

立法會
Legislative Council

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LC Paper No. CB(2)194/07-08
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

**Minutes of special meeting
held on Tuesday, 8 May 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon Albert HO Chun-yan
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon LEE Cheuk-yan
 - Hon Margaret NG
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon CHEUNG Man-kwong
 - Hon Bernard CHAN, GBS, JP
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon Howard YOUNG, SBS, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon LEE Wing-tat
 - Hon Daniel LAM Wai-keung, SBS, JP
 - Hon Alan LEONG Kah-kit, SC
 - Dr Hon KWOK Ka-ki
 - Hon Ronny TONG Ka-wah, SC
 - Hon CHIM Pui-chung
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members attending** :
- Hon SIN Chung-kai, JP
 - Hon Albert CHAN Wai-yip
 - Dr Hon Fernando CHEUNG Chiu-hung
- Members absent** :
- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon CHAN Yuen-han, JP
 - Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
 - Hon LEUNG Yiu-chung

Hon WONG Yung-kan, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon WONG Kwok-hing, MH
Hon MA Lik, GBS, JP
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon KWONG Chi-kin

Public Officers : Item I
attending

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Miss Denise YUE Chung-yee
Secretary for the Civil Service

Mr Andrew WONG Ho-yuen
Permanent Secretary for the Civil Service

Mrs Cherry TSE LING Kit-ching
Permanent Secretary for Constitutional Affairs

Ms CHANG King-yiu
Permanent Secretary, Chief Executive's Office

Ms Fanny IP Fung-king
Deputy Law Draftsman
(Bilingual Drafting & Adm) (Acting)

Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional Affairs

Clerk in : Mrs Percy MA
attendance : Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Proposed re-organisation of policy bureaux of the Government Secretariat

(CAB F19/6/3/2(2007) - Legislative Council Brief on "Re-organisation of policy bureaux of the Government Secretariat"

LC Paper No. CB(2)1766/06-07(01) - Administration's letter dated 3 May 2007

LC Paper No. CB(2)1780/06-07(01) - Administration's paper on "Re-organisation of policy bureaux of the Government Secretariat : Legislative Amendments")

As the Chairman was out of town, the Deputy Chairman took the chair.

Introduction

2. Secretary for Constitutional Affairs (SCA) said that the Chief Executive (CE) announced on 3 May 2007 the plan to re-organise the policy bureaux of the Government Secretariat with effect from 1 July 2007. The CE had explained that economic, social and other developments experienced by Hong Kong since the implementation of the Accountability System for Principal Officials (POs) (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 Government of the Hong Kong Special Administrative Region (HKSAR) had to address. In addition, there was also a need to ensure an even distribution of work among policy bureaux. Arising from the re-organisation, the number of bureaux would be increased from 11 to 12.

3. SCA further said that the Administration would submit a proposal of changes in the 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 would 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. The

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Resolution would not involve substantive amendments to the statutory functions (including powers and duties) provided in the relevant ordinances.

4. Some members, including Mr LEE Cheuk-yan, Ms Audrey EU and Dr Fernando CHEUNG, 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 considered that the Administration should consult the public on the proposed re-organisation before implementation.

5. Dr Fernando CHEUNG considered that the Chief Secretary for Administration (CS) should attend meetings of the Panel to explain details of the proposed re-organisation to Members. Mr Albert CHAN said that the proposed re-organisation was outside the scope of work of the Constitutional Affairs Bureau (CAB). He said that the CE, or the three POs, namely the CS, the Financial Secretary (FS) and the Secretary for Justice, should be the one to brief Members on the proposal.

6. SCA said that the CE had already set out the proposal at the Council meeting on 3 May 2007. In his election platform, the CE had also highlighted, inter alia, that the third term Government of the HKSAR would review the division of work among policy bureaux. When the Accountability System was introduced in 2002, the CAB was the bureau to represent the Government in the discussion with Members on the proposal. The present arrangement followed that of the 2002.

Review of the Accountability System

7. Mr LEE Cheuk-yan said that since the Accountability System was introduced four years ago, no review had been conducted to assess its effectiveness, such as whether the system had enhanced the accountability of POs to LegCo and whether persons of the right calibre from the private sector had been attracted to take up political positions. He considered that the Administration should review the Accountability System before making any proposal to re-organise policy bureaux of the Government Secretariat.

8. Mr Albert CHAN said that the LegCo Brief did not provide a detailed analysis on why the proposed re-organisation was necessary. The Administration should prepare a comprehensive report on the Accountability System and allow ample time for the LegCo to consider the proposed re-organisation. It appeared to him that the Administration was tailor-making some senior positions for certain people. Ms Audrey EU shared his view.

9. SCA said that Chapter 1 of the Consultation Document entitled "Further Development of the Political Appointment System" issued in July 2006 had already set out the development of the Accountability System since July 2002. The Administration would analyse the views collected during the consultation period and announce the way forward in the latter half of 2007. The Administration would

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address issues relating to the Accountability System in the light of the views received. SCA further said that in both the Penny Stocks and SARS incidents, the POs concerned had borne the brunt of political responsibility. At present, about half of the POs were recruited from the civil service and the remainder from the private sector.

Role and responsibilities of POs and civil servants

10. Ir Dr Raymond HO expressed concern about the unclear division of the role and responsibilities between POs and civil servants under the Accountability System. He questioned how senior civil servants, who were often required to undertake political work such as explaining Government policies to Members, could maintain political neutrality.

11. SCA and Secretary for the Civil Service (SCS) explained that it had taken time for the POs and civil servants to get used to the Accountability System since its introduction in 2002. Under the Accountability System, POs should shoulder the political responsibility while the civil service, being a professional and permanent establishment, should remain politically neutral. Over the past five years, the two streams of public officers had established a good working relationship and many teething problems experienced in the early stages of the Accountability System had been resolved. Civil servants should support the work of POs by explaining policies decided by the Government of the day to Members, the public and the media, and helping secure the support of the community and the LegCo on Government policies. Undertaking such work with political content was not in conflict with the political impartiality of the civil service.

12. Mr James TIEN expressed concern about the level of representation of public officers at Panel meetings, and suggested that POs should attend Panel meetings to explain Government policies to Members on a more frequent basis. SCA agreed to convey Members' view to the Directors of Bureau.

13. Ms LI Fung-ying said that in the past, there were negative comments about recruiting persons from outside the civil service to provide administrative support to Directors of Bureau. She asked whether the positions created as a result of the re-organisation, such as the positions of an administrative assistant, a press secretary, a personal assistant and a driver, would be filled by civil servants or otherwise.

14. SCS explained that a Director of Bureau could decide whether these positions should be filled by civil servants on postings or by way of direct appointment to non-civil service positions. In the past four years, most of these positions were filled by civil servants.

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Distribution of responsibilities among policy bureaux

Environment portfolio

15. Ir Dr Raymond HO considered that the workload among bureaux was not evenly distributed, e.g. there was only one department under the Environment Bureau. SCA explained that under the existing structure, some bureaux such as the Health, Welfare and Food Bureau (HFWB) and the Environment, Transport and Works Bureau (ETWB) covered a wide span of responsibilities. To establish a more focused structure and a more balanced workload, it was therefore proposed to redistribute the policy portfolios of these bureaux so that the portfolios handled by each bureau would be more even.

16. Ms Audrey EU doubted whether it was appropriate to put sustainable development, which cut across all policy portfolios, under the Environment Bureau. She requested the Administration to provide a written response on the issue.

17. SCA responded that sustainable development was not possible without a closer interface with the policies relating to environmental protection and energy which helped improve the quality of the environment. These portfolios would 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.

Transport portfolio

18. Ir Dr Raymond HO held the view that the existing arrangement of placing the Highways Department under the bureau responsible for the works portfolio (i.e. the ETWB then) was more cost efficient than the proposal to have it placed under the Transport and Housing Bureau. SCA responded that the Highways Department had all along been under the Transport Branch. However, for officers in the Highways Department who were engineers, the existing arrangement was for them to report to the permanent secretary responsible for the works portfolio. This would continue after the reorganisation SCA assured members that the proposed re-organisation would not affect the co-operation between the Highways Department and other works departments.

19. Mr Howard YOUNG said that while he supported the re-organisation in general, he wondered why transport and housing matters were put under the same policy bureau. He also expressed concern that the importance of air services and maritime transport would be undermined if they were placed under the Transport and Housing Bureau. He pointed out that air services and maritime transport which involved international agreements were totally unrelated to local housing policy.

20. SCA responded that matters relating to internal and external transportation, including air services, maritime transport, land transport and logistics, would be put

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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.

21. Mr Patrick LAU pointed out that transport matters were closely related to infrastructure developments and projects. However, the Transport and Housing Bureau was placed under the purview of the CS, while the new Development Bureau was under the purview of the FS. He stressed the importance of having close co-ordination between planning and transport matters in development projects.

22. SCA explained that the delineation of policy portfolio had been carefully considered and it was unlikely that any re-organisation proposal could be perfect. The span of the Development Bureau would be too wide if transport matters were placed under it. For projects cutting across different bureaux, arrangements were in place to ensure their effective coordination and implementation. For instance, POs held daily meeting with the CE and also attended the Policy Committee. There were in-built matrix mechanisms to ensure that co-ordination across bureaux and departments could be re-oriented quickly and resources mobilized flexibly to deal with cross-cutting issues promptly and effectively.

Labour, welfare and manpower portfolios

23. Dr Fernando CHEUNG agreed that the policy portfolios of the HWFB were too wide and should be restructured. However, he had reservation about the proposal of placing the portfolios of labour and welfare under the same policy bureau. He requested the Administration to provide justifications for the proposal. He pointed out that welfare covered more than just alleviating poverty, and promoting self-reliance through job creation might not be applicable to certain vulnerable groups such as the elderly and handicapped.

24. SCA responded that welfare was about taking care of the vulnerable groups. The reason for placing labour and welfare portfolios under the same policy bureau was because the two could complement each other in terms of policy formulation and the use of resources. By enhancing the policy interface between the two, better support could be provided to vulnerable groups in the society. SCA undertook to provide a written response after the meeting.

25. Dr KWOK Ka-ki said that the existing Permanent Secretary for Economic Development and Labour (Labour) (ranked at D8 level), apart from his policy responsibilities, also performed executive functions in the capacity of the Commissioner for Labour. Under the proposed re-organisation, the Permanent Secretary for Labour and Welfare would be responsible for both the labour and welfare policy portfolios, and a D6 post would be reinstated as the head of the Labour Department. He asked whether the Administration no longer advocated the merging of policy bureau and department for the purpose of rationalising administration work and reducing costs and resources.

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26. SCA responded that the policy that the organisation structure should meet the operational need of the bureaux concerned remained unchanged. Under the proposed structure, the Permanent Secretary for Labour and Welfare would be supported by two directors, one of which was the Commissioner for Labour. At the same time, the Permanent Secretary for Education and the Permanent Secretary for Transport and Housing would continue to be in charge of the Education Bureau and the Housing Department respectively.

27. Mr LEE Cheuk-yan expressed concern that the portfolio of manpower appeared not to be covered by any bureau under the proposed structure. SCA and SCS confirmed that the portfolio of manpower (including matters relating to the Employee Retraining Board) would be placed under the Labour and Welfare Bureau.

Infrastructure development and heritage conservation portfolios

28. Ms LI Fung-ying said that according to the proposed structure, Government bodies involved in infrastructure projects would be put under the Development Bureau so as to speed up the implementation of large-scale projects. She said that in the past years, the Administration had undertaken to speed up these projects but the progress was slow. Given that these projects would create employment to ease the problem faced by construction workers in particular, she asked what projects would be specifically handled by the Development Bureau in the near future.

