

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

**Administration's response to
issues raised at the meeting on 7 May 2002**

This paper sets out the Administration's response to the list of issues raised at the meeting on 7 May 2002 as set out in LC Paper No. CB(2)1869/01-02(01).

Executive Council

- (1) Issue raised: To provide the paper on the review of statutory appeals and objections to ExCo conducted by the Attorney General's Chambers in 1995.

Administration's response: Please refer to LC Paper No. CB(2)1911/01-02(02) issued on 13 May 2002.

- (2) Issue raised: On the 53 references providing for appeals to the Chief Executive in Council, to advise what is the nature of these appeals, what are the decisions involved, who are the policy secretaries under appeal, whether any other remedies are available to the aggrieved parties, and whether these 53 references should be reviewed in the light of the proposed change of the composition of ExCo.

Administration's response: Please refer to LC Paper No. CB(2)1911/01-02(01) issued on 13 May 2002.

- (3) Issue raised: In the interest of transparency and consistency, a mechanism should be put in place to deal with appeals that go to ExCo against decisions of principal officials under the proposed accountability system.

Administration's response: In the event of appeals against decisions of principal officials, the current arrangement will apply, i.e. legal advice would be given to the principal official concerned as to whether he/she should stand down from the particular appeal.

Principal officials/Civil Service

- (4) Issue raised: To provide copies of the Code of Practice for principal

officials, and the composite circular for civil servants (the Administration's paper on "Preserving the Integrity and Probity of the Civil Service" refers).

Administration's response: The Code is attached to LC Paper No. CB(2) 1952/01-02(01) issued on 15 May 2002. The composite circular for civil servants is being drafted.

- (5) Issue raised: What would be the terms and conditions of service for principal officials and how would they be different from those applicable to existing principal officials (who may have been promoted from within the Civil Service or appointed from outside the Civil Service).

Administration's response: Please see Annex. The table at Annex shows only the terms applicable to new appointees at the rank of D8 to the civil service on or after mid 2000 when the level of fringe benefits was reviewed and adjusted downwards. As regards the fringe benefits for serving civil servants who joined the civil service before mid 2000, their fringe benefits would be at a higher level, for example their dependent children may be eligible for overseas or local education allowances and their leave passages will include those for their spouse and dependent children.

Permanent Secretaries

- (6) Issue raised: Whether the legal status of Permanent Secretaries will be established by legislative means or through administrative measures; and whether Permanent Secretaries would be acting as principal officials and performing the functions of principal officials during the leave or absence of the latter.

Administration's response: Although a few posts in the civil service are established by statute, the vast majority of posts are not so established. The arrangements during the leave or temporary absence of principal officials under the accountability system will be addressed in a separate paper.

**Comparison of Terms of Employment for a Director of Bureau
appointed on Civil Service Terms and Terms under the Accountability System**

	Civil Service New Agreement Terms^{Note} (for those who are appointed to the Civil Service on or after 1 June 2000)	Terms for Principal Officials under the Accountability System
Duration of Employment	Up to three years but renewable	Not more than 5 years unless again recommended by the following term Chief Executive
Salary	D8 (currently at \$190,100 per month)	\$3,743,050 per annum (\$311,900 per month)
Medical and dental treatment	For the officer and his/her family: <ul style="list-style-type: none"> • free medical advice and treatment, investigative procedures and medicines from Government outpatient clinics or the Hospital Authority • free dental treatment (extractions and fillings) from Government dental clinics; reasonable charges for dentures and dental appliances 	Same
Vacation leave	22 working days per annum, accumulation limit at 44 days	22 working days per annum, accumulation limit at 22 days
Leave passages	Non-accountable Leave Passage Allowance of \$44,520 at the end of each 12-month eligibility period	Nil
Housing benefits	Non-accountable Cash Allowance at \$37,450 per month, maximum eligibility period 120 months	Nil
Car	A car and driver	Same
Retirement benefits	Statutory MPF contribution (currently at \$1,000 per month)	Same
Gratuity	Up to 25% of basic salary drawn during the agreement period (inclusive of the Government's MPF contributions)	Nil
Conduct and discipline	<ul style="list-style-type: none"> • Subject to Executive Orders, Government Regulations and Circulars, Departmental Instructions and to any Ordinances or Regulations on conduct 	<ul style="list-style-type: none"> • Need to observe the rules and principles contained in the employment contract and in the Code. • Must declare his investments and

