

立法會

Legislative Council

LC Paper No. CB(2)1602/01-02

(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Legislative Council Panel on Constitutional Affairs

Minutes of meeting held on Monday, 18 March 2002 at 2:30 pm in Conference Room A of the Legislative Council Building

- Members Present** : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon SZETO Wah
Hon YEUNG Yiu-chung, BBS
Hon IP Kwok-him, JP
- Members Attending** : Hon Cyd HO Sau-lan
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Public Officers Attending** : Items III, IV and V
Mr Michael M Y SUEN, GBS, JP
Secretary for Constitutional Affairs
Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs
Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Mr Andrew LAI
Principal Assistant Secretary for Civil Service

Item VI

Mr Michael M Y SUEN, GBS, JP
Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer
Registration and Election Office

Mr Frederick W H HO
Commissioner for Census and Statistics

Mr Alvin W K LI
Assistant Commissioner for Census and Statistics

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

Staff in Attendance : Mr Paul WOO
Senior Assistant Secretary (2)3

Item IV

Mr Watson CHAN
Head, Research and Library Services Division

Mr CHEUNG Wai-lam
Research Officer 2

Mr CHAU Pak-kwan
Research Officer 5

Action
Column

I. Confirmation of minutes of meetings
(LC Paper Nos. CB(2)1189/01-02 and 1334/01-02)

The minutes of the meetings held on 21 January 2002 and 18 February 2002 respectively were confirmed.

II. Information papers issued since last meeting

(LC Paper Nos. CB(2)1212/01-02(01); 1325/01-02(01) and (02))

2. Members noted that the above papers had been issued.
3. The Chairman drew members' attention to LC Paper No. CB(2)1325/01-02 attaching the correspondence between the Legislative Council (LegCo) Secretariat and the Chairman of the Sha Tin District Council (STDC) on the issue of an additional seat for the District Council functional constituency. He said that the Chairman of STDC had advised that the proposal for an additional seat for the District Council functional constituency was made by an individual STDC member at the LegCo Members' meeting with STDC on 29 November 2001. The Chairman of STDC had conveyed the Administration's reply on the proposal to the DC member for attention. In the circumstances, the Panel considered that no further action should be taken on the matter.

III. Item for discussion at the next meeting

(LC Paper No. CB(2)1344/01-02(01))

Proposed accountability system for principal officials

4. In reply to the Chairman, SCA said that the Administration was likely to be in a position to report to the Panel at the next meeting on 15 April 2002 on the proposed accountability system for principal officials. He undertook to notify the Secretariat at the earliest opportunity, if the Administration eventually decided that discussion of the item should be deferred.
5. SCA suggested that the Panel might consider holding a joint meeting with other Panels such as the Panel on Public Service when the issue would be discussed on 15 April 2002. After some discussion, members agreed that instead of holding a joint meeting, all other LegCo Members would be invited to attend the next meeting of this Panel on 15 April 2002.
6. Ms Emily LAU asked whether the Administration would be prepared to move a motion debate on the proposed accountability system for principal officials after the necessary discussion on the subject had been concluded by the Panel. SCA replied that the proposal was being actively considered by the Administration.

IV. Research Report on "Process of Appointment of Senior Members of Government in Selected Countries"

(RP05/01-02 - Research Report conducted by the Research and Library Services Division issued under LC Paper Nos. CB(2)1345/01-02 (English version) and 1349/01-02 (Chinese version))

7. The Chairman said that the Research and Library Services Division (RLSD) had completed the above Research Report on the United Kingdom (UK), the United States (US) and the Republic of Singapore (Singapore). He informed members that due to time constraints for getting sufficient relevant information on the practices adopted in France, the part of the Report on France would not be undertaken at this stage.

8. The Chairman referred members to the Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" (RP02/01-02 issued under LC Paper No. CB(2)887/01-02 which was presented to the Panel on 21 January 2002). He said that for the benefit of discussion of the proposed accountability system for principal officials, the two Research Reports should be considered together.

9. At the invitation of the Chairman, Head, Research and Library Services (H/RL) briefed members on the Research Report. The scope of the research covered the following aspects -

- (a) Qualification of senior members of government;
- (b) Routes to senior members of government;
- (c) Appointment process;
- (d) Pay and benefits;
- (e) Terms of appointment;
- (f) Conflicts of interests; and
- (g) Removal of senior members of government.

10. H/RL said that Part 6 of the Research Report had set out a number of issues which the Panel could consider regarding the appointment of principal officials under the proposed accountability system. These were -

- (a) Applicability of Article 79 of the Basic Law (BL) to LegCo Members if appointed as principal officials, since the appointment was made by the Central Government and not the Government of the Hong Kong Special Administrative Region;

- (b) Whether some form of pre-appointment vetting should be introduced for the principal officials;
- (c) Remuneration package for principal officials and the need for specific legislation to govern principal officials' salaries;
- (d) Whether a system for monitoring possible conflicts of interest and declaration of interest should be introduced, taking into consideration that some principal officials might be appointed from outside the civil service;
- (e) Whether a contractual arrangement between the Chief Executive (CE) and principal officials was appropriate and related issues;
- (f) What courses of action could be taken in the situation of the CE refusing to recommend to the Central Government the removal of a principal official who had committed a serious policy mistake; and
- (g) Whether LegCo should have a role to play in the process of removal of a principal official from office.

11. Ms Emily LAU expressed the following views on the findings of the Research Report -

- (a) As shown in Table 12 of the Research Report, the ministerial salaries in UK and US were relatively modest as compared with the salary levels of senior government officials in Hong Kong. The issue of remuneration for the principal officials under the proposed accountability system had to be carefully considered ;
- (b) Consideration should be given to the merits of adopting the system in UK and US where declaration of interests made by senior members of government covered not only their own personal interests, but also those of their spouses and children;
- (c) In all the three countries under study, the legislature had a part to play in the process of removal of holders of ministerial positions from office. Both the UK and Singapore relied on the vote of confidence, while US relied on the impeachment mechanism. Hong Kong should take reference from their experience; and
- (d) In UK, US and Singapore, holders of ministerial posts were political appointees and did not have employment contracts. This differed from the proposed accountability system under which the politically appointed principal officials would be appointed on contract terms.

12. In response to Ms Emily LAU on paragraph 11(d), Research Officer 5 said that in the three countries concerned, the relationship between the head of government and holders of ministerial posts was political rather than contractual. Unlike their civil service counterparts, the political appointees were not employed on contractual terms. Conditions of removal were regulated either by constitutional conventions as in UK or by legal means as in US. He added that the absence of contractual obligations had the advantages of flexibility and minimizing disputes in the event of the removal of the political appointees.

13. Dr YEUNG Sum said that in the countries under study, the legislature could remove a political appointee from office by passing a vote of no confidence or by impeachment. In the US, committees of the Senate could hold public hearings for the purpose of considering the suitability of a candidate for political appointment. Through answering questions, candidates could take the opportunity to explain to the public their visions for policies and how they would commit themselves to achieving the policy goals. He suggested that the Government should consider introducing similar arrangements for the proposed accountability system.

14. Dr YEUNG Sum further opined that constitutional conventions should be developed so that when a vote of no confidence was passed by LegCo on a principal official, CE should respect the consensual view of LegCo and recommend for the removal of the official concerned. He said that although the BL did not provide for a mechanism for removing principal officials from office by LegCo, the development of such a constitutional convention would not amount to a violation of the BL.

15. Echoing Dr YEUNG Sum's views, the Chairman pointed out that the Report on the Development of the Political System of the Hong Kong Special Administrative Region published by the Panel in June 2000 recommended, inter alia, "that the Government should explore the feasibility of developing constitutional conventions under which principal officials shall voluntarily resign as a result of having committed serious mistakes in the formulation or implementation of government policies".

16. The Chairman added that in nearly all parliamentary systems of government, although the legislature had a role to play in the removal of senior members of government from office, it played no part in the appointment of the officials. The situation, nevertheless, was different under the presidential system in the US.

17. In response, SCA said that the Administration would explain to LegCo Members the finalized proposals at the meeting on 15 April 2002. The initial position of the Administration was that the suggestions made by Dr YEUNG in paragraph 13 above might not be the only way to achieve the true objective of

enhancing accountability. Under the proposed accountability system, principal officials who committed serious mistakes would be held accountable for their actions and in extreme cases would have to consider voluntarily resigning from office.

