

立法會

Legislative Council

LC Paper No. CB(1)1647/08-09
(These minutes have been seen
by the Administration)

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Panel on Public Service

**Minutes of meeting held on
Monday, 16 February 2009, at 9:30 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 LEUNG Kwok-hung
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou
- Members attending** : Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon LI Fung-ying, BBS, JP
Hon WONG Sing-chi
- 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

The Honourable Ronald ARCULLI, GBS, JP
Chairman
Committee on Review of Post-Service Outside
Work for Directorate Civil Servants

Ms Ivy LAW
Secretary
Committee on Review of Post-Service Outside
Work for Directorate Civil Servants

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

Agenda item VI

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

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

Mr Patrick CHAN Nim-tak, JP
Director of General Grades

**Attendance by
invitation**

: Agenda item V

Government Disciplined Services General Union

Mr LAM Kwok-ho
Chairman

Mr BUI Sing-lee
Secretary

Hong Kong Federation of Civil Service Unions

Mr LEUNG Chau-ting
Chairman

Mr CHAN Wai-keung
Executive Committee Member

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)745/08-09 - Minutes of meeting on
15 December 2008)

The minutes of the meeting held on 15 December 2008 were confirmed.

- II Information papers issued since last meeting**
(LC Paper No. CB(1)789/08-09 - Submission on concerns about pay rates in respect of Assistant Education Officer (Administration) and Assistant Inspector (Graduate) from the Chairman of Association of Government Education Administrators to the Administration and the Administration's reply letter)

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

- III Items for discussion at the next meeting scheduled for 16 March 2009**

- (LC Paper No. CB(1)747/08-09(01) - List of outstanding items for discussion
LC Paper No. CB(1)747/08-09(02) - List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting on 16 March 2009 –

- (a) Medical and dental benefits for civil servants; and
(b) Civil service-related issues featuring in the 2009 Budget.

(Post-meeting note: At the suggestion of the Administration and with the concurrence of the Chairman, an additional item on "Consultation Document on Review of Post-service Outside Work for Directorate Civil Servants" was subsequently added to the agenda.)

IV Public consultation on post-service outside work for directorate civil servants by the Committee on Review of Post-service Outside Work for Directorate Civil Servants

(LC Paper No. CB(1)747/08-09(03) - Paper on work progress and public consultation plan from Committee on Review of Post-service Outside Work for Directorate Civil Servants

LC Paper No. CB(1)781/08-09(01) - Administration's paper on the number of approved applications from directorate civil servants of major professional grades to take up post-service outside work with organizations related to their professions (from 2006 to 2008)

LC Paper No. CB(1)86/08-09 - Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(1)559/08-09 - Minutes of special meeting on 27 October 2008

LC Paper No. CB(1)568/08-09 - Referral from the Complaints Division on control regime for post-service outside work of directorate civil servants)

4. Mr ARCULLI, Chairman of the Committee on Review of Post-Service Outside Work for Directorate Civil Servants (the Review Committee), briefed members on the work progress and the public consultation plan of the Review Committee. He said that, having examined the current control regime for post-service outside work for former directorate civil servants and made reference to overseas practices, the Review Committee had identified a number of salient issues for public consultation as set out in the Review Committee's paper. He further said that the Review Committee had an open mind on these issues and it wished to consult widely. The Review Committee would issue a public consultation document on 20 February 2009 and hold a number of public forums and consultative sessions to collect views from the public and stakeholders.

Discussion

Underlying principles (issue 1)

5. Mr Ronny TONG queried why it was necessary to consult the public on "issue 1" in the Review Committee's paper, i.e. "should protecting the public interest and protecting an individual's right continue to be recognized as the two underlying principles of the control regime" because, in his view, it was apparently clear that the principle of protecting the public interest should always take precedence over that of protecting an individual's right. He considered that it was inappropriate that the Administration's position over this fundamental principle should be steered by public opinions.

6. Mr ARCULLI pointed out that one of the issues considered by the Review Committee was whether the existing control regime was able to strike an appropriate balance between protecting the public interest and protecting an individual's right. The Review Committee noted that the public had expressed some views on the two underlying principles. The Review Committee had, therefore, decided to raise this issue in the consultation document as it did not want to draw up its own conclusions without listening to the public's and stakeholders' views.

