

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 thirteenth meeting
held on Friday, 31 May 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
Hon James TIEN Pei-chun, GBS, 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 Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Attending : Hon Fred LI Wah-ming, JP
Hon SIN Chung-kai
Hon Andrew CHENG Kar-foo
Hon LAU Ping-cheung

Members Absent : Hon Eric LI Ka-cheung, JP
Hon Margaret NG
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon MA Fung-kwok

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

Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs

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

Miss Jennifer MAK
Deputy Secretary for the Civil Service (3)

Mr I G M WINGFIELD
Law Officer (Civil Law)

Mr R C ALLOCK
Solicitor General

Mr P H H WONG
Senior Assistant Solicitor General

Mr Allen LAI
Senior Government Counsel

Mr W L CHEUNG
Senior Government Counsel

Ms Vicki LEE
Senior Government Counsel

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

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

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Mrs Justina LAM
Assistant Secretary General 2

Miss Monna LAI
Assistant Legal Adviser 7

Miss Mary SO
Senior Assistant Secretary (2)8

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I. Matters arising

Splitting, merging and retention of bureaux

Revised policy portfolios

Members noted that during the motion debate on "Accountability System for Principal Officials" held at the Council meeting commencing on 29 May 2002, the Chief Secretary for Administration (CS) had announced that the policy portfolios of the 11 bureaux would be revised. The main changes were that -

- (a) the Environment portfolio would come under the same principal official responsible for the Transport and Works portfolios;
- (b) the Food and Environmental Hygiene portfolio would come under the Secretary for Health, Welfare and Food;

- (c) the Labour portfolio would come under the same principal official responsible for the Economic Development portfolio;
- (d) manpower development including training and retraining of the workforce would remain with the Secretary for Education and Manpower; and
- (e) the Information Technology portfolio would come under the same principal official responsible for the Commerce and Industry portfolio.

2. As a result of the proposed changes, the post titles of the 11 Directors of Bureau would be as follows -

- (a) Secretary for the Civil Service (SCS);
- (b) Secretary for Commerce, Industry and Technology;
- (c) Secretary for Constitutional Affairs (SCA);
- (d) Secretary for Economic Development and Labour;
- (e) Secretary for Education and Manpower;
- (f) Secretary for the Environment, Transport and Works;
- (g) Secretary for Financial Services and the Treasury;
- (h) Secretary for Health, Welfare and Food;
- (i) Secretary for Home Affairs;
- (j) Secretary for Housing, Planning and Lands; and
- (k) Secretary for Security.

Portfolios of Environment, Transport and Works

3. Ms Emily LAU, Ms Cyd HO, Miss CHOY So-yuk and Mr Fred LI expressed strong reservation about the proposal of placing environmental protection and pollution control matters and the Transport and Works portfolios under the same principal official. They were worried that infrastructure development needs and environmental protection and conservation needs conflicted with each other, and that the former needs would prevail over the latter needs. Ms Emily LAU pointed out that in some countries, environmental conservation and sustainable development were accorded the highest priority. As the Chief Executive (CE) had time and again said that he was very concerned about the environment, the portfolio should be given to a principal official who was not given responsibility over other policy areas so that he could have an independent voice to fight for resources. She requested the Administration to consider the proposal.

4. Mr LEE Cheuk-yan criticised the Administration for not conducting any consultation before deciding on the proposed changes. Miss CHOY So-yuk was of the view that the revised proposal was more "disastrous" than the original proposal. She considered that the Environment portfolio should come under an

independent bureau or merge with the Planning portfolio, but definitely not with the Transport and Works portfolios.

5. Dr Raymond HO considered that although the Administration's revised proposal was not the best, it was acceptable as he did not wish to see the establishment of too many bureaux. Dr HO also took the view that the amalgamation of these portfolios would enable conflicts to be sorted out within the bureaux, and hence would result in better use of resources and more efficient and effective implementation of policies under these portfolios.

6. Mr Howard YOUNG said that Members belonging to the Liberal Party were in support of the Administration's revised proposal.