29. SCA said that the Administration had on different occasions mentioned that it had made an annual provision of \$29 billion for infrastructure projects. He was aware that a number of railway projects had been the subject of discussion of the relevant Panels. The Development Bureau would co-ordinate with relevant Government departments involved in infrastructure projects with a view to implementing them as soon as practicable.

30. In view of the possible conflict between infrastructure projects and heritage conservation, some members, including Mr Patrick LAU, Dr KWOK Ka-ki and Mr LEE Wing-tat, asked whether it was appropriate to put the latter under the Development Bureau, and not the Home Affairs Bureau (HAB). They requested the Administration to provide a written response on the issue.

31. SCA explained that heritage conservation invariably impinged on considerations relating to planning, land use and building preservation and was therefore placed under the Development Bureau. Putting related responsibilities under the same Bureau enabled a closer interface at the policy level between development and heritage conservation. It would also enhance efficiency while ensuring early attention to heritage conservation when implementing development projects.

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Legal aid portfolio

32. Ms Margaret NG and Mr SIN Chung-kai expressed concern that the proposal to transfer the legal aid portfolio from the Administration Wing of the Chief Secretary for Administration's Office to the HAB, a policy bureau, might downgrade the status of the Legal Aid Department (LAD) and undermine its independence. Ms NG pointed out that access to legal aid was a core issue for the administration of justice and the actual and perceived independence of the provision of legal aid was of paramount importance to confidence in the rule of law. She expressed concern that the Administration had not conducted prior consultation with the Legal Aid Services Council (LASC), the two legal professional bodies and the public on the proposal. She said that the Administration should provide justifications for the proposed transfer and the issue should also be discussed by the Panel on Administration of Justice and Legal Services.

(Post-meeting note : The Panel on Administration of Justice and Legal Services discussed the issue at the meeting on 28 May 2007 and received views from the relevant parties.)

33. SCA responded that as legal aid was a complex stand-alone policy subject that involved provision of services to the community, it was appropriate for the subject to be placed under the purview of the HAB. The proposed transfer would not affect the statutory role of the LASC, the legal aid services provided by the LAD in accordance with the relevant legislation, and the progress of the various reviews in the pipeline.

Mainland affairs

34. Ir Dr Raymond HO asked about the role played by the Commerce and Economic Development Bureau and the Constitutional and Mainland Affairs Bureau (CMAB) over the Hong Kong Economic and Trade Offices (ETOs) in the Mainland under the proposed structure.

35. SCA explained that CMAB was responsible for co-ordinating and overseeing the HKSAR's relations with the Mainland. The HKSAR Government Office in Beijing and the three ETOs in Guangdong, Shanghai and Chengdu would continue to be under the purview of the CMAB. However, where economic and trade matters were involved, the Commerce and Economic Development Bureau would assist in the implementation of regional co-operation such as the CEPA. With the assistance of the Security Bureau, the four offices in the Mainland continued to render assistance to Hong Kong residents in distress in matters relating to immigration, imprisonment, detention in the Mainland, etc. The ETOs were also involved in the co-operation of other policy portfolios such as health, food safety and infrastructure development. ETOs would report to different bureaux for matters under their respective purview.

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Civil service portfolio

36. Mr LEE Cheuk-yan held the view that the Civil Service Bureau and the SCS post were not necessary. He suggested that the civil service portfolio could be overseen by the CS with the assistance of a Permanent Secretary.

37. SCA and SCS explained that CS was a political appointee and this PO's portfolio was already very stretched and could not include managing the civil service. Under the Accountability System, SCS was one of the POs nominated by the CE for appointment. It was specified that the person filling the SCS position should be drawn from the body of serving civil servants but not required to resign or retire from the civil service before taking up the position. He could choose to do so during his term as the SCS, or he could choose to revert to the civil service immediately upon termination or completion of his term of appointment as the SCS if he had not yet reached the retirement age specified for civil servants. The Administration would address views on the position of the SCS in the context of the consultation exercise on further development of the political appointment system.