7. Mr Ronny TONG asked about the Review Committee's preliminary view on "issue 1". Mr ARCULLI said that the Review Committee had not come to any conclusions on the issue at this stage. Mr TONG took the view that civil servants should abide by the principle that protection of public interest, which was a core value in the civil service, always took precedence over an individual's right. He considered that the Review Committee should reaffirm this understanding and state it clearly in the consultation document.

8. Referring to the above two underlying principles, Mr CHEUNG Man-kwong considered that it was the public's expectation that protecting public interest was more important than protecting an individual's right to

pursue post-service employment for directorate civil servants, given that civil servants upon retirement were rewarded relatively generous retirement benefits. He considered that a core mission of the Review Committee's work was to come up with effective measures to avoid suspicion or perception of 'deferred reward' for past favour done by a former directorate civil servant in his official position to benefit a particular entity or individual in return for lucrative post-service employment. He took the view that the salient issues 3 to 9 in the Review Committee's paper were relevant to the consideration of this matter.

Policy objective (Issue 2)

9. Mr CHEUNG Man-kwong considered issue 2 in the Review Committee's paper an important issue. He said that the incident of Mr LEUNG Chin-man had aroused wide public concern about the possible loophole in the existing control regime, and the need to prevent directorate civil servants from offering favour to private companies during government service and securing employment in concerned companies as a reward after the end of sanitization period. He further said that as different from the colonial days during which the retirement package of civil servants was considered very generous and most directorate civil servants were nationals of the United Kingdom (UK) who mostly returned to UK after retirement, nowadays the retirement package might no longer be considered by some retired directorate civil servants as very generous, and that most directorate civil servants were locals.

10. Noting that the Review Committee would submit its report to the Chief Executive (CE) in mid-2009, Mr CHEUNG Man-kwong asked whether the Administration would temporarily suspend processing applications for post-service outside work from directorate civil servants until the new policy and arrangements were in place, to prevent any directorate civil servant from taking advantage of loopholes of the existing control regime to seek approval before the control regime was tightened up.

11. In response, SCS pointed out that the current control regime was founded on a comprehensive set of underlying principles, policy objectives and control arrangements. The Administration would continue to process applications in accordance with the existing policy until any new control arrangements were introduced. Mr CHEUNG Man-kwong, however, considered it undesirable to do so as the assessment criteria adopted in assessing applications already received or those coming up in the next few months might not be consistent with the assessment criteria to be adopted under the revised control regime.

12. Mr ARCULLI commented that it would be rather unusual for a government system to cease operation during a review. He considered that

the Administration, however, should exercise more caution in assessing applications in view of possible changes to the existing control regime.

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13. Referring to the Administration's paper on the "Number of approved applications from directorate civil servants of major professional grades to take up post-service outside work with organizations related to their professions" (LC Paper No. CB(1)781/08-09)(01)), Mr CHEUNG Man-kwong requested additional information on the number of cases in the education profession. SCS agreed to provide the information.

(Post-meeting note: The revised paper with the requested information provided by the Administration was issued vide LC Paper No. CB(1)1033/08-09(02) on 13 March 2009.)

Periods of restriction (issue 3)

14. Referring to the above same paper, the Chairman noted that from 2006 to 2008, the Administration had approved 15 applications from directorate civil servants of major professional grades to take up post-service outside work with private commercial organizations related to their professions. The Chairman considered that the post-service outside work taken up by a former directorate civil servant should not be related to the policy responsibilities over which he was involved during his last five years of government service.

15. In response, SCS pointed out that under the existing control regime, in addition to the standard work restriction, job-specific restrictions would be imposed on a case-by-case basis. The Chairman further asked SCS whether there were any legal or contractual constraints to the introduction of the additional restriction proposed by him above as the restriction might be regarded as contradicting civil servants' reasonable expectations. In response, SCS invited members to note that one of the issues to be flagged up by the Review Committee in the public consultation document was the length of 'periods of restrictions' for post-service outside work in the same field as that pursued by a former directorate civil servant before leaving the government service. She believed that the Review Committee would consider all relevant factors.

16. Dr Margaret NG asked whether it was possible that the Review Committee might come up with recommendations on post-service employment which would be inconsistent with the existing periods of restriction or other related restrictions imposed by professional bodies to which civil servants of professional grades belonged. Mr ARCULLI replied that the Review Committee would consider the views received during the public consultation before drawing up any recommendations.

Possible time gap between the release of respective reports of the Review Committee and the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man (the Select Committee)

17. Mr WONG Kwok-hing asked whether the Review Committee would take into account recommendations on the policy and arrangements governing post-service outside work for directorate civil servants to be made by the Select Committee. Mr ARCULLI noted that the work schedule of the Select Committee might not tally with that of the Review Committee. Nevertheless, he assured members that the Review Committee would take into consideration the views from LegCo Members.

18. Dr PAN Pey-chyou, who was also a member of the Select Committee, asked SCS how the Administration would deal with any discrepancy between the recommendations of the Review Committee and those of the Select Committee over the existing control regime.

19. SCS responded that there might be a time gap between the release of the Review Committee's report and the Select Committee's. She said that she would closely monitor the developments of the inquiry conducted by the Select Committee and further consider taking the following course of action if necessary -

- (a) when the Review Committee's report was available, SCS might consider the need for proposing to CE the implementation of recommendations relating to the existing control regime before completion of the inquiry of the Select Committee; or
- (b) proposing to CE to put on hold the implementation of the relevant recommendations, pending completion of the inquiry of the Select Committee and issue of its report.

20. In response to Dr Margaret NG's enquiries, Mr ARCULLI said that information on the control regimes of seven overseas jurisdictions covered in the consultancy study commissioned by the Civil Service Bureau would be included in the consultation document.

21. Mr ARCULLI further said that the Review Committee had received a submission from two professors on their study which compared Hong Kong's control regime with that of an overseas jurisdiction. The submission would be placed on the Review Committee's webpage if the professors concerned had no objection. At the suggestion of Dr Margaret NG, Mr ARCULLI agreed to request the secretariat of the Review Committee to do a research on any papers published by academics comparing Hong Kong's control regime with those of other jurisdictions for reference of the Review Committee.

22. Mr WONG Kwok-hing enquired whether the Review Committee would consult the Panel on the Review Committee's findings and recommendations prior to submission of its report to CE. Mr ARCULLI responded that in the course of conducting the review, the Review Committee would stand ready to discuss with the Panel on the existing control regime and to listen to members' views. He explained that the Review Committee was appointed by CE and was tasked to submit a report on its findings and recommendations to CE by mid 2009. He understood that CE would make public the Review Committee's report. Mr WONG Kwok-hing, however, maintained that the Review Committee should consult the Panel on its final views and recommendations first, as members might propose refinements to the recommendations for consideration by the Review Committee.

Control regime governing politically appointed officials

23. The Deputy Chairman asked whether control arrangements on post-service outside work for politically appointed officials would be covered in the review. Mr ARCULLI replied that the subject was outside the terms of reference of the Review Committee. SCS said that the control regime governing post-service outside work for politically appointed officials and the control regime under discussion were separate systems, with the former under the policy purview of the Constitutional and Mainland Affairs Bureau.

24. The Deputy Chairman said that in conducting its review, the Review Committee should consider all relevant factors, including how stringent the control arrangements governing post-service outside work for politically appointed officials were. She said that as politically appointed officials had wider powers, it would be unreasonable if the control arrangements governing the post-service outside work applied to them were less stringent than those applied to directorate civil servants. Mr ARCULLI said that he would take note of the Deputy Chairman's views. SCS said that she would convey the Deputy Chairman's concerns to the relevant bureau for consideration.

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25. Dr Margaret NG asked Mr ARCULLI whether the Review Committee had decided that it would not touch on the control arrangements governing post-service outside work for politically appointed officials. Mr ARCULLI said that although the post-office work control for political appointees was outside the terms of reference of the Review Committee, the Review Committee would consider views expressed by the public or LegCo in this regard and consider how best to handle these views. He added that the Review Committee had already received some submissions expressing views on this subject.

- (LC Paper No. CB(1)351/08-09(04) - Administration's paper on draft civil service code
- LC Paper No. CB(1)564/08-09(01) - Administration's supplementary information paper on the expression of comments by chairmen/representatives of civil service staff unions/associations on the Government or its policies
- LC Paper No. CB(1)390/08-09(01) - Information note prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)745/08-09 - Extract from draft minutes of meeting on 15 December 2008
- LC Paper No. CB(1)747/08-09(04) - Submission from Senior Civil Service Council (Staff Side)
- LC Paper No. CB(1)747/08-09(05) - Submission from Police Force Council Staff Side
- LC Paper No. CB(1)781/08-09(02) - Submission from Hong Kong Chinese Civil Servants' Association)