Portfolios of Health, Welfare and Food

7. Mr Fred LI said that the bureau overseeing the portfolios of Health, Welfare and Food would become a "super bureau" as the Director of Bureau would be responsible for almost one-third of government expenditure for providing services to the community and an enormous number of staff. As the Food portfolio covered both food safety and environmental hygiene matters, Mr LI was concerned whether the Director would be overburdened.

Portfolios of Economic Development and Labour

8. Ms LI Fung-ying expressed concern about how the interests of the labour sector and those of the business sectors could be balanced under the revised proposal of placing labour and employment matters under the same principal official responsible for Economic Development. She considered the revised proposal not well thought-out and no better than the original proposal of putting the Manpower and Commerce portfolios under the same bureaux. Ms LI pointed out that as the working population stood at about 3 million, there should be a dedicated bureau for the Manpower portfolio.

9. Mr Andrew CHENG said that according to CS' speech, the tourism and logistics industries were the main areas of economic development which would bring plenty of employment opportunities to the labour market, and the amalgamation of the portfolios of Economic Development and Labour would enable the Director of Bureau concerned to match the labour policy with that for developing these two industries. Mr CHENG said that he was unconvinced by the reason put forward by CS for merging the Labour portfolio with the Economic Development portfolio, and requested the Administration to provide figures on the "plenty of employment opportunities" provided by the tourism and logistics industries referred to by CS in his speech. SCA agreed to do so.

10. Mr Andrew CHENG pointed out that employment and manpower training and development were part and parcel of the labour policy. The revised

proposal of placing labour and employment matters within the purview of one bureau, and placing manpower training and development within the purview of a different bureau would result in fragmentation of labour policy. He considered that there should be a separate manpower and labour bureau.

11. Mr CHAN Kam-lam shared the concern of Ms LI Fung-ying about the conflicting role of the Secretary for Economic Development and Labour in overseeing the two policy portfolios within his purview. He requested the Administration to review the arrangement and consider the possibility of transferring the Labour portfolio to another bureau, after implementation of the accountability system. Mr CHAN also suggested the Administration to consider placing the Labour portfolio under the responsibility of SCS who was responsible for the management of, and formulation of policies for, the civil service. Ms Emily LAU expressed support that the Administration should consider Mr CHAN's suggestion which, in her view, was very innovative.

12. SCA responded that placing the Labour portfolio under SCS would give the international community a wrong impression that the entire working population of Hong Kong of 3 million people were civil servants.

13. Mr HUI Cheung-ching considered the Administration's revised proposal appropriate. However, in view of the concerns expressed by some members, he suggested that CE could consider appointing a civil servant to be the Secretary for Economic Development and Labour. The appointee would be much more neutral and be perceived to be much more neutral in balancing the respective interests of the labour and business sectors.

Portfolios of Financial Services and the Treasury

14. Mr SIN Chung-kai was of the view that for the purpose of streamlining the government structure, the portfolios of Financial Services and the Treasury should be placed under the Financial Secretary (FS) who was responsible for functions in respect of public finance and monetary affairs. He did not consider it necessary to have a separate Director of Bureau responsible for the Financial Services and Treasury portfolios, as proposed by the Administration.

Response of the Administration

15. SCA responded that the Administration had considered the views of members and different sectors of the community in deciding on the revised amalgamation of the various policy portfolios as announced by CS at the Council meeting commencing on 29 May 2002. The Administration hoped that members would appreciate that it was not possible for the Administration to come up with a formulation which would be acceptable to everyone. However, the Administration would not rule out the possibility of making changes to the areas of responsibilities of the reorganised bureaux in the future, if considered

necessary.

16. Mr TSANG Yok-sing said that it would be very difficult to make changes to the areas of responsibility of the bureaux after the implementation of the accountability system as the principal officials would have drawn up their respective work plans. He asked whether further changes to the Administration's revised proposals could still be made at this stage. He reckoned that if the appointee was an incumbent policy secretary, there would not be any problem for him to take on a different area of work at short notice as administrative officers were generalists by training and experience. Even if the principal official was recruited from outside the civil service, Mr TSANG believed that the candidate would have the political acumen to cope with new challenges.

