

立法會
Legislative Council

LC Paper No. CB(1)745/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PS/1

Panel on Public Service

**Minutes of meeting held on
Monday, 15 December 2008, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon LEUNG Kwok-hung
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou
- Member attending** : Hon WONG Kwok-hing, MH
- Public officers attending** : **Agenda item IV**
Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Mr Brian LO
Deputy Secretary for the Civil Service 2

Agenda item V

Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Ms Mimi LEE
Deputy Secretary for the Civil Service 3

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

Action

I Confirmation of minutes of meeting
(LC Paper No. CB(1)354/08-09 — Minutes of meeting on
20 October 2008)

The minutes of the meeting held on 20 October 2008 were confirmed.

II Information papers issued since last meeting
(LC Paper No. CB(1)359/08-09(01) — Submission on staffing
shortage and implementation
of five-day week in public
libraries from a group of
public library staff)

2. Members noted the above paper issued after the last meeting.

**III Items for discussion at the next meeting scheduled for 19 January
2009**

(LC Paper No. CB(1)351/08-09(01) — List of outstanding items for
discussion

LC Paper No. CB(1)351/08-09(02) — List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting scheduled for 19 January 2009 at 10:45 am –

- (a) Entry system for the civil service; and
- (b) Implementation of Five-day Week in the Government.

4. Regarding item (b) above, members agreed that the Administration's paper on the subject should also address the concerns raised in the submission on staffing shortage and implementation of five-day week in public libraries [LC Paper No. CB(1)359/08-09(01)].

5. Members noted a written submission made by Police Force Council Staff Side requesting to give views on the issue "Grade structure reviews: recommendations of the advisory committees", which was tabled at the meeting. Members agreed to invite deputations from major civil service consultative councils and staff associations to give views on the subject at the next regular meeting on 19 January 2009. In order to allow sufficient time for discussion, members also agreed that the meeting would be advanced to start at 10:30 am and extended to end at 1:15 pm.

(Post-meeting note: The submission was issued to members vide LC Paper No. CB(1)419/08-09 on 15 December 2008.)

IV Grade structure reviews: recommendations of the advisory committees

(LC Paper No. CB(1)310/08-09(01))

— Administration's paper attaching the following:

- a copy each of the reports from the three advisory bodies on civil service salaries and conditions of service on their respective reviews on the directorate grades, the disciplined services, and selected non-directorate civilian grades; and
- a copy of the statement by the Secretary for the Civil Service when meeting the media on the above grade structure review reports on 27 November 2008.

- LC Paper No. CB(1)351/08-09(03) — Administration's paper on grade structure reviews for directorate, disciplined services and selected non-directorate civilian grades
- LC Paper No. CB(1)352/08-09 — Background brief prepared by the Legislative Council Secretariat

6. The Secretary for the Civil Service (SCS) briefed members on the three grade structure review (GSR) reports submitted by the relevant advisory bodies on civil service salaries and conditions of service, and the Administration's consultation plan for taking forward these GSR reports. SCS advised that in recognition of Hong Kong's rapidly worsening economy amidst the worldwide financial crisis, when the Administration submitted its position formulated after study and consultation to the Executive Council (ExCo), it would propose to defer the implementation of those recommendations supported by the Administration and involving additional financial implications to until the local economy had returned to a steady state.

Proposal to defer implementation of recommendations

7. Ms LI Fung-ying queried whether the Administration was being self-contradictory in deciding that it would propose to defer implementation of any recommendation involving additional financial implications and in claiming that the Administration had an open mind on the recommendations of the GSR reports. She also asked about the criteria to be adopted for determining when the local economy was regarded to have returned to a steady state and whether the Administration had considered the impact of the "deferral" proposal on those civil servants who were about to retire.

8. SCS explained that the Administration would first study the findings and recommendations of the three reports and consult all relevant parties before formulating its position on the recommendations. If the Administration's position involved proposing to ExCo to accept any recommendation with additional financial implications, the Administration would propose at the same time to ExCo to defer the implementation of such recommendation until the economy had returned to a steady state. SCS further said that apart from making reference to readily available economic indicators, the Administration would collect views during the consultation exercise on how to assess whether the economy had returned to a steady state. She added that during the consultation exercise, the Administration would also welcome views on implications of the "deferral" proposal on soon-to-retire civil servants and how this matter should be addressed.