18. Mr CHEUNG Man-kwong opined that the Administration should take necessary measures to address public concern that the proposed accountability system for principal officials might over-strengthen the executive's power, resulting in intensification of the conflicts between the executive and the legislature. He said that the Administration should explain its stance on the following issues at the meeting on 15 April 2002 -

- (a) How to put in place a proper system of pre-appointment integrity vetting of candidates, bearing in mind that some of the principal officials might be recruited from outside the civil service;
- (b) Whether it was desirable to include as part of the appointment process a procedure under which candidates of principal official posts should appear before LegCo to answer questions put to them by Members;
- (c) Whether constitutional conventions should be developed whereby a principal official should resign from office on a vote of no confidence passed by LegCo; and
- (d) How a system of post-office restrictions on activities of former principal officials would be implemented to guard against possible conflicts of interest.

19. Miss Margaret NG asked whether the proposed accountability system would necessitate enactment of new legislation and if so, how could the Administration ensure that the legislative process could be completed before 1 July 2002 when the new accountability system was intended to be brought into effect.

20. SCA responded that an internal detailed study was being conducted by the Administration. The initial thinking of the Administration was that some legislative changes might be required to give effect to the changes which would be brought about by the proposed accountability system, e.g. to provide the legal basis for the exercise of the statutory functions by the politically appointed principal officials upon the coming into operation of the new system. However, he anticipated that the legislative process would not be a complicated one.

21. The Chairman expressed the view that enactment of new legislation might not be necessary if the same policy portfolios of the present Bureau Secretaries were to be transferred to the newly appointed principal officials who would then be held ultimately accountable for the respective policies.

22. Miss Margaret NG pointed out that principal officials would have a crucial role to play in constitutional litigation cases, where the Government was involved as a party to the proceedings. Citing the right of abode cases as an example, she said that the Director of Immigration was the respondent in the litigation proceedings concerned. She said that the requisite legislative amendments to clarify the authority of the principal officials would have to be completed at an early stage. But there must also be adequate time to allow LegCo to scrutinize the legislative proposals in detail.

23. Miss Margaret NG further said that the proposed accountability system for principal officials had been discussed by LegCo since more than one year ago and yet only very sketchy information had so far been provided by the Administration. As the Administration had yet to unveil the details of the system for consultation, she doubted the feasibility of implementing such a major reform by 1 July 2002, in view of the complexities and legislative amendments involved.

24. Dr YEUNG Sum said that it was likely that the proposed accountability system would enhance the powers of the principal officials in their respective policy areas. This might impact on the structures and functions of some statutory bodies such as the Housing Authority and the Hospital Authority, thus making the legislative process even more complicated and time-consuming.

25. Ms Emily LAU and Dr YEUNG Sum cautioned that the Administration should not expect LegCo to simply “rubber-stamp” the proposed accountability system which involved both financial and legislative proposals. They said that the Administration must set a realistic timetable for implementation in order to allow sufficient time for thorough discussion by LegCo and the public, including the holding of a motion debate by the Council on the issue. Otherwise, the Administration would find it a difficult task to secure the support of LegCo.

26. SCA said that the Administration would take note of members’ concerns and respond to them at the next meeting. He expressed confidence that the Government and LegCo would work cooperatively in dealing with this important issue of enhancing executive accountability, as on many instances in the past.

V. Restrictions on activities of former heads of government and former senior members of government

(Research Reports conducted by RLSD on “Restrictions on Activities of Former Heads of Government and Former Senior Members of Government” (RP02/01-02) and “Process of Appointment of Senior Members of Government in Selected Countries” (RP05/01-02); LC Paper No. CB(2)2042/00-01(04))

27. SCA said that the Administration had prepared a paper (LC Paper No. CB(2)2042/00-01(04)) for discussion by the Panel at its meeting on 9 July 2001. The paper highlighted a study conducted by the Administration on the arrangements applicable to heads of governments after stepping down from office in eight countries, viz, Australia, Belgium, Canada, Germany, Japan, New Zealand, the United Kingdom and the United States. The study contained similar findings to that of the Research Reports conducted by RLSD. For example, the findings showed that legislation was not the only means to imposing post-office restrictions. Among other things, the threat of hostile public reaction and media comments could be a powerful disincentive to former members of government to refrain from engaging in activities which might create suspicion or impropriety. He said that the Administration would take into account the systems operating in other countries in its consideration of the issue of post-office restrictions on activities of a former CE and senior members of government.

