members to consider whether the Administration's claim that the 11 new Permanent Secretaries would continue to take on substantially the same functions and duties after the implementation of the accountability system though they would be acting under the direction of the respective principal officials was justified. On the delegation of authority to create supernumerary directorate posts for periods up to 12 months, LA confirmed that the arrangements approved by FC on 9 March 1983 were still in effect. Notwithstanding, FS was required under the Public Finance Ordinance (Cap. 2) to report to FC, at the end of each quarter of the financial year, any changes to the approved estimates of expenditure made pursuant to an exercise of delegated powers. Although LA was of the view that the proposed measures to be taken by the Administration for achieving the policy objective of providing Permanent Secretary posts for the bureaux under the accountability system were permissible from the legal point of view, whether these measures were the most appropriate means for achieving the same would be a matter for members to consider.

6. Mr Andrew WONG expressed some reservation on the need to create the five supernumerary posts in question by way of delegated authority. Notwithstanding the delegation of powers as approved by FC in 1983, Ms Emily LAU maintained her view that it was inappropriate for the Administration to create under delegated authority the five supernumerary directorate posts to be held against five permanent D8 vacancies for 12 months in order to effect the temporary deployment of the five D8 posts which involved substantive adjustments in their functions and duties under the accountability system.

7. Ms Emily LAU expressed utmost dissatisfaction that the Administration regarded the proposed arrangements for the Permanent Secretary posts a re-titling exercise in an attempt to bypass scrutiny by FC. She pointed out that under the existing government structure, bureau secretaries were responsible for policy formulation as well as leading and co-ordinating the work of all relevant government organizations under their respective policy areas. However, under

the accountability system, these D8 officers would assume a diminished role as they would only assist the principal officials in policy formulation, securing public support and answering LegCo questions. She was totally unconvinced that such a fundamental change in policy-making role was merely a change in post titles and reiterated her view that the positions of Permanent Secretary were in fact a new creation in the civil service which should be scrutinized by ESC/FC.

8. Ms Emily LAU stated that ESC's endorsement and FC's approval should be sought for the deletion of the existing 16 D8 civil service posts and for the creation of the 16 new Permanent Secretary posts required under the accountability system to underpin the Directors of Bureau. In line with established practice, the Administration should also specify the responsibilities of each Permanent Secretary, together with the justification for retaining all the 16 posts at D8 level. In the absence of such justification, the accountability system as proposed would only serve to expand rather than streamline the government structure, particularly at the directorate level. She also cautioned that endorsement of the staffing proposal by ESC in its present form would set a very bad precedent.

9. In response, the Secretary for the Civil Service (SCS) referred to the Annex of the Supplementary Note (LC Paper No. CB(2)2185/01-02(01)) setting out the job description of the Permanent Secretaries. He stressed that the crux of the accountability system was the creation of a new hierarchy of principal officials at the highest level of government while the Permanent Secretaries underpinning the principal officials would be the highest ranking civil servants in the government structure. They would continue to play a pivotal role in securing support for agreed policies, in steering and co-ordinating their implementation by executive departments, in resource and staff management and in upholding the reliability and professional standards in the delivery of public services.

10. Ms Emily LAU however did not subscribe to the Administration's reasoning and expressed serious doubts that the Permanent Secretaries could still maintain their neutrality and impartiality if they were required to assist the principal officials in formulating, explaining and defending policies as all these duties were highly political in nature.

11. In reply, SCS elaborated that under the proposed accountability system, the principal officials would be politically accountable for the success and failure of policies falling within their respective purviews. Although the Permanent Secretaries would not have to take on political responsibility in the same way as the Directors of Bureau would, they would continue to abide by the highest standards of public service and discharge their required duties in a professional, impartial and competent manner. The Permanent Secretaries would continue to make their best endeavours to put forward well-conceived, objective and impartial advice on policy options to the principal officials. However, once a policy decision was made, the Permanent Secretaries, as career civil servants, would be

duty bound to abide by and take forward the decided policy, irrespective of their personal stance.

Ranking of Permanent Secretary posts

12. Mr Howard YOUNG reiterated his reservation on retaining all 16 existing bureau secretary civil service posts at D8 level. Instead, he opined that the ranking of Permanent Secretary posts should be suitably adjusted to reflect the lesser responsibilities they would assume in respect of policy formulation under the accountability system. Notwithstanding the Administration's undertaking to review the situation within 12 months, he considered that if the Directors of Bureau positions turned out to be filled by incumbent bureau secretaries, it might not be necessary that the Permanent Secretaries be D8 posts. As such, he suggested that the Administration should advance the timing of the organizational review, preferably before presentation of the draft Estimates for 2003-04.