9. Ms LI Fung-ying considered that the "deferral" proposal should not be made to ExCo unless it was considered acceptable based on the views

received from the consultation exercise. The Chairman asked whether consideration would be given to including the "deferral" proposal within the scope of the consultation.

10. SCS replied in the negative and explained that the Administration considered that there was a need to put forward the "deferral" proposal to ExCo in view of the gravity of the global financial crisis and its impact on Hong Kong. She stressed that the implementation of the "deferral" proposal would also require the approval by the Chief Executive in Council.

11. Mr TAM Yiu-chung expressed support for the "deferral" proposal in view of the stringent economic environment. He, however, highlighted the view expressed by the Police Force Council Staff Side in paragraph 15 of its submission that "it would be fair and reasonable to implement retrospectively" any recommendation deferred "to the Report date", and sought the Administration's response. SCS said that this suggestion would be covered in the consultation exercise and the Administration would formulate its position after considering all the views received.

12. Mr CHEUNG Man-kwong also considered the "deferral" proposal appropriate taking into account the current situation in Hong Kong. He, however, recognized the need for the Administration to give special consideration to recommendations concerning the Government Counsel and Veterinary Officer grades if the serious recruitment and retention difficulties associated with these grades persisted.

13. Mr CHEUNG Man-kwong further pointed out that there was a time gap between the conduct of the GSRs in April 2008 when the local economy was buoyant, and the release of the reports recently in the midst of severe economic downturn. As such, he proposed that, when the local economy returned to a steady state, the information and data adopted to form the basis of the recommendations in the three reports should be updated first. The Administration should then review the recommendations in the light of the updated information and data. He said that if the Administration did not adopt such a position and failed to openly state that the information and data collected in April 2008 was already outdated, those civil servants who would benefit from the implementation of the current recommendations might have a justified basis to claim for back pay when the economy returned to a steady state.

14. SCS said that members' views and comments would be considered alongside other views collected during the consultation. She, however, invited members to note that in the GSR report on the directorate grades, it was stated that the comparison with private sector pay had been based on Guaranteed Cash only which was less affected by changes in the economy and had not taken into account bonus which was more susceptible to change in the

economy. The Chairman asked whether consideration would be given to using updated new information and data to form the basis for reviewing the recommendations. SCS reiterated that it was inappropriate for the Administration to formulate a position on the matter before conclusion of the consultation exercise.

15. While stating acceptance of the "deferral" proposal only as a temporary measure, Dr PAN Pey-chyou opined that since the GSRs had been conducted in accordance with established procedures and in a stringent manner, their recommendations should not be totally disregarded simply because of the prevailing public sentiment and economic situation, or else civil servants would always be denied their right to any pay adjustment and there would be difficulty in attracting high-calibre candidates to join the civil service. He considered that importance should be attached to civil servants' morale as well. Mr CHEUNG Man-kwong clarified that he did not question the methodology and principles adopted for conducting GSRs but only sought to update the relevant data for working out recommendations on pay adjustments.

16. The Deputy Chairman, however, pointed out that different from pay trend surveys, GSRs were essentially aimed at weighing the specific responsibilities of different grades against their pay scales in the light of changes in their responsibilities in response to public expectations, and to compare the pay scales with those in the private sector to keep the grade structure and the terms and conditions of the civil service abreast of the market situation.

17. SCS said that the Administration attached great importance to the three GSR reports and would study their recommendations in detail and give due regard to the views collected in the consultation exercise. She said that the views and comments expressed by members would also be taken into full account.

Salaries of D8 officers and relativity with remuneration for politically appointed officials

18. The Deputy Chairman asked whether the recommendation to introduce an increment to D5 to D8 officers, if accepted, would entail corresponding pay adjustments for politically appointed officials (excluding Political Assistants since their salaries were pitched at D2 level only). SCS responded that officials under the Political Appointment System were not civil servants and their remuneration packages were not linked to those for the civil service. For example, while there had been an upward pay adjustment for the civil service in 2007 and 2008, the remuneration for politically appointed officials had remained unchanged.

