

立法會
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**Legislative Council
Subcommittee to Study the Proposed
Accountability System for Principal Officials and Related Issues**

**Minutes of the fifth meeting
held on Friday, 10 May 2002 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present :

Hon IP Kwok-him, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP

Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok

Members : Dr Hon David CHU Yu-lin, JP
Absent : Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, JP

Public Officers : Mr Michael M Y SUEN
Attending : Secretary for Constitutional Affairs

Mr Clement C H MAK
Deputy Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr Joseph WONG Wing-ping
Secretary for the Civil Service

Miss Jennifer MAK
Deputy Secretary for the Civil Service

Mr I G M WINGFIELD
Law Officer (Civil Law)

Mr R C ALLCOCK
Solicitor General

Mr P H H WONG
Senior Assistant Solicitor General

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Clerk in : Mrs Percy MA
Attendance : Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Mrs Justina LAM
Assistant Secretary General 2

Miss Monna LAI
Assistant Legal Adviser 7

Miss Betty MA
Senior Assistant Secretary (2)¹

Action
Column

I. Matters arising from discussion on items I - III of the List of Areas for study

Secretary for Constitutional Affairs (SCA) informed members that the Administration would move a motion on the accountability system for principal officials for debate at the Council meeting on 29 May 2002, and it would give notice of the motion shortly.

Functions and role of the Chief Secretary for Administration (CS) and the Financial Secretary (FS)

2. Mr CHEUNG Man-kwong pointed out that under the existing law, there were about 120 and 500 references to the wide-ranging statutory functions of CS and FS respectively. As principal officials under the accountability system were responsible for the success and failure of matters falling within their respective portfolios, he was of the view that some of the statutory functions now exercisable by CS and FS should be transferred to the relevant principal officials.

3. SCA responded that the resolution under section 54A of Cap.1 sought to deal with the necessary transfer of statutory functions from the relevant policy secretaries to the principal officials under the accountability system. As CS and FS were already empowered under existing legislation to delegate their statutory functions to the relevant government officials, no separate legislation was required.

Need for primary legislation to underpin the proposed system

4. Mr Albert HO said that members were advised that the resolution under section 54A of Cap. 1 was not the legislation to provide for the reorganisation of bureaux, but was consequential to the reorganisation. Mr HO asked about the legal backing to underpin the proposed accountability system.

5. SCA said that the Chief Executive (CE) announced in his 2000 Policy Address that a study would be conducted to review the accountability system for principal officials. In his 2001 Policy Address, CE outlined the framework of the accountability system. SCA further said that the LegCo Paper on the accountability system presented the framework and details relating to its implementation, and no legislation was required to launch the accountability system. SCA pointed out that apart from reorganisation of government structure which could be effected by administrative means, other supplementary measures to be taken included the resolution to be made under section 54A of Cap. 1, and funding and staffing proposals to be submitted to the Establishment Subcommittee (ESC) and Finance Committee (FC) for approval.

6. Mr Albert HO expressed concern whether introducing changes to government structure by way of administrative measures was legally in order. Mr HO asked SCA to explain the lawful authority for introducing such changes as proposed under the accountability system.

7. Solicitor General (SG) said that the Basic Law (BL) did not provide for the formation of the government structure, but it empowered CE to lead the Government and to decide on government policies. SG further said that regarding major policy decisions, CE was required to consult the Executive Council (ExCo). The introduction of the accountability system was a policy decision made by the CE in Council under the power conferred on CE by BL. The resolution under section 54A of Cap. 1 and related financial proposals to be submitted to FC and ESC were legal steps to implement the proposed accountability system.

8. Mr Albert HO asked whether it was appropriate to launch the accountability system on the basis of the ExCo decision, as the modus operandi of ExCo was confidential. In the absence of formal promulgation of the ExCo decision, Mr HO considered that Legislative Council (LegCo) Members could not discharge their functions properly in scrutinising the proposed legislative measures relating to the accountability system. Mr HO held the view that Members needed to look at the original text of the ExCo decision in order to understand how the decision was made, and the basis and ambit of the decision, as well as to ensure that the Administration's public statement on the accountability system was fully consistent with the content of the ExCo decision.