Presentation of views by deputations and the Administration's initial response

Government Disciplined Services General Union

26. Mr LAM Kwok-ho, Chairman of the General Union, said that the General Union's major concern about the draft Civil Service Code (the Code) was that as set out in its paragraph 6.4, namely under secretaries might request civil servants to prepare and provide information and data. The General Union was worried that it was not clear who would be held responsible if the requisite information so disclosed was later found to be inappropriate for disclosure. In the situation, the civil servant would also feel worried that rejecting the request might lead to negative comments from the under secretary concerned on his performance, because it was stated in paragraph 6.5 of the Code that under secretaries' comments might be sought on the performance of those civil servants with close working relationship with them as an input for the performance appraisals of the civil servants concerned. Mr LAM highlighted that as set out in paragraph 6.4, it was only necessary to keep the permanent secretaries in the relevant line of command informed of communication between under secretaries/ political assistants and civil servant concerned "**as far as possible**". The General Union considered that in the above scenario, there should be a clear written record of the request made by

the under secretary, and that the permanent secretary should be kept informed of the request made by the under secretary.

Hong Kong Federation of Civil Service Unions

27. Mr LEUNG Chau-ting, Chairman of the Federation, referred to paragraphs 5.6 and 6.6 of the Code and expressed concern that the role of civil servants under the Political Appointment System was belittled as civil servants were depicted as only responsible for implementing policies and it seemed that they had no role to play in policy formulation. Mr LEUNG considered it necessary to clarify in the Code the division of roles and responsibilities between civil servants and politically appointed officials. He expressed concern that it also seemed from the Code that it was possible that civil servants were to be blamed for failure of policies as they were responsible for rendering advice to the politically appointed officials concerned. Mr LEUNG considered that if that was the case, it was a waste of public money to introduce the Political Appointment System if civil servants were held responsible for failure of policies.

28. SCS made the following points in her initial response to the deputations' views –

- (a) consultation on the draft Code was on-going until the end of February 2009. The two deputations' views on the Code would be taken into consideration;
- (b) one of the purposes of the Code was to specify that civil servants were responsible for implementation of policies and decisions of the Government and to bear responsibility for administrative decisions and actions, while politically appointed officials had to bear political responsibility for policy decisions. If the relevant paragraphs in the Code were unclear, the Administration could consider improving their drafting to enhance clarity;
- (c) civil servants were required to work to their respective Directors of Bureau, who were the highest authorities in their respective policy bureaux. Under the present system, there was a supervising/subordinating relationship between principal officials and their respective permanent secretaries. When an under secretary was acting as the relevant Director of Bureau during the latter's temporary absence, there was a supervising/subordinating relationship between the under secretary concerned and the relevant permanent secretary during the acting period;

- (d) although paragraphs 6.3 and 6.4 of the draft Code specified the need for civil servants to assist under secretaries/political assistants by providing information and advice, such working contact should not be perceived as constituting a supervisor/subordinate relationship between the under secretaries/political assistants and civil servants; and
- (e) the words "**as far as possible**" were used in paragraph 6.4 to cater for circumstances in which the request for information was urgent and there was no time to inform the permanent secretaries (or the appropriate civil servants in the relevant line of command) of the communication between the under secretaries/political assistants and civil servants concerned.

Discussion

Demarcation of roles and responsibilities between civil servants and politically appointed officials

29. Mr WONG Kwok-hing shared the deputations' views and urged the Administration to address the concerns raised by civil servants especially about the demarcation of roles and responsibilities between civil servants and politically appointed officials, in order to avoid affecting the morale of civil servants. He further highlighted the following common problems shown in recent incidents, namely the blockade of the airport by taxi drivers on 3 December 2008, the mortuary incident at Pamela Youde Nethersole Eastern Hospital, and the chartered flight incident -

- (a) failure of the politically appointed officials to get involved in handling relevant disputes. For example, in the blockade of the airport on 3 December 2008, the under secretary concerned refused to have direct dialogue with the taxi drivers concerned after he had been called by a LegCo Member conveying the request from the taxi drivers concerned; and
- (b) failures of principal officials to take political responsibility for the above incidents. The principal officials concerned had only claimed that they were collectively responsible.

30. Mr WONG Kwok-hing further said that permanent secretaries/deputy secretaries, rather than the politically appointed officials, were required to attend meetings of LegCo to explain policy initiatives or government policies to Members. The Chairman requested SCS to explain the extent to which

civil servants were held responsible for failure of policies or a government decision under the present system.

31. SCS responded that under the Political Appointment System, 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. In response to Mr WONG Kwok-hing's concern, SCS assured members that all views of civil servants on the Code would be actively considered, and improvements would be introduced as appropriate to address civil servants' concerns.

32. Mr CHEUNG Man-kwong opined that the demarcation of duties and powers between permanent secretaries and under secretaries/political assistants as set out in the Code was unclear. For example, according to its paragraph 5.7, when questions arose as to whether politically appointed officials or civil servants should take the lead in handling certain duty or task, the principal official concerned was required to critically consider the political sensitivity involved in the duty or task and decide who should take the lead. Mr CHEUNG considered that "political sensitivity" was, however, abstract and difficult to assess as exemplified in the chartered flights incident, which involved both administrative and political decisions on whether exceptional arrangements should be made in response to changes in public sentiments.

33. SCS pointed out that the Political Appointment System was still in the process of evolvement. Nevertheless, she noted that it was now the normal practice that under secretaries often took the lead in attending LegCo meetings, though civil servants' company was still necessary because Members' questions were often related to policy implementation or technical details.

34. Dr PAN Pey-chyou opined that under the Political Appointment System, it was not clear regarding the difference between the definition of political accountability and that of administrative responsibility. Given the problem, it was also not easy to define clearly the division of roles and responsibilities between civil servants and the politically appointed officials. Dr PAN considered that the recent incidents such as those mentioned by Mr WONG Kwok-hing had revealed problems in the co-operation between the two teams, and civil servants had been made the scapegoats in some of those incidents.

35. SCS said that she noted that some countries which had a long history of implementing ministerial system still faced problems similar to those mentioned by Dr PAN. SCS explained that the Administration well recognized the interrelationship between policy formulation and policy execution, and the existence of grey areas in the delineation of roles and responsibilities between civil servants and politically appointed officials. In order to ease civil servants' concern, it was specified in the Code that politically

appointed officials were primarily responsible for undertaking political work, whereas civil servants were to assist in the policy formulation under the charge of principal officials by providing necessary support. SCS advised that the grey areas in the division of work could also be sorted out between the respective permanent secretaries and principal officials where necessary. In addition, the communication/complaint/redress mechanism under section 7 of the Code was proposed also with a view to addressing the relevant concerns from civil servants.

36. Mr IP Wai-ming shared the view that the Code had failed to provide a clear picture of the division of roles and responsibilities between civil servants and politically appointed officials, or between permanent secretaries and under secretaries. He was worried that this might lead to distrust between the two teams in their work. He asked SCS again about the possibility of emergence of dual command in a policy bureau.

37. SCS responded that there was no dual command in any policy bureau. Both civil servants and the under secretaries/political assistants worked to their Director of Bureau, who was the highest authority in a policy bureau. In response to Mr IP Wai-ming's concerns, SCS explained that one of the duties of under secretaries was to maintain close contact with stakeholders to solicit their views on policy initiatives.

Unclear supervising/subordinating relationship between civil servants and under secretaries

38. Mr CHEUNG Man-kwong highlighted that it was set out in paragraph 6.4 of the Code that under secretaries might, on behalf of principal officials, "convey" to civil servants the views and work priorities of principal officials, whereas civil servants (including the directorate officers) only received instructions from them. He also pointed out that in paragraph 6.5 of the Code, it was set out that for those civil servants with close working relationship with under secretaries, their supervisors might seek the views of under secretaries concerned as an input for the performance appraisals of the relevant civil servants. Mr CHEUNG considered that under these arrangements, civil servants would inevitably look upon under secretaries as their supervisors.

39. In response, SCS made the following points –

- (a) It would be too rigid and might even cause delays if under secretaries were required to seek the approval of permanent secretaries every time when they approached civil servants for assistance or information. To address civil servants' concern, paragraph 6.4 therefore spelled out that the permanent secretaries and the appropriate civil servants in

the relevant line of command were to be kept informed as far as possible of the communication between under secretaries/political assistants and civil servants concerned. Moreover, under the complaint mechanism proposed in the Code, when a civil servant felt that he had been directed by an under secretary/political assistant to act in a way which he considered 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; and

- (b) It had been an established practice well before the introduction of the Political Appointment System that input from parties concerned with close working relationship with a civil servant might be sought for the performance appraisal report of the civil servant. The arrangement would be good for the civil servant concerned as it took into account the comments of the relevant parties having worked with him closely in his appraisal. Some civil servants also considered that the arrangement proposed in paragraph 6.5 was fair as their efforts made in providing assistance to under secretaries could be taken into account in their appraisals. Moreover, it was stated in paragraph 6.5 of the Code that "such solicitation of views does not constitute, and should not be perceived as constituting, a supervising or subordinating relationship between the concerned under secretaries and civil servants".

