

System of Accountability for Principal Officials

Proposed Order and Areas for Study

Constitutional Affairs
Bureau's paper provided
to Members at Council
meeting on 17 April 2002
(paragraph no. if relevant)

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Council Business Division 2
Legislative Council Secretariat
23 April 2002

**Subcommittee to study the proposed accountability system
for principal officials and related issues**

**Available meeting slots in April/May 2002
(as at 23 April 2002)**

Date	Time/Venue	Clash with
Thursday, 25 April 2002	8:30 am - 10:30 am Chamber	<u>9:00 am - 3:00 pm</u> Visit of LegCo Members to Sha Tau Kok Closed Area
Saturday, 27 April 2002	8:30 am - 10:30 am Chamber	<u>8:45 am - 9:00 am</u> Mtg of Select Committee on Building Problems of Public Housing Units (Internal)
	10:45 am - 12:45 pm Chamber	<u>9:00 am - 1:45 pm</u> Mtg of Select Committee on Building Problems of Public Housing Units (Closed)
Monday, 29 April 2002	8:30 am - 10:30 am Chamber	<u>8:30 am - 12:45 pm</u> Mtg of Subcommittee on draft subsidiary legislation to be made under the Securities and Futures Ordinance
	10:45 am - 12:45 pm Chamber	<u>9:00 am - 5:30 pm</u> Briefing sessions for the Public Accounts Committee (Internal)
	2:30 pm - 4:30 pm Chamber	<u>2:30 pm - 4:30 pm</u> Mtg of Bills Committee on Fire Safety (Buildings) Bill
Tuesday, 30 April 2002	8:30 am - 10:30 am Chamber	<u>9:00 am - 5:30 pm</u> Briefing sessions for the Public Accounts Committee (Internal)
	10:45 am - 12:45 pm Chamber	<u>10:45 am - 12:45 pm</u> Mtg of Bills Committee on Gambling (Amendment) Bill 2000

Friday, 3 May 2002	8:30 am - 10:30 am Chamber	Mtg of Panel on Planning, Lands and Works
Monday, 6 May 2002	4:30 pm - 6:30 pm Conference Room A	Mtg of Panel on Environmental Affairs Mtg of Committee on Rules of Procedure (closed)
Tuesday, 7 May 2002	8:30 am - 10:30 am Chamber	<u>9:00 am - 12:30 pm</u> Mtg of the Public Accounts Committee (Internal)
	10:45 am - 12:45 pm Chamber	
Friday, 10 May 2002	8:30 am - 10:30 am Conference Room B	<u>8:30 am - 10:30 am</u> Mtg of Bills Committee on Fire Safety (Buildings) Bill
	10:45am - 12:45 pm Conference Room B	<u>9:30 am - 1:30 pm</u> Public hearings of the Public Accounts Committee (Internal) <u>10:45am - 12:45 pm</u> Mtg of Home Affairs Panel
Tuesday, 14 May 2002	8:30 am - 10:30 am Chamber	-
	10:45 am - 12:45 pm Chamber	Mtg of Subcommittee on review of the Building Management Ordinance
Wednesday, 15 May 2002	8:30 am - 10:30 am Chamber	<u>9:00 am - 10:30 am</u> Mtg of Public Accounts Committee (Internal) <u>9:00 am - 1:00 pm</u> Public hearings of the Public Accounts Committee (Internal)

Thursday, 16 May 2002	8:30 am - 10:30 am Chamber	-
	4:30 pm - 6:30 pm Chamber	Mtg of Bills Committee on Human Organ Transplant (Amendment) Bill 2001
Friday, 17 May 2002	8:30 am - 10:30 am Conference Room B	Mtg of Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001
		<u>9:00 am - 1:00 pm</u> Public Hearings of the Public Accounts Committee (Internal)
Tuesday, 21 May 2002	8:30 am - 10:30 am Chamber	-
	10:45 am - 12:45 pm Chamber	<u>11:00 am - 12:30 pm</u> Mtg of the Legislative Council Commission
Thursday, 23 May 2002	8:30 am - 10:30 am Chamber	-
Friday, 24 May 2002	8:30 am - 10:30 am Chamber	Mtg of Panel on Planning, Lands and Works (Internal)
	10:45 am - 12:45 pm Chamber	Mtg of Panel on Transport
Monday, 27 May 2002	2:30 pm - 4:30 pm Chamber	Mtg of Panel on Environmental Affairs

Tuesday, 28 May 2002	8:30 am - 10:30 am Chamber	-
	10:45 am - 12:45 pm Chamber	-
Wednesday, 29 May 2002	8:30 am - 10:30 am Chamber	Mtg of the Public Accounts Committee (Internal)
Thursday, 30 May 2002	8:30 am - 10:30 am Chamber	-
	10:45 am - 12:45 pm Chamber	Mtg of Subcommittee to study issues relating to the Fugitive offenders (Sri Lanka) Order
	2:30 pm - 4:30 pm Chamber	Mtg of Panel on Constitutional Affairs
Friday, 31 May 2002	8:30 am - 10:30 am Chamber	-

Council Business Division 2

Legislative Council Secretariat

23 April 2002

A summary of concerns and views on the proposal to implement a system of accountability for principal officials raised at the meetings of Panel on Constitutional Affairs

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
(1)	Basic principles	<p>(a) There should be two levels in the constitutional system, the political layer and the career civil servants. The political layer should be composed of persons who are directly elected or appointed by CE but have the majority support of the Legislative Council (LegCo). (21 May 2001)</p> <p>(b) The proposed system will not enhance public accountability. It only expands the power of the Chief Executive (CE) by making the principal officials solely accountable to him. (19 November 2001)</p> <p>(c) Executive accountability has to be considered in the context of the democratic and political development of Hong Kong. (19 November 2001)</p> <p>(d) Effectiveness of the proposed system is in doubt in the absence of a CE elected by universal suffrage. (18 February 2002)</p>	<p>(i) Although accountability has to come with the mandate of the people, the two issues need not be dealt with at the same time. The proposed accountability system, even though not a perfect system, should be implemented as a first step. (3 March 2001)</p> <p>(ii) The proposed system should not result in over-expansion of the power of CE and politicisation of the civil service. (19 November 2001)</p> <p>(iii) Apart from an accountability system for principal officials, it is also necessary to implement an institutionalised system to enhance public accountability of CE. (19 November 2001)</p> <p>(iv) The proposed system should be the initial step in an on-going and progressive process of constitutional reform. (9 July 2001 and 19 November 2001)</p>

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
		<p>(e) An effective accountability system should be underpinned by legislation and supported by constitutional convention. (3 March 2001)</p> <p>(f) The Administration should explain in what way the proposed system would ensure that the Government of the HKSAR is accountable to LegCo and implements the Basic Law principle of gradual and orderly progress in the democratic development of Hong Kong. (18 April 2002)</p>	<p>(v) Enactment of legislation to empower LegCo to appoint or remove principal officials would contravene the Basic Law. However, constitutional conventions can be developed for LegCo to vet nominations. (3 March 2001)</p> <p>(vi) Special legislation for the appointment, transfer and removal of principal officials should be enacted. (3 March 2001)</p>
(2)	Consistency with the Basic Law	<p>(a) To require a nominee to appear before LegCo to answer questions would not contravene the Basic Law. (27 August 2001)</p> <p>(b) The Administration should clarify the meaning of the terms "public servants" and "civil servants" and whether introducing a new system of appointment for principal officials on terms different from those in the Civil Service would contravene the Basic Law. (19 November 2001)</p> <p>(c) The Administration should explain</p>	<p>(i) Enactment of legislation to empower LegCo to appoint or remove principal officials would contravene the Basic Law. (3 March 2001)</p>

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
		<p>whether the proposed system would contravene the Basic Law in view of -</p> <ul style="list-style-type: none"> (i) its limiting effect on the career path of public servants; (ii) the change in the constitutional role of public servants from one of formulating policies to one of assisting the principal officials in formulating policies; and (iii) the change from the existing system of CE appointing some of the principal officials to ExCo to one under which all the principal officials will automatically become Members of ExCo. (18 April 2002) 	
(3)	Role of LegCo in the appointment and removal of principal officials	(a) The nominees should appear before LegCo to answer questions and explain their policy goals before formal appointments are made. In US, committees of Senate could hold public hearings for the purpose of considering the suitability of a candidate for political appointment. (27 August 2001 and 18 March 2002)	<ul style="list-style-type: none"> (i) It is reasonable for nominees to answer questions from LegCo Members before appointment. This would improve the relationship between the executive and the legislature. (3 March 2001) (ii) Appointment of principal officials should only be made with the majority support of LegCo Members. (3 March 2001)

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
		<p>(b) Upon passage of a vote of no-confidence by LegCo, a principal official should resign or the CE should remove him from office. Such constitutional convention should eventually be incorporated in the law. In UK, US and Singapore, the legislature has a role to play in the process of removal of holders of ministerial positions from office. Both UK and Singapore rely on the vote of confidence, while US relies on the impeachment mechanism. (3 March 2001, 27 July 2001, 17 December 2001 and 18 March 2002)</p> <p>(c) It is inappropriate for LegCo to question principal officials prior to appointment. This might have implications on the appointment system of other statutory bodies. (27 August 2001)</p>	<p>(iii) Constitutional convention should be established whereby CE should remove a principal official from office upon passage of a vote of no-confidence by LegCo. (3 March 2001)</p>
(4)	Consultation with public and LegCo	<p>(a) An extensive consultation exercise on a review of the development of the political system should be conducted by the Government as soon as possible. As part of the review, the Government should, inter alia, study the proposal of implementing a more flexible contract system so that principal officials may be</p>	<p>(i) The review on constitutional development is a very important matter and needs not be conducted after the 2002 Chief Executive election and the 2004 LegCo election are held, as suggested by the Administration. (12 June 2001)</p>

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
		<p>held accountable for their decisions (Report of the Panel on Constitutional Affairs on the Development of the Political System of the Hong Kong Special Administrative Region presented to the Council in June 2000).</p> <p>(b) The Administration should put forward concrete proposals on the proposed system for consideration of LegCo and conduct an extensive public consultation before taking a decision. (27 August 2001)</p> <p>(c) Legislation to provide for the authority and power of principal officials should be enacted at an early stage. But there must be adequate time to allow LegCo to scrutinise the legislative proposal in detail. (18 March 2002)</p> <p>(d) LegCo should not simply "rubber-stamp" the proposed system which involves both financial and legislative matters. The Administration should set a realistic timetable for implementation in order to allow sufficient time for thorough discussion by LegCo and the public. (18 March 2002)</p>	

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
(5)	Role and composition of the Executive Council (ExCo)	<p>(a) The role and composition of ExCo after the implementation of the proposed system should be carefully considered. (3 March 2001)</p> <p>(b) Any recommendation on the role and composition of ExCo must have regard to the fact that the CE in Council is an entity exercising a lot of powers. (3 March 2001)</p> <p>(c) The Administration should explain the differences, if any, in the functions and operation of the ExCo brought about by the proposed system. (18 April 2002)</p>	<p>(i) CE and principal officials should form the cabinet of the Government. ExCo should become the advisory council of CE. (3 March 2001)</p> <p>(ii) The membership of ExCo should be confined to principal officials. (3 March 2001)</p>
(6)	Roles of the Chief Secretary for Administration (CS), Financial Secretary (FS) and Secretary for Justice (SJ)	<p>(a) The post of the SJ should not be filled by a political appointee in order not to undermine its independent and impartial role to uphold justice. In the United Kingdom (UK), the Attorney General is not a member of Cabinet. (19 November 2001, 17 December 2001 and 21 January 2002)</p> <p>(b) In common law jurisdictions where the equivalent of SJ is a member of the cabinet, the cabinet is accountable to a fully representative and directly elected legislature. (17 December 2001)</p>	<p>(i) The office of SJ should not be included in the proposed accountability system. If it is so included, the quasi-judicial functions of SJ, such as the function of taking prosecution decisions independently and impartially, should be transferred to another Law Officer in the Department of Justice. (17 December 2001)</p>

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
(7)	Amalgamation of Bureaux	(a) The Administration should explain the reasons for the proposed amalgamation of Bureaux. (18 April 2002)	
(8)	The Civil Service	<p>(a) Salary of civil servants at D8 level should be reduced. (19 November 2001)</p> <p>(b) The Administration should clarify whether a Permanent Secretary can refuse to carry out instructions from a principal official if he considers the instructions to be unlawful or the carrying out of such instructions would be contrary to his conscience; whether a Permanent Secretary would be required to resign from office if he refuses to carry out instructions from a principal officials; and whether he is prohibited from revealing the reasons for his refusal to carry out the instructions after leaving service. (18 April 2002)</p> <p>(c) A Code similar to the UK Civil Service Code should be promulgated. (18 April 2002)</p>	<p>(i) The relationship and division of responsibilities between principal officials and civil servants should be clearly defined and delineated. (3 March 2001)</p> <p>(ii) A mechanism should be established to safeguard political neutrality of the Civil Service and protect civil servants from being forced to act against their conscience. The UK Civil Service Code is a useful reference. (3 March 2001 and 19 November 2001)</p> <p>(iii) The Public Service Commission should be empowered to become the main protector of civil service values. If the post of the Chief Secretary for Administration is turned into a political appointment, a top civil servant should act as the principal advocate of civil service interests and concerns. (3 March 2001)</p> <p>(iv) The policy portfolios of existing Bureaux</p>

