

Practice and Procedure of the Select Committee

Introduction

The Select Committee on Building Problems of Public Housing Units (the Select Committee) was appointed by a resolution in the Legislative Council on 7 February 2001. Its Chairman, Deputy Chairman and its members were appointed by the President on 16 February 2001.

Term of Office

2. In accordance with Rule 78(4) and (5) of the Rules of Procedure, a select committee shall be dissolved upon reporting to the Council or at the end of a term. If the committee is of the opinion that it will not be able to complete consideration of the matter before the end of a term, it shall so report to the Council.

Chairmanship

3. All meetings are chaired by the Chairman or, in her absence, by the Deputy Chairman. In accordance with Rule 79(3) of the Rules of Procedure, in the event of the temporary absence of the Chairman and Deputy Chairman, the select committee may elect a chairman to act during such absence.

Quorum

4. In accordance with Rule 78(3) of the Rules of Procedure, the quorum of a select committee shall be one third of the members excluding the chairman, a fraction of a whole number being disregarded. The quorum of the Select Committee shall therefore be four members excluding the Chairman. It is a common practice in select committee for the clerk to draw to the attention of the chairman the absence of a quorum as and when such arises.

Power to Compel Evidence

5. The resolution passed by the Council on 7 February 2001 authorizes the Select Committee, in the performance of its duties, to exercise the powers conferred by Section 9(1) of the Legislative Council (Powers and privileges) Ordinance (Cap. 382). The Select Committee may, subject to Sections 13 and 14 of the Ordinance, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

6. In obtaining evidence, the Select Committee may request any person or body to attend a meeting to give evidence orally, invite any person or body to submit evidence in writing or any person or body to submit specified documents to the Select Committee.

Conduct of Meetings

7. In accordance with Rule 79(1) of the Rules of Procedure, the deliberations of a select committee shall be confined to the matter or matters referred to it by the Council.

8. A schedule of meetings is usually agreed beforehand, but the Chairman is given the discretion to decide on the date of meetings. Members will be notified by the Clerk of the time and venue of meetings. Where considered appropriate, the Select Committee may meet outside the Legislative Council Building.

9. In accordance with Rule 79(2) of the Rules of Procedure, meetings of a select committee shall be held in public unless the chairman otherwise orders in accordance with any decision of the select committee.

Meetings for the examination of witnesses

10. Examination of witnesses will be held in public. Exceptions to open hearing may be made, based on the individual circumstance on each occasion. During open hearings, members should only ask questions for the purpose of establishing the facts in connection with the inquiry. Members should not make comments or statements during these sessions.

11. The following procedures will apply in the conduct of public hearings: -

- (a) At the beginning of each open session, the Chairman will remind the public and the media that disclosure of the evidence given at the hearing outside the proceedings will not be protected under Cap. 382. The media should obtain legal advice as to their legal responsibilities.
- (b) Where it is decided that witnesses should be examined on oath, the Chairman will administer the oath under section 11 of Cap. 382 at the beginning of the hearing or before the examination.
- (c) Facts will be established by questions and answers at formal sessions. The Chairman will first set the context and then ask the witness an appropriate opening question, giving him an opportunity to state his case.

- (d) Members wishing to ask questions should indicate by a show of hands, and will be called upon to ask questions in order. The chairman will exercise discretion to ensure, as far as possible, that every member has an equal opportunity to ask questions and that the hearing is conducted in a structured manner.
- (e) The Chairman will decide, after listening to members, on the relevance of a question or a piece of evidence to the scope of inquiry.
- (f) Short follow-up questions may be allowed. Follow-up questions should be questions seeking further answers to the original questions or clarifications to the answers given. The Chairman has the discretion to decide whether or not a question is a follow-up question.
- (g) Unless excused under section 13(2) of Cap. 382 or justifiably claiming privilege under section 15, a witness summoned under section 9 of Cap. 382 must answer all lawful and relevant questions from the Select Committee. If he refuses to do so, he commits an offence under section 17 of Cap. 382 and will be liable to prosecution.
- (h) If the witness claims privilege from disclosure of evidence on grounds of public interest immunity, the procedure contained in the resolution concerning the usage and practice in regard to the determination of claims of public interest privilege in **Annex I** will be followed.
- (i) The privilege in Cap. 382 is available only within the context of the hearings. All Members, including non-Select Committee members, should refrain from making comments outside the proceedings. Evidence given in camera should not be made public by any individual members privy to the hearing.

