

立法會
Legislative Council

LC Paper No. CB(2)1972/06-07(01)

Ref : CB2/HS/1/06

**Subcommittee on Legislative Amendments Relating to the Proposed
Re-organisation of Policy Bureaux of the Government Secretariat**

Background Brief

PURPOSE

This paper reports on the deliberations of the Panel on Constitutional Affairs on issues relating to the proposed re-organisation of policy bureaux of the Government Secretariat (the proposed re-organisation) at its meetings on 8, 11, 16 and 18 May 2007, and related developments.

BACKGROUND

2. On 3 May 2007, the Chief Executive (CE) announced the plan to re-organise the policy bureaux of the Government Secretariat with effect from 1 July 2007. CE explained that economic, social and other developments experienced by Hong Kong since the implementation of the accountability system in 2002 had necessitated a review to ascertain if the current structure could enable Hong Kong to meet the challenges which the third term HKSAR Government had to address. In addition, there was also a need to ensure an even distribution of work among policy bureaux.

3. At the House Committee meeting on 4 May 2007, Members agreed that the proposed re-organisation be followed up by the Panel on Constitutional Affairs.

DELIBERATIONS OF THE PANEL

4. The Panel has so far held four meetings between 8 and 18 May 2007 to discuss the distribution of responsibilities among the policy bureaux, the changes in the civil service organisational structure consequential to the proposed re-organisation, and the nature of the legislative amendments to effect the transfer of statutory functions arising from the re-organisation. A list of the 11 organisations/individuals who have submitted views to the Panel meeting on 18 May 2007 is in **Appendix**. The Panel will receive further views from the

public at its meeting on 26 May 2007. The main issues discussed by the Panel are summarised below.

Timetable and public consultation

5. According to the Administration, it will submit a proposal of changes in the civil service organisational structure consequential to the proposed re-organisation to the Establishment Subcommittee on 22 May 2007 and the Finance Committee in early June 2007. The Administration will give notice on 23 May 2007 to move a Resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap.1) at the Council meeting on 13 June 2007 to effect the transfer of statutory functions arising from the re-organisation.

6. Some Members, including Hon Emily LAU, Hon YEUNG Sum, Dr Hon Fernando CHEUNG and Hon Albert HO, have criticised the tight timetable proposed by the Administration and queried the need for the proposed re-organisation to be implemented on 1 July 2007. They also consider that the Administration should consult the public on the proposed re-organisation before implementation. Dr Hon Fernando CHEUNG considers that the Chief Secretary for Administration should attend meetings of the Panel to explain details of the proposed re-organisation to Members.

7. The Administration has explained that it had, over the last few years, in the context of consulting the community, Members and various advisory groups, received feedback that there is a need to review the existing alignment of policy responsibilities to take account of the changes in workload and scope of policy bureaux. In his election platform, the CE has highlighted, inter alia, that there is also a need to ensure an even distribution of work among policy bureaux. In response to the comments received and in order to honour his election pledges, the CE has decided to re-organise the Government Secretariat with effect from 1 July 2007.

8. The Administration has also advised that following the CE election in March 2007, it has taken several weeks to finalise the re-organisation proposal before CE could make a formal announcement on 3 May 2007. It is the intention of the Administration that the proposed re-organisation will be implemented for the third term Government on 1 July 2007. Following the legislative process, the Principal Officials for the third term Government will be nominated by the CE for appointment.

9. The Panel has decided to invite the public to give views on the proposed re-organisation at its meetings on 18 and 26 May 2007.

Legislative amendments

10. The Administration has advised that the Resolution will provide that, with

effect from 1 July 2007, the functions currently exercisable by a certain Director of Bureau by virtue of the ordinances set out in the Resolution be transferred to a specified Director of Bureau who will take charge of the relevant policy responsibilities following the re-organisation of the Government Secretariat. The Resolution will not involve substantive amendments to the statutory functions (including powers and duties) provided for in the relevant ordinances. The Resolution will provide for the simple substitution of the current title of the Director of Bureau by the new title of the Director of Bureau in whom policy responsibility for the provisions in question is to be vested with effect from 1 July 2007.