13. In response, SCS explained that it was a prudent approach to retain the Permanent Secretary posts at D8 level so as to ensure that sufficient support was available to the principal officials at the initial stage of the implementation of the accountability system. As the job duties of the Permanent Secretaries were broadly similar to the existing duties of the bureau secretaries, it was appropriate to retain their ranking at D8 level pending the review within the next 12 months. Referring to overseas experience, he said that the Permanent Secretary posts should be of a sufficiently senior rank in order to preserve the status, professionalism and impartiality of civil servants which would be a key to the success of the accountability system. While acknowledging concerns about the need for an early review, SCS pointed out that the review was in fact no easy task because other related issues such as the working relationship between the bureau and its executive departments as well as the staffing and structure of the bureau would also have to be considered.

14. Regarding Mr Howard YOUNG's concern about possible difficulties in downgrading the posts, if considered necessary, after 12 months, SCS advised that in general, where an officer was appointed to act in a D8 post, it was unlikely that he would be given a substantive promotion in 12 months. SCS re-affirmed that the review in question would be a substantive review. There was no question that the review would be pre-empted by the Permanent Secretary posts being already filled by certain officers.

Remuneration of non-civil service principal officials

15. Members noted that under the present proposal, three Secretaries of Department and 11 Directors of Bureau positions would be created with effect from 1 July 2002, to be offset by the deletion of three civil service directorate posts of the Chief Secretary for Administration, FS and the Secretary for Justice (SJ).

16. Considering that the Directors of Bureau positions were political appointments, Mr Howard YOUNG opined that the proposed remuneration level (i.e. \$311,900 per month) might not be able to attract high calibre candidates outside the civil service to take up the positions.

17. Given that the schedule of responsibilities and the resources to be managed varied among the Directors of Bureau, Mr HUI Cheung-ching considered that the 11 Directors of Bureau should not be remunerated at the same level. He called on the Administration to consider his views when reviewing the implementation of the accountability system.

18. In reply, the Secretary for Constitutional Affairs (SCA) assured members that while the Directors of Bureau each had different policy portfolios and work schedules, their responsibilities were equally important in ensuring the effective administration of the Government. Given the increasing complexity of government policies and the demands from LegCo and the public, it was inevitable that at times, the policy areas of some Directors of Bureau might receive greater public attention than others. Regarding the remuneration of the 14 principal officials, SCA confirmed that there was no predetermined mechanism for pay adjustment.

Administrative support for Directors of Bureau

19. Mr Andrew WONG was dissatisfied that the discussion paper did not contain any information about the estimated staff cost required to provide the complement of administrative support staff (i.e. an administrative assistant pitched at the equivalent rank of Administrative Officer Staff Grade C (D2), a press secretary, a personal assistant and a driver) for each Director of Bureau. Citing the current TOR of ESC which required that proposals in relation to the “creation, redeployment and deletion of permanent and supernumerary posts remunerated at the directorate pay scales” should be submitted to ESC for consideration, he questioned whether it was in order for the Administration to arrange for the temporary redeployment of D2 posts within the respective bureaux to fill the proposed Administrative Assistant positions under delegated authority.

20. In response, SCA confirmed that the provisions for the complement of administrative staff would be absorbed within existing financial resources. While temporary redeployment would be arranged by the Administration under delegated authority, ESC’s endorsement and FC’s approval would be sought on the longer term arrangements as necessary. SCS further advised that the additional full annual average staff cost for providing administrative support to the 11 Directors of Bureau was estimated to be in the region of \$57 million. He assured members that the principal officials would review the working relationship between the bureaux and departments as well as the staffing and structure of their policy bureaux upon their assumption of duties. When reporting the outcome of the review, the Administration would also inform

members of the long-term arrangement for these positions.

21. Mr Andrew WONG maintained his view that although the additional staff costs required might be absorbed through existing financial resources, the Administration still had a duty to submit proposals involving the redeployment of permanent and supernumerary directorate posts to ESC/FC for scrutiny in line with the established practice and procedure.

Creation of a non-civil service position of Director of Chief Executive's Office

22. On the proposed creation of the position of the Director of Chief Executive's Office (DCEO) offset by the deletion of the civil service post of Information Coordinator (IC), Ms Emily LAU reiterated her concern about the special status of the DCEO post. While the position of DCEO was a political appointment, the postholder was not a principal official but would have to abide by the Code applicable to principal officials under the accountability system (the Code for Principal Officials). She questioned the underlying rationale for such an arrangement.

