

立法會

Legislative Council

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**Legislative Council
Subcommittee to Study the Proposed
Accountability System for Principal Officials and Related Issues**

**Minutes of the second meeting
held on Monday, 29 April 2002 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present : Hon IP Kwok-him, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon NG Leung-sing, JP
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon LI Fung-ying, JP
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok

Members : Hon James TIEN Pei-chun, GBS, JP
Absent : Hon Eric LI Ka-cheung, JP
Hon Margaret NG
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Michael MAK Kwok-fung

Public Officers : Mr Michael M Y SUEN
Attending : Secretary for Constitutional Affairs

Mr Joseph WONG Wing-ping
Secretary for the Civil Service

Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Clerk in : Mr Paul WOO
Attendance : Acting Chief Assistant Secretary (2)6

Staff in : Mr Jimmy MA, JP
Attendance : Legal Adviser

Mrs Justina LAM
Assistant Secretary General 2

Miss Monna LAI
Assistant Legal Adviser 7

Miss Lolita SHEK
Senior Assistant Secretary (2)7

The Chairman informed members that Hon Andrew CHENG Kar-foo had withdrawn his membership of the Subcommittee.

2. Ms Audrey EU protested that the Subcommittee had to meet twice a week because of the deadline set by the Administration to implement the proposed accountability system on 1 July 2002.

3. The Chairman also informed members that Mr LEE Cheuk-yan had proposed to shorten the duration of each meeting from four to two hours. The Chairman said that because of the large membership of the Subcommittee, the arrangement of double sessions should be maintained, but the duration of a meeting could suitably be shortened where appropriate, depending on the circumstances and progress of discussion.

I. Principal officials under the proposed accountability system for principal officials

Post of the Secretary for Justice (SJ)

4. Ms Audrey EU said that she strongly objected to the Administration's proposal to include the post of the SJ under the proposed accountability system for principal officials. Ms EU further said that she was extremely disappointed that the Administration had ignored the concerns about the post being filled by a political appointee expressed by some Members and the Hong Kong Bar Association in past discussions. Ms EU added that the Administration had failed to learn its lesson from the public outcry about the decisions made by SJ not to prosecute certain individuals, and SJ's decision to seek interpretation of the Basic Law (BL) from the Standing Committee of the National People's Congress. Ms EU reiterated that including the post of SJ in the proposed system would undermine the independence and impartiality of the post as an institutional safeguard to uphold justice.

5. Mr Andrew WONG said that he could accept the Administration's proposal of including the post of SJ in the proposed system. However, if SJ was to be politically appointed, the Director of Public Prosecutions (DPP) should be given the quasi-judicial functions of SJ as well as the power to take prosecution decisions independently. Mr WONG also suggested that the post of DPP should be appointed by the Chief Executive (CE), and the appointee should be nominated by a committee formed by members of the legal profession.

Secretary for the Civil Service (SCS) and the Civil Service

6. Some members expressed concern about the Administration's proposal that the post of SCS would be filled by a political appointee. These members

were also worried that the civil service would not be able to maintain its political neutrality under the proposed system. Dr YEUNG Sum said that a politically appointed SCS might put his political career above staff interests. He also suggested that the post of SCS should be filled by a civil servant so as to act as a "firewall" against politicisation of the civil service. Ms LI Fung-ying expressed concern that as the Administration had proposed that principal officials would have a strong say in the deployment of personnel working directly under them, it would encourage a culture of "shoe-shining" in the civil service. Dr Hon Raymond HO considered that a politically appointed SCS might not be able to fully represent or speak for the interests of the civil servants in situations where their interests, in matters such as civil service pay and size of the civil service, differed from those of the Administration and the community.

7. Mr Andrew WONG expressed concern that as SCS would be a political appointee, the present system of posting and promotion would be politicised. Mr WONG suggested that an arrangement similar to the United Kingdom (UK) should be put in place. Mr WONG explained that in the UK, the responsibility for central coordination and management of the civil service rested with the Prime Minister as Minister for the Civil Service. The Prime Minister was supported by the Head of Home Civil Service who was a senior civil servant. Mr WONG added that consideration should be given to appointing a Permanent Secretary at D10 rank as head of the civil service.

8. SCS said that as the principal officials would be held responsible for the success or failure of their policies, they should have greater influence in the choice of their supporting staff as well as the share of financial resources allocated to them. SCS further said that he did not see any grounds for fearing that the interests of civil servants would be affected by the proposed accountability system. He pointed out that effective mechanisms, including a well-established performance appraisal system, were in place in the civil service to ensure that appointment and promotion exercises were conducted in a fair and open manner. The Public Service Commission, as an independent advisory body, was responsible for monitoring the appointment, promotion and disciplinary matters in the civil service. There were also avenues for redress whereby aggrieved civil servants could lodge complaints against unfair treatment with their heads of department or directly with SCS. SCS added that forcing a civil servant to act improperly in the discharge of his public duties would be dealt with in accordance with existing laws and regulations.