19. The Deputy Chairman said that in briefing LegCo on the remuneration package recommended for additional political appointees previously, the Administration had compared the scale of remuneration for Deputy Directors of Bureau to the remuneration of a D4 to D6 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed, and that for Political Assistants to the remuneration of a senior professional to D2 civil servant on agreement terms with all allowances and end-of-contract gratuity encashed. She queried that if any pay adjustment for directorate grades did not entail corresponding pay adjustment for political appointees, the pay of Permanent Secretaries (D8), which would be further increased based on inflation, might eventually even exceed that of Directors of Bureau. She considered that the existing relativity of salaries of D8 officers with the remuneration for politically appointed officials would need to be preserved, and introduction of an increment to D5 to D8 officers would not have no implications on the remuneration for politically appointed officials.

20. SCS said that the principle that the remuneration package for officials under the Political Appointment System would not be linked to that for D8 or higher level civil servants had already been clearly set out in the financial proposals on the implementation of the accountability system submitted to the Finance Committee (FC) in 2002. She explained that in setting the level of remuneration for Deputy Directors of Bureau and Political Assistants, the Administration had pitched the remuneration within a range equivalent to 65% to 75% and 35% to 55% respectively of the remuneration package approved for a Director of Bureau by FC in 2002. The comparison to the remuneration of directorate civil servants as mentioned by the Deputy Chairman had been provided by the Administration as a reference only and it was not the basis for setting the remuneration for the Deputy Directors of Bureau and Political Assistants.

21. Dr Margaret NG considered that the remuneration for Permanent Secretaries should not be noticeably lower than that of Directors of Bureau because, as she understood, the latter were not the supervisors of the former and the two only assumed different roles in the government. Referring to the recommendations for the directorate grades, Dr NG asked whether it was proposing that only the salaries of the heads of the Hong Kong Police Force and the Independent Commission Against Corruption would continue to be equivalent to D8.

22. SCS said that the posts of the Commissioner of Police and the Judiciary Administrator as well as all Permanent Secretaries (except for the post of Permanent Secretary/the Chief Executive's Office which was pitched at the rank of D6) were pitched at the rank of D8. She also pointed out that before the deletion of the Director of Education and Director of Housing posts, both posts were pitched at the rank of D7.

23. SCS further said that there was a supervisor/subordinate relationship between Directors of Bureau and their respective Permanent Secretaries under the present system. Dr Margaret NG said that even so, the Administration should not try to reflect this supervisor/subordinate relationship in their remuneration levels in formulating the pay adjustment mechanism for officials under the Political Appointment System. She considered that while civil servants' jobs were meant to be a lifelong career, the non-civil service positions of Directors of Bureau were different. SCS pointed out that the pay adjustment mechanism for officials under the Political Appointment System was under the purview of the Constitutional and Mainland Affairs Bureau. She would convey members' views in this regard to the Secretary for Constitutional and Mainland Affairs for consideration.

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24. Dr Margaret NG further asked whether the remuneration for Directors of Bureau was broadly equivalent to that for a D9 or D10 civil servant. SCS said that at the time of introduction of the accountability system in 2002, the Administration had proposed to FC, and FC had agreed, to set the remuneration package for a Director of Bureau at a level similar to that for an agreement-term civil servant at D8 level; and that thereafter there would be no linkage between the remuneration package of Directors of Bureau and that for civil servants. She pointed out the current monthly salary for a Director of Bureau (i.e. \$298,115) was higher than that for a D10 (i.e. \$241,750) or for a D8 civil servant (i.e. \$202,000). However, she said it was important to bear in mind that the former was remunerated on the basis of a total cash package with no fringe benefits such as housing allowance, passage allowance and gratuity payment upon completion of the employment contract, while such fringe benefits would be provided to a D10 or D8 ranking agreement-term civil servant. In response to Dr NG's enquiry, SCS undertook to provide a comparison of the remuneration packages between Directors of Bureau and Permanent Secretaries before and after taking into account the recommendations in the Eleventh Report of the Standing Committee on Directorate Salaries and Conditions of Service. At the request of the Deputy Chairman, SCS also agreed to provide information on the current salary of ministers and top civil servants in the United States and the United Kingdom for members' reference.