11. After the Resolution has been passed, the CE in Council will need to make an order to amend the list of public officers specified in Schedule 6 to Cap. 1, so as to reflect the changes to the post titles of the various Directors of Bureau who are to take charge of the relevant re-organised bureaux. The Administration intends to present the draft Order to the Panel alongside the Resolution. For the re-organisation to be implemented, both the Resolution and the Order will need to come into force on 1 July 2007.

12. The Panel has considered whether it should discuss the draft Resolution attached to the Legislative Council Brief entitled "Re-organisation of Policy Bureaux of the Government Secretariat : Legislative Amendments" issued on 9 May 2007. Some Members, including Hon Emily LAU and Hon YEUNG Sum, consider it inappropriate for the Panel, which is tasked to discuss the policy aspect of the proposed re-organisation, to be responsible also for scrutinizing the Resolution. They are adamant that the established procedure for scrutinising subsidiary legislation by a subcommittee formed under the House Committee should be respected and adhered to by the Administration.

13. Hon Margaret NG has reiterated her previous position that the accountability system implemented in 2002 was unconstitutional because the status of the new category of public officers, i.e. Principal Officials, was not established by means of legislation before resorting to the use of a resolution under section 54A of Cap. 1 to transfer the relevant statutory functions.

14. As proposed by Hon Emily LAU, the House Committee discussed and agreed at its meeting on 18 May 2007 that a subcommittee should be formed to study legislative amendments relating to the proposed re-organisation.

Accountability system for Principal Officials

Review of the accountability system

15. Some Members, including Hon LEE Cheuk-yan, Hon Emily LAU and Hon Albert HO, have pointed out that the proposed re-organisation will result in changes in the role and responsibilities of some Principal Officials and the creation

of an additional position of Principal Official. They consider that the Administration should review the accountability system implemented in 2002 before making any proposals to re-organise policy bureaux of the Government Secretariat.

16. The Administration has explained that the Consultation Document entitled "Further Development of the Political Appointment System" was issued in July 2006. Chapter 1 of the Consultation Document sets out the development of the accountability system since July 2002. The Administration will analyse the views collected during the consultation period and announce its decision on the way forward in the latter half of 2007. The Administration will address any issues relating to the accountability system in the context of this consultation exercise.

17. Hon Emily LAU has requested the Administration to review the position of the Secretary for the Civil Service (SCS) under the accountability system, e.g. whether the "no revolving door" requirement should apply to this position.

18. The Administration has explained that the position of the SCS is rather unique. Under the accountability system, the SCS is one of the Principal Officials nominated for appointment by the CE. The person filling the SCS position is drawn from the body of serving civil servants and not obligated to resign or retire from the civil service before taking up the position. He may choose to do so during his term as the SCS, or he may choose to revert to the civil service immediately upon termination or completion of his term of appointment as the SCS if he has not yet reached the retirement age specified for civil servants. The Administration will address any views on the position of the SCS in the context of the consultation exercise on further development of the political appointment system.

Role and responsibilities of Principal Officials and civil servants

19. Some Members have expressed concern about the unclear division of the role and responsibilities between Principal Officials and civil servants under the accountability system. They have questioned how senior civil servants, who are often required to undertake political work such as explaining Government policies to Members, could maintain political neutrality.

20. The Administration has explained that civil servants should support the work of Principal Officials by explaining policies decided by the Government of the day to Members, the public and the media, and helping to secure the support of the community and the LegCo on Government policies. Undertaking political work of this nature is not in conflict with the political impartiality of the civil service.

21. Hon James TIEN and Hon Emily LAU have expressed concern about the level of representation of public officers at Panel meetings, and suggested that Principal Officials should attend Panel meetings to explain Government policies to Members on a more frequent basis. The Administration has agreed to convey Members' view to the Directors of Bureau.

