

立法會
Legislative Council

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(Item II of these minutes has been
seen by the Administration)

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the special meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 5 July 2002**

Members present :

- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP (Chairman)
- Hon Fred LI Wah-ming, JP (Deputy Chairman)
- Hon Kenneth TING Woo-shou, JP
- Hon James TIEN Pei-chun, GBS, JP
- Hon Cyd HO Sau-lan
- Ir Dr Hon Raymond HO Chung-tai, JP
- Hon LEE Cheuk-yan
- Hon Martin LEE Chu-ming, SC, JP
- Hon Eric LI Ka-cheung, JP
- Dr Hon David LI Kwok-po, GBS, JP
- Dr Hon LUI Ming-wah, JP
- Hon NG Leung-sing, JP
- Hon James TO Kun-sun
- Hon CHEUNG Man-kwong
- Hon HUI Cheung-ching, JP
- Hon CHAN Kwok-keung
- Hon CHAN Yuen-han, JP
- Hon Bernard CHAN, JP
- Hon CHAN Kam-lam, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Hon LEUNG Yiu-chung
- Hon SIN Chung-kai
- Hon Andrew WONG Wang-fat, JP
- Dr Hon Philip WONG Yu-hong
- Hon WONG Yung-kan
- Hon Jasper TSANG Yok-sing, GBS, JP
- Hon Howard YOUNG, JP
- Dr Hon YEUNG Sum
- Hon YEUNG Yiu-chung, BBS
- Hon LAU Chin-shek, JP
- Hon LAU Kong-wah
- Hon LAU Wong-fat, GBS, JP

Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Members : Dr Hon David CHU Yu-lin, JP
absent Hon Albert HO Chun-yan
Hon Margaret NG
Hon Andrew CHENG Kar-foo

Public Officer : Item II
Attending

Mr Michael SUEN Ming-yeung, GBS, JP
Ag Chief Secretary for Administration

Mr Stephen LAM
Secretary for Constitutional Affairs

Mr Bob Allock
Solicitor General
Department of Justice

Mr Andrew WONG
Director of Administration

Clerk in Attendance : Mrs Constance LI
Ag Assistant Secretary General 2

Staff in Attendance : Mr Ricky C C FUNG, JP
Secretary General

Mr Jimmy MA, JP
Legal Adviser

Mr LAW Kam-sang, JP
Deputy Secretary General

Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Ms Pauline NG
Assistant Secretary General 1

Mr Ray CHAN
Assistant Secretary General 3

Ms Bernice WONG
Assistant Legal Adviser 1

Mrs Vivian KAM
Principal Assistant Secretary (Complaints)

Miss Kathleen LAU
Chief Public Information Officer

Miss Salumi CHAN
Chief Assistant Secretary (1)5

Miss Betty MA
Senior Assistant Secretary (2)1

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I. Report by the Chairman on her meeting with the Chief Secretary for Administration (CS) on 2 July 2002

Briefing for Legislative Council (LegCo) on important announcements

The Chairman said that she had advised CS of the strong dissatisfaction of the Subcommittee on Matters Relating to the Implementation of Railway

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Development Projects with the Administration's omission to brief the Subcommittee before releasing information to the media on the development right for the Shatin to Central Link project, despite the former Secretary for Transport's undertaking to do so.

2. The Chairman informed Members that CS had said that he would investigate into the matter, including what the former Secretary for Transport had undertaken to do. CS had said that the Administration's omission to brief LegCo was unintentional. CS had mentioned that he himself had made a statement at the Council meeting on 26 June 2002 regarding the report on the remuneration for senior executives of major statutory and other bodies. CS had commented that the development right for the Shatin to Central Link project was a procurement decision which was commercially sensitive.

3. The Chairman said that she had expressed doubt that the omission was unintentional, as the Subcommittee had requested the Administration specifically beforehand. As for the point that the project was commercially sensitive, she had said that arrangement could have been made for the briefing to the Subcommittee to take place at 4:30 pm, with the media briefing held shortly afterwards.

4. The Chairman further said that the Deputy Chairman had emphasised to CS that the Subcommittee was rightly dissatisfied, because even after the media briefing, the Administration had still made no arrangement to brief the Subcommittee at the latter's meeting two days afterwards.

5. The Chairman added that she had stressed the importance for LegCo to feature in the Administration's announcement process as an institution.

6. The Chairman said that CS had remarked that this was all a matter of mutual respect. CS had reiterated that he would investigate into the matter, and the agreed arrangement to consult the Chairman and Deputy Chairman of a Panel/subcommittee on briefings to Members would continue.

7. The Chairman added that she had also written to CS about the matter, and a reply was awaited.

Proposed invitation to principal officials to meet with relevant Panels

8. The Chairman said that she had conveyed to CS Members' request that CS should encourage the principal officials to meet with the relevant Panels so as to start a dialogue and enhance mutual understanding. She had also advised CS that the Panels would extend the invitation to the principal officials separately.

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9. The Chairman informed Members that CS had undertaken to relay the request to the principal officials. CS had explained that the principal officials needed more time to familiarise themselves with their portfolios, set priorities and draw up work plans.