23. In reply, SCA said that in view of the special status of the DCEO as a political appointment, the postholder would be required to abide by the Code for Principal Officials and other relevant legislation and regulations applicable to principal officials under the accountability system. IC further advised that although DCEO was not a principal official under the accountability system, as a member of the senior administration of the Hong Kong Special Administrative Region (HKSAR) Government, DCEO's key responsibilities often involved political judgement. Firstly, the Director had to ensure that the agenda of the Executive Council reflected the priorities of the overall policy agenda of the Government; decisions on the best timing for putting up issues for public discussion often involved political judgement. Secondly, the work on information coordination involved the formulation of public relations strategies for handling major issues and policies and for securing community support. Thirdly, in assisting the Chief Executive (CE) in overseeing the running of the Chief Executive's Office, DCEO had to liaise with different sectors of the community and make arrangements for CE to gauge their views. In view of the aforesaid requirements, the Administration had considered it more appropriate to designate the DCEO position as a non-civil service post. DCEO would be answerable to CE for his/her work, and in case DCEO made serious mistakes in his/her work or lost public confidence, he/she might have to be dismissed by CE. IC assured members that the appointment arrangements for the DCEO post were similar to those for comparable positions in other jurisdictions.

24. Ms Emily LAU asked whether the requirement for prospective principal officials to disclose their membership of or affiliation to any political organization would apply to DCEO. In reply, SCA said that as previously explained, each principal official candidate should disclose his/her political affiliation to CE, and

it would be for CE to decide whether to put forward the nomination to the Central People's Government, having regard to the principles set out in the Code for Principal Officials. Such information would be made available for public inspection upon request. SCA confirmed that the same disclosure requirement would apply to DCEO. On Ms LAU's concern about the sanction on failure to observe this requirement, SCA explained that under such circumstances, DCEO's integrity would be called into question. In deciding whether or not the Director should be dismissed, CE would take into consideration, among other things, the Director's loss of public support, as well as any vote of no confidence on him/her that might have been passed by LegCo

25. In reply to Ms Emily LAU, SCA confirmed that the Administration had undertaken to include reference to DCEO in the composite circular to be issued to the civil service. Members noted that the circular, which set out the working relationship between principal officials and civil servants, aimed at fostering a spirit of trust between principal officials and the civil servants working with them. In this connection, Ms LAU requested a copy of the composite circular be provided for members' reference after it had been prepared in consultation with the relevant civil servants' associations.

Admin

Amalgamation of policy portfolios

26. Mr Fred LI expressed grave concern about the wide span of responsibilities of the future Secretary for Health, Welfare and Food who would be tasked to oversee some \$70 billion of government expenditure and an enormous staffing establishment providing services to the community. He was particularly concerned that the said Secretary would only be supported by one Permanent Secretary while according to an earlier version of the Administration's proposal, two Permanent Secretaries were provided. He queried the hasty approach in which the Administration dealt with the amalgamation of policy portfolios under the accountability system.

27. In reply, SCA stressed that the staffing establishment of individual bureaux and executive departments would not be increased as a result of the accountability system. There would only be a net increase of 11 principal official positions at the highest level of government under CE for which approval was being sought under the present staffing proposal. To facilitate co-ordination, the number of bureaux would be reduced from the current 16 to 11 as related portfolios would be placed under the same roof. In proposing the current arrangements, SCA advised that careful consideration had been given to balance the need to contain the number of senior positions and to ensure that the scope of responsibility of each principal official was reasonable and manageable. The rectification he made in respect of list of Permanent Secretaries was purely due to a clerical error. He reiterated that the Administration had examined different options of consolidating the 16 bureaux into 11 portfolios, and the currently proposed arrangements were considered to be the most appropriate.

28. Miss CHOY So-yuk did not agree with the Administration's proposal to include environmental affairs, transport and works under the same principal official as this might compromise environmental protection in the face of infrastructural development. She further said that her support or otherwise of the current arrangement would hinge upon the postholder and urged the Administration to announce the appointment early. In this regard, SCA agreed to reflect Miss CHOY's concern to CE and informed members that the Administration would announce the appointment of the Directors of Bureau in the near future.

29. Ir Dr Raymond HO on the other hand supported placing environment, transport and works under the same Director of Bureau as this setup could minimize conflicts and achieve better co-ordination which would result in more effective implementation of works projects. However, given the heavy responsibilities arising from such a schedule, he considered that the Administration should consider assigning an additional Permanent Secretary to the Secretary for the Environment, Transport and Works. Ir Dr HO also expressed disagreement that the post of the Secretary for the Civil Service was a political appointment as the major duty of the postholder was the management of the civil service.