40. Mr CHEUNG Man-kwong maintained that though not expressly stated, an implied supervisor/subordinate relationship between under secretaries and civil servants existed under the above arrangements. Dr PAN Pey-chyou shared Mr CHEUNG's concerns, and proposed that under secretaries' input sought for appraisal reports should not affect the promotion prospect of the civil servants concerned.

Rationale for introducing the Code

41. The Deputy Chairman said that the civil service had all along been functioning well without the Code. She asked about the purpose of introducing the Code and which authority initiated the idea of introducing the Code. In view of the many concerns raised by civil servants about the Code, the Deputy Chairman asked whether the Administration would consider shelving the implementation of the Code.

42. SCS responded that the Civil Service Bureau (CSB) initiated the idea of drawing up the Code when the Government decided to expand the Political

Appointment System. The purpose of the Code was to provide guidelines on the division of roles and responsibilities between civil servants and politically appointed officials under the Political Appointment System. SCS explained that the Administration had not considered shelving the introduction of the Code. However, she assured members that CSB would take into account the views received when finalizing the Code.

43. At the Deputy Chairman's invitation, Mr LEUNG Chau-ting said that many civil servants considered the Code unnecessary and its main purpose was to hold civil servants also responsible for improper decisions made by politically appointed officials so that the latter could shed responsibility, and to establish the system that under secretaries/political assistants could request civil servants to assist in their work. He added that given the appraisal arrangement as set out in paragraph 6.5 of the Code, civil servants simply could not refuse to perform any tasks as instructed by politically appointed officials.

44. SCS said that she totally disagreed with the views expressed above. She pointed out that as early as 2002 when the Political Appointment System was introduced, CSB had issued a circular on "The Role and Responsibilities of Civil Servants in relation to Principal Officials appointed under the Accountability System" (CSB Circular No. 8/2002), setting out similar guidelines as those in the Code. The Code was in fact drafted on the basis of the circular and in the light of experience gained in implementation of the Political Appointment System. She pointed out that in fact, many civil servants had requested for the introduction of a Code which would address their concerns about their role and the framework within which they were expected to work with politically appointed officials under the expanded Political Appointment System.

45. The Chairman commented that the concern expressed by civil servants about the motive behind the introduction of the Code was related to the general perception that politically appointed officials had not really been held accountable for failures of policies ever since the implementation of the Political Appointment System. He considered that the concern of civil servants could not be addressed merely by improving the drafting of the Code if no improvements were made to this problem, and the chartered flights incident was a case in point.

46. The Chairman further made the following suggestions regarding the drafting of the Code -

- (a) The statement in paragraph 6.4, i.e. "[P]ermanent secretaries and the appropriate civil servants in the relevant line of command are to be kept informed of communication between under secretaries/political assistants and civil servants concerned as far as possible", should be revised to

state that under secretaries/political assistants should convey their requests to permanent secretaries as far as possible for the latter to assign relevant jobs to civil servants concerned; and

- (b) The statement in paragraph 6.5, i.e. "For those civil servants with close working relationship with under secretaries, their supervisors in the Civil Service may seek the views of under secretaries as an input for the performance appraisals of the concerned civil servants", should be deleted so as to enable the supervisors of the civil servants concerned to exercise discretion as to whether the views of under secretaries should be solicited in this regard.

47. SCS agreed to consider the Chairman's proposals above. She considered that when the Chief Secretary for Administration (CS) talked about "collective responsibility" in the chartered flight incident, CS did not imply that civil servants were held responsible for the incident. Instead, he might mean that the relevant decision was the collective decision made by all politically appointed officials concerned. She also invited members to note that the Secretary for Security had apologized to the public for the incident.

VI Employment of non-civil service contract staff

- (LC Paper No. CB(1)747/08-09(06) - Administration's paper on employment of Non-Civil Service Contract staff
- LC Paper No. CB(1)781/08-09(03) - Submission on employment of non-civil service contract staff from a non-civil service contract staff member
- LC Paper No. CB(1)748/08-09 - Background brief prepared by the Legislative Council Secretariat)

48. Members noted the following papers tabled at the meeting –

- (a) Letter from the Chairman on employment of non-civil service contract (NCSC) staff; and
- (b) The Administration's reply to (a) above.

