

立法會
Legislative Council

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LC Paper No. CB(2)322/07-08
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

**Minutes of special meeting
held on Tuesday, 11 May 2007, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** :
- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon Margaret NG
 - Hon CHEUNG Man-kwong
 - Hon Jasper TSANG Yok-sing, GBS, JP
 - Hon Howard YOUNG, SBS, JP
 - Hon LAU Kong-wah, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon CHOY So-yuk, JP
 - Hon Timothy FOK Tsun-ting, GBS, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon WONG Kwok-hing, MH
 - Hon Daniel LAM Wai-keung, SBS, JP
 - Hon Alan LEONG Kah-kit, SC
 - Hon LEUNG Kwok-hung
 - Dr Hon KWOK Ka-ki
 - Hon CHEUNG Hok-ming, SBS, JP
 - Hon WONG Ting-kwong, BBS
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members attending** :
- Hon SIN Chung-kai, JP
 - Dr Hon Fernando CHEUNG Chiu-hung
- Members absent** :
- Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
 - Hon Albert HO Chun-yan
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon LEE Cheuk-yan
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon CHAN Yuen-han, JP

Hon Bernard CHAN, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Dr Hon YEUNG Sum
Hon LAU Wong-fat, GBM, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon LEE Wing-tat
Hon MA Lik, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
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

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

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

Ms Vicki LEE Yuet-ming
Senior Government Counsel

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

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

Staff in : Mr Arthur CHEUNG
attendance 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

(LC Paper No. CB(2)1813/06-07(01) - Administration's paper on "Re-organisation of Policy Bureaux of the Government Secretariat : Changes in Civil Service Organisation Structure"

LC Paper No. CB(2)1813/06-07(02) - Administration's response to issues raised by Members at the meeting on 8 May 2007

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

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

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

Briefing by the Administration

At the invitation of the Chairman, Secretary for the Civil Service (SCS) briefed members on the changes in the civil service organisation structure consequential to the proposed re-organisation of policy bureaux of the Government Secretariat as set out in LC Paper No. CB(2)1813/06-07(01). She said that the proposed re-organisation would result in the creation of a new Director of Bureau position and a directorate officer post at D2 level to serve as the new Director of Bureau's Administrative Assistant. Apart from these, the proposed re-organisation would not result in a net number of civil service posts at any of the ranks in the directorate scale. However, the proposed re-organisation would result in some departments coming under a different policy bureau, re-deployment of posts between bureaux as well as some changes to the grading and distribution of duties of civil service posts.

2. Secretary for Constitutional Affairs (SCA) briefed members on the Administration's response to issues raised by Members at the meeting on 8 May 2007 (LC Paper No. CB(2)1813/06-07(02)).

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Public consultation

3. Dr Fernando CHEUNG expressed dissatisfaction that the Chief Secretary for Administration (CS) did not attend the meeting to explain details of the proposed re-organisation to Members. He also expressed concern that the Administration had not consulted the public on the proposed re-organisation before implementation.

4. SCA said that following the publication of the Consultation Document entitled "Further Development of the Political Appointment System" in July 2006, the Administration had received views from both the public and political parties/political groups on the need to review the workload of the various bureaux. In addition, the Chief Executive (CE) had indicated in his election platform, inter alia, that there was a need to review the distribution of work among policy bureaux. The CE had also explained the re-organisation proposal to Members on 3 May 2007.

Review of the Accountability System

5. Ms Emily LAU and Ms Margaret NG said that the Administration should review the effectiveness of the Accountability System for Principal Officials (POs) (the Accountability System) implemented in 2002, instead of merely increasing the number of POs and their remuneration. For example, it should review whether POs had enhanced their accountability to the LegCo by attending Panel meetings to explain Government's policies, and whether it was fair for some civil servants who were appointed as POs to receive "double benefit" or to revert to the civil service upon completion of his term of appointment. Ms LAU asked whether the Administration had received any feedback from the civil service about the Accountability System. She expressed concern that senior civil servants had to undertake political work on behalf of POs from time to time. She pointed out that in the recent case of the demolition of the Queen's Pier, civil servants had attended Panel meetings to explain Government's policy on behalf of the PO concerned.