17. Mr Andrew WONG was of the view that it was not necessary for the Administration to change the current post-titles of the Directors of Bureau, and to effect transfer of statutory functions by way of a resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap.1). Mr WONG suggested that one Director of Bureau could simply double up as the Director of another Bureau.

18. SCA responded that as a decision had already been taken, the Administration would not consider making further changes. Moreover, the legislative timetable did not allow further changes to be made as the Resolution to effect the transfer of statutory functions would be moved at the Council meeting on 19 June 2002. The Administration had to give notice of the Resolution and provide the text of the Resolution to the Legislative Council by 3 June 2002.

19. Ms Emily LAU and Miss CHOY So-yuk said that, given the grave concern of some members over the merging of the Environment portfolio with the Transport and Works portfolios and the merging of the Labour portfolio with the Economic Development portfolio, the Subcommittee should hold meetings to hear the views of the green groups, the labour groups and other concern organisations on the revised proposals. Mr NG Leung-sing, Dr Raymond HO and Mr Kenneth TING disagreed. Mr CHEUNG Man-kwong suggested and members agreed to take a vote on the suggestion made by Ms LAU and Miss CHOY. As five members voted in favour of the suggestion and nine members voted against it, the Chairman concluded that the Subcommittee would not hold further meetings to meet with deputations.

Remuneration of principal officials

20. Mr CHEUNG Man-kwong expressed concern that for a civil servant who was appointed a principal official, he would receive "quadruple" benefits. These benefits were: a substantial increase in salary with the element of housing

and education allowances included even though the civil servant would have exhausted his entitlement to these benefits; encashment of his leave; payment of the pension lump sum even before he had reached retirement age; and monthly pension. In particular, Mr CHEUNG pointed out that for a civil servant who joined a public-funded organisation after retirement, it was a standard practice that his monthly pension payment would be suspended under existing pension legislation. He queried the "double standard" being applied by the Administration.

21. Deputy Secretary for the Civil Service(1) (DS(CS)1) responded that there was no question of "double standard" or "double benefit" being applied as the civil servant who was appointed principal official under the accountability system would not be receiving any contract gratuity whereas in the case of a retired civil servant joining the public service or a public-funded organisation he would normally receive a gratuity upon the satisfactory completion of his contract.

22. Mr Andrew WONG said that while he had no objection to the proposed remuneration package for principal officials, the Administration should make clear that this was a special arrangement and a departure from the existing practice. DS(CS)1 responded that CE's approval would be sought under the pension legislation for a civil servant who was appointed a principal official under the accountability system to receive his monthly pension.

Preserving the integrity and political neutrality of the civil service

23. Ms Emily LAU said that the Administration had told the Subcommittee on 28 May 2002 that it would consult civil servants on the draft composite circular setting out the working relationship between civil servants and principal officials under the accountability system. However, SCS told Members during the motion debate on the accountability system at the Council meeting commencing on 29 May 2002 that it had already invited views of the civil servants on the draft composite circular. In the light of this, Ms LAU sought clarification as to whether civil servants had already been consulted on the draft circular.

24. DS(CS)3 explained that aside from the proposed framework for the composite circular set out in an earlier paper submitted to the Subcommittee, SCS had subsequently issued a copy of the draft composite circular to the staff sides and invited them to give views before 7 June 2002. The Administration would report the outcome of the consultation to the Subcommittee in due course.

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Financial and staffing implications

25. At the invitation of the Chairman, SCA briefed members on the Administration's paper entitled "Financial and Staffing Implications" (LC Paper

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No. CB(2)2068/01-02(03)) which set out the financial and staffing implications arising from the accountability system.

Financial proposals

26. Mr Howard YOUNG asked whether the savings which the Administration intended to achieve within 12 months to make the introduction of the accountability system a cost neutral exercise would be treated as savings under the Enhanced Productivity Programme. SCA replied in the negative.