The proposed re-organisation

Proposed changes

22. The Administration has advised that at present, the Government Secretariat comprises 11 policy bureaux, each headed by a Director of Bureau. The 11 existing policy bureaux are -

Civil Service Bureau
Commerce, Industry and Technology Bureau
Constitutional Affairs Bureau
Economic Development and Labour Bureau
Education and Manpower Bureau
Environment, Transport and Works Bureau
Financial Services and the Treasury Bureau
Health, Welfare and Food Bureau
Home Affairs Bureau
Housing, Planning and Lands Bureau
Security Bureau.

23. The major impact on the structure of the Government Secretariat following the proposed re-organisation is as follows -

- (a) a new bureau (i.e. the Labour and Welfare Bureau) will be created;
- (b) eight existing bureaux (and also the Administration Wing under the Chief Secretary's Office) will have their policy responsibilities re-organised; and
- (c) three existing bureaux (i.e. the Civil Service Bureau, the Financial Services and Treasury Bureau and the Security Bureau) will not be affected by the proposed re-organisation. Their structures and names will remain unchanged.

24. After the re-organisation, the 12 policy bureaux are as follows -

Civil Service Bureau
Commerce and Economic Development Bureau
Constitutional and Mainland Affairs Bureau
Development Bureau

Education Bureau
Environment Bureau
Financial Services and the Treasury Bureau
Food and Health Bureau
Home Affairs Bureau
Labour and Welfare Bureau
Security Bureau
Transport and Housing Bureau.

Distribution of responsibilities among policy bureaux

25. Some Members and some deputations support the proposed re-organisation which aims to rationalize the distribution of responsibilities between policy bureaux and facilitate the CE to implement the priority policy initiatives pledged during the CE election.

26. Some Members and some deputations have raised concerns over the distribution of responsibilities among the bureaux as follows -

- (a) Constitutional and Mainland Affairs Bureau - it is inappropriate to transfer human rights to the bureau which is responsible for co-ordination of HKSAR's relations with the Mainland, as it may give the impression that the Mainland will have undue influence on human rights issues of the HKSAR;
- (b) Development Bureau - it is inappropriate to put development-related heritage conservation under the Development Bureau, in view of the possible conflict between early implementation of infrastructural projects and heritage conservation;
- (c) Environment Bureau - sustainable development should be placed under a single bureau, and not the Environment Bureau, as policies on sustainable development straddle different policy areas and should not focus only on environmental protection;
- (d) Home Affairs Bureau - the proposal to transfer the legal aid portfolio from the Administration Wing of the Chief Secretary for Administration's Office to the Home Affairs Bureau, a policy bureau, may downgrade the status of the Legal Aid Department (LAD) and undermine its independence. Access to justice is a core issue for the administration of justice and the actual and perceived independence of the provision of legal aid is of paramount importance to confidence in the rule of law;
- (e) Labour and Welfare Bureau - the proposal to merge the labour portfolio and the welfare portfolio under the same policy bureau is

welcomed by some Members. However, there are doubts on whether the arrangement is appropriate, as welfare covers more than just promotion of self-reliance through employment; and

- (f) Transport and Housing Bureau - it may not be appropriate to place external transportation and housing matters under the same policy bureau, as air services and maritime transport involve international agreements and are totally unrelated to local housing policy.

27. The Administration's response is summarised below -

- (a) Constitutional and Mainland Affairs Bureau - fundamental rights and freedoms of Hong Kong residents and HKSAR's obligations under the relevant international covenants are guaranteed in the Basic Law whose implementation is an integral part of the Constitutional Affairs portfolio;
- (b) Development Bureau - the CE has pledged in his election platform to consolidate the structure of Government bodies involved in infrastructure projects, so as to speed up the implementation of large-scale projects and enhance planning and implementation efficiency. Putting related responsibilities under the same Bureau enables a closer interface at the policy level between development and heritage conservation. It will also enhance efficiency while ensuring early attention to heritage conservation when implementing development projects;
- (c) Environment Bureau - sustainable development is not possible without a closer interface between the policies relating to environmental protection and energy which help improve the quality of the environment. These portfolios will be put under the same bureau in order to establish a more focused structure to deal with these closely related policy areas and to make better use of expertise and resources;
- (d) Home Affairs Bureau - as legal aid is a complex stand-alone policy subject that involves provision of services to the community, it is appropriate for the subject to be placed under the purview of the Home Affairs Bureau. The proposed transfer will not affect the statutory role of the Legal Aid Services Council, the legal aid services provided by the LAD in accordance with the relevant legislation, and the progress of the various reviews in the pipeline;
- (e) Labour and Welfare Bureau - The policy portfolio of the current Health, Welfare and Food Bureau is too wide. It is considered appropriate to transfer the welfare portfolio to the same policy