6. 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 its decision on the way forward in the latter half of 2007. The Administration would address issues relating to the Accountability System in the light of the views received.

7. SCS explained that it had taken some 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. After operating under the Accountability System for five years, they had established a good working relationship and much of the hiccups experienced in the early stages had been ironed out. Civil servants should support

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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 political work of this nature was not in conflict with the political impartiality of the civil service.

8. Ms Margaret NG 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. POs, 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. She also expressed concern about the conflicting role between a political appointee and the Secretary for Justice (SJ).

9. SCA responded that the political appointment of SJ and the statutory functions he exercised complied with the Basic Law.

Staff establishment of various bureaux and departments after re-organisation

General

10. Dr Fernando CHEUNG said that a comparison between the organisation charts of the existing structure and the proposed structure revealed that the CE was increasing his span of direct control over the POs, as the line of command between the Chief Secretary for Administration (CS)/the Financial Secretary (FS) and the relevant POs under them had changed from a dotted line to a solid line. In his view, the CE should have delegated more power to the CS and the FS in overseeing the work of the Directors of Bureau

11. SCA explained that experience in the first few years since the Accountability System was implemented showed that requiring the 14 POs to report direct to the CE had made his span of direct control too wide. In October 2005, a series of measures was put in place to strengthen further the coordinating functions of the CS and the FS, such as requiring the 11 Directors of Bureau to report on the day-to-day business of their bureaux to either the CS or the FS who would in turn support the CE in ensuring the effective conduct of Government business. SCA added that given that the CE had to nominate POs and report them to the Central Authorities for appointment under the Basic Law, it was not inappropriate for the Directors of Bureau to be accountable to the CE in discharging their responsibilities.

12. Mr Howard YOUNG referred to paragraph 30 of the LC Paper No. CB(2)1813/06-07(01) and asked about the adjustments made to the ceilings placed on the total notional annual mid-point salary of all non-directorate posts in the permanent establishment of the Government Secretariat as a result of the transfer of posts under the re-organisation.

13. SCS explained that as far as non-directorate posts in the permanent establishment of the Government Secretariat were concerned, a small number of

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support-related posts would be provided to the new Secretary for Labour and Welfare. Other than that, the proposed re-organisation only involved re-deployment of posts between bureaux which would not affect the total notional annual mid-point salary of all non-directorate posts in the permanent establishment. As for the directorate grade staff, the post of the Permanent Secretary for the Environment (PSE), currently pitched at D6 level, was proposed to be upgraded to D8 level. The creation of the D8 post would be offset by the deletion of a D8 post under the Economic Development Branch of the Economic Development and Labour Bureau. The existing PSE post at D6 level would be deleted for offsetting the reinstatement of the post of Commissioner for Labour. Overall, apart from a new Administrative Assistant post, the re-organisation would not result in the net increase in the number of civil service posts at any of the ranks in the directorate scale.

14. Mr WONG Kwok-hing asked about the distribution of Permanent Secretaries before and after the re-organisation. SCS advised that excluding the Permanent Secretary in the Chief Executive's Office, currently there were 18 Permanent Secretaries, 17 pitched at D8 level and one at D6 level. After the re-organisation, there would be 17 Permanent Secretaries at D8 level and each Director of Bureau would be underpinned by one or two Permanent Secretaries as follows -

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

Director of CE's Office (DCEO)

15. Mr WONG Kwok-hing asked about the reason for the proposal to align the terms of employment of DCEO with those of a Director of Bureau.

16. 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. As DCEO was a political

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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 alignment would also enhance the flexibility for the CE to reshuffle the appointees among different positions when warranted.

Commissioner for Labour

17. Mr WONG Kwok-hing expressed dissatisfaction that the proposal to reinstate the Commissioner for Labour post at D6 level to lead and steer the Labour Department (LD) would downgrade the importance of the post.

18. SCA and SCS explained that the existing Permanent Secretary for Labour, apart from his policy responsibilities, also performed executive functions by serving as the head of the LD. As this post would in future be responsible for both the labour and welfare portfolios after re-organisation, a D6 post would be reinstated to take over his responsibility as the head of the LD. SCS stressed that more manpower at senior level would be provided for the labour portfolio under the proposal.

Director of Environmental Protection

19. Miss CHOY So-yuk noted that the post of PSE, currently pitched at D6 level, was proposed to be upgraded to D8 level. The post holder would continue to assume the title of the Director of Environmental Protection (DEP). As the highest rank of the Environmental Protection Officer grade was currently at D3 level and following the deletion of the post of the DEP, she expressed concern about the promotion prospect of the grade. She suggested that the post of the DEP at D6 level should be reinstated and be filled by a qualified environmental professional instead of an Administrative Officer (AO) grade staff.

20. SCS responded that not all the posts of Permanent Secretaries were filled by AO grade staff; an example was the post of Permanent Secretary for the Environment, Transport and Works (Works) who was usually filled by a qualified professional from the works departments. The Administration would select the most suitable candidate for a post irrespective of whether he was a professional or AO grade staff. She was aware of the concern of the Environmental Protection Officer grade and would discuss with the management and departmental grade staff of the Environmental Protection Department with a view to addressing the situation in the latter half of 2007.

Commissioner for Rehabilitation

21. Dr Fernando CHEUNG pointed out that a few years ago, the post of Commissioner for Rehabilitation was downgraded from the AO grade to the Executive Officer (EO) grade. He requested the Administration to reconsider the reinstatement of the post at AO level so as to recognise the importance of the post.

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22. SCS explained that the post of the Commissioner for Rehabilitation had always remained at D2 rank and there was no question of a downgrading. The regrading of the post from AO grade to EO grade was approved by the Finance Committee in 2001 and the Administration had no intention to change the current status. SCS undertook to provide for members' reference the relevant papers of the Establishment Subcommittee and the Finance Committee concerning the regrading of the said post in 2001.

(*Post-meeting note* : The relevant papers were issued to members vide LC Paper No. CB(2)1855/06-07(01) on 15 May 2007.)

Education Bureau

23. Mr CHEUNG Man-kwong expressed concern that the manpower of the Education Bureau, proposed to be supported by one Permanent Secretary at D8 level, two Deputy Secretaries at D4 level and four Deputy Secretaries at D3 level, was inadequate. He said that insufficient resources would impact on the successful implementation of the new 3-3-4 academic structure.

24. SCS responded that Mr CHEUNG's question was related to additional resources and should be dealt with in the annual budget exercise. She would relay Mr CHEUNG's concern to her colleagues within the Administration.

Adm

Distribution of responsibilities among policy bureaux

Environment Bureau

25. Miss CHOY So-yuk considered it inappropriate to transfer the Sustainable Development Unit from the Administration Wing to the Environment Bureau. She pointed out that sustainable development cut across all policy portfolios and not just the Environment Bureau. The move would undermine the independence and importance of sustainable development and give rise to co-ordination problems in achieving holistic sustainable development for Hong Kong. She suggested that sustainable development should be put under the purview of the CE's Office or the CS.

26. SCS said that an important aspect of sustainable development work was to seek common ground among competing social, economic and environmental values. No matter which bureau was to be responsible for the subject, government-wide efforts straddling different policy areas would be required. For instance, all Directors of Bureau would report on the day-to-day business of their bureaux to either the CS or the FS, who would in turn support the CE in ensuring the effective conduct of Government business. In addition, there were in-built mechanisms for co-ordination across bureaux and departments and for flexible deployment and mobilisation of resources to deal with cross-cutting issues promptly and effectively.

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Development Bureau

27. Mr Abraham SHEK said that the Administration had the prerogative to decide its organisation structure to improve governance. He supported the proposed re-organisation in general, in particular the proposal to place the Development Bureau under the purview of the FS which was conducive to the economic development of Hong Kong. However, he was concerned about the conflicting role between the Permanent Secretary for Development (Works) (PSD/W) and the Permanent Secretary for Development (Planning and Lands) (PSD/PL), and the inherent conflict of interest between heritage conservation and development.

28. SCS said that the Administration considered that if the Secretary for Development was to take up planning, lands and works all by himself, he would be overloaded. It was therefore proposed that he should be supported by the PSD/W and the PSD/PL. The Secretary for Development would discuss with the two Permanent Secretaries over progress of projects and how problems could be resolved among the relevant departments. The proposed structure was an improvement over the existing one under which the works departments reported to another Director of Bureau who was not in charge of planning and lands matters. As SCA had said at the last meeting, it was unlikely that any re-organisation could be perfect. The Administration had attempted to work out the best proposal for the consideration of the LegCo.

29. SCA explained that heritage conservation invariably impinged on considerations relating to planning, land use and building preservation, it 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.

30. Mr Patrick LAU asked about the reporting line for the Urban Renewal Unit, Buildings Department and Antiquities Advisory Board under the proposed structure.

31. SCS said that the Urban Renewal Unit and Buildings Department would be placed under the PSD/PL. After the re-organisation, matters relating to heritage conservation would come under the PSD/W. The statutory duties of the Secretary for Home Affairs in the Antiquities Advisory Board would be transferred to the Secretary for Development. In response to Mr Abraham SHEK, SCA explained that given the heavy workload of PSD/PL, the Administration considered it more appropriate for the PSD/W to take up matters relating to development-related heritage conservation.

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Labour and Welfare Bureau

32. Mr WONG Kwok-hing expressed concern that the Commission on Poverty (CoP) was not covered by any bureau under the proposed structure. SCS explained that the CoP, presently reporting to the FS, was not a permanent forum. It would conclude its work within a few weeks and would cease operation after 30 June 2007. Matters relating to poverty would be handled by the Labour and Welfare Bureau under the proposed structure.

33. Dr Fernando CHEUNG agreed that the policy portfolios of the Health, Welfare and Food Bureau were too wide and should be restructured. However, the concept of welfare perceived by the Administration was too narrow. 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.

34. SCA responded that welfare policy 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.

Home Affairs Bureau

35. Mr WONG Kwok-hing asked why matters relating to the outstanding leisure and cultural services projects of the former municipal councils were placed under the HAB, instead of the Development Bureau. SCA and SCS explained that HAB was responsible for policies relating to leisure and cultural services. As far as the construction of leisure and cultural facilities was concerned, it would be undertaken by the Development Bureau.

Constitutional and Mainland Affairs Bureau (CMAB)

36. Mr WONG Kwok-hing asked about the division of work between constitutional and mainland affairs within the CMAB.

37. SCA explained that CMAB would attach equal importance to constitutional and mainland affairs. As far as the budget was concerned, allocation would be made based on need. The Mainland Affairs Liaison Office (MALO) was established within the Constitutional Affairs Bureau in 2006 to oversee the co-ordination of the HKSAR's relations with the Mainland. The HKSAR Government Office in Beijing and the three Economic and Trade Offices in Guangdong, Shanghai and Chengdu which were currently managed by the MALO would continue to come under the CMAB. The CMAB, together with other relevant bureaux, would foster regional co-operation with the Mainland in areas of trade, health, food safety, infrastructure development, etc.

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Name of bureau

38. Members noted 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 retitled the bureau as the Commerce and Economic Development Bureau.

39. Mr SIN Chung-Kai and the Chairman expressed concern that the title did not reflect the portfolios of industry and technology, two important economic pillars of Hong Kong. They requested the Administration to reconsider the matter.

40. 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.

II. Any other business

41. Noting that 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, Ms Margaret NG asked whether a subcommittee would be formed to scrutinise the resolution. The Chairman responded that the matter would be decided by the House Committee.

42. The Chairman informed members that three more special meetings had been scheduled for 16, 18 and 26 May 2007. Dr Fernando CHEUNG proposed that two of these meetings should be scheduled for receiving views from the public. The Chairman said that he would decide the matter after the meeting.

43. The meeting ended at 10:43 pm.

Council Business Division 2
Legislative Council Secretariat
12 November 2007