9. Mr Andrew WONG requested the Administration to explain the role, if any, to be played by the Public Service Commission in the appointment of the principal officials, including SCS, under the proposed accountability system.

10. Mr CHEUNG Man-kwong said that SCS should be a Permanent Secretary underpinning the Chief Secretary for Administration (CS). He

pointed out that only under such an arrangement would civil servants be able to perceive their head of service as someone who was prepared to identify himself with the values and interests of the civil service.

11. SCS responded that that CE had stated clearly that the civil service would remain permanent, meritocratic and politically neutral, and the well-established systems in the civil service would remain unchanged under the accountability system. One of the major tasks of SCS was to safeguard the core values of the civil service. As the post-holder of SCS would be appointed from within the civil service and would become a member of ExCo, he would bring his civil service experience and perspective, including knowledge of the interests and concerns of the civil servants and the core values of the civil service, to bear on the decision-making process in ExCo.

12. SCS said that he could not agree to the concept of SCS acting as a "firewall" put forward by Dr YEUNG Sum. He further said that the political neutrality of the civil service should not be "romanticised". Civil servants should offer their opinions and advice during the formulation of a policy. However, once a decision on the policy was taken, it was the duty of civil servants to ensure that the policy would be implemented successfully, and they should no longer express personal views on the policy in question. SCS stressed that the new accountability system would not change the present situation in this regard. SCS pointed out that although some civil servant associations had expressed concern about the impact of the proposed accountability system on the civil service, most of them had indicated support for the proposed system. SCS added that a code would be issued to set out clearly, among other things, the relationship between principal officials and civil servants under the proposed system.

13. Secretary for Constitutional Affairs (SCA) added that the role of civil servants was not to check and balance the Administration. Civil servants should understand that once a policy was decided by the Government, civil servants had the responsibility to uphold the policy and ensure that it is smoothly implemented. If individual civil servants did not adhere to the agreed policy, they were in breach of internal regulation and would be subject to disciplinary action.

14. Mr LEE Cheuk-yan opined that there would be conflicts in the role of SCS if SCS was to formulate civil service policy and, at the same time, manage the civil service and act as the guardian of civil servants' interests.

15. SCS said that office-holders of the post of SCS in the past had all along been involved in the formulation of civil service policy, and there had been no conflicts in their performance of the role of SCS. He said that the accountability system should cover all government policies. As civil service policy was an important government policy, SCS would be one of the principal

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officials under the accountability system. He would be responsible to CE for civil service policy and the management of the civil service. SCS said that, speaking from his personal experience, there would not be any role conflict if the SCS could balance the interests of all parties concerned. He further pointed out that under the proposed system, SCS would be appointed from within the civil service so that civil servants' interests and concerns could be fully represented.

16. Hon Cyd HO asked whether a SCS who had resigned or had been removed from office could return to the civil service, and if so, how such arrangement would operate in practice. SCS explained that if it was found that the civil servant concerned was not suitable or not competent enough to be SCS, he should be allowed to return to the civil service. However, if the SCS had committed mistakes or dereliction of duty, he might face disciplinary action. Ms Cyd HO requested the Administration to provide a written response to her query.

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17. Mr Howard YOUNG commented that as SCS would be a member of Executive Council (ExCo), he would have to implement whatever policy had been decided by ExCo, even if the policy was not in the interests of the civil service. Mr YOUNG further asked whether SCS would replace CS as head of the civil service under the proposed accountability system. SCS responded that since CS was the most senior civil servant in the Government at present, he was often referred to as the head of civil service. The term "head of the civil service" was therefore only a concept, not a post title. SCS added that under the accountability system, SCS would be answerable directly to CE for policy issues concerning the civil service.

Permanent Secretaries

18. Mr NG Leung-sing said that the principal officials might encounter difficulties in ensuring the successful implementation of government policies since the actual management of the operation of the executive departments rested with the Permanent Secretaries, but the latter needed not be held personally accountable for any policy failure. SCS responded that it was unlikely that such a problem would arise, as the Permanent Secretaries would continue to abide by the highest standards of public service and make their best endeavour to support the principal officials.

The functions, composition and operation of the Executive Council

19. Ms Audrey EU noted that there were 689 references to "the Chief Executive in Council" in the laws of Hong Kong, some of which were related to public appeals or objections against decisions of principal officials. She expressed concern that with the implementation of the proposed accountability system, conflict of interest situations might arise when CE in Council

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considered such appeals or objections, as the principal officials would be members of ExCo.

20. SCA responded that concern could be addressed under the current arrangement, i.e. when CE in Council heard an appeal against a decision of a bureau or department which came under the remit of a policy secretary who was a member of ExCo, the official concerned might need to stand down from the appeal in question.

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21. Ms Audrey EU requested the Administration to explain in writing the operation of the 689 references to "the Chief Executive in Council" in the laws of Hong Kong, and how appeals against decisions of principal officials presently dealt with by CE in Council would in future be handled when the principal officials appointed under the proposed accountability system would also be appointed as ExCo members.

22. Mr CHEUNG Man-kwong noted that Article 56 of the Basic Law (BL) provided that CE should consult ExCo before making important policy decisions. If CE did not accept a majority opinion of ExCo, CE should put the specific reasons on record. He considered that this requirement in BL 56 enabled ExCo to check and balance CE's decision-making power. Mr CHEUNG expressed concern that with the implementation of the proposed accountability system, the majority of ExCo members would be the principal officials, who would be answerable directly to CE. It was therefore questionable whether the principal officials would take a different view from that of CE when deliberating policy issues in ExCo.

23. Mr TAM Yiu-chung said that he was a member of the former Drafting Committee for BL. He pointed out that BL 54 stated that the function of ExCo was to assist CE in policy-making. BL 56 specified that CE had the authority not to accept a majority opinion of ExCo, and in such cases CE needed only to put down the reasons on record. He further said that while BL 55 specified the membership of ExCo, the authority was vested in CE to decide the actual number and the composition of ExCo members.

24. SCA agreed that BL 56 should be read together with BL 54 and BL 55. He stressed that the role of ExCo was not to check and balance CE's decision-making authority, and that the accountability system would not change the existing role and functions of ExCo.

25. Mr CHEUNG Man-kwong and Ms Cyd HO requested the Administration to provide a written response to the following issues -

- (a) the legislative intent of BL 56 and how such intent could be achieved;

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- (b) the circumstances under which a record of CE not accepting a majority opinion of ExCo would be made public;
- (c) how such records had been kept since 1 July 1997 and the public officer/authorities responsible for keeping such records; and
- (d) whether the present arrangement for keeping such records would be reviewed with a view to making the arrangement more transparent under the proposed accountability system.

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26. Mr SZETO Wah asked if CE would be responsible for policy failure in cases where he made an important policy decision despite opposing views from the majority of ExCo members. SCA responded that ExCo would continue to function on the basis of collective responsibility under the accountability system. Principal officials would be held individually accountable for policy failure since they were responsible for the formulation and implementation of policies within their respective portfolios. He added that where ExCo expressed disagreement to a particular policy proposal, the principal official concerned would have to reconsider the issue again in every detail.

Consistency with the Basic Law

27. Mr Albert HO opined that the proposed accountability system might contravene the requirements in BL 48(5) and BL 103 relating to appointment of principal officials, and the appointment and promotion of public servants. The Chairman said that the issues raised by Mr HO would be discussed in detail at the next meeting on 3 May 2002.

28. Ms Cyd HO requested the Administration to provide the full text of the court judgments referred to in the Administration's paper entitled "The Constitutionality of the Accountability System" (issued under LC Paper No. CB(2)1735/01-02(01)) for the Subcommittee's consideration.

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Splitting, merging and retention of bureaux

29. Mr Andrew WONG said that in his view, each principal official could oversee more than one policy portfolio so that the number of principal officials would be reduced. Mr CHAN Kam-lam commented that some of the bureaux, such as the Commerce, Industry and Manpower Bureau, and the Environment, Health and Welfare Bureau, would become so large in size after the proposed amalgamation that they would be overloaded with responsibilities. Mr CHAN also queried the appropriateness of merging the portfolio of Commerce and Industry with that of Manpower, as the arrangement might be seen as putting the interests of the business sectors above those of the working class and the lower income sectors. He considered it more appropriate for the Manpower

portfolio and the Education portfolio to come within the purview of one principal official.

30. SCA explained that in considering amalgamating the various policy portfolios, the Government had tried to balance the need to contain the number of senior posts under the new set up and the need to ensure that the scope of responsibility of each principal official was reasonable and manageable. The proposed arrangements sought to merge related portfolios together to facilitate more efficient and effective operation of the bureaux.

31. As regards the proposed merging of the Manpower portfolio with Commerce and Industry, SCA advised that the reorganisation was considered appropriate because policy issues relating to promotion of employment, manpower planning and training and development of the economy had important bearing on each other.

32. The Chairman said that matters relating to splitting, merging and retention of bureaux would be discussed in detail at a later meeting.

II. Any other business

33. Mr Albert HO requested the Administration to provide written clarification on the following issues to facilitate discussion at the next meeting on 3 May 2002 -

- (a) the differences between "civil servants" and "public servants"; and whether their conduct in public office was subject to the same types and extent of regulatory control under existing law, such as the Prevention of Bribery Ordinance;
- (b) the "status" of the Code of Practice which would, among other things, set out the relationship between principal officials and civil servants and safeguard the core values of the civil service; whether the Code of Practice would be a set of internal guidelines, or whether it would have legal backing;
- (c) the status of the Permanent Secretaries being subordinates of principal officials; would the status be established by legislative means, or through administrative measures; and
- (d) changes to the powers and functions of CS and the Financial Secretary; whether such changes would be effected through legislative means or administrative measures.

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III. Date of next meeting

34. The next meeting of the Subcommittee would be held on Friday, 3 May 2002 from 8:30 am to 12:45 pm.

35. There being no other business, the meeting ended at 12:12 pm.

Council Business Division 2
Legislative Council Secretariat
26 June 2002