

立法會
Legislative Council

LC Paper No. CB(2)1077/03-04

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by the Administration)

Ref : CB2/PL/CA+HA

Panels on Constitutional Affairs and Home Affairs

**Minutes of joint meeting
held on Monday, 8 December 2003 at 2:30 pm
in Chamber of the Legislative Council Building**

**Members
present**

: Members of Panel on Constitutional Affairs

- * Hon Andrew WONG Wang-fat, JP (Chairman)
- * Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
- * Hon Cyd HO Sau-lan
- * Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Hon Margaret NG
- * Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
- * Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
- * Hon CHOY So-yuk
- * Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
- * Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

Members of Panel on Home Affairs

- # Hon IP Kwok-him, JP (Chairman)
- # Hon MA Fung-kwok, JP (Deputy Chairman)
- Dr Hon TANG Siu-tong, JP
- Hon Henry WU King-cheong, BBS, JP
- Hon Albert CHAN Wai-yip
- Dr Hon LO Wing-lok, JP

**Members
absent**

: Members of Panel on Constitutional Affairs

- Dr Hon LUI Ming-wah, JP
- * Hon NG Leung-sing, JP
- Hon Bernard CHAN, JP
- Hon SIN Chung-kai
- Dr Hon Philip WONG Yu-hong, GBS
- * Hon LAU Wong-fat, GBS, JP
- Dr Hon LAW Chi-kwong, JP
- Hon Michael MAK Kwok-fung
- Hon LEUNG Fu-wah, MH, JP
- * Hon WONG Sing-chi
- Hon LAU Ping-cheung

Member of Panel on Home Affairs

Hon Timothy FOK Tsun-ting, BBS, JP

*Also a member of Panel on Home Affairs

#Also a member of Panel on Constitutional Affairs

**Attendance by
invitation**

: Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement C H MAK
Permanent Secretary for
Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Ms Eva YAM Ya-ling
Principal Assistant Secretary for
Constitutional Affairs

Ms Pamela TAN KAM Mi-wah
Director of Home Affairs

Mr K C LEE
Assistant Director of Home Affairs

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

Staff in attendance : Mr Jimmy MA
Legal Adviser

Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Millie WONG
Senior Assistant Secretary (2)4

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I. Election of Chairman

Mr Andrew WONG was elected Chairman of the joint meeting.

II. Appointed membership of District Councils

(LC Paper Nos. CB(2)550/03-04(01)-(02), CB(2)568/03-04(01) and LS25/03-04)

2. The Chairman referred members to the background paper prepared by the Legislative Council (LegCo) Secretariat (LC Paper No. CB(2)550/03-04(01)), the responses of the Secretary for Constitutional Affairs (SCA) and the Secretary for Home Affairs on the motion debate on "Appointing least number of District Council members" held at the Council meeting on 3 December 2003 (LC Paper No. CB(2)550/03-04(02)), and the two papers from the Administration and the Legal Service Division (LSD) of the LegCo Secretariat respectively.

Briefing by the Administration

3. SCA briefed members on the Administration's paper on "Appointed Membership of District Councils" (LC Paper No. CB(2)568/03-04(01)). He said that the composition of District Councils (DCs) had been provided for in the

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District Councils Ordinance (DCO) (Cap. 547). Section 9 of DCO provided that a DC was to consist of elected members, appointed members and ex-officio members. Section 11 further provided that the Chief Executive (CE) may appoint as members of a DC a number of persons not exceeding the number specified in Schedule 3 of DCO. According to Schedule 3, there were to be a total of 400 elected members, a maximum of 102 appointed members, and 27 ex-officio members for the second term DCs.

4. SCA further said that the Government had proposed that DCs should include appointed membership after the review of district organizations in 1998. The policy intention was that appointed membership would on average constitute about one-fifth of the total membership of a DC. The main considerations were that appointed membership could provide an additional channel for capable and experienced individuals to serve the community, and appointed members could help reflect the views of different sectors in the districts. In addition to the criteria for appointment provided in section 12 of DCO, the Government would take into account the individuals' ability, experience, professional qualifications and background, commitment to serve the public, integrity and public service record.

5. SCA advised members that the Government had undertaken to conduct a review of DCs after the 2003 DC election. The issue of appointed membership would be included in the review. The Administration would consult the public widely in the process.

Briefing by the Legal Adviser (LA)

6. LA briefed members on the paper "Opinion on the Nature of the Chief Executive's Power of Appointing District Council Members under the District Councils Ordinance" (LC Paper No. LS25/03-04). He said that section 11(1) of DCO had conferred the power on CE to appoint DC members, subject to the express restriction in section 5(2) that the members appointed could not exceed the maximum number specified in Schedule 3. LA further said that in administrative law, the exercise of discretionary powers was subject to some restrictive principles which required them to be "exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empowering Act". Any decisions which deviated from the administrative law principles could be subject to judicial review.

7. LA added that it was the policy intention for DCs to consist of three types of membership, as reflected in section 9(1) of DCO. Section 72 protected the power of a DC to transact business and the validity of its proceedings in the case of vacancies in the circumstances as defined in its provisions.

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8. LA said that the conclusion of the paper in paragraph 16 was that subject to the specified maximum number of appointed members in each DC and CE's complying with those administrative law principles which governed the exercise of discretionary powers, there was no requirement in law that CE must appoint a certain minimum number of members to DCs.

9. Miss Margaret NG asked whether the Administration would agree to the view in paragraph 9 of LA's paper that the composition of a DC would not affect its established status. SCA reiterated that the policy intention was that there should be three categories of membership in DCs. In terms of appointed members, DCO provided that CE might appoint a maximