

立法會
Legislative Council

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Panel on Constitutional Affairs

**Minutes of special meeting
held on Friday, 18 May 2007, at 3:30 pm
in Conference Room A of the Legislative Council Building**

Members present :

- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
- Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
- Hon Martin LEE Chu-ming, SC, JP
- Hon Margaret NG
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon CHAN Yuen-han, JP
- Hon Bernard CHAN, GBS, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Dr Hon Philip WONG Yu-hong, GBS
- Hon Jasper TSANG Yok-sing, GBS, JP
- Hon Howard YOUNG, SBS, 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 Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon WONG Kwok-hing, MH
- Hon LEE Wing-tat
- Hon Daniel LAM Wai-keung, SBS, JP
- Hon Alan LEONG Kah-kit, SC
- Dr Hon KWOK Ka-ki
- Hon CHEUNG Hok-ming, SBS, JP
- Hon WONG Ting-kwong, BBS
- Hon Ronny TONG Ka-wah, SC
- Hon CHIM Pui-chung

Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin

Member attending : Dr Hon Fernando CHEUNG Chiu-hung

Members absent : Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon WONG Yung-kan, JP
Hon MA Lik, GBS, JP
Hon LEUNG Kwok-hung

Public Officers attending : Item I

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Miss Denise YUE Chung-yee
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

Miss Jennifer MAK Yee-ming
Deputy Secretary for the Civil Service

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

Attendance by invitation : Hong Kong Chinese Civil Servants' Association.
Environmental Protection Officer Branch

Mr Alan YIM
Chairman

Mr Arthur LEE
Treasurer

Kowloon Federation of Associations

Mr CHIU Kwok-wai
Secretary (Policy Studies)

The Hong Kong Construction Association Limited

Mr Conrad WONG
President

Mr Thomas TSE
Secretary General

The Hong Kong Federation of Electrical and Mechanical
Contractors Limited

Mr LAU Chun-kay
Council Member

Civic Party

Ms CHAN Suk-chong
Convenor, the Constitution & Governance Branch

Ms Gladys LI
Member, the Constitution & Governance Branch

The Hong Kong Island Federation Limited

Mr CHENG Shing-lam

The Hong Kong Institution of Engineers

Ir WONG Kowk-lai
President

The Democratic Party

Mr LAM Tze-kin
Spokesman

Hong Kong Human Rights Monitors

Mr LAW Yuk-kai
Director

The Chinese Manufacturers' Association of Hong Kong

Mr Joseph LAU
Executive Committee Member

- Clerk in attendance** : Mrs Percy MA
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 and related issues**
(LC Paper Nos. CB(2)1895/06-07(01)-(03), 2062/06-07(01)-(10) and (19)-(21) – submissions from deputations)

Presentation of views by deputations

The Chairman welcomed the deputations to the meeting. He said that the purpose of this meeting was to receive views from the public on the proposed re-organisation of policy bureaux of the Government Secretariat and related issues. He invited the deputations to give views.

2. The Chairman of the Hong Kong Chinese Civil Servants' Association, Environmental Protection Officer Branch (HKCCSA) expressed concern about the promotion prospect of the Environmental Protection Officer (EPO) grade in the Environmental Protection Department (EPD), following the deletion of the post of the Director of Environment Protection (DEP) at D6 level. Details of the Association's views were set out in LC Paper Nos. CB(2)1895/06-07(01) and 2062/06-07(01)-(02).
3. The representative of the Kowloon Federation of Associations expressed support for the proposed re-organisation in general. Details of the Associations' views were set out in LC Paper No. CB(2)2062/06-07(03).
4. The President of the Hong Kong Construction Association Limited (HKCAL) expressed support for the proposed re-organisation in general. Details of the Association's views were set out in LC Paper No. CB(2)2062/06-07(04).