28. SCA drew members’ attention to Appendix II to the RLSD’s Research Report (RP05/01-02) on “Guidelines on the Acceptance of Appointment or Employment Outside Government by Former Ministers of the Crown”. In considering how to implement post-office restrictions, the Administration would carefully consider different approaches with a view to achieving the right balance between avoiding possible conflicts of interest on the one hand and protection of the right to move into other areas of public life after leaving office on the other.

29. Mr James TIEN opined that any system adopted should not have the effect of deterring dedicated and capable people from serving Hong Kong. He said that the Administration should finalize its proposals and revert to the Panel as early as possible, preferably at the next meeting on 15 April 2002.

30. Ms Cyd HO and Ms Emily LAU said that in conducting its study, the Administration should not rule out the possibility of introducing legislation for the monitoring of post-office activities of the CE and senior members of government. Ms Cyd HO pointed out that a strict comparison of Hong Kong with other overseas countries might not be possible in view of the different political systems in operation, e.g. the absence in Hong Kong of universal suffrage for the election of the head of government and the absence of a ruling party etc. These could limit the effect of media comments and hostile public

reactions in deterring unethical conduct of former senior members of government.

31. SCA said that the Administration would take into consideration members' views.

32. Ms Emily LAU asked whether the Administration would promulgate post-office restrictions on the activities of the CE before the second term CE assumed office on 1 July 2002. She opined that to be fair to the CE, such restrictions should be publicized before 1 July 2002.

33. SCA replied that the issue of post-office restrictions on the activities of CE would be considered in a separate context from that relating to senior members of government. He said that the Administration would try its best to finalize the proposed arrangements as soon as possible.

VI. Hong Kong 2001 Population Census - Maps and Tables for District Council Districts

(Basic Tables for District Council Districts, Boundary Maps Complementary to Tables for District Council Districts and Constituency Areas, Basic Tables for Constituency Areas (Hong Kong Island, Kowloon, New Territories), Basic Tables for Tertiary Planning Units, and Boundary Maps Complementary to Tables for Tertiary Planning Units - issued under LC Paper Nos. CB(1)692/01-02 and 954/01-02; LC Paper No. CB(2)1344/01-02(02))

34. Deputy Secretary for Constitutional Affairs introduced the Administration's paper (LC Paper No. CB(2)1344/01-02(02)) which highlighted the findings of the Hong Kong 2001 Population Census (the Census) relating to the 18 District Council (DC) districts. As explained in the paper, the population figures in the Census, which served as the basis for demarcation of constituency boundaries in the DC elections, were of greater relevance to constitutional affairs.

35. The Administration explained that as provided for in section 6 of the District Councils Ordinance, the CE in Council should, by order published in the Gazette, declare any area within a district to be a constituency for the purposes of election of a member of the DC established for that district. When making the order, the CE in Council must have regard to the recommendations made by the Electoral Affairs Commission (EAC). In accordance with section 18 of the EAC Ordinance, the EAC would submit its recommendations on the delineation of DC constituencies for the next DC elections in 2003 to the CE on or before 27 November 2002. Section 19 of the EAC Ordinance further provided that the EAC should consult the public on the proposed delineation before it was to submit its recommendations to the CE.

36. The Administration further advised that when drawing up the constituency boundaries for the 2003 DC elections, EAC would take into account the population changes in various districts by mid-2003 as well as the statutory requirements provided for in the EAC Ordinance.

37. The Chairman asked whether a change would be proposed to the total number of elected DC members to be returned in the 2003 DC elections, having regard to the findings of the Census and the population changes by mid-2003.

38. Mr IP Kwok-him and Dr YEUNG Sum asked whether there would be changes to the number of constituencies in the districts and changes to the constituency boundaries for the 2003 DC elections.

39. Ms Cyd HO pointed out that the population and the number of elected members in the DCs did not match proportionately among districts. For example, the ratio of the population of the Central and Western District to that of the Wan Chai District was 5 to 3, while that for the number of elected DC members was 15 to 11. She considered that it might be desirable to conduct a review in this regard.