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
			would need to be reshuffled. (19 November 2001)
(9)	Review of advisory and statutory functions	(a) The proposed system will enhance the powers of the principal officials in their respective policy areas. This will impact on the structures and functions of some statutory bodies, hence adding to its complexity. (18 March 2002)	(i) Existing advisory committees can be re-organised to provide research support and policy advice to principal officials. The positions as heads of certain statutory advisory bodies or committees should be taken up by principal officials responsible for the relevant policy portfolios. (19 November 2001)
(10)	Integrity checking	(a) A system for pre-appointment integrity checking of principal officials should be put in place. (18 March 2002)	
(11)	Conflict of interest	(a) A system of post-office restrictions on activities of former CEs and principal officials should be implemented to avoid possible conflict of interest. (18 March 2002) (b) Restrictions should cover, apart from post-office employment, engagement in political activities after leaving office. (18 February 2002) (c) Post-office restrictions should be promulgated before implementation of	(i) An effective system to guard against conflict of interest is necessary. (18 February 2002) (ii) Concerning restrictions on post-service employment of principal officials, reference should be made to the experience in other jurisdictions which have clear guidelines such as the imposition of a sanitisation period for post-office employment. (3 March 2001)

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
		<p>the proposed system, and written into the contracts of principal officials. The desirability of introducing legislation should be considered. (18 February and 18 March 2002)</p> <p>(d) The authorities responsible for enforcing sanctions against the principal officials for violation of post-office restrictions should be specified. (18 February 2002)</p> <p>(e) Post-office restrictions should not deter dedicated and capable people from serving Hong Kong. (18 March 2002)</p> <p>(f) Consideration should be given to adopting the system in UK and US where declaration of interests by senior members of government cover not only their own personal interests but also those of their spouses and children. (18 March 2002)</p> <p>(g) The Administration should explain the reasons for not proposing legislation to deal with the issues of conflict of interest and protection of "whistle blowers". (18 April 2002)</p>	<p>(iii) Independent monitoring bodies such as an ethics commission would be useful in promoting ethical conduct in and out of government. (18 February 2002)</p> <p>(iv) Post-office restrictions should be promulgated before appointments are offered to principal officials. (18 February 2002)</p>

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
(12)	Employment package	(a) Remuneration for principal officials should be carefully considered having regard to comparable salaries figures in other jurisdictions. The ministerial salaries in UK and the United States (US) are relatively modest as compared with the salary levels of senior government officials in Hong Kong. (18 March 2002)	
(13)	Terms and Conditions	<p>(a) Circumstances under which principal officials can be removed from office should be stipulated in the employment contract. (17 December 2001)</p> <p>(b) In UK, US and Singapore, holders of ministerial posts are political appointees and do not have employment contracts. This differs from the arrangement under the proposed system. (18 March 2002)</p> <p>(c) The Administration should define the meaning of serious misconduct or dereliction of duty which warrant termination of the contract of principal officials. (17 December 2001)</p>	<p>(i) Principal officials should be appointed from within and outside the civil service. Suitable senior civil servants could be offered political appointment on condition that they would leave the Civil Service. (3 March 2001 and 19 November 2001)</p> <p>(ii) CE should consider nominating LegCo Members who are members of political parties in support of the Government as principal officials. (19 November 2001)</p> <p>(iii) Principal officials should be appointed on contract terms, with retirement benefits and compensation for premature termination of office. (3 March 2001)</p> <p>(iv) The term of office of principal officials</p>

	Major areas	Concerns / views of individual Members	Concerns / views of deputations
			should be the same as that of CE. (3 March 2001)
(14)	Transfer of statutory functions	(a) The Administration should explain the reasons for the proposed transfer of statutory functions for establishing the proposed system by means of a resolution of the Legislative Council under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) rather than by means of primary legislation. (18 April 2002)	

() denotes date of meeting of the Panel on Constitutional Affairs

Council Business Division 2
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