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(Post-meeting note: The requested information was issued to members vide LC Paper No. CB(1)606/08-09(01) dated 15 January 2009.)

Conditioned hours of work

25. Noting that the staff of the Customs and Excise Department (C&ED) had proposed shortening their conditioned hours of work from 51 to 48 per week, Mr TAM Yiu-chung said that although the proposal had the support of the Standing Committee on Disciplined Services Salaries and Conditions of Service, there might be difficulty in implementing it given the three

pre-requisites of being cost neutral, not involving additional manpower and maintaining the same level of service to the public, that had to be achieved.

26. SCS noted that the Police Force had successfully shortened their conditioned hours of work to 48 in 1998 under the same three prerequisites as recommended by the Standing Committee in the context of conditioned hours of work for the Customs disciplined service grades. She said that in the case of the Police, the three prerequisites had been achieved through internal deployment, streamlining of work procedures, enhanced use of technology, etc to make up for the shortened conditioned hours of work. She further noted that C&ED had been making similar arrangements on a pilot basis in the past few years and managed to shorten the conditioned hours of work by a few hours per week for over 80% of its staff. In reply to Mr TAM's further enquiry, SCS said that the costs associated with the enhanced use of technology by C&ED to save manpower was met from the department's operating expenditure envelope.

V Draft Civil Service Code

(LC Paper No. CB(1)351/08-09(04) — Administration's paper on draft civil service code

LC Paper No. CB(1)390/08-09(01) — Information note prepared by the Legislative Council Secretariat)

27. SCS briefed members on the Administration's paper on the draft Civil Service Code (the Code). SCS informed members that the Administration was in the process of consulting politically appointed officials, the staff sides of the civil service and the Public Service Commission. The draft Code had been posted on the homepage of the Civil Service Bureau (CSB). SCS said that all members of the civil service were welcome to convey their views to CSB, which would finalize the draft Code in the light of the views received. The Administration planned to promulgate the Code in the first half of 2009.

Discussion

28. Referring to paragraph 5.8 of the draft Code, Mr WONG Kwok-hing expressed concern about how the expression "試圖妨礙或阻撓" ("seek to obstruct or frustrate") would be defined. He asked whether a civil servant who only acted in good faith in dissuading a politically appointed official from adopting a policy which, in the civil servant's view, was not in line with public interest, would be regarded as seeking to obstruct or frustrate a policy or decision taken by politically appointed officials.

29. Referring to paragraph 3.11 of the draft Code, Mr WONG Kwok-hing also expressed similar concern with regard to the rule that civil servants "are accountable for" the use of public resources under their charge "in compliance with the directions and decisions made by their principal officials". He asked whether a civil servant would be regarded to have breached the rule in the said paragraph when he resisted using the public moneys under his charge in accordance with his principal official's decision because the civil servant believed that the decision was not in the best public interest.

30. SCS explained that whether any case would be regarded as in breach of paragraph 5.8 of the draft Code would be determined on a case by case basis taking into full account the facts of each case. She also invited members to note section 7 which had spelt out the communication/complaint/redress mechanism to address concerns from civil servants on directions from politically appointed officials. A civil servant who felt aggrieved by any allegation made by politically appointed officials could seek redress under the mechanism.

31. SCS further explained that, while civil servants were obliged to make their best professional judgment in their work and render their views to their principal officials accordingly for consideration, civil servants had to perform their duties in accordance with the decision and directions of principal officials. SCS also pointed out that under the Political Appointment System, principal officials were responsible for policy formulation, whereas civil servants were responsible for executing policies and, provided that a civil servant had not committed administrative blunder in the execution process, the civil servant would not be held responsible for failure of policies.