9. SG responded that there was no express requirement for promulgation of the decision of CE in Council under BL. As far as the proposed accountability system was concerned, the ExCo decision was not a secret decision. The proposed accountability system was publicly announced on many occasions, and detailed in the relevant LegCo Paper presented to the Council.

Action
Column

Adm

10. At the request of Miss Margaret NG, the Administration agreed to provide a written response to members' queries about the lawful authority to change the structure of the Government and the need for formal promulgation of the relevant ExCo decision.

Civil service under the proposed system

11. Secretary for the Civil Service (SCS) took members through the Administration's paper on "Preserving the Integrity and Probity of the Civil Service" (LC Paper No. CB(2)1822/01-02(04)). SCS stressed that the Administration was committed to preserving the qualities of the civil service system, i.e. permanence, professionalism, political neutrality, and an uncorrupt administration under the new accountability system for principal officials. SCS added that the Administration maintained a close dialogue with civil servant associations.

12. Mr Kenneth TING enquired about the mechanism put in place to ensure that civil servants would not make reckless complaints against principal officials for believing that they were asked to act in an improper manner which might conflict with their role as a civil servant.

13. SCS said that a civil service circular setting out the framework within which civil servants were to work to principal officials would be issued. It aimed to foster a spirit of trust between principal officials and the civil servants working to them, and to build a partnership relationship. SCS further said that under the present system, the Administration would conduct investigation into each and every complaint to find out whether they were substantiated, and to take appropriate follow-up actions. As for complaints of malicious nature, disciplinary action might be taken against the complainants. SCS added that similar procedures would be adopted under the accountability system.

14. Mr NG Leung-sing asked whether procedures for instituting disciplinary action against civil servants would be clearly spelt out. SCS responded that the existing disciplinary mechanism would remain unchanged, including the setting up of an independent inquiry committee to determine cases of alleged misconduct after consideration of factual evidence.

15. Referring to established procedures for a civil servant to pursue a complaint if he was required by his supervisor to act in an improper manner, Mr HUI Cheung-ching sought clarification on the meaning of "improper manner". SCS explained that it referred to the act which would undermine the integrity and impartiality of the civil service or conflict with the civil servant's role as a civil servant.

16. Miss Margaret NG said that the principal officials would be required, as part of their condition of employment, to observe a Code of Practice which set out, among other things, the duty of principal officials to uphold and preserve the core values as well as the integrity and impartiality of the civil service. Miss NG asked the following questions -

- (a) the rationale for stipulating such a requirement in the condition of employment of principal officials;
- (b) the mechanism put in place to ensure the permanence of the civil service system; and
- (c) the differences between the nature of employment of civil servants and principal officials under the proposed accountability system, in terms of permanence and security of tenure.

17. SCS said that the Code for principal officials, which set out their relationship with civil servants, would be part of their condition of employment. Law Officer (Civil Law) (LO(CL)) added that as far as the relationship between Government and principal officials was concerned, the employment contract between Government and respective principal officials was legally binding on both parties.

18. As regards Miss NG's second question, SCS said that under the present system, civil servants had to comply with the Public Service Administration Order and the Civil Service Regulations (CSR) which dealt with matters relating to the conduct and discipline of civil servants. Separate civil service circulars, which enjoyed the same legal status as CSR, were also issued from time to time on specific important issues. SCS added that in the light of the great impact of the accountability system on the civil service, a composite circular would be issued to ensure that civil servants clearly understood their role and responsibilities in relation to the principal officials. Under the proposed accountability system, civil servants were expected to continue as before to discharge their duties in accordance with Government Regulations.

19. LO(CL) said that as far as the contractual relationship between Government and civil servants was concerned, CSR and Civil Service Circulars had legal effect, although not legislative effect, and were legally enforceable. LO(CL) further said that although it was not a constitutional requirement, there was statutory protection for civil servants who were on pensionable terms in relation to their entitlement to remain in service, subject to their conduct, as enshrined in the pensions legislation.

20. On Miss NG's third question, SCS said that the term of contract of principal officials would not exceed the term of the CE who nominated them for appointment. The absence of security of tenure for principal officials

Action
Column

under the accountability system implied that they could be removed at any time. As regards civil servants, including Permanent Secretaries, their terms of employment would not be affected as a result of any changes in the upper echelon of the Government.

21. Miss Margaret NG said that she was unconvinced that the best way to require the principal officials to uphold and preserve the integrity and impartiality of the civil service was by way of a Code of Practice which was part of their condition of employment. Miss NG said that to preserve the principle of permanence of the civil service under the accountability system, the Administration should consider drawing up a code for principal officials similar to the United Kingdom (UK) Ministerial Code.

Adm

22. SCA said that the Administration would provide to the Subcommittee a paper on the details of the Code for principal officials. SCA further said that a contravention of the Code by principal officials would be regarded as a breach of their employment contract.

23. Mr Howard YOUNG said that the process of making and implementation of policy would be impeded if civil servants always offered honest but divergent advice on policy options to the principal officials. Mr NG Leung-sing asked how SCS would perform his new role under the proposed accountability system. Dr Philip WONG considered that the success of the accountability system would largely depend on the trust between civil servants and principal officials. Dr WONG expressed concern about ways to foster the spirit of trust.

24. Mr James TIEN expressed concern that a civil servant might not implement a particular policy wholeheartedly if he personally did not agree with it. He also suggested that principal officials should have a final say in staff deployment, similar to the practice in private sector. Ir Dr Raymond HO and Mr Abraham SHEK shared Mr TIEN's views. Dr HO said that the principal officials might encounter difficulties in the effective implementation of Government policies since the day-to-day implementation of the policies rested with the civil servants. Mr SHEK said that as principal officials would be held accountable for their policy decisions, they should be vested with the power to remove civil servants working to them, so as to ensure smooth implementation of agreed policies.

25. SCA said that civil servants were dedicated to their duties, and they were also responsible and loyal to the Government of the day. If individual civil servants did not discharge their duties appropriately, they would be subject to disciplinary action. SCS further said that the SCS under the accountability system would retain his link with the civil service and would be responsible for managing the civil service, including safeguarding the core values of the civil service. The relevant civil service circular would make it clear that it was the

Action
Column

responsibility of the civil service to support the implementation of the accountability system. Civil servants would continue to put forward clear and honest advice on policy options formulated to their best abilities. Once decisions had been made, civil servants would support the decisions without question regardless of their own personal convictions, and would fully and faithfully implement decisions.

26. SCS explained that although principal officials did not have the power to dismiss staff, they would have a strong say in assignment of staff working under them. Any requests for staff deployment would be considered by SCS. SCS pointed out that having regard to the fact that some existing principal officials were from outside the civil service, he was confident that principal officials under the proposed accountability system and civil servants working to them would be able to work in harmony.

27. Mr James TIEN expressed concern that principal officials under the proposed system would not have the power to redeploy and dismiss civil servants. He asked the Administration to provide information on overseas experience in this respect. SCS said that the Administration had made reference to overseas experience, which might not be applicable to the unique situation in Hong Kong. Nevertheless, he agreed to consider Mr TIEN's request.

Adm

28. Mr LEE Cheuk-yan expressed concern that the Permanent Secretaries could be removed, e.g. under the Management-Initiated Retirement Scheme, if they were at odds with the principal officials, as the post of SCS would be included in the accountability system. Mr LEE considered that SCS should be a civil servant so as to safeguard civil servants' interests. Miss Margaret NG also agreed that the interests of career civil servants should be safeguarded. SCS responded that there were well established procedures and safeguards in the civil service system against possible abuses.