Internal deliberations

12. Subject to Rule 79(2) of the Rules of Procedure, deliberations of the Select Committee are usually conducted in camera to facilitate members to review the work plan and progress of the inquiry, agree on the logistical arrangements for the hearings, consider the evidence obtained and the draft report of the Select Committee.

Handling of Documents

13. All documents submitted to the Select Committee are numbered on each document and on each page of the document. All members of the Select Committee will each be given a copy of the documents submitted to the Select Committee, unless advised otherwise with the consent of the Select Committee.

14. A room in the Legislative Council Building is reserved for keeping a complete set of documents submitted to the Select Committee. Where a document is classified confidential, each member should ensure that the document is not removed from the room. Members should also not make photocopy of the document or any part of it.

Voting

15. In accordance with Rule 79(5) and (6) of the Rules of Procedure, divisions in a select committee shall be taken by the clerk to the select committee who shall ask each member separately how he/she wishes to vote and record the votes accordingly. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he/she shall have a casting vote.

Personal Interest to be Disclosed

16. Rule 84 of the Rules of Procedure shall apply to the proceedings of the Select Committee.

17. In addition to Rule 84, for the purpose of maintaining the integrity of the Select Committee, there may be situations in which members would wish to declare non-pecuniary interests. In such cases, they should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public meetings or hearings of the Select Committee the nature of interests declared by individual members.

Participation of Non-Select Committee Members

18. While meetings held in public shall be attended by members of the Select Committee, non-Select Committee members may also be in attendance at these meetings, but may not address the meeting. If a non-Select Committee member wishes to direct any questions to a witness, he/she should put his/her questions in writing and pass them to the Chairman without interrupting the proceedings, and the Chairman will decide whether or not to ask the questions.

19. Non-Select Committee members will be required to withdraw from the meetings when the Select Committee conducts the hearing in camera or when the Select Committee holds its internal deliberations.

Minutes of Proceedings of the Select Committee

20. In accordance with Rule 79(9) of the Rules of Procedure, the minutes of proceedings of a select committee shall record all proceedings on consideration of a report in the select committee and on every amendment proposed to the report, with a note of divisions, if divisions were taken in the select committee, showing the names of members voting in the division or declining to vote.

21. All proceedings of hearings/meetings will be tape-recorded. Members of the public may obtain copies of the tape-recordings of public hearings/meetings upon the payment of a charge. Minutes of evidence, usually in the form of a verbatim transcript, are kept for each meeting at which witnesses are examined. Relevant part of the draft minutes are forwarded to the person or body giving evidence for comments before being incorporated into the minutes of evidence. Where persons or bodies other than the witness giving evidence request copies of transcripts of evidence, the procedures in **Annex II** shall apply.

Report of the Select Committee

22. In accordance with Rule 79(10) of the Rules of Procedure, a report of the select committee, with the minutes of proceedings and the minutes of evidence, if evidence was taken, shall be laid on the Table of the Council by the chairman of the select committee.

Premature Publication of Evidence

23. In accordance with Rule 81 of the Rules of Procedure, the evidence taken before the select committee and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the select committee or by any other person before the select committee has presented its report to the Council. Any member of the select committee who fails to comply with this Rule may be admonished or reprimanded by the Council on a motion to that effect.

**Resolution under Legislative Council (Powers and Privileges) Ordinance
Passed on 25 May 1994 and Amended on 20 November 1996
and Further Amended on 16 April 1997**

That with effect from 25 May 1994 the usage and practice in regard to the determination of claims of “public interest privilege” made by persons appearing before a committee of the Council shall be as set out in the Schedule annexed to this Resolution.

1. In this Schedule -

“relevant body”, (有關方面) in relation to a committee before which a witness is attending to give evidence or to produce any paper, book, record or document, means -

- (a) the chairman and deputy chairman of the committee, where both are present (and references to the delivering of the opinion of the relevant body shall be taken to mean the opinion of the chairman where the chairman and deputy chairman disagree);
- (b) the chairman alone where the deputy chairman is absent;
- (c) the deputy chairman alone where the chairman is absent; or
- (d) where both the chairman and deputy chairman are absent, the member elected to act as chairman during such absence.

“witness” (證人) means -

- (a) a person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before a committee; and
- (b) any public officer designated by the Governor under section 8A(2)(b) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) for the purpose of attending sittings of a committee.

2. If, at a public sitting of a committee, a witness refuses to answer publicly or privately any question that may be put to him, or to produce any paper, book, record or document, and claims privilege on the ground that the giving of the answer or the production of the paper, book, record or document would be contrary to the public interest the following procedure will apply -

- (1) The chairman shall inform the witness that he may explain his reasons in confidence to the relevant body and that the relevant body will then deliver an opinion to the committee without disclosure of any information or paper, book, record or document claimed by the witness to be privileged from disclosure.
- (2) If the witness agrees to explain his reasons to the relevant body the relevant body shall make arrangements to consider the reasons and deliver its opinion to the committee.
- (3) If the relevant body delivers its opinion that the claim of privilege by the witness is justified in respect of an answer to a question or the production of any paper, book, record or document the committee shall excuse the answering of such question or the production of such paper, book, record or document.
- (4) If the relevant body delivers its opinion that the claim of privilege by the witness is not justified in respect of any answer to a question or the production of any paper, book, record or document the committee may order the answering or production thereof.
- (5) If the witness continues to refuse to answer any question or produce any paper, book, record or document the committee may take such action within its powers as it considers appropriate.
- (6) If the witness does not agree to explain his reasons to the relevant body under subparagraph (2) the committee may take such action within its powers as it considers appropriate.

3. If, at a public sitting of a committee, a witness refuses to answer in public any question that may be put to him, or to produce in public any paper, book, record or document on the ground of public interest privilege, but requests to answer such question or produce such paper, book, record or document at a private sitting of the committee, the following procedure will apply -

- (1) The committee will deliberate in private whether to agree to the request by the witness.
- (2) The decision of the committee will be taken by formal vote.
- (3) If the committee decides to agree to the request by the witness no answer given by the witness at a private sitting nor any paper, book, record or document produced by him thereat shall be made public unless the committee decides during the private sitting that the request by the witness for confidentiality is not justified. Before reaching such a decision the committee shall give the witness an opportunity to state the grounds upon which he claims public interest privilege in respect of the particular answer or paper, book, record or document.

Provision of Transcripts of Evidence

The following procedures shall apply to the provision of transcripts of evidence taken by the Select Committee on Building Problems of Public Housing Units:

- (a) where considered appropriate, the Select Committee may permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request;
- (b) "witnesses" refers to persons on whom summonses have been served by the Select Committee to order their appearance before it; "prospective witnesses" refers to witnesses whom the Select Committee has decided to summon to appear before it;
- (c) where copies of transcripts of evidence taken in public are provided to witnesses or prospective witnesses, the unpublished and/or uncorrected status of the transcripts shall be stated clearly; and
- (d) the provision of unpublished and/or uncorrected transcripts of evidence taken in public to witnesses or prospective witnesses be made on the condition that they shall not make public use of the transcripts; shall not quote directly from the transcripts; and shall not use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons.