

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

**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.