40. The Administration advised that Part I of Schedule 3 to the District Councils Ordinance prescribed the number of elected members and appointed members of the 18 DCs. The number of constituencies in a district equaled the number of elected members in that district, since section 7 of the District Councils Ordinance required that the number of elected members to be returned for each constituency was one. At present, the Administration had no intention to amend Schedule 3 for the 2003 DC elections.

41. The Administration further advised that in drawing up the DC constituency boundaries, EAC would ensure that the population in each constituency was as near the population quota as practicable. The population quota, by definition, was the total population of Hong Kong divided by the total number of elected members to be returned in a particular election. In the 1999 DC elections, the population quota was 17,043. Other factors to be considered included the community identities and the preservation of local ties as well as physical features such as size, shape, accessibility and development of the relevant areas. The constituency boundaries of certain districts might change for the 2003 DC elections. The EAC would consult the public in September 2002 on the proposed delineation of constituency boundaries for the purposes of the 2003 DC elections.

42. The Chairman and Dr YEUNG Sum opined that there might be a need to review the number of DC members in certain districts in view of the population changes. They noted that apart from some districts in the New Territories, sharp population increases were also found in other areas such as

Tseung Kwan O and Chai Wan. This had led to significant deviations from the existing population quota of 17 043.

43. The Chairman drew members' attention to section 8 of the District Councils Ordinance which provided that the CE in Council might amend Schedule 1, 2 or 3 subject to the approval of LegCo.

44. Mr Howard YEUNG also noted that while the total population of Hong Kong had increased by about 1%, the change in population in some areas had varied considerably. Mr CHEUNG Man-kwong pointed out that in the 1999 DC elections, the population in the smallest constituency, "Lamma & Po Toi", was 5 220, while the biggest constituency, "Wo Che", had a population of 23 004. Both deviated greatly from the population quota of 17 043. He asked whether there were both upper and lower limits for the population of a constituency, and whether certain existing constituencies could be merged with or subdivided into other constituencies.

45. Ms Emily LAU said that she was in strong opposition to the present system of appointing a certain number of members to the DCs. She considered that such appointment system should be dispensed with. She further pointed out that there were views expressed that the existing DC constituencies were too small, resulting in the promotion of narrow and sectoral interests. Hence, the desirability and feasibility of enlarging the constituencies should be considered.

46. In response to the above issues raised by members, the Administration advised that section 20 of the EAC Ordinance provided the EAC with flexibility in making recommendations on constituency boundaries. Where it was not practicable to comply with the requirement of the population quota, EAC should ensure that the extent of each constituency was such that the population in that constituency did not exceed or fall short of the population quota by more than 25%. Furthermore, section 20(5) of the EAC Ordinance empowered the EAC to choose to depart from the application of these requirements in exceptional circumstances, if a consideration relating to the community identities and the preservation of local ties of a particular area rendered such a departure necessary or desirable.

47. The Commissioner for Census and Statistics (CCS) supplemented that the Census and Statistics Department would prepare a new set of territory-wide population projections in mid 2002. The new population projections would be used as control total for projections of population distribution at small area level, taking into consideration such factors as completion of new housing projects and redevelopment of old districts etc. Such endeavour should produce useful information for the consideration of the EAC.

48. Mr CHEUNG Man-kwong noted that there was a total population of 5 895 under the category of "Marine". He asked how these people were

registered for the purposes of DC elections. Chief Electoral Officer said that as with other registered voters, these people were registered according to their reported principal place of residence (i.e. the locations at which their marine vessels were moored).

49. Ms Emily LAU asked whether the existing practice of excluding home-makers from the labour force should be reviewed. CCS replied that the current treatment of home-makers was in line with classifications recommended by the International Labour Organization and adopted by advanced economies. It was necessary to follow the adopted criteria in order to make meaningful comparisons with statistics in other jurisdictions.

50. At Ms Emily LAU's request, the Administration agreed to provide a breakdown of the number of electors by DC constituencies based on the current voter register.

(Post-meeting note - The breakdown was circulated under LC Paper No. CB(2)1454/01-02(01))

51. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
17 April 2002