29. Ms Cyd HO expressed concern that rapid and substantial changes could be introduced to the government structure at any time, as such changes could be effected administratively. SCA said that the Administration would only introduce changes on a need basis. Before making any necessary changes, the Administration would fully explain the justifications for the change.

30. Mr CHEUNG Man-kwong expressed concern about the enforcement of the Code of Practice for principal officials, in particular SCS's ability to investigate complaints against other principal officials. Mr CHEUNG suggested that the Administration should consider setting up an independent investigation committee, similar to the Civil Service Commissioners system in UK, to make inquiry into complaints against principal officials.

31. SCS said that the Administration had no intention to follow the UK practice. SCS stressed that principal officials were obliged to observe the Code, and the future SCS would conduct an independent investigation on complaints received in order to maintain the integrity of the civil service. SCS pointed out that the Public Service Commission, an independent advisory body, was responsible for monitoring the appointment, promotion and disciplinary matters in the civil service. In addition, LegCo, The Ombudsman and the media would provide additional checks against possible abuses. SCS further said that in the event that a complainant was aggrieved by SCS's decision, he could appeal to CE, or apply for a judicial review.

32. Mr Andrew WONG asked who would be the Controlling Officers under the new accountability system. SCS said that either the Permanent Secretaries or department heads, i.e. civil servants, would be designated as Controlling Officers under the Public Finance Ordinance (Cap. 2).

33. The Legal Adviser pointed out that Controlling Officers had to comply with administrative regulations and directions issued by FS under the Public Finance Ordinance. He said that members might wish to consider whether this requirement was compatible with the proposed system.

34. Ms Emily LAU requested the Administration to provide more information on the regulations made and directions or instructions given by FS under the Public Finance Ordinance to designated Controlling Officers. Mr Andrew WONG requested the Administration to provide a written response on whether the requirements for the Controlling Officers to comply with administrative regulations and directions issued by FS and to be accountable to FS were compatible with the proposed system.

Adm

35. In response to Ms Emily LAU's question, SCA said that Controlling Officers who were responsible for the proper use of financial resources within bureaux and departments would be the appropriate person to attend special FC meetings to examine the draft Estimates and meetings of the Public Accounts Committee (PAC).

36. Ms Emily LAU expressed reservation about the arrangement as public expenditure was directly related to the implementation of policies for which principal officials were accountable. SCA said that there were ample avenues for principal officials to explain to and answer questions from Members on policy issues.

37. Mr Andrew WONG said that it was appropriate for civil servants to be Controlling Officers and to attend meetings of PAC and special FC. As it was possible for principal officials to be designated as Controlling Officers under the Public Finance Ordinance, Mr WONG requested the Administration to confirm the arrangement in writing. SCS agreed.

Adm

38. Miss Margaret NG noted that under the UK Ministerial Code, Accounting Officers would set out in writing his or her objection to a funding proposal together with the reasons to the Comptroller and Audit General should the advice be overruled, and the Committee of Public Accounts would regard that the Accounting Officer did not bear personal responsibility for the action concerned. Miss NG suggested that the Administration should make reference to the UK experience. Mr Andrew WONG expressed support for Miss NG's suggestion.

39. Mr CHEUNG Man-kwong referred members to the paper submitted by the Democratic Party setting out proposals on preserving the political neutrality of civil servants, including draft codes of practice for civil servants and principal officials (tabled at the meeting and subsequently issued to members vide LC Paper No. CB(2)1910/01-02(01)). Mr CHEUNG said that a similar arrangement, as suggested by Miss Margaret NG in paragraph 38 above, was proposed in paragraph 3.4 of the paper.

40. SCA said that the Administration did not consider the UK arrangement applicable to the local situation and had no intention to adopt such an arrangement at this stage. SCS further said that any views expressed by different parties during the decision making process would be properly recorded in the internal documents of the Government.