(Post-meeting note: The above papers were issued to members vide LC Paper No. CB(1)815/08-09 on 17 February 2009.)

NCSC staff's employment arrangements

49. Noting that some 2 330 NCSC positions had been phased out upon the end-dates of the employment contracts of the concerned NCSC staff, Mr WONG Kwok-hing asked how many of the relevant NCSC staff had successfully been selected for appointment as civil servants. The Chairman pointed out that the requisite information could be found in the paper in paragraph 48(b) above [LC Paper No.CB (1)815/08-09(02)]. At his invitation, SCS briefed members on the paper.

50. Mr WONG Kwok-hing noted from Annex II to the Administration's paper that 9 602 NCSC staff were employed on contracts of only one to less than two years. He asked how the Administration planned to handle these 9 602 NCSC staff when their contracts expired.

51. SCS responded that whether these NCSC staff's contracts would be renewed would depend on their performance and whether there were continued service needs. In this regard, although some 1 600 of the positions presently taken up by NCSC staff would be replaced by civil service posts and hence the NCSC contracts concerned might not be renewed, NCSC staff were welcome to apply for any of the civil service vacancies through open recruitment. Mr WONG maintained that as the largest employer in Hong Kong, the Government should properly handle the 9 602 NCSC staff to avoid aggravating the unemployment problem.

52. Mr CHEUNG Man-kwong opined that the NCSC Staff Scheme had been introduced to serve two purposes, namely, to ensure the size of the overall civil service establishment would remain under control, and to create jobs to alleviate the unemployment situation at times of need. He noted that while NCSC positions could be created easily, NCSC staff faced great difficulty in securing civil service appointment because additional civil service posts were rarely created. This was demoralizing to the NCSC staff. He considered that the Administration should introduce a scheme whereby NCSC staff with proven satisfactory performance would be accorded priority for consideration in the selection of appointees for filling relevant civil service posts, so as to motivate NCSC staff and give them some assurance in terms of their career prospect.

53. In response, SCS made the following points –

- (a) the NCSC Staff Scheme, introduced in 1999, had in fact been introduced not for the purpose of keeping the civil service establishment under control but in recognition that certain service needs did not need to be met by permanent civil service staff. Notwithstanding, the special review on the employment situation of NCSC staff jointly conducted by CSB with bureaus and departments (B/Ds) in 2006 had

identified 4 004 NCSC positions involving work that should more appropriately be performed by civil servants, and the positions were gradually being converted to civil service posts;

- (b) the entry requirements for civil servants and NCSC staff might be different in recognition of the fact that the former would need to have the potential to advance in their chosen career. Moreover, other suitable candidates not already working in the Government might wish to join the civil service. To enable the civil service to attract good calibre candidates, appointment of civil servants should be through open recruitment. It would not be appropriate to consider NCSC staff first when filling civil service posts. Instead, open, fair and competitive recruitment should be conducted; and
- (c) the performance of a candidate with experience as a NCSC staff might not be necessarily better than other applicants during the interview stage. Notwithstanding, it was noted that following the lifting of the open recruitment freeze in 2007, the success rate of job applicants who were former NCSC staff was much higher than that of applicants who were not. This showed that through open and fair recruitment, the Administration had given due regard to the relevant experience of NCSC staff.

54. Noting SCS's response in paragraph 53(c), the Chairman drew the Administration's attention to the submission on employment of NCSC staff from a NCSC staff member (LC Paper No. CB(1)781/08-09(03)), alleging that the Government Logistics Department (GLD) had discriminated against NCSC staff in favour of graduates from Hong Kong Institute of Vocational Education in selecting candidates to fill Transport Services Officer II vacancies. As a result, all NCSC staff who had served GLD in that capacity for over five years and were better qualified had not been selected for appointment. SCS agreed to look at the case and provide a written response after the meeting.

(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)1025/08-09(01) dated 12 March 2009.)

55. Referring to Annex II to the Administration's paper, Dr PAN Pey-chyou noted that a high percentage of NCSC staff worked on contracts of one to two years. He opined that if the contract of a NCSC staff member was renewed time and again, his suitability for appointment as civil servant should have been established. SCS pointed out that the length of NCSC contracts

was determined according to service needs and not for the purpose of assessing the suitability of NCSC staff for civil service posts.