The giving of notice by the Administration to resume the Second Reading debate on a bill prior to the completion of scrutiny of the bill by the relevant Bills Committee

10. The Chairman informed Members that she had advised CS that Members felt strongly that notice for resumption of Second Reading debate should not have been given before a consensus on the completion of scrutiny work had been reached. The appropriate alternative was to finish the scrutiny work first, and then seek the President's leave to dispense with the notice if there was urgency for resumption of Second Reading debate to take place.

11. The Chairman said that CS had emphasised the urgency of the bill in question, which the Administration hoped to be passed before the summer recess.

Late rush of legislative proposals

12. The Chairman said that she had reflected Members' concern regarding the late rush of legislative proposals at the end of each session, and she had requested CS to look into how this could be improved.

13. The Chairman informed Members that CS had agreed that barring unforeseen urgent legislative proposals, there should not be such a late rush and the Administration should take action to adjust its programme. He asked the Chairman and the Deputy Chairman to relay his sincerest thanks to Members for working so hard to speed up scrutiny work.

Timing for the delivery of Chief Executive (CE)'s Policy Address

14. The Chairman said that at their meeting with CS on 2 July 2002, CS had reiterated the justifications for changing the timing for delivery of the Policy Address as mentioned at their meeting in the previous week and in his letter dated 25 June 2002. CS had advised that the Policy Addresses in the 1960's and 1970's were not delivered in October, and the provision regarding timing in Rule 13(1A) of the Rules of Procedure was not obligatory. CS had also advised that as the new principal officials needed time to familiarise themselves with their respective portfolios and provide input to the preparation of the Policy Address, it would be desirable for the Policy Address to be delivered in January 2003.

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15. The Chairman informed Members that she had explained to CS that Members considered the change of the timing of the Policy Address an important one, the implementation of which would be more effective with consultation and discussion with LegCo. The Chairman added that she had stressed that as a matter of mutual respect, the Administration should have consulted LegCo.

16. The Chairman advised that the matter would be discussed under agenda item II below. She said that as CS was currently in the United Kingdom (UK) for the celebrations of the fifth Anniversary of the Hong Kong Special Administrative Region (HKSAR), Mr Michael SUEN, Ag CS, would attend the discussion.

II. Timing for the Delivery of Policy Address

(LC Paper No. CROP 27/01-02)

(CS's letter dated 3 July 2002 on "Timing for the Delivery of Policy Address")

(Dr Hon YEUNG Sum's letter dated 4 July 2002)

17. The Chairman said that Members agreed at the last House Committee meeting that they should discuss among themselves before meeting with CS at 3:30 pm. The Chairman further said that the LegCo Secretariat had prepared a paper on the background of Rule 13(1A) of the Rules of Procedure, which was made by a resolution of LegCo on 28 April 1999. The Chairman advised that the Committee on Rules of Procedure (CRoP) discussed the matter in detail and exchanged views with the Administration when Rule 13(1A) was made in 1999. She added that an extract from the relevant parts of CRoP's progress report for the period July 1998 to April 1999 was tabled at the meeting for Members' easy reference.

18. Dr YEUNG Sum welcomed the arrangement for Members to discuss among themselves before meeting with CS. Referring to paragraph 3.13 of CRoP's progress report, Dr YEUNG said that when Members were consulted in October 1998, most of the 58 Members who had responded were in favour of a new session commencing in October to tie in with the delivery of the Policy Address. Dr YEUNG further said that Members belonging to the Democratic Party maintained the same view. He pointed out that it was the convention for a session to commence in October, and for the Chief Executive (CE) (or the former Governors of Hong Kong) to deliver his Policy Address at the beginning of a new session, to be followed by presentation of the Budget in March. He added that it was also the convention for LegCo to have a debate on the Policy Address and for LegCo Panels to plan their work after receiving the Policy Address.

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19. Assistant Secretary General 1 clarified that during the consultation conducted by CROp in 1998, Members were asked separately on whether they were in favour of the first meeting of a session tying in with the delivery of the Policy Address, and on different options for the commencement and ending of sessions. Assistant Secretary General 1 said that most of the Members who responded at that time were in favour of having a new session commencing in October, and also having a new session tying in with the delivery of the Policy Address.

20. Dr YEUNG Sum stressed that the delivery of the Policy Address by CE at the beginning of a new session had the important symbolic meaning of Executive Authorities being accountable to the Legislature. Dr YEUNG said that it was most regrettable that the Administration had now changed the timing for the delivery of the Policy Address unilaterally, and such a change had great implications on the operation of LegCo.

21. Mr IP Kwok-him thanked the LegCo Secretariat for preparing the background paper on the making of Rule 13(1A) of the Rules of Procedure in 1999. Mr IP said that while he appreciated that there were good reasons for the Policy Address to be delivered at the beginning of a new session, he did not find it unacceptable for the Policy Address to be delivered in January. Mr IP further said that Members belonging to the Democratic Alliance for Betterment of Hong Kong did not have strong views on the timing for the delivery of the Policy Address. He added that as the new principal officials had just assumed office, it was reasonable to allow time for them to familiarise with their policy portfolios and to formulate their work plans. Mr IP considered, however, that there should be prior consultation and discussion with LegCo, even if the Administration had the authority to change the timing of the Policy Address. He added that the Administration should respect the practice of LegCo and views expressed by Members concerning the timing of the Policy Address.