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5. The representative of the Hong Kong Federation of Electrical and Mechanical Contractors Limited (HKFEMC) expressed support for the proposed re-organisation in general. Details of the Federation's views were set out in LC Paper No. CB(2)1895/06-07(02).
6. Representatives of the Civic Party (CP) raised a number of concerns and suggestions on the proposed re-organisation. Details of their views were set out in LC Paper No. CB(2)2062/06-07(05).
7. The representative of the Hong Kong Island Federation Limited said that he would like to listen to other organisations' views on the proposed re-organisation at the meeting.
8. The representative of the Hong Kong Institution of Engineers (HKIE) expressed support for the establishment of the Development Bureau to help achieve efficient and smooth implementation of infrastructure projects. HKIE also suggested that the post of the DEP at D6 level should be reinstated and be filled by a qualified environmental professional. On the name of the Commerce and Economic Development Bureau, HKIE suggested to include into it the word "technology". Details of the Institution's views were set out in LC Paper Nos. CB(2)2062/06-07(06) and (07).
9. The representative of the Democratic Party (DP) advocated a review of the Accountability System for Principal Officials (POs) (the Accountability System) implemented since July 2002. Details of the DP's views were set out in LC Paper No. CB(2)2062/06-07(08).
10. The representative of the Hong Kong Human Rights Monitors (HKHRM) considered it inappropriate for human rights issue to be transferred to the Constitutional and Mainland Affairs Bureau (CMAB), as it might give the impression that the Mainland would have undue influence on human rights issue in Hong Kong. The transfer of the portfolio of legal aid to the Home Affairs Bureau (HAB) also undermined the independence of the Legal Aid Department (LAD). Details of the HKHRM's views were set out in LC Paper No. CB(2)2062/06-07(09).
11. The representative of the Chinese Manufacturers' Association of Hong Kong expressed support for the proposed re-organisation in general. Details of the Association's views were set out in LC Paper No. CB(2)2062/06-07(10).

Discussion with the deputations

Accountability System

12. Ms Emily LAU declared interest that the Frontier had received donation of some HK\$440,000 from the HKCAL in May 2006 to carry out research work. She

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sought views from the deputations on whether the Accountability System had improved governance and whether the Accountability System should continue to operate.

13. A representative of the CP said that any system needed to be considered in the context of the entire constitutional structure. The Accountability System was entirely a creation of Hong Kong. Being an experiment in the absence of an established and well-tested system, it should be subject to periodic review. In relation to the problems of the Accountability System, there was no information on the problems encountered during coordination among bureaux and departments, and how the system should be developed, etc.

14. The representative of HKHRM said that in the absence of sufficient information, it was not possible to assess the effectiveness of the Accountability System.

15. Dr YEUNG Sum made the following points concerning the Accountability System -

- (a) the Accountability System was built on quick sand. Given that the Chief Executive (CE) was not returned by universal suffrage, he was not accountable to the people. Dr YEUNG had reservation on further developing the Accountability System by creating additional layers of political appointees, i.e. Deputy Directors of Bureau and Assistants to Directors of Bureau; and
- (b) it was necessary to assess the impact of the Accountability System on the civil service. Dr YEUNG expressed concern whether the "no revolving door" requirement would apply to the additional layers of political appointees, if civil servants were appointed to these positions.

16. 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 the Administration would improve the relationship between the two streams of public officers, as some senior civil servants were concerned that they had to undertake political work on behalf of POs from time to time.

Director of Environmental Protection

17. Members noted that under the proposed re-organization, the Environment, Transport and Works Bureau (ETWB) would be split to form the Environment Bureau, the Development Bureau and the Transport and Housing Bureau. The post of Permanent Secretary for the Environment, Transport and Works (Environment) (PSE), currently pitched at D6, was proposed to be upgraded to D8, and the post holder would continue to assume the title of DEP. The D8 post was designated as the Permanent Secretary for Environment (PS(Env))/DEP.

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18. Some members, including Ms Audrey EU, Miss CHAN Yuen-han and Ir Dr Raymond HO, pointed out that the highest rank of the EPO grade was currently at D3 level and following the upgrading of the post of the DEP from D6 to D8 level, the promotion prospect of the EPO would be diminished. They expressed concern about its impact on staff morale. They also held the view that the DEP should be filled by a professional grade staff. Ms EU sought views from the deputations as to whether they considered the proposed restructuring an improvement from the environmental point of view. For example, whether the PS(Env)/DEP who would likely be an Administrative Officer (AO), could exercise professional judgment in evaluating applications for environmental permits under the Environmental Impact Assessment Ordinance (Cap. 499) (EIAO). Ms CHAN asked about the experience of EPOs in working under a qualified environmental professional compared with one who was not.

19. The Chairman of the HKCCSA said that the establishment of the Environment Bureau as a separate entity would enable the Secretary for the Environment to focus on environmental policy which was an improvement compared with the present arrangement. He expressed concern that the post of PS(Env)/DEP would not be filled by a qualified environmental professional and suggested that the post of the DEP at D6 level should be reinstated and filled by a professional grade staff. He informed members that in the past two years, three persons had been deployed to fill the post of DEP. The first DEP was an AO grade staff who had worked for more than one year in the Department. After his departure, an EPO at D3 level acted as the DEP for four months and the post was later filled by another AO. EPOs had to prepare many briefing notes to facilitate the DEP at AO grade to understand the environmental concerns of each and every project. On the other hand, a professional grade DEP could easily grasp the environmental concerns and crux of the problems of these projects.

20. Ms Audrey EU noted that the Environment Branch of the ETWB and the EPD were merged on 1 April 2005. She asked the HKCCSA whether the Administration had failed to honour its undertaking made during the merger, if any.

21. The Chairman of the HKCCSA said that the Administration had agreed at that time that there were opportunities for both departmental and AO grade staff to fill the post of DEP in future based on proven abilities and competence and operational requirements of the Department. However, as the prospect for the EPO grade staff to fill the post of PS(Env)/DEP at D8 level after the re-organisation would be slim, professional grade staff would be deterred from joining the EPD. The EPD would encounter succession problem in the years to come.

22. A representative of the CP pointed out that under the EIAO, the Secretary was supposed to be a different person from the DEP. She cited for example that section 4 of the EIAO required that the Secretary should consult the DEP on designated projects. The CP considered it inappropriate for the post of DEP to be twinned with that of the Secretary and be filled by one person who did not have the requisite professional and technical expertise.

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Development Bureau

23. Ms Audrey EU sought views from the deputations on the conflict of interest between environment conservation and infrastructure development. The representative of the HKIE said that the HKIE had suggested that the Environment Bureau and the Transport and Housing Bureau should second professional staff to the Development Bureau to assist in assessing environment and traffic impact arising from major infrastructure projects. The Government would then decide whether and how to go ahead with these projects based on these assessments.

24. Ms Emily LAU said that the HKCAL had pointed out the negotiations amongst various Government departments had resulted in the delay of the implementation of infrastructure projects. She asked why the HKCAL considered that the proposed re-organisation would help speed up work in this area.

25. The President of the HKCAL said that the smooth implementation of infrastructure projects hinged on effective co-ordination among Government departments. It was important for relevant stakeholders to make known their needs and requirements during the planning stage and negotiate among themselves how differences could be resolved during implementation. With the splitting of the ETWB into three separate bureaux, i.e. the Environment Bureau, the Development Bureau and the Transport and Housing Bureau, he envisaged that the conflict between transport and environment polices with that of the infrastructure development works would need to be brought up to the level of Directors of Bureau for early resolution.

26. Mr Howard YOUNG asked the HKFEMC to give views on ways to improve coordination of projects straddling different policy bureaux. The representative of the HKFEMC said that the HKFEMC had no solution to the problem. The HKFEMC would like to bring to the attention of the Administration that it was necessary to strike a balance between heritage conservation and development work. On the construction of highways, the HKFEMC stressed that effective coordination between the Transport and Housing Bureau and the Development Bureau was necessary to ensure the works projects were executed without undue delay.

Legal aid

27. Dr YEUNG Sum and Ms Margaret NG 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 (the proposed transfer), a policy bureau, could downgrade the status of the LAD and undermine its independence. Ms NG said that as Senior Assistant Legal Adviser 2 had advised that the proposed transfer did not require any legislative amendments, the LegCo was not in a position to stop the proposed transfer. She expressed concern whether the Secretary for Home Affairs would allocate sufficient manpower and financial resources to the LAD. She asked the CP and the HKHRM to comment on the impact of the proposed transfer on administration of justice and the provision of legal aid service.

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28. A representative of the CP said that it was considered constitutionally desirable or necessary that a department or an institution such as the Judiciary should be made independent. In the past there had been a lot of discussions as to how the LAD should be made completely independent of the Government. The Legal Aid Services Council (LASC), which was established to advise the CE on legal aid policy, had been advocating the independence of legal aid administration. The CP considered that there was no justification for the proposed transfer.

29. The representative of the HKHRM supported the views of the CP. With the LAD placed under the HAB, he expressed concern whether adequate resources would be allocated to the LAD, given the scope of the policy portfolio of the HAB. In addition, some decisions made pursuant to the statutory powers of the Secretary for Home Affairs and the Director of Home Affairs were amenable to judicial review. There was potential conflict of interest in the event that the LAD refused to grant legal aid to these cases. The HKHRM held the view that the proposed transfer was inappropriate. The Administration should consult the LASC and the two legal professional bodies on the proposal.

Response of the Administration

30. Secretary for Constitutional Affairs (SCA) and Secretary for the Civil Service (SCS) thanked the deputations and members for their views. They responded to some of the specific comments made at the meeting.

Accountability System

31. SCA said that the principles behind the Accountability System had been fully explained to Members in 2002. The proposed re-organisation did not involve any changes to the fundamental principles of the Accountability System. It merely proposed the reshuffling of responsibilities among the bureaux and the net creation of one new bureau. SCA added 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 on the proposals contained in the Consultation Document in the latter half of 2007. The Administration would address issues relating to the Accountability System in the light of the views received.

32. SCA further said that Hong Kong was an open and transparent society. The CE and his team were accountable to the public, the media and the LegCo. The Accountability System allowed the CE to form his own team so as to attract more people of the right calibre to serve as political appointees and to participate in public administration. Meanwhile, the civil service with some 160 000 civil servants would remain a professional and permanent establishment, to ensure stability in public administration and delivery of service to the community.

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33. SCS supplemented that it had taken time for the POs and civil servants to get used to the Accountability System since its introduction in 2002. 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. The Administration attached importance to the political neutrality core value of the civil service. The promotion and disciplinary system of the civil service would not be affected by changes in political leadership.

34. SCS further said that the SCS was the only PO exempted from the "no revolving door" requirement. She explained that the position of the SCS was rather unique. The SCS was one of the POs nominated by the CE for appointment. The person filling the SCS position was drawn from the body of serving civil servants. He was not obligated to resign or retire from the civil service before taking up the position, but 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 two additional political layers referred to in the "Consultation Document on Further Development of the Political Appointment System" were proposed to be subject to the "no revolving door" principle. At this stage, she had no idea how many civil servants might be interested in becoming political appointees. Those who wished to join must resign or retire from the civil service.

Director of Environmental Protection

35. Addressing members and deputations' concern on the post of the DEP, SCS explained that when the Environment Branch of the ETWB and EPD were merged with effect from 1 April 2005, one D6 post was created and designated as PSE/DEP. The arrangement for a civil servant to assume two posts was not new; the Permanent Secretary for Housing, Planning and Lands (Housing) and a former Permanent Secretary for Education and Manpower also assumed the posts of Director of Housing and Director of Education respectively. The Administration had consulted the HKCCSA on the merging proposal in April 2005 and at that time it supported the post of PSE/DEP to be filled by an AO grade staff. SCS said that she could understand that the HKCCSA might have changed its position after two years.

36. SCS further explained that under the proposed re-organisation, the Environment Bureau would also be in charge of two environment-related portfolios, i.e. energy and sustainable development. In view of the additional responsibilities, the post of PS(Env)/DEP was proposed to be upgraded to D8. The Administration was aware of the concern of the EPO about their promotion prospect arising from the proposed re-organisation and would discuss with the management and departmental

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grade staff of the EPD with a view to addressing the situation in the latter half of 2007. She said that where appropriate, directorate posts were also open to departmental grade staff with proven abilities and competence.

37. In response to Ms Audrey EU about the frequent change of personnel of the DEP post, SCS explained that prior to the merging of the PSE and DEP posts in April 2005, they were taken up by two persons. As the DEP retired in early 2005 and following the merger, the PSE who was an AO grade staff also assumed the post of PSE. As it was the established practice for an AO grade staff to undergo job rotation every three to five years, the PSE/DEP was transferred out of the EPD in around May 2006 and another AO had taken up the post in September 2006. During that interim period, an acting appointment was arranged for the deputy DEP, who was an EPO at D3 level, to be the DEP.

38. In response to the CP (paragraph 22 above), SCS clarified that the Secretary referred to in EIAO was a PO (i.e. the Secretary for Environment, Transport and Works under the existing structure or the Secretary for the Environment under the proposed re-organisation), and not the Permanent Secretary who was a civil servant. As such, the Secretary and the PSE/DEP were assumed by two different persons, and the issue raised by the CP would not arise.

Development Bureau

39. Addressing the expectation of HKCAL, HKFEMC and HKIE that the re-organisation would speed up the implementation of infrastructure projects and enhance planning and implementation efficiency, SCA said that the purpose of forming the Development Bureau sought to achieve that purpose. The Administration would ensure that infrastructure projects with an annual provision of \$29 billion would be implemented as soon as possible. The Development Bureau would be in charge of development-related heritage conservation, so as to enable 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. Regarding the concern about coordination of policy issues straddling different policy bureaux, SCA said that all the Directors of Bureau would report on the day-to-day business of their bureaux to either the Chief Secretary for Administration (CS) or the Financial Secretary (FS), who would in turn support the CE in ensuring the effective conduct of Government business. In addition, the Policy Committee, led either by the CS or FS, would meet every Thursday to discuss important issues, legislative and financial proposals for onward consideration by the Executive Council and the LegCo.

Legal aid

40. SCA said 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 LAD's exercise of its powers and

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functions would not be affected irrespective of whether the portfolio was under the Director of Administration under the current set-up or under the Secretary for Home Affairs after the re-organisation. There were safeguards to ensure that the Director of Legal Aid would continue to exercise statutory functions vested in him and to consider legal aid applications according to the established criteria. 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.

Constitutional and Mainland Affairs Bureau

41. Responding to the views of HKHRM that human rights issue should not be placed under the CMAB, SCA explained that back in the late 1980's and early 1990's, the then Constitutional Affairs Branch was the one responsible for the drafting and promotion of the Bill of Rights. Subsequently, the portfolio was transferred to the Home Affairs Bureau. He pointed out that the fundamental rights and freedoms of Hong Kong residents and the Hong Kong Special Administrative Region (HKSAR)'s obligations under the international covenants were guaranteed in the Basic Law. The implementation of these elements formed an integral part of the constitutional affairs portfolio.

42. Referring to the comments made by the DP, SCA said that in dealing with constitutional matters, the HKSAR Government followed the principle of "one country, two systems" and the framework laid down in the Basic Law. Under CMAB, Mainland affairs and constitutional affairs were two separate portfolios. The former focused on the co-ordination of the HKSAR's relations with the Mainland, such as co-operation in areas of trade and economic development through CEPA, and involved the operation of Hong Kong Economic and Trade offices in the Mainland to render assistance to Hong Kong residents in distress in the Mainland, etc.

Other issues

43. Ir Dr Raymond HO pointed out the titles "Secretary" (Director of Bureau), "Permanent Secretary" and "Deputy Secretary" were confusing. He requested the Administration to review these post titles as well as the one for Deputy Directors of Bureau to be introduced under the "Further Development of the Political Appointment System". SCA responded that the Administration would consider the matter. For the time being, the Administration was considering to adopt "Under Secretary" as the post title for the Deputy Directors of Bureau.

44. 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 the permanent

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secretary responsible for the works portfolio to serve as their Head of Grade. 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.

45. The Chairman thanked the deputations for their views. There being no other business, the meeting ended at 5:55 pm.

Council Business Division 2
Legislative Council Secretariat
13 December 2007