32. SCS pointed out that under the Public Finance Ordinance (Cap. 2), public funds were restricted from being used for purposes other than the authorized purposes for which the funds were provided. Civil servants were obliged to clearly explain to their principal officials the authorized purposes for which any funding had been approved by the Finance Committee. SCS said that it was already specified under the Code for Officials under the Political Appointment System that politically appointed officials should not require civil servants to act in any way which was illegal or might involve possible maladministration.

33. Mr WONG Kwok-hing remained dissatisfied with the Administration's reply and requested to put on record his concern about the expression "試圖妨礙或阻撓" ("seek to obstruct or frustrate") in paragraph 5.8 of the draft Code as it might result in accusations against a civil servant merely based on subjective judgment of the civil servant's motive behind his act, and this would be unfair to the civil servant concerned. He urged the Administration to re-consider the relevant wording.

34. Mr LEUNG Kwok-hung said that Hong Kong's political system had prevented civil servants from daring to render any personal view or comment which did not accord with the views of the Chief Executive or principal officials. He asked whether civil servants could, in their capacities as the chairmen or representatives of civil service staff unions/associations, criticize the Government or its policies. He considered that it would be unfair to restrain civil servants from doing so, given that an Executive Council Member had also openly criticized the Government recently.

35. In response, SCS explained the existing restriction on civil servants from acting in any way which would bring disrepute to the Government. She pointed out that provisions were in place to safeguard the right of relevant civil service staff unions/associations when acting on behalf of their members' interests with a view to promoting their welfare. In the draft Code, it was further highlighted that civil servants "shall ensure that their involvement in, or contribution to, any public debate or discussion on public matters ...is appropriate to the official positions they hold". Mr LEUNG Kwok-hung specifically asked whether civil servants could, in their capacities as the chairmen or representatives of civil service staff unions/associations, criticize Government policies such as legislation to implement Article 23 of the Basic Law when the legislation was introduced. He said that such legislation might be outside the scope of civil servants' welfare but was related to their well-being. At the Chairman's request, SCS agreed to provide a written response to Mr LEUNG's question.

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(Post-meeting note: the Administration's written response was issued under LC Paper No. CB(1)564/08-09(01).)

36. Mr IP Wai-ming asked whether a civil servant who felt that he had been directed to act in an improper way and resorted to the communication/complaint/redress mechanism in section 7 might be alleged as seeking to obstruct or frustrate a policy or decision or delay its implementation. SCS replied in the negative and pointed out that under the mechanism, if the civil servant concerned chose to discuss the matter with his immediate supervisor, his discussion with his immediate supervisor would be duly recorded. The record would serve to protect the civil servant from allegations of seeking to obstruct a decision or delay its implementation.

37. Mr CHEUNG Man-kwong considered that the Code should address the division of role and responsibilities between permanent secretaries and the under secretaries/political assistants, in order to prevent duplication of responsibilities and unclear demarcation of duties and powers. In this connection, he raised the following concerns –

- (a) As set out in the draft Code, **both** permanent secretaries and the under secretaries were to assist in explaining proposed

policy initiatives or government policies to the Legislative Council (LegCo), the community, stakeholders, political parties, the media, etc.;

- (b) As set out in the draft Code, **both** permanent secretaries and political assistants were required to render advice to principal officials to facilitate their formulation of policies; and
- (c) Under the proposed complaint mechanism, when a civil servant who felt that he had been directed by the under secretaries/political assistants to act in a way which he considered was improper, he could either discuss and resolve the matter with the concerned politically appointed official, **or** bring the matter to the personal attention of the relevant permanent secretary. The mechanism failed to set out clearly the most proper complaint channel and procedure.

Mr CHEUNG Man-kwong further asked that as there was not a supervising or subordinating relationship between permanent secretaries and the under secretaries/political assistants, how disagreements or disputes arising in the course of the above work between them would be resolved.