22. Mr LEE Cheuk-yan commented that the proposed change of timing for delivery of the Policy Address and the Budget would not only affect the operation of LegCo, but also shorten the time for public consultation. Mr LEE stressed that as a matter of principle, the Administration should not make changes which might affect LegCo without prior consultation and discussion. He was of the view that the existing practice should continue, and there should be detailed discussion before a decision was made on the future arrangements for the Policy Address and the Budget.

23. Ms Emily LAU said that the point at issue was that the Administration had not consulted LegCo on the new arrangement which affected the operation of LegCo. She further said that while Members seemed to have accepted that flexibility should be provided for CE to deliver his Policy Address when Rule 13(1A) was made in 1999, the understanding was that the Policy Address should be delivered at the first meeting of a session. She added that during

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the discussion in 1999, although the Administration did not consider Rule 13(1A) necessary, it had not disagreed that CE was to deliver his Policy Address at the first meeting of a session. Ms LAU said that she was shocked to learn that the Administration had now decided to change the arrangement unilaterally without prior discussion with LegCo. She said that there were good reasons for the existing practice, and she could not accept that the new timing for the Policy Address should be adopted for the whole five-year term of CE.

24. Ms Emily LAU suggested that the LegCo Secretariat should research into the practice of advanced overseas countries on the commencement of a legislative session and its relationship with the preparation/presentation of the policy address and the budget. She also suggested that the study should include how the budget of these countries was presented to their parliaments, for example, whether the revenue and expenditure parts of the budget were presented separately on two different occasions. Ms LAU considered that the information would assist Members in considering future arrangements for the commencement of a session, as well as the timing for delivery of the Policy Address and the Budget.

25. The Legal Adviser pointed out that the formulation of Rule 13(1A) of the Rules of Procedure reflected the practice and expectation of LegCo that the Policy Address was to be delivered at the first meeting of a session which commenced in October. He said that in moving the resolution to add subrule (1A) to Rule 13 of the Rules of Procedure at the Council meeting on 28 April 1999, the Chairman of CRoP had stated that the provision in Rule 13(1A) was not to bind CE that he could only deliver his Policy Address at the first meeting of a session and not at any other time. The Legal Adviser also pointed out that while Article 64 of the Basic Law stipulated that the Government of the Hong Kong Special Administrative Region (HKSAR) "shall present regular policy addresses to the Council", there was no specific requirement on the frequency or the timing for such Policy Addresses. The Legal Adviser added that since the coming into effect of Rule 13(1A) of the Rules of Procedure in 1999, there was one occasion where the 2001 Policy Address was delivered by CE at the second meeting of the session.

26. The Chairman advised that before Rule 13(1A) was added to the Rules of Procedure in 1999, CRoP had thorough discussion on the relevant constitutional and operational issues, such as the commencement of a session and the timing for delivery of the Policy Address and the Budget. The Chairman said that CRoP had come to a view in 1999 that it was appropriate to add the new Rule 13(1A) to provide for the delivery of the Policy Address by CE at the first meeting in a session which normally commenced in October, based on the understanding that "the Administration will continue to plan on the basis that Policy Addresses in subsequent years will be delivered in the month of October". The Chairman pointed out that Rule 13(1A) was merely

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an enabling provision to facilitate CE to deliver his Policy Address, having regard to the practice in the past and operational considerations.

27. The Chairman further said that it was a departure from the understanding in 1999 if the Administration had now decided to defer the Policy Address to January. She pointed out that in previous years, CE had delivered his Policy Address either at the first or second meeting of a session. The Chairman stressed that it was important for the Administration to understand that there should be a consultation process with LegCo on important changes which affected its operation.

28. Ms Cyd HO said that the delivery of Policy Address at the beginning of a session was to reflect that the Executive Authorities were accountable to the Legislature. Ms Cyd HO was of the view that Rule 13(1A) of the Rules of Procedure only provided the flexibility for CE to deliver his Policy Address at any meeting within October. She pointed out that CE had delivered his Policy Addresses at the second meeting of a session in 1998 and 2001 only because a general election had taken place, and Members were required to take their Oath and elect the President at the first meeting of a new term. Ms HO further said that while she accepted that the timing for delivery of the Policy Address could be changed, LegCo must first be consulted on the change and the Administration should also provide an overall assessment on how the operation of LegCo would be affected.

29. Mr SZETO Wah pointed out that the Administration's proposal sought to defer the timing for delivery of the Policy Address to January for the whole five-year term of CE, and to combine the consultations on the revenue and expenditure proposals for the Budget. Mr SZETO considered that the issue involved important matters such as the constitutional convention and the autonomy of LegCo. He said that the Government of the HKSAR was accountable to LegCo under the Basic Law, and therefore the Government must not give directions or "orders" to LegCo. He stressed that it was the duty of CE to deliver Policy Addresses to LegCo, and any changes in such arrangements should only be made through consultation and discussion with LegCo. He strongly criticised the Administration for not consulting LegCo on the change in the timing for the Policy Address.

30. Mr James TO said that it was clear from paragraphs 3.13 to 3.16 of CRoP's progress report that the first meeting of a session should tie in with the delivery of the Policy Address. Mr TO further said that there could be serious consequences for the Administration to change the timing of the Policy Address unilaterally. He requested to put on record that he reserved the right to challenge the Administration's decision in court. He explained that he did not want to give the impression to the Administration that Members did not object to the proposal of deferring the Policy Address to January.

