

立法會
Legislative Council

LC Paper No. LS123/01-02

Paper for the Panel on Administration of Justice and Legal Services

**Rules of Procedure for the Endorsement of the Appointment
of Judges under Article 73(7) of the Basic Law**

Introduction

At the Panel meeting on 16 May 2002, advice was sought on the need to make rules in the LegCo Rules of Procedure to facilitate the exercise of the power of LegCo under Article 73(7) of the Basic Law to endorse the appointment of certain judges, with reference to the "Normal Procedure" proposed as Option 1 in the Consultation Paper on Process of Appointment of Judges issued by the Panel in December 2001.

Adequacy of existing rules

2. Since 1 July 1997, there have been two occasions on which the legislature has exercised its power under Article 73(7) of the Basic Law to endorse the appointment of judges by a resolution of the Legislative Council.

3. Detailed rules for passing such a resolution have already been set out in the Rules of Procedure. As the proposed "Normal Procedure" will continue to provide for the endorsement by way of a motion which will be governed by such rules, this aspect of the "Normal Procedure" could be accommodated within the existing framework of the Rules of Procedure unless any special considerations exist. Panel members may wish to look at the provisions in the Rules of Procedure on motions (Part G).

4. It is noted that as such an endorsement motion is expected to be moved by the Administration, it will be a Government motion and the rules for Government motions in general will apply.

Preliminary procedures

5. Before an endorsement motion is moved, the "Normal Procedure" requires that four procedural steps should be taken. These are set out in paragraph 2.6(a) to (d) of the Consultation Paper and will be discussed in that order.

(a) Administration to advise House Committee of proposed appointment

6. The "Normal Procedure" proposes that the Administration advises LegCo's House Committee of CE's acceptance of the recommendation of JORC on a judicial appointment.

7. The advice could take two forms. First, the formal notice given under Rule 29(1) for the moving of the endorsement motion could serve as such an advice to the House Committee. Second, the Administration could be asked to give a separate notice in advance of the Rule 29(1) notice.

8. Just as in the case of subsidiary legislation requiring an approving motion of LegCo (the positive vetting procedure), the House Committee will, in the first instance, have an opportunity to consider the endorsement motion when it comes up as an item of Council business on its regular agenda. It can then decide whether it has to be studied in detail. If there is insufficient time, the Administration could be asked to withdraw the notice until the detailed study has concluded. The advantage is that no new rules need to be considered. The drawback may be the notice would almost invariably have to be withdrawn by the Administration if detailed study is to be taken as a norm.

9. In the second instance, the issue would arise whether reliance for the giving of the advice should be placed on an understanding/agreement with the Administration, practices/precedents which become established over time or some express provisions in the rules.

10. With regard to the last option, it is noted that in Rule 75 of the Rules of Procedure, there is at present no notice requirement at all for any item to be placed on the House Committee agenda. However, Rule 20(f) of the House Rules does provide that "[T]he deadline for proposing agenda items for a meeting is normally 5:00 p.m. on the Tuesday before the meeting. A member wishing to raise an urgent item after the deadline may make a request to the chairman of the House Committee for it to be discussed at the meeting under Any Other Business". It would be a major change to the Rules of Procedure if such a notice requirement on the Administration is to be added to the Rules of Procedure and would have to be studied in greater detail. As to the House Rules, it may not be appropriate to use them to impose any binding obligations on the Administration. In both cases however, it would be possible to include rules which accord with a particular practice adopted by the Administration, rather than oblige it to follow any particular practice.

11. The "Normal Procedure" also proposes that the advice to the House Committee should take place before the CE makes any public announcement of his acceptance of the recommendation. This proposal would seem to depend on the Government position before the need for any rules can be assessed.

(b) House Committee to refer to the Panel etc.

12. The "Normal Procedure" proposes that the House Committee refers the proposed appointment to the Panel or some other Panel(s) or committee(s) for discussion.

13. As Rule 75(11) of the Rules of Procedure empowers the House Committee to consider any item relating to the business of the Council, matters relating to the endorsement motion would appear to be an item that comes rightly within the purview of the House Committee.

14. Rule 75(13) further provides that the House Committee may refer any policy matter relating to the business of the Council to a Panel. The point to be considered here is whether the endorsement motion or the proposed appointment should be considered as a policy matter suitable for reference to the Panel or some other Panel(s). If not, an exception may have to be made requiring an amendment to the Rules of Procedure, with probably a need to review the terms of reference of the Panel(s). In any event, Rule 75(12) would allow the House Committee to appoint a subcommittee for the purpose.

(c) Panel etc. to hold early discussion open to all Members

15. The "Normal Procedure" proposes that the Panel(s)/committee(s) discusses the matter as soon as possible at a meeting to which all LegCo Members are invited to attend.

16. It is an accepted practice that any Member may attend a meeting of a Panel or committee but such a Member may not participate in any voting at the meeting. No stipulation in the Rules of Procedure would appear necessary.

(d) Panel(s)/committee(s) to report to the House Committee

17. Finally, the "Normal Procedure" proposes that the Panel(s)/committee(s) reports its discussion to the House Committee.

18. Rule 75(14) already provides that a Panel may make a report to the House Committee on a particular matter. For other committees appointed by the House Committee, it would be accepted practice to report back to the House Committee on their work.

Removal of judges

19. As the "Normal Procedure" is designed on the presumption that the appointment of judges is normally non-controversial, it may not be applicable entirely to the removal of judges. This might have to be borne in mind when the above is considered so that, if any rules are to be made, their applicability would have to be clarified.

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