38. In response, SCS made the following points –

- (a) The emphases of the work of politically appointed officials and that of civil servants were different. The former was primarily responsible for undertaking political work, whereas the latter was to assist in the policy formulation under the charge of principal officials by providing necessary support, preparing relevant information and presenting options.
- (b) Given their small number (only some 30), politically appointed officials were unable to discharge the role of explaining the whole spectrum of government policies to LegCo and all relevant stakeholders without civil servants' assistance. However, civil servants were required to assume only a supporting role in handling such work, and to make this clear, the words "as necessary" were deliberately used in paragraph 5.6 of the draft Code. On the other hand, it was set out clearly in paragraphs 5.2, 5.3 and 5.4 of the draft Code that it was the main duty of politically appointed officials that they had to attend LegCo meetings and canvass support for government policies.

- (c) Regarding the complaint mechanism, the civil servant concerned was encouraged to first discuss the matter with the politically appointed official who issued the direction to seek clarification and clear any misunderstanding regarding the direction given, as the problem that had given rise to concern might have arisen from misunderstanding only. However, if the civil servant concerned found this difficult, he could discuss the matter with his immediate supervisor who should consider the relevant information. If the matter remained unresolved, it could also be brought to the personal attention of the relevant permanent secretary. The permanent secretary should then consider all the relevant information, discuss with the concerned civil servant and politically appointed official with a view to resolving the matter. If the matter could not be resolved, the permanent secretary should bring it to the personal attention of the relevant principal official for resolution. If the matter remained unresolved, it should be brought to the attention of SCS for resolution.

39. Mr CHEUNG Man-kwong further asked that if a civil servant received contradictory instructions of work from his permanent secretary and under secretary, the civil servant should follow whose instruction, especially in a situation that the under secretary claimed the instruction he gave came from the principal official. SCS responded that civil servants and politically appointed officials should strive to work in effective partnership and the two would have working contact in daily operation. As set out in section 6 of the draft Code, permanent secretaries and the appropriate civil servants in the relevant line of command should be kept informed of communication between under secretaries/political assistants and civil servants concerned as far as possible. SCS added that the use of e-mail would also help expedite and facilitate communication amongst all relevant parties and clarification of any unclear instruction of work. Mr CHEUNG, however, considered that the use of e-mail could not resolve all possible problems arising from the unclear demarcation of duties and powers between permanent secretaries and under secretaries/political assistants. He added that there might also be different interpretations of messages in e-mails.

40. Ms LI Fung-ying echoed Mr CHEUNG Man-kwong's view that there was a need to clarify the division of role and responsibilities between civil servants and politically appointed officials. With the creation of two additional layers of political appointment positions, i.e. the under secretaries/political assistants, she considered it unfair to still require civil servants to assist in work such as presenting and explaining proposed policy initiatives as set out in paragraph 5.6 of the draft Code. She considered that

this would be a waste of public resources and duplication of responsibilities.

41. Mr IP Wai-ming also expressed concern about the need to clarify demarcation of duties and powers, particularly between permanent secretaries and the under secretaries/political assistants, and agreed to the view that permanent secretaries should no longer be required to present and explain government policies to LegCo. He raised that the unclear demarcation of duties and powers between permanent secretaries and the under secretaries might result in dual command in a policy bureau. SCS pointed out that there was no dual command in any policy bureau. She said that both civil servants and the under secretaries/political assistants should work to their Director of Bureau, who was the highest authority in a policy bureau.

42. Noting that the under secretaries/political assistants could on behalf of principal officials request civil servants to prepare and provide information and data (paragraph 6.4 of the draft Code), Dr Margaret NG expressed concern about the possibility of civil servants being overloaded with such requests. She asked how a civil servant should deal with the under secretaries'/political assistants' excessive requests for unnecessary information if such a situation arose. Ms LI Fung-ying shared Dr NG's concerns.

43. SCS responded that the civil servants concerned could take similar course of actions as described in paragraph 38(c) above. The civil servant concerned should discuss the matter with his immediate supervisor, who could bring the matter to the attention of the relevant permanent secretary. The permanent secretary should discuss with the concerned civil servant and politically appointed official with a view to resolving the matter. If the matter remained unresolved, the permanent secretary could bring it to the attention of the relevant principal official for resolution.