bureau with responsibility for labour and manpower. While promoting self-reliance through employment applies most aptly to the able-bodied unemployed, the concept, as an approach is also applicable to other vulnerable groups; and

- (f) Transport and Housing Bureau - matters relating to internal and external transportation, including air services, maritime transport, land transport and logistics, will be put under the same roof for a more integrated approach to support Hong Kong as the premier international transportation and logistics hub, and maritime centre in Asia.

28. To address some Members' concerns about co-ordination of policy issues straddling different policy bureaux, the Administration has supplemented that all Directors of Bureau will report on the day-to-day business of their bureaux to either the Chief Secretary for Administration or the Financial Secretary, who will in turn support the CE in ensuring the effective conduct of Government business. In addition, there are in-built matrix mechanisms whereby co-ordination across bureaux and departments can be re-oriented quickly and resources mobilized flexibly to deal with cross-cutting issues promptly and effectively.

Title of the Commerce and Economic Development

29. The Administration has proposed to merge the portfolio of the present Secretary for Commerce, Industry and Technology with that of the present Secretary for Economic Development and Labour in respect of matters relating to tourism, consumer protection and competition policy. In recognition of the expanded remit of the bureau, it will be retitled the Commerce and Economic Development Bureau.

30. Dr Hon LUI Ming-wah and Hon SIN Chung-Kai are disappointed that the title of the bureau does not reflect the portfolios of industry and technology, two important economic pillars of Hong Kong, and have requested the Administration to reconsider the matter. The Administration has explained that if the title of the bureau reflects all its responsibilities, it will be unnecessarily cumbersome and long. The Administration remains of the view that the proposed title is appropriate. Hon SIN Chung-Kai has indicated that he will move an amendment to the Resolution.

Grading and ranking of certain civil service posts

31. According to the Administration, the post of Permanent Secretary for the Environment, currently pitched at D6 level, is proposed to be upgraded to D8 level. The post holder will continue to assume the title of the Director of Environmental Protection (DEP). As the highest rank of the Environmental Protection Officer grade is currently at D3 level and following the deletion of the post of the DEP,

Hon CHOY So-yuk, Hon Audrey EU and some deputations have expressed concern about the promotion prospect of the grade. Some deputations have suggested that the post of the DEP at D6 level should be reinstated and be filled by a qualified environmental professional. The Administration has agreed to address the relevant issues in the latter half of 2007.

32. Hon WONG Kwok-hing has expressed his concern as well as that of some other Members in the labour sector that the Administration's proposal to reinstate a Commissioner for Labour post at D6 level to lead and steer the Labour Department (LD) will downgrade the importance of the post.

33. The Administration has explained that the existing Permanent Secretary for Labour, apart from his policy responsibilities, also performs executive functions by serving as the head of the LD. As this post will be responsible for both the labour and welfare portfolios after re-organisation, a D6 post will have to be reinstated to take over his responsibility as the head of the LD. The Administration has stressed that more manpower at senior level will be provided for the labour portfolio under the proposal.