56. Dr PAN Pey-chyou considered the NCSC Staff Scheme unfair and unreasonable. It had given rise to the problem of "different pay for the same job" and hence conflicts among staff. He considered that the Scheme should be gradually phased out.

57. SCS responded that there was a need for the Government to employ NCSC staff to complement the civil service workforce to meet service needs which were time-limited, seasonal, or subject to market fluctuations; or which required staff on a part-time basis; or which required tapping the latest expertise in a given field in the market; or where the mode of delivery of the service was under review or likely to be changed. These were detailed in the scope of the NCSC Staff Scheme. SCS gave the example that the Scheme could provide flexibility for employing additional life guards to meet seasonal needs. She also pointed out that government departments which operated in a Trading Fund mode and hence were subject to business fluctuations, such as Hongkong Post and the Electrical and Mechanical Services Department (EMSD), would also need the flexibility provided by the NCSC Staff Scheme to adjust their staff mix in response to changing operational and service needs. As such, the Scheme could not be phased out. However, the Administration would gear up efforts to ensure that B/Ds would adhere to the ambit of the NCSC Staff Scheme, and would stop renewing relevant NCSC contracts if the work involved was completed or phased out. She added that the employment of NCSC staff in B/Ds required to be approved by high-level officers of B/Ds concerned to ensure that employment of such staff would adhere to the ambit of the NCSC Staff Scheme.

58. Mr LEUNG Kwok-hung considered that the rationale for the NCSC Staff Scheme was to allow the Government to suppress the salary level of employees whose expertise were in demand on a seasonal basis only. He said that this had set a very bad example for the private sector. The "different pay for the same job" phenomenon created by the NCSC Staff Scheme also represented a retrograde step for government policies.

59. SCS said that she did not agree that the Government was exploiting NCSC staff. She referred members to paragraphs 3 and 4 of the Administration's paper regarding the principles for determining the employment package of NCSC staff, and explained that the employment packages of different staff of the Government, namely, politically appointed officials, civil servants and NCSC staff, were different. This was because the entry requirements concerned were different, and the employment packages for civil servants were designed based on the consideration that civil servants should regard their job as a life-long career. She further pointed out that not all NCSC positions had comparable civil service ranks.

Justifications for employing NCSC staff instead of civil servants to meet certain service needs

60. In response to the Deputy Chairman's query of the employment of some 300 NCSC staff in CS's Office and the Financial Secretary's Office, SCS advised that the Efficiency Unit (EU) under CS's Office had to employ many NCSC staff to operate the 1823 Call Centre on a shift system. EU was reviewing its mode of operation to address the high staff turn-over problem so as not to waste its training efforts.

61. The Chairman noted that the departments which employed NCSC staff with length of continuous service at five years or more were mostly operating in a Trading Fund mode. He queried if the Government had required such departments to hire more NCSC staff even though there was a long-term service need for relevant posts. SCS responded that CSB had not restricted these departments from employing civil servants, and the departments were free to request replacing their NCSC positions with civil service posts as appropriate. In fact, EMSD was conducting open recruitment of civil servants. However, in view of business fluctuations, Trading Fund departments might prefer meeting fluctuating service needs through employing NCSC staff.

62. The Chairman further enquired why a high percentage of staff of Radio Television Hong Kong (RTHK) were employed on NCSC terms. SCS responded that this was because the mode of delivery of RTHK's service was under review pending completion of the review of public service broadcasting. She emphasized that with such uncertainties loaming, it would be irresponsible to convert these NCSC positions to civil service posts considering that after the conversion, their service might need to be terminated through abolition of office instead of non-renewal of contract if the mode of service delivery was changed.

63. While supporting the creation of more jobs in the face of the prevailing financial crisis, Mr TAM Yiu-chung requested the Administration to exercise caution in increasing the number of NCSC staff in view of the many problems as pointed out by members. He also urged the Administration to map out measures to address such concerns.

64. The Chairman said that members were concerned whether the Government was using NCSC positions to meet long-term service needs for cost-saving purpose. He referred to the table entitled "Employment of Non-Civil Service Contract Staff by Bureau/Department/Office" attached to the Administration's letter (LC Paper No. CB(1)815/08-09 (02)), and asked the Administration to provide a breakdown of the figures set out in the table by the five criteria that had to be satisfied for employing NCSC staff under the NCSC

Staff Scheme. SCS remarked that the Administration would require some time, probably about two months' time, to collect the requested statistics. The Chairman said that the Panel should revisit this issue when the requisite information was available.

VII Any other business

65. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
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