	<p>and discipline which apply to the office or to the department he is appointed to.</p> <ul style="list-style-type: none"> • Liable to disciplinary punishment (including dismissal) if he neglects or refuses to perform duties or misconducts himself. • Must declare investment and may be required to divest if there is real or apparent conflict of interest. • Subject to the Prevention of Bribery Ordinance. 	<p>interests and may be required to divest if there is real or apparent conflict of interest.</p> <ul style="list-style-type: none"> • Must not use his official power to benefit himself or any other person or to do anything which may conflict or compete with his official duties. • Subject to the Prevention of Bribery Ordinance.
<p>Permission to take up outside appointment on completion of agreement</p>	<p>Within one year after the end of appointment, need to seek Government's agreement before taking up employment or engaging in any business, trade or profession the principal part of which is carried on in Hong Kong, if the employment is in the same field as his/her civil servant employment and where there is a possible conflict of interest.</p>	<p>Within one year after termination of employment, need to seek advice from a committee appointed by the Chief Executive if he intends to commence any employment or start any business. Also barred from representing any person in connection with any claim or negotiation with Government and from lobbying Government.</p>

Note: For comparison purpose, the prevailing civil service agreement terms is presented. It should be noted that different sets of terms of appointment and conditions of service apply to civil servants who were first appointed to the Civil Service before 1 June 2000. For example, the service of such officers may be pensionable instead of MPF and contract gratuity bearing. They may also receive local/overseas education allowances for their children, live in non-departmental quarters, join the Home Financing Scheme, be eligible for different leave earning rates and accumulation limits, and be subject to post-retirement employment restrictions prescribed in the Hong Kong pension legislation etc.

**Subcommittee to Study the Proposed
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**Administration's response to
issues raised at the meeting on 10 May 2002**

This paper sets out the Administration's response to the list of issues raised at the meeting on 10 May 2002 as set out in LC Paper No. CB(2)1924/01-02(01).

Lawful authority for changing the structure of Government

- (1) Issue raised: Which body has the lawful authority to change the structure of the Government and what is the legal source for that authority? In what manner should that authority be exercised?

Administration's response: Subject to the provisions of the Basic Law, and of the laws of Hong Kong, the Chief Executive has the power to change the administrative structure of the Government. His powers in that respect are derived from the Basic Law, and must be exercised in accordance with the Basic Law and with the laws of Hong Kong. Please refer also to LC Paper No. CB(2)2000/01-02(01) issued on 18 May 2002.

- (2) Issue raised: Has the Executive Council's advice been sought on the proposed system before the Chief Executive addressed the Legislative Council on 17 April 2002? If yes, would that advice together with the Chief Executive's decision on the matter be formally promulgated in order to enable the Legislative Council to discharge its functions properly when considering the proposed change and any proposed legislative measures for effecting the proposed change?

Administration's response: Please refer to LC Paper No. CB(2)2000/01-02(01) issued on 18 May 2002.

Principal officials/Permanent Secretaries

- (3) Issue raised: Under the Public Finance Ordinance (Cap. 2), a controlling officer must be designated in respect of each head and subhead of estimates of expenditure laid before LegCo, and such controlling officer must account to the Financial Secretary for the performance of his duties. Would there be any changes to the practice that a bureau secretary is

normally designated as the controlling officer? Would the requirements that the controlling officers have to comply with administrative regulations and directions issued by the Financial Secretary and that they have to account to the Financial Secretary be compatible with the proposed system?

Administration's response: We will recommend to Finance Committee that as from 1 July 2002, Permanent Secretaries be designated as Controlling Officers for their respective bureaux. We have made clear in the Code for Principal Officials under the Accountability System that controlling officers are responsible for the expenditure of the bureaux and departments falling within their purview and that principal officials have a duty to give fair consideration and due weight to informed and impartial advice from controlling officers.

- (4) Issue raised: To explain clearly the delineation of responsibilities and duties between principal officials and their Permanent Secretaries in attending meetings of the Legislative Council and its committees including the Public Accounts Committee, the special Finance Committee meetings, Panels and bills committees.

Administration's response: Principal officials under the accountability system would attend meetings of the Legislative Council. They will also attend meetings of the Legislative Council committees, subcommittees and panels where major policy issues are involved. Subject to the direction of the relevant principal officials, Permanent Secretaries would attend meetings of the Legislative Council committees, subcommittees and panels. As Controlling Officers, Permanent Secretaries would attend meetings of the Public Accounts Committee and special Finance Committee meetings. When matters of policy are involved, the relevant principal officials would also attend.

- (5) Issue raised: Whether principal officials under the proposed system have the power to dismiss or transfer civil servants including Permanent Secretaries? To provide information on the practice in some overseas jurisdictions, e.g. USA and UK.

Administration's response: There are well-established posting and discipline mechanism in the civil service. Posting plans affecting individual civil service grades are worked out by designated senior officers in the relevant grades. As a rule, supervisors are consulted on posting plans involving their direct subordinates. This will continue to be the case under the accountability system. Principal Officials are supervisors of Permanent Secretaries and they will be consulted over the posting plans of the latter

by the Secretary for the Civil Service who is responsible for civil service management. Similarly, the Permanent Secretaries may reflect their requests for transfer to Secretary for the Civil Service. Under the prevailing discipline mechanism in the civil service, the authority to dismiss a civil servant at the directorate level rests with the Chief Executive on the recommendation of the Secretary for the Civil Service and the advice of the Public Service Commission. Following the establishment of the misconduct through impartial investigation and hearings, the Chief Executive would decide on the level of the punishment having regard to the severity of misconduct.

From the information available to us, in U.K. Civil Service, the Prime Minister appoints Permanent Secretaries on the recommendations of the Head of the Home Civil Service. As regards the decisions on disciplinary matters involving Permanent Secretaries, they are taken by the Head of the Home Civil Service after consultation with the Minister of the Department concerned and with the Prime Minister after the completion of the due procedures. Similar arrangements are in place in the New Zealand civil service where the State Services Commissioner is vested with the authority to appoint and remove public service Chief Executives of departments. The Commissioner will arbitrate disputes arising from Ministers and these Chief Executives.

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**Administration's response to
issues raised at the meeting on 11 May 2002**

This paper sets out the Administration's response to the list of issues raised at the meeting on 11 May 2002 as set out in LC Paper No. CB(2)1926/01-02(01).

Permanent Secretaries

- (1) Issue raised: Whether there will be a Permanent Secretary working to the politically appointed Secretary for the Civil Service under the proposed accountability system for principal officials.

Administration's response: There will be a Permanent Secretary working to the Secretary for the Civil Service.

- (2) Issue raised: Whether the Permanent Secretaries will be required to "sell" Government policies and if so, how are they to carry out such duty under the proposed system.

Administration's response: Permanent Secretaries would be required to assist the principal officials in formulating, explaining and defending policies. They would also be required to assist principal officials in securing the support of the public and the Legislative Council. Subject to the direction of the relevant principal officials, Permanent Secretaries as well as other civil servants would have to explain and defend policies in public.

**Subcommittee to Study the Proposed
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**Administration's response to
issues raised at the meeting on 17 May 2002**

This paper sets out the Administration's response to the list of issues raised at the meeting on 17 May 2002 as set out in LC Paper No. CB(2)1991/01-02(01).

(1) The Bureaux

Issue raised: A member has requested more justifications for the proposed distribution of policy portfolios. He is concerned that some will become 'super-bureaux' which will be over-burdened by too many policy portfolios (e.g. the proposed Health, Welfare, Environment and Food Bureau), while some other bureaux may have a light schedule (e.g. Constitutional Affairs).

Administration's response: We will respond in sum at the motion debate on 29 May 2002.

(2) Relationship between bureaux and departments

Issue raised: To provide more information on the objectives, considerations and plans (e.g. percentage of savings) for streamlining the structure of departments and bureaux.

Administration's response: The overall direction of the review on the role of bureaux vis-à-vis departments is to streamline the structure and working relationship between the two, merging and integrating similar functions being performed by both, making better use of resources and enhancing the efficient and effective implementation of policy and delivery of services to the public. The details of the review will be left to the principal officials under the accountability system.

(3) Employment package for principal officials

Issue raised:

(a) To provide information on the relativity of the remuneration for the

principal officials (such as CS) and the Chief Justice;

- (b) The basis and principles for determining the remuneration for members of the Judiciary; and
- (c) Whether any overseas countries have a system where the Head of Judiciary has a lower salary than that of the principal officials such as Directors of Bureau.

Administration's response:

- (a) In May 1987, in view of the independent status of the Judiciary and to enable greater flexibility in determining the pay and conditions of service of judges and judicial officers, it was decided that the Judiciary should be a self-administering body with pay and conditions of service for judges and judicial officers dealt with separately from those of the civil service. The Standing Committee on Judicial Salaries of Conditions of Services was subsequently established in December 1987. On the advice of the Standing Committee on Judicial Salaries and Conditions of Service and upon the approval of the Finance Committee, the Judicial Officers Pay Scale (initially known as the Judicial Service Pay Scale) was established in November 1988 as a new and separate pay scale to cater specifically for judges and judicial officers.
- (b) The Chief Justice (CJ) is remunerated on the Judicial Service Pay Scale (JSPS 19) whereas CS is remunerated on the Directorate Pay Scale (D10). The salaries of JSPS 19 and D10 are the same in monetary terms.
- (c) Under the accountability system, the remuneration package for CS will be re-structured so that he will no longer be entitled to a range of allowances and other benefits, nor will he be entitled to any end of contract gratuity payment. The total cost to the taxpayer in respect of the CS under the accountability system will be \$4,167,808 per year which is on par with the total cost to the taxpayer of the incumbent CS.

(4) Integrity checking

Issue raised: To provide the criteria and standards for integrity checks (e.g. moral standard and conduct guidelines), and the average time taken for completion of integrity check.

Administration's response: A separate paper has been provided.

(5) Involvement in political activities

Issue raised: To advise –

- (a) whether a principal official can be a member of a political party/organisation/body;
- (b) whether CE's approval is required for participation of activities organised by political organisations or bodies;
- (c) the meaning of 'not cause any embarrassment to the Government' and 'distract their attention' in paragraph 4.2 (b) and (c) of the draft Code for Principal Officials under the accountability system; and
- (d) whether a principal official can still be directors of companies during his term of office.

Administration's response: Freedom of association is protected by law in Hong Kong. It is the responsibility of the principal official under the accountability system to ensure that no conflict will arise with his oath to uphold the Basic Law and his oath of allegiance to the HKSAR. It is also his responsibility to ensure that there is no conflict with the principles set out in Chapter 4 of the Code for Principal Officials. The same applies to participation in activities organised by political organisations or bodies. In case of doubt, the principal official should seek guidance from the Chief Executive as is also provided for in Chapter 4 of the Code.

A principal official cannot be a director of a company without the prior consent of the Chief Executive. However he may retain or accept honorary posts in non-profit making organisations or charitable bodies provided that there is no actual or apparent conflict of interest between his interests in such organisations or bodies and his official duties and that his interests in such organisations or bodies would not cause embarrassment to the Government, the Chief Executive or other principal officials of the Government.