Posts of Permanent Secretaries

27. At the request of Mr LEE Cheuk-yan and Ms Cyd HO, SCA undertook to provide information on the number of Permanent Secretary under each Director of Bureau in the afternoon following this meeting.

28. Regarding the Administration's proposal to retitle the existing 16 D8 posts as Permanent Secretaries, Ms Emily LAU and Mr LEE Cheuk-yan were unconvinced that there was no material difference between the posts of Permanent Secretaries and the D8 civil service posts except in post-titles, and requested the Administration to provide more information on the roles and functions of Permanent Secretaries in its paper submitted to the Establishment Subcommittee (ESC). They pointed out that according to Rule 2(a)(i) of the ESC Procedure, the endorsement of ESC should be sought for the creation, redeployment and deletion of permanent and supernumerary posts remunerated at the directorate pay scales, and the Permanent Secretary posts should be regarded as either new posts or redeployment of posts. Mr Andrew WONG pointed out that Rule 2(a)(viii) of the ESC Procedure which stipulated that the endorsement of ESC was required for changes to the organisational structure of the Government and consequential transfer of posts was also applicable in this particular case. Members requested the Legal Adviser to examine whether it was legally and procedurally in order for establishing the Permanent Secretary posts by way of re-titling the 16 D8 posts from Director of Bureau to Permanent Secretary.

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29. Mr Andrew WONG queried about the need for having 16 Permanent Secretaries, having regard to the fact that there would only be 11 Directors of Bureau under the accountability system. SCA agreed to provide more information in the regard.

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30. In reply to Ms Cyd HO, SCA confirmed that there was no question of one Permanent Secretary working to two Directors of Bureau.

Administrative support for Directors of Bureau

31. Mr LEE Cheuk-yan expressed concern that some staff of the relevant grades in the civil service, for instance, the Information Officers, might be redundant, as the Directors of Bureau could recruit their office staff from outside the civil service and offer them employment package less favourable than that of the civil servants.

32. DS(CS)1 responded that the Administration did not envisage any staff redundancy problem arising from the flexibility given to Directors of Bureau to recruit their office staff from outside the civil service, if they so preferred. Instead, she said it was expected that most of these positions would be filled by civil servants. In addition, the management did have the flexibility to post staff to different departments. She further said that there was no question of cost-saving for the Directors of Bureau to recruit their office staff from outside the civil service, as staff taking up the non civil service positions would receive salary, fringe benefits and gratuity similar to and no better than those prevailing for the equivalent ranks in the civil service.

33. Mr Andrew WONG expressed concern that the administrative assistant (a D2 post) to the Director of Bureau could exert undue influence on the work and promotion prospect, etc. of civil servants, and requested the Administration to consider drawing up rules to set out the working relationship between the administrative staff and civil servants. SCA responded that at present, both CS and FS were each provided with an administrative assistant. The arrangement had been working well and problems, as envisaged by Mr WONG, had never emerged.

Post of Director of Chief Executive's Office

34. Mr CHEUNG Man-kwong requested the Administration to clarify the legal status of the Director of CE's Office in attending meetings of the Executive Council (ExCo), as the Information Coordinator had told members at a previous meeting that the Director would be a member of the political team. He pointed out that the Director was not one of the three categories of persons mentioned in Article 55(1) of the Basic Law (BL), namely, principal officials, Members of the Legislative Council and public figures.

35. SCA said that the Director, though a political appointee, was not a principal official under the accountability system. He had no right to vote at ExCo meetings. SCA agreed to revert to members on this point. Law Officer (Civil Law) supplemented that under BL 55(3), CE might, as he deemed necessary, invite other persons concerned to sit in on meetings of ExCo.

36. Ms Emily LAU said that, for the avoidance of doubt on the Director's position, the Administration should provide information in support of the

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special status of the Director in the ESC paper, i.e. why the Director was a political appointee but not a principal official, and since he was not a principal official, why was he required to abide by the Code for Principal Officials and included in the composite civil service circular setting out the working relationship between civil servants and principal officials.

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37. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
28 November 2002