Distribution of posts of Permanent Secretary

34. The Administration has advised that after re-organisation, each Director of Bureau will be underpinned by one or two Permanent Secretaries. The distribution of the 17 posts of Permanent Secretary is as follows -

- Secretary for the Civil Service - 1
- Secretary for Commerce and Economic Development - 2
- Secretary for Constitutional and Mainland Affairs - 1
- Secretary for Development - 2
- Secretary for Education - 1
- Secretary for the Environment - 1
- Secretary for Financial Services and the Treasury - 2
- Secretary for Food and Health - 2
- Secretary for Home Affairs - 1
- Secretary for Labour and Welfare - 1
- Secretary for Security - 1
- Secretary for Transport and Housing - 2.

Director of Chief Executive's Office (DCEO)

35. The Administration has proposed to take the opportunity to align the terms of employment of DCEO with those of a Director of Bureau. Hon Audrey EU has requested the Administration to provide justifications for the proposal and the percentage increase in DCEO's remuneration under the proposal.

36. The Administration has explained that DCEO is the CE's Chief of Staff and is the head of the CE's Office. Similar to all Directors of Bureau, DCEO is a non-civil service position created in 2002 under the accountability system. He is accountable to the CE and subject to the CE's political appointment. At present, DCEO's remuneration is pegged to that of a directorate civil servant at D8 level. Though not a Principal Official himself, the post-holder has to abide by the Code applicable to Principal Officials under the accountability system. Similar to the arrangements for the Principal Officials, DCEO's term of office will tie in with that of the CE who appoints him.

37. As DCEO is a political appointee performing the role and responsibilities akin to that of Principal Officials under the accountability system, the Administration considers it reasonable and logical that his terms of employment should be identical to those of Directors of Bureau. The additional cost will be \$396,288 per year, representing an increase of more than 10% in DCEO's remuneration.

Remuneration of Principal Officials after 1 July 2007

38. The Administration has proposed that the 10% cut in the remuneration of Principal Officials implemented in April 2003 will no longer apply from the new term of Government from 1 July 2007. Hon LEE Wing-tat has suggested that reversion should be implemented in phases.

39. The Administration has explained that all Principal Officials voluntarily accepted a 10% reduction of their remuneration from April 2003 to share the hard times with the community to solve the fiscal deficit problem. The term of appointment of the Principal Officials under the accountability system of the current term Government will end on 30 June 2007. With the commencement of the new term Government on 1 July 2007, the contracts to be entered into with the Principal Officials should be based on the remuneration package approved by the Finance Committee in 2002. As the 10% cut was accepted voluntarily by the Principal Officials of the second term Government, this arrangement will lapse with the completion of the second term.

RELATED DEVELOPMENTS

40. On 22 May 2007, the Establishment Subcommittee endorsed the changes of the civil service organisational structure arising from the proposed re-organisation and the alignment of the terms of employment of DCEO with those of a Director of Bureau.

41. The Panel on Administration of Justice and Legal Services will discuss the proposed transfer of the legal aid portfolio from the Administration's Wing to the Home Affairs Bureau at its meeting on 28 May 2007.

RELEVANT PAPERS

42. The relevant papers considered by the Panel are available on the LegCo website.

Council Business Division 2
25 May 2007

曾向政制事務委員會提出意見的團體／人士名單
List of organisations/individuals who have
submitted views to the Panel on Constitutional Affairs

- | | |
|------------------|--|
| (1) 九龍社團聯會 | Kowloon Federation of Associations |
| (2) 公民黨 | Civic Party |
| (3) 民主黨 | The Democratic Party |
| (4) 香港人權監察 | Hong Kong Human Rights Monitors |
| (5) 香港工程師學會 | The Hong Kong Institution of Engineers |
| (6) 香港中華廠商聯合會 | The Chinese Manufacturers' Association of Hong Kong |
| (7) 香港建造商會有限公司 | The Hong Kong Construction Association Limited |
| (8) 香港島各界聯合會 | The Hong Kong Island Federation Limited |
| (9) 香港機電工程師聯合會 | The Hong Kong Federation of Electrical and Mechanical Contractors Limited |
| (10) 華員會環境保護主任分會 | Hong Kong Chinese Civil Servants' Association, Environmental Protection Officer Branch |
| * (11) | S K LAI |

* 只提供意見書
Written submission only