Principal officials under proposed system

41. Ir Dr Raymond HO said that if principal officials would be held accountable for decisions made by statutory bodies to which they were appointed as members, this might deter potential candidates outside the civil service from taking up appointment as principal officials. SCA said that the statutory functions of bureau secretaries would be transferred to principal officials by way of the resolution under section 54A of Cap.1. A principal official would not be held accountable for the collective decision of a statutory body in the same way as he would be held personally accountable for his policy decisions.

42. Dr YEUNG Sum asked whether there would be Deputy Directors of Bureau under the proposed accountability system. SCA replied in the negative. In further response to Dr YEUNG on the leave relief arrangement for principal officials, SCA said that during the temporary absence of a principal official from Hong Kong, arrangement would be made for his/her duties to be taken up by another principal official. SCA added that it would not be appropriate for the Permanent Secretaries to perform the duties of principal officials.

43. SG said that as far as the leave relief arrangement for the Secretary for Justice (SJ) was concerned, operational experience showed that SJ could be contacted for making urgent decisions even if she was away from Hong Kong. Moreover, some of SJ's powers had already been delegated to the Director of Public Prosecutions. SG envisaged that there would not be any problem if no acting appointment was arranged vice SJ on leave. SG added that it was not considered appropriate for a civil servant to assume the role of a principal official.

44. Mr Andrew WONG, Mr Albert HO and Ms Audrey EU were of the view that leave relief arrangement for principal officials was an important issue which should be addressed. Mr Andrew WONG said that Deputy Directors of Bureau should be provided under the accountability system. Ms Emily LAU said that Members should be informed of the stand-in arrangement during the temporary absence of principal officials and the justifications for such arrangement as early as possible. She added that the leave relief arrangement for principal officials should be stipulated in the Code for principal officials.

45. Ms Emily LAU also asked why the Permanent Secretaries could not take up the duties of Directors of Bureau during the latter's absence. Ms LAU also asked about the practice in overseas countries. Mr James TIEN said that if a principal official was unable to attend LegCo meetings to answer Members' questions on a specific topic, it would be more appropriate for the relevant Permanent Secretary to attend the meeting on his behalf, as the Permanent Secretary was more familiar with the subject matter. Mr CHAN Kam-lam echoed Mr TIEN's view. Mr CHAN added that the arrangement for another principal official to attend the meeting was inappropriate as he might not be able to fully answer Members' questions.

46. SCS responded that although it was the normal practice in the civil service for an officer of a lower rank to take up the duties of an officer at a higher rank, the Administration considered it inappropriate to require a civil servant, who was politically neutral, to assume the duties of a politically appointed principal official. SCA added that the leave relief arrangement for the temporary absence of a principal official would only be made for special circumstances, e.g. to attend LegCo meetings to answer questions from Members. In the light of the well established civil service system, the daily operation would not be affected during the absence of principal officials.

47. Ir Dr Raymond HO and Miss Margaret NG asked under what circumstances would principal officials attend committee meetings of LegCo. SCA said that there were no hard and fast rules for principal officials to attend committee meetings of LegCo, although they would be required to attend Council meetings, as part of their condition of employment, to explain their policy decisions and answer questions from Members. SCA further said that principal officials would attend meetings of LegCo Panels whenever possible,

Action
Column

and that Permanent Secretaries and their subordinates would also assist the relevant principal officials by attending meetings of Panels and Bills Committees.

48. Mr CHEUNG Man-kwong said that Permanent Secretaries would have a heavier workload than principal officials under the proposed division of responsibilities. Ms Audrey EU suggested that the Administration should state clearly the demarcation of responsibilities between the principal officials and Permanent Secretaries.

49. SCA responded that there was no ambiguity in the matter. Principal officials would accept total responsibility for the performance of the bureaux and explain the policy decisions in public forums, while the Permanent Secretaries would support the principal officials in running the relevant bureaux and departments.

II. Date of next meeting

50. The next meeting of the Subcommittee would be held on Saturday, 11 May 2002 to meet with deputations.

51. There being no other business, the meeting ended at 12:20 pm.

Council Business Division 2
Legislative Council Secretariat
9 July 2002