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31. Dr YEUNG Sum said that he was not convinced of the explanation given in CS's letter dated 3 July 2002 that narrowing the time gap between the Policy Address and the Budget would help ensure speedy implementation of new initiatives announced in the Policy Address, and the arrangement would be of benefit to the community at large. Dr YEUNG said that it was totally unacceptable for the Administration to change the established practice of LegCo without good reasons and without prior consultation with LegCo. Dr YEUNG added that while the new principal officials might need more time to provide input to the next Policy Address, he would not agree that the arrangement should continue for the whole five-year term of CE.

32. Dr YEUNG further said that information on the practice in some advanced overseas countries was provided in his letter dated 4 July 2002 which was tabled at the meeting. He pointed out that in the United States, the United Kingdom and Taiwan, the newly elected governments could deliver their policy addresses within three months after the election. As for Hong Kong, Dr YEUNG said that the community expected the Government to introduce immediate measures to tackle pressing problems, such as the high unemployment rate. The public would be greatly disappointed if the Policy Address was deferred to January next year.

33. Mr LEUNG Yiu-chung asked whether it was possible for Members to reach a consensus on the timing for the Policy Address so that such view could be conveyed to Ag CS.

34. Dr YEUNG Sum suggested that Members could request the Administration to adhere to the existing practice of delivering the Policy Address in October. Ms Emily LAU and Ms Cyd HO concurred. Ms LAU added that in his letter dated 25 June 2002, CS had recognised that it was the practice for CE to deliver his Policy Address in October of the year. She considered that the existing practice should continue before new arrangements were worked out between LegCo and the Administration.

35. Mr IP Kwok-him said that he would not insist that the Policy Address must be delivered in October if there were good reasons for deferring it to a later time.

36. Mr Andrew WONG said that the Administration's proposal actually raised two separate issues. Mr WONG was of the view that if there was a need to allow time for the new principal officials to provide input to the Policy Address, Rule 8 of the Rules of Procedure which provided that CE could address the Council at any time could cater for such a situation. As regards narrowing the time gap between the Policy Address and the Budget, Mr WONG said that this involved changing the long-standing practice of LegCo as the Policy Address was normally delivered in October. Mr WONG said that there should be detailed discussion with LegCo if the Administration intended

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to make it a long-term arrangement for the Policy Address to be delivered in January.

37. Mr LEUNG Yiu-chung requested that a vote should be taken on Dr YEUNG Sum's proposal, so that a majority view of the House Committee could be conveyed to Ag CS. The Chairman explained that the discussion amongst Members at the special meeting was only to enable Members to have a better understanding of the background to the promulgation of Rule 13(1A) in 1999. The Chairman advised that the question before Members was whether they would agree to the Administration's proposal to change the timing for the Policy Address to January. She said that as Members had expressed different views on the Administration's proposal, it would not serve any useful purpose for a vote to be taken on any Member's proposal. She advised that Members should raise their concerns directly with Ag CS who had just arrived at the meeting.

Meeting with Ag CS

38. The Chairman welcomed Mr Michael SUEN, Ag CS, and other government representatives to the meeting.

39. The Chairman said that Members had expressed grave concern about the Administration changing the timing for the Policy Address without prior consultation with LegCo. She asked Ag CS to explain to Members why such changes were necessary and why no prior discussion with LegCo had taken place.

40. Ag CS said that Mr Donald TSANG, CS, had explained the reasons for the changes in his letters dated 25 June and 3 July 2002 and to the Chairman and Deputy Chairman during their regular meetings in the past two weeks. Ag CS explained that it was the past practice for CE to deliver his Policy Address in October of the year, and for the Financial Secretary to announce the Budget in March the following year. There was thus a five-month gap between the Policy Address and the Budget, and this had resulted in a considerable delay in the implementation of those proposals in CE's Policy Address which required new funding. The Administration therefore proposed to change the timing for the delivery of the Policy Address to the second week of January, in order to narrow the time gap between the Policy Address and the Budget. The purpose was to ensure speedy implementation of new initiatives announced in the Policy Address, and this would be of benefit to the community at large.

41. Ag CS further said that the new principal officials had just assumed office and needed time to review the on-going programmes, consult the relevant parties and stakeholders, and identify their respective priorities in support of CE's next Policy Address. Taking into account of the lead time

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required to prepare the actual Address, keeping the existing timetable of delivering the Policy Address at October of the year would not be realistic or practical.

42. Ag CS advised that the Administration had therefore decided to defer the delivery of the next Policy Address to January next year, while the timing for the delivery of the Budget would remain unchanged. Ag CS added that previously there were separate consultations on the revenue and expenditure proposals for the Budget. To allow more time for the new Directors of Bureau to consult Members and the relevant parties on the 2003-04 Budget, the consultations on the revenue and expenditure proposals for the Budget would be combined and take place in November/December 2002. The Administration believed that the new arrangement would enable Members and the public to monitor the implementation of the policy initiatives announced in the Policy Address more effectively.

43. Ag CS said that the Administration recognised that the timing for delivery of the Policy Address would have implications on the work plan of LegCo. CS had therefore taken the earliest available opportunity to inform Members of the new arrangement, through his regular meeting with the Chairman and the Deputy Chairman of the House Committee on 24 June 2002. Ag CS added that he and the Director of Administration (D of Adm) attended this special meeting of House Committee to further explain the rationale for the revised timetable and exchange views with Members on the implications on LegCo's work plan.

44. Mr Andrew WONG sought clarification on whether the Administration's proposed new timetable would apply only to the next Policy Address or for the whole five-year term of CE. He said that although he accepted that the new timetable could be adopted exceptionally for the next Policy Address, he considered that the Administration should have detailed discussion with LegCo before deciding whether the new timetable should be adopted for subsequent years.

45. Ag CS responded that the Administration was now consulting Members on the revised arrangements for the next Policy Address, and as was the current practice, a review should be conducted following the delivery of the Policy Address next January.

46. Dr YEUNG Sum disagreed that the Administration had consulted Members on the new timetable. He pointed out that the Chairman and the Deputy Chairman of the House Committee were only notified of, and not "consulted" on, the new timetable during their regular meeting with CS on 24 June 2002. Dr YEUNG said that Members were also given the understanding that the new arrangement would be adopted for the whole five-year term of CE. Dr YEUNG asked whether the Administration had now changed its stance.

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47. The Chairman also pointed out that during the discussion with the Administration in 1999, CRoP was given the understanding that the Administration would continue to plan on the basis that Policy Addresses in subsequent years would be delivered in the month of October. The Chairman said that the Administration had now changed the arrangements without prior consultation with LegCo.

48. Ag CS explained that when CE would deliver a Policy Address was a matter for CE under the Basic Law. He said that the correspondence between D of Adm and the Chairman of CRoP in 1999 clearly reflected that Rule 13(1A) was not intended to impose any obligation on CE that he could only deliver his Policy Address at the first meeting in a session and not at any other time. Ag CS said that with the benefit of experience, a more logical timetable was now proposed for the delivery of the Policy Address. The new timetable would be implemented for the next Policy Address and subject to the usual review. As regards Members' concern about the lack of consultation with LegCo, Ag CS pointed out that the Administration would consult LegCo on how the revised timetable would affect LegCo's work plan. He reiterated that CS had taken the earliest opportunity to consult Members on the proposed arrangement, and there would be more detailed discussion at this meeting.

49. Dr YEUNG Sum stressed that it was undesirable for the Administration to change the established practice unilaterally without consulting LegCo. He said that the Administration should take active steps to consult Members on such important changes, if it really wanted to work in partnership with LegCo.

50. Ag CS reiterated that it was the Administration's intention to adopt the new timetable for the whole five-year term of CE, but a review would first be conducted after the arrangement was tried out for the next Policy Address. He said that Members would be consulted on the detailed arrangements.

51. Secretary for Constitutional Affairs (SCA) stressed that it was the Administration's aim, and the objective of the accountability system, to strengthen partnership with LegCo. He said that the proposed timing for the next Policy Address was to allow more time for the new principal officials to gauge views on their policy proposals, and to narrow the time gap between the Policy Address and the Budget. SCA added that the new timetable would enable more effective implementation of the policy initiatives.

52. Ms Miriam LAU agreed that the new timetable could be adopted for the next Policy Address to allow time for the new principal officials to settle in at their posts, but the question of whether the new arrangement should continue in subsequent years should be subject to discussion with LegCo. She stressed that there must be a process of consultation with LegCo if the Administration wished to change an established practice. She pointed out that LegCo had

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detailed discussion with the Administration last year on the proposal to change the arrangements for the debate on the Policy Address.

53. Mr Albert CHAN said that the public had expectations that the next Policy Address would provide some measures to address the pressing social and economic problems. He further said that the public would be greatly disappointed if the Policy Address was to be deferred, and the new principal officials did not take any action to tackle these problems in the meantime.

54. Ag CS responded that CE had already outlined some important policy directions, such as to develop a population policy, at the beginning of his new term in July 2002. Some new principal officials had also started meeting with Members and relevant parties to gauge their views on policy proposals. He said that some lead time was required for the principal officials to formulate their policies in support of the preparation of the Policy Address. He added that Members would definitely be consulted in the process of drawing up the Policy Address.

55. Mr LEE Cheuk-yan expressed regret that CS had not consulted LegCo on revising the timing for the delivery of the Policy Address. He said that as far as he knew, the Administration had been contemplating the change for quite some time, and he could not understand why the Administration had not consulted LegCo earlier on such an important change. He was of the view that the Administration did not show any respect to LegCo in the way it handled the matter.

56. Ag CS explained that CE had the authority to determine when to deliver his Policy Address and that CS had already taken the earliest opportunity to consult Members. In response to Mr LEE Cheuk-yan's further question, Ag CS advised that there had been internal discussion within Government on the new arrangements.

57. Mr SZETO Wah said that Article 75 of the Basic Law provided that "the Rules of Procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene the Basic Law". He further said that it was for LegCo to interpret its rules, and the Administration could not direct LegCo to follow what the Administration considered to be the correct interpretation of Rule 13(1A) of the Rules of Procedure. He asked the Administration to confirm whether it was still of the view that Rule 13(1A) was not consistent with the Basic Law. He added that Rule 13(1A) of the Rules of Procedure was formulated in 1999 based on the understanding that CE would continue to deliver his Public Address in October each year.

58. Solicitor General responded that based on his understanding of the discussion at the meeting, Members did not seem to have disputed the interpretation of Rule 13(1A) of the Rules of Procedure. He said that in the

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light of the correspondence exchanged between the Chairman of CRoP and the Administration when Rule 13(1A) was drafted and formulated in 1999, the Rule did not limit CE that he could only deliver his Policy Address at the first Council meeting, and not other meetings, in a session. He further said that if Members accepted that Rule 13(1A) was formulated to reflect such intention, the Rule was not in contravention of the Basic Law.

59. Ag CS said that Article 64 of the Basic Law stipulated that the Government of the HKSAR "shall present regular policy addresses to the Council", and Rule 8 of the Rules of Procedures provided that CE could address the Council at any time "as he shall think fit". He considered that Rule 13(1A) could hardly be interpreted in such a way that it would prohibit CE from delivering his Policy Address at a time other than the first Council meeting.

60. Mr NG Leung-sing said that the content of a Policy Address was more important than the timing of its delivery. He further said that it would not be in the public interest to receive an ill-conceived Policy Address in October, if the new principal officials really needed more time to formulate their work plans for the coming year. Mr NG suggested that the Administration should designate a team to study the impact of any proposed changes which might affect the operation of LegCo, in order to improve the relationship between the Administration and LegCo and make it easier for LegCo to "adapt" to such changes.

61. Ag CS said that the new principal officials had already started to cultivate constructive relationship with Members and made their best efforts to answer Members' questions at Council meetings. He believed that there would be even better communication between the Administration and LegCo with the implementation of the accountability system for principal officials.

62. Mr LEUNG Fu-wah said that according to the record of proceedings on the debate on the resolution to amend the Rules of Procedure at the Council meeting on 28 April 1999, CS had stated that the Administration had reservations about Rule 13(1A). Mr LEUNG noted that it was the understanding at that time that Rule 13(1A) was not to impose any obligation on CE to deliver a Policy Address at the first meeting of a session and not at any other time. Mr LEUNG was of the view that if the Administration's present proposal was consistent with such understanding and was legally in order, he did not see any need for Members to further discuss whether the Administration had been disrespectful to LegCo.

63. Mr Howard YOUNG said that he agreed that the new principal officials needed time to familiarise with their policy portfolios, and CE had given a speech in July 2002 that resembled a Policy Address. However, he did not agree that the Administration's proposed timetable was the only option to

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narrow the time gap between the Policy Address and the Budget. He said that the Administration should consider all relevant factors, such as the commencement of a new term after a general election, when formulating arrangements on a long-term basis. He urged the Administration to consult LegCo on such proposals, so that any operational problems could be resolved at an early stage.

64. Ag CS assured Members that the Administration would review the arrangements in the light of the experience for the delivery of the next Policy Address, and all relevant factors would be taken into consideration.

65. Mr James TO said that while Article 64 of the Basic Law stipulated that the Government of HKSAR should present regular Policy Addresses to LegCo, the Basic Law did not specify that CE could deliver his Policy Address at any time he liked. Mr TO sought clarification on whether the address to be made by CE on 8 January 2003 was a Policy Address under Rule 13(1A), or an address made under Rule 8(a) of the Rules of Procedure. He said that the process of debate would be different under these Rules.

66. Responding to Mr James TO, Solicitor General explained that Rule 13(1A) did not impose an obligation on CE to deliver his Policy Address only at the first meeting of a session and not at any other time. He said that the issue should be looked at in the light of the overall constitutional setting and the relevant provisions in the Basic Law. He advised that Article 73(4) of the Basic Law stipulated that it was one of the functions of LegCo to receive and debate the Policy Addresses of CE, but no timeframe was specified in the Basic Law in this respect. Solicitor General reiterated that Rule 13(1A) of the Rules of Procedure would not contravene the Basic Law if the understanding was that the Rule did not impose an obligation on CE to deliver his Policy Address only at the first meeting of a session and not at any other time.

67. Ag CS said that since the Basic Law had not specified when CE should deliver his Policy Address, it would not contravene the Basic Law for CE to deliver his next Policy Address in January 2003.

68. Ms Audrey EU stressed that there must be prior consultation with LegCo on changes that affected LegCo. She emphasised that it was not solely a legal question of whether CE or the Administration had the "authority" to determine the timing for the delivery of Policy Addresses, it was also a matter of partnership between the Administration and LegCo, and a matter of accountability to LegCo and to the public. Ms EU said that while she accepted that the new timetable could be adopted exceptionally for the next Policy Address, it was the established practice for CE to deliver his Policy Address at the first meeting of a session, and CE should not change the timetable as freely as he liked.

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69. Ag CS responded that the Administration had tried to provide a balanced view to Members by explaining the legal basis of the revised timetable. He said that most Members accepted that there was a practical need to adopt the new timetable for the next Policy Address. He further said that although it was the Administration's intention to adopt the new timetable in subsequent years, the Administration would review the arrangement in the light of experience and views expressed by Members.

70. SCA added that CE had the authority under the Basic Law to determine when he would deliver his Policy Address, and the delivery of regular Policy Addresses was one of the four areas for which the Government of the HKSAR was accountable to the LegCo under the Basic Law.