30. Ms Emily LAU did not agree that the Permanent Secretary responsible for matters relating to labour issues should be pitched at D8 level because labour issues only accounted for one-third of the schedule of responsibilities of the existing Secretary for Education and Manpower post which was also remunerated at D8. Given the substantially reduced responsibility and resultant workload, Ms LAU said that the Administration should critically re-examine the post with a view to downgrading it as soon as possible.

31. SCA took note of members' views and concerns and assured members that the current arrangements would be reviewed within 12 months in the light of operational experience. Where necessary, adjustments would be proposed and the approval of FC would be sought on the longer-term arrangements.

Positions stated by members

32. On behalf of Members of the Democratic Alliance for the Betterment of Hong Kong (DAB), Mr YEUNG Yiu-chung expressed support for the present staffing proposal which was necessary for the implementation of the accountability system. Members of DAB considered that as LegCo had passed the motion in support of the accountability system, the system should be implemented on 1 July 2002 as scheduled.

33. On behalf of Members of the Liberal Party (LP), Mr Howard YOUNG expressed support for the present staffing proposal and considered that early implementation of the system was desirable for achieving the proposed objectives

of enhancing the administration of the HKSAR Government and strengthening the accountability of principal officials.

34. Miss Margaret NG stated her objection to the present proposal. While she did not wish to comment on whether the proposed staffing and financial arrangements under the accountability system were legally or procedurally in order, there would obviously be substantive changes in the duties of the existing D8 civil service posts from bureau secretaries to Permanent Secretaries, hence making the current arrangements of re-titling the existing D8 civil service posts a way to bypass scrutiny by ESC/FC. She also pointed out that under the accountability system, the remuneration of SJ (\$322,850 per month) would be much higher than the Chief Justice as the head of the Judiciary (\$227,450 per month). The Administration's failure to provide adequate justification and to take into account the relativity of pay level between senior judicial posts and principal officials would be damaging to the important principle of maintaining the independence of the Judiciary.

35. Echoing Miss Margaret NG's views about the way the proposed accountability system was taken forward, Mr CHEUNG Man-kwong stated objection to the present proposal on behalf of Members of the Democratic Party (DP). He put forth the strong view that for the sake of ensuring the prudent and efficient use of public funds, the Administration should critically re-examine the uneven distribution of duties among the 16 Permanent Secretary posts, the non-accountability of the DCEO position, the retention of all 16 existing D8 civil service posts and the entitlement of civil servants to pension payments if they were appointed principal officials. In this connection, he informed members that DP would move an amendment to reduce the proposed number of Directors of Bureau from 11 to nine so that the structure of bureaux could be further streamlined. To enable the development of a proper and truly democratic accountability system, Mr CHEUNG called on the Administration to maintain an open position in receiving views from Members and the community at large.

36. Mr Andrew WONG stated his objection to the present proposal. Although he agreed that principal officials should be accountable, he could not accept the accountability system as currently proposed by the Administration. In this connection, he expressed his view that a Permanent Secretary at D9 or D10 rank should be appointed to head the civil service. Instead of the proposed Administrative Assistant positions, Deputy Directors of Bureau posts should be created to assist the principal officials. To maintain the integrity of the accountability system, Mr WONG opined that the proposed DCEO position should either be filled by a civil servant or a political appointee as one of the principal officials, similar to the Chief Cabinet Secretary in Japan. He also emphasized the importance of establishing and developing constitutional conventions so as to enhance the accountability of CE and principal officials under the accountability system.

37. The Chairman put the item to vote. 12 members voted for the item, 6 members voted against and none abstained -

For:

Ir Dr Hon Raymond HO Chung-tai
Hon NG Leung-sing
Hon HUI Cheung-ching
Hon Bernard CHAN
Hon Jasper TSANG Yok-sing
Hon Howard YOUNG
(12 members)

Hon YEUNG Yiu-chung
Hon Abraham SHEK Lai-him
Hon Henry WU King-cheong
Hon LEUNG Fu-wah
Dr Hon LO Wing-lok
Hon LAU Ping-cheung

Against:

Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat
(6 members)

Hon Emily LAU Wai-hing
Hon SZETO Wah
Hon Michael MAK Kwok-fung

38. The item was endorsed.

39. The Subcommittee adjourned at 6:30 pm.

Legislative Council Secretariat

13 June 2002