Name of bureau

38. Noting that the Administration 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 and to retitle the bureau as the Commerce and Economic Development Bureau, Mr SIN Chung-Kai expressed concern that the title did not reflect the portfolios of industry and technology, two important economic pillars of Hong Kong. He requested the Administration to reconsider the matter.

39. SCA and SCS explained that if the title of the bureau reflected all its responsibilities, it would be unnecessarily cumbersome and long. The Administration held the view that the proposed title was appropriate.

40. Ms Audrey EU proposed to change the name of the Development Bureau to "Sustainable Development Bureau" and requested the Administration to reconsider the matter. SCA said that sustainable development would be under the purview of the Environment Bureau.

41. Ir Dr Raymond HO proposed that the word "Development" should be deleted from the Commerce and Economic Development Bureau, in order to avoid confusion with the Development Bureau. He requested the Administration to reconsider the matter.

Director of CE's Office (DCEO)

42. Mr Abraham SHEK suggested that that DCEO should be shown on the

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existing and proposed organisation charts of the HKSAR Government. Dr KWOK Ka-ki said that it appeared that DCEO was accorded a status higher than other POs.

43. SCA said that leaders of the western countries often had aides to support their work and the positions of these aides might not be reflected in the organisation charts. The Permanent Secretary of the CE's Office explained that the organisation chart of the HKSAR Government focused primarily on the policy and statutory organs together with executive departments. The established approach was not to include private offices of the CE or of any POs under the Accountability System in the overall organisation chart of the HKSAR Government. SCA undertook to consider Mr SHEK's suggestion.

44. Ms Audrey EU requested the Administration to provide justifications for the proposal to align the terms of employment of DCEO with those of a Director of Bureau and the percentage increase in DCEO's remuneration under the proposal.

45. SCA explained that DCEO was the CE's Chief of Staff and was the head of the CE's Office. Similar to all Directors of Bureau, DCEO was a non-civil service position created in 2002 under the Accountability System. DCEO was accountable to the CE. At present, DCEO's remuneration was pegged to that of a directorate civil servant at D8 level. Though not a PO himself, the post-holder had to abide by the Code applicable to Principal Officials under the Accountability System. Similar to the arrangements for the POs, DCEO's term of office tied in with that of the CE who appointed him.

46. SCA further said that as DCEO was a political appointee performing the role and responsibilities akin to that of POs under the Accountability System, the Administration considered it reasonable and logical that his terms of employment should be identical to those of Directors of Bureau. The additional cost would be \$396,288 per year, representing an increase of more than 10% in DCEO's existing remuneration.

Remuneration of POs after 1 July 2007

47. Noting that the Administration proposed that the 10% cut in the remuneration of POs implemented in April 2003 would no longer apply from the new term of Government from 1 July 2007, Mr LEE Wing-tat suggested that the reversion should be implemented in phases, given that it involved an increase of about \$300,000 per PO per year. He pointed out that in a recent opinion survey, over half of the respondents did not support the proposal.

48. SCA explained that all POs voluntarily accepted a 10% reduction of their remuneration from April 2003 to share the hard times with the community. The term of appointment of the POs under the Accountability System of the current term Government would end on 30 June 2007. As the 10% cut was accepted voluntarily by the POs of the second term Government, this arrangement would lapse with the

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completion of the second term. With the commencement of the new term Government on 1 July 2007, the contracts to be entered into with the POs should be based on the remuneration package approved by the Finance Committee in 2002. SCA undertook to reflect Mr LEE's view to the Administration.

(Post-meeting note : The Administration's response to the issues raised at the meeting was issued to members vide LC Paper No. CB(2)1813/060-07(02).)

II. Any other business

49. Members agreed that given the tight schedule, a series of special meetings should be held to discuss the proposed re-organisation. The Deputy Chairman said that members would be advised of the date of the next meeting in due course.

(Post-meeting note : The next meeting was scheduled for 11 May 2007 at 8:30 am.)

50. The meeting ended at 12:47 pm.

Council Business Division 2
Legislative Council Secretariat
30 October 2007