44. Referring to paragraph 7.1 of the draft Code, Ms LI Fung-ying asked whether a civil servant, when directed to act in a way which he considered was illegal, could refuse to do so right away. SCS responded that in such circumstances, the civil servant should follow the guidelines set out in CSB Circular No. 20/79, according to which he should report promptly to the relevant law enforcement agencies. In any circumstances, a civil servant must refrain from committing any illegal act. As regards the mechanism in paragraphs 7.2-7.10 of the draft Code, it only applied to situations covered in paragraph 7.2 (a)-(d) of the draft Code.

45. Mr TAM Yiu-chung considered that the Code should address issues which might hinder the smooth cooperation between permanent secretaries and politically appointed officials as there had been newspapers reports in the past on individual Directors of Bureau and permanent secretaries failing to forge a good working relationship. In reply to Mr TAM 's enquiry about the consultation process with relevant stakeholders in drafting the Code, SCS said

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that she had informally consulted all principal officials, permanent secretaries and heads of department. Their views and comments had already been incorporated as far as possible in the current draft. Mr IP Wai-ming requested information on such views received. SCS said that the Administration could prepare a summary of views received on the draft Code after completion of the current consultation exercise in end February 2009 and provide it to the Panel.

46. Dr Margaret NG opined that the Code should seek to encourage civil servants to take the initiative to fulfill their role and responsibilities without fear of incurring punishment. To achieve this, she considered that the Code should provide safeguards to protect a civil servant from being subjected to punishment after he had acted in accordance with the principles stated in paragraph 6.1, i.e., civil servants "shall provide politically appointed officials their full, honest and impartial advice, without fear or favour, and whether or not the advice accords with the views of politically appointed officials" and "shall endeavour to provide politically appointed officials with the best advice they believe they can give and all relevant information they have access to". She considered that the communication/complaint/redress mechanism under section 7 was not adequate to address this concern. Referring to the same paragraph of the draft Code, Dr NG disagreed that civil servants should work together with politically appointed officials "in the spirit of partnership", as this requirement would conflict with the division of roles and responsibilities between civil servants and politically appointed officials under the Political Appointment System.

47. The Deputy Chairman considered that it was unrealistic and belittling of civil servants to describe them, as was done in paragraphs 3.11 and 5.8 of the draft Code, as responsible for only implementing policies and use of public resources. The Deputy Chairman pointed out that civil servants were also required to exercise judgment at the policy level in performing their duties, as reflected in the recent incident on handling of chartered flights for Hong Kong residents stranded in Thailand and concern over the decisions made by Mr LEUNG Chin-man in his former official capacities. The Deputy Chairman also pointed out that civil servants, mainly permanent secretaries/deputy secretaries, were in fact playing a very important role in canvassing support for government policies and their performance in this respect was even better than the under secretaries/political assistants. She considered that there would be difficulty in the implementation of the Code if it failed to truly reflect the role and functions actually performed by civil servants in the Government.

48. SCS disagreed that there was any intention behind the draft Code to belittle the important role played by civil servants. She said that the draft Code attempted to cover the role and responsibilities of civil servants in relation to politically appointed officials. She invited members to note that it was also set out in paragraphs 3.5, 3.11 and 5.6 of the draft Code that civil

servants were in fact "responsible for decisions and actions taken in their official capacity", and "responsible to develop policy options or proposals and assess their full implications, ...based on intellectual rigour, objective research, professional knowledge and expertise". It was also set out that civil servants "shall endeavour to provide politically appointed officials with the best advice they believe..." (in paragraph 6.1 of the draft Code).

49. In response to the Deputy Chairman's enquiry, SCS said that the Code would also be applicable to non-civil service contract staff. The Deputy Chairman said that she had other comments on the draft Code. Due to shortage of time, she would write to the Chairman for follow-up with the Administration. SCS said that members' views and comments on the draft Code would be taken into account in refining the draft.

50. At the suggestion of Mr WONG Kwok-hing, members agreed to further discuss the subject at the regular meeting in February 2009 and to invite deputations from major civil service consultative councils and staff associations.

Clerk

VI Any other business

51. There being no other business, the meeting ended at 1:00 pm.

Council Business Division 1
Legislative Council Secretariat
13 February 2009