71. The Legal Adviser pointed out that the relevant provisions in the Basic Law cited by the Administration only set out the constitutional responsibilities of the Executive Authorities and the Legislature. These provisions did not refer to such responsibilities as the "authority" of CE or the Government of the HKSAR, and they should be understood as imposing constitutional obligations on the CE.

72. Ms Cyd HO was of the view that the point at issue was that the Administration had not consulted LegCo before formulating the new timetable for the delivery of the Policy Address and the Budget. She doubted whether the Administration had fully assessed the implications of the revised timetable on LegCo and on the community. Ms HO asked whether the Directors of Bureau would be required to cap their expenditure for the coming year at the annual growth rate of 1.75%. She was concerned that the Directors of Bureau would no longer have a role to play in next year's resource allocation exercise as there would not be any new money. She considered that the Administration had the responsibility to explain to LegCo and the public if there would be changes to the preparation of the Budget.

73. Ag CS responded that he could not answer on behalf of the Financial Secretary whether substantive changes would be made to the preparation of the Budget. However, he assured Members that the Directors of Bureau would be consulted in the process. He further said that there were merits in combining the consultations on the revenue and expenditure proposals for the Budget.

74. Mr James TIEN said that the Administration had given Members the impression that it had adopted an "executive-led" approach and did not consider it necessary to discuss with LegCo prior to making changes to the established practice. He further said that had the Administration consulted LegCo on the new timetable for the delivery of the Policy Address, Members could have given their views earlier for better implementation of the proposal. Mr James TIEN added that he did not see any reason for CE and his team to take six months to prepare the Policy Address as CE was already in his second

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term. He asked what benefits the revised timetable for the delivery of the Policy Address would bring to the community.

75. Mr James TIEN added that the deferment of the Policy Address had upset the work schedules of LegCo during the three months from October to December, as LegCo normally planned its work after receiving the Policy Address. Mr TIEN asked whether the Administration had considered other options to narrow the time gap between the Policy Address and the Budget, such as advancing the delivery of the Budget and changing the beginning of a financial year to January each year.

76. Ag CS responded that the Administration recognised that the revised timetable would have implications on the operation of LegCo and it was necessary to consult Members. While the next Policy Address would be deferred to January 2003, he believed that LegCo would be occupied with its normal business, such as scrutiny of bills and monitoring the work of Government during the period from October to December. As regards the suggestion of changing the definition of a financial year, Ag CS said that it would involve amendments to the relevant legislation and the proposal would require careful consideration.

77. Mr CHAN Kam-lam agreed that the delivery of the next Policy Address could be deferred to 8 January 2003. He stressed, however, that the Administration should consult LegCo as soon as possible on the arrangements for subsequent years. He also agreed that there was a need to narrow the time gap between the Policy Address and the Budget, and requested the Administration to consider other options such as maintaining the practice of delivering the Policy Address in October of the year, but advancing the presentation of the Budget to January the following year.

78. Ms Emily LAU criticised the Administration for not consulting LegCo on changes relating to the delivery of the Policy Address and consultations on the Budget. She said that the Administration's approach was totally unacceptable. Ms LAU further said that she had requested the LegCo Secretariat to research into the practice of overseas countries to assist Members in their consideration of the arrangements for subsequent years.

79. Dr YEUNG Sum said that Members belonging to the Democratic Party were opposed to the delivery of the Policy Address in January, as it was the established practice for CE to deliver his Policy Address in October, and there had not been any prior consultation with LegCo on the proposed change. Dr YEUNG further said that he was not convinced that the principal officials needed such a long time to prepare for the Policy Address, as they were assisted by their Permanent Secretaries who were very experienced and familiar with the respective policy areas. Moreover, experts could be engaged to carry out policy research and studies where necessary. He therefore did not

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consider it necessary for the delivery of the Policy Address to be deferred. Dr YEUNG added that he, nevertheless, appreciated that Ag CS had proposed at the meeting that the new arrangement would only be tried out for the next Policy Address, and a review would be carried out afterwards. He urged the Administration to discuss with CRoP as soon as possible with a view to reverting to the practice of delivering the Policy Address in October.

80. Mr Andrew WONG pointed out that it was the long-standing practice of LegCo to receive the Policy Address in October, and the Administration should not seek to change the practice and the system of LegCo unilaterally without discussion with LegCo. Mr SZETO Wah concurred.

81. Mr LEE Cheuk-yan expressed concern whether there would be new money for new services next year. He requested the Administration to provide a paper to explain the resource allocation mechanism for the 2003-04 Budget and the relationship between the Policy Address and the Budget. He said that it would be difficult for Members and the parties concerned to make suggestions on next year's Budget without any information on how the Budget would be worked out.

82. Mr LEE Cheuk-yan further said that he did not believe that the new principal officials would need six months to formulate their policy proposals and to provide input to the Policy Address. He pointed out that the new principal officials had already been talking to the media about their new policy initiatives. He added that the Policy Address would be no more than a formal announcement of those policy initiatives for which resources had been allocated.

83. In response to Members' concern, Ag CS said that he had clarified the Administration's position at the meeting, and the majority of Members had expressed agreement to adopting the revised timetable for the next Policy Address. He undertook that the Administration would review the arrangements as soon as possible and consult Members on whether the revised timetable would continue in subsequent years. Ag CS said that D of Adm was ready to further discuss with Members the detailed arrangements if necessary.

84. As regards the consultations on the Budget, Ag CS said that the purpose was to gauge views from Members, the relevant parties and stakeholders on the Budget proposals. The Administration would then work out the priorities for the various services and initiatives. Should there be insufficient money for the implementation of services, the Administration would consider redeployment of resources, for example, from the less cost-effective services to the more pressing and worthwhile services.

85. In concluding the discussion, the Chairman said that Members had expressed strong dissatisfaction that the Administration had not consulted

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LegCo on the new timetable for the delivery of the Policy Address and the Budget. The Chairman stressed the importance of mutual respect and partnership between the Administration and LegCo. She pointed out that LegCo had always consulted the Administration when proposing amendments to the Rules of Procedures, and she urged that the Administration should also discuss with Members important proposals or changes which affected LegCo.

86. On the timing for the delivery of the Policy Address, the Chairman said that some Members agreed that the new principal officials needed time to familiarise with their policy areas and provide input to the next Policy Address. The Chairman pointed out that Members had reservations that the revised timetable should be implemented on a long-term basis, as it involved substantial changes to the operation of LegCo. She said that the Administration should discuss with CRoP as soon as possible the revised timetable and the detailed arrangements for the next Policy Address, and also the arrangements for subsequent years. She added that the discussion should include consultation on the Budget and how the Budget would tie in with the Policy Address. The Chairman suggested that CRoP should consult all Members on the proposals.

87. Ag CS apologised for not having consulted Members earlier on the revised timetable for the delivery of the Policy Address. He agreed that the Administration should discuss with CRoP as early as possible the detailed arrangements for the debate on the next Policy Address under the new timeframe. He also undertook that the Administration would conduct a review based on the experience in 2003, and consult Members as soon as possible on the arrangements for subsequent years.

88. The Chairman proposed that subject to CE publishing in the Gazette under section 9(2) of the Legislative Council Ordinance that the 2002-2003 ordinary session of the LegCo was to begin in October this year, a recommendation should be made to the President that the first Council meeting in the next session should be held in the second week of October. Members agreed.

III. Report of the Bills Committee on United Nations (Anti-Terrorism Measures) Bill

(LC Paper No. CB(2) 2479/01-02)

89. Mr LAU Kong-wah, Chairman of the Bills Committee, said that the Bills Committee had completed scrutiny of the Bill and provided a further report on the deliberations of its meetings held on 2 and 3 July 2002.

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90. Mr LAU Kong-wah informed Members that the Administration had agreed to delete the relevant provisions in the Bill relating to procedures to be provided by rules of court, the power to make regulations for freezing of property (other than funds) and certain provisions in Schedules 1, 2 and 3. Mr LAU added that members had expressed concern about the deletion of the other provisions relating to the investigative powers, seizure and detention powers as the Administration needed more time to work out the details. In response to members' concerns, the Administration had agreed to introduce an amendment bill, which would be submitted to LegCo in the last quarter of 2002, to provide for these relevant provisions.

91. Mr LAU said that at the last meeting of the Bills Committee, a vote was taken on whether the resumption of the Second Reading debate on the Bill on 10 July 2002 should be supported. The voting result was that six members were in support of the resumption of the Second Reading debate on 10 July 2002, and three members voted against the proposal.

92. Ms Cyd HO said that she objected to the resumption of the Second Reading debate on the Bill. Referring to paragraph 37 of the report of the Bills Committee, Ms HO clarified that as there was a relaxation of anti-terrorist measures internationally, there was a need to review the provisions in the Bill periodically to ensure that they were in line with the international trend.

93. Ms Audrey EU said that she was a member of the Bills Committee, but she was unable to attend its last meeting due to other commitments. Ms EU further said that she personally did not agree that the scrutiny work had been completed. She pointed out that at the last meeting of the Bills Committee, the Administration still could not provide the final version of some Committee Stage amendments (CSAs). It was therefore not possible for members to decide whether they should move their own amendments. She added that given the tight timeframe for examination of the Bill, the Bills Committee did not have time to discuss with the Members concerned their proposed CSAs. Moreover, it had not been possible to invite the deputations which had given views to the Bills Committee to comment on the proposed CSAs. Ms EU expressed regret about the way the Administration had handled the matter.

94. Members noted that the majority of the members of the Bills Committee supported the resumption of Second Reading debate on 10 July 2002.

95. The Chairman advised that as the Bills Committee had completed its work, the vacant slot would be taken up by the Bills Committee on Companies (Amendment) Bill 2002 on the waiting list, as agreed at the last meeting.

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IV. Proposed subcommittee to review the distribution of work among Panels in the light of the reorganisation of policy bureaux under the accountability system for principal officials

96. The Chairman said that at the House Committee meeting on 21 June 2002, Members agreed to defer to this meeting the consideration of the proposal of forming a subcommittee under the House Committee to review the distribution of work among Panels, in the light of the reorganisation of policy bureaux under the accountability system for principal officials.

97. Mr CHAN Kam-lam said that there was no pressing need to review the operation of Panels, and the principal officials could attend meetings of the relevant Panels as and when necessary. He suggested that Members might wish to review the situation after the accountability system for principal officials had been implemented for some time.

98. The Chairman proposed that discussion of the proposal be deferred to the next session. Members agreed.

99. There being no other business, the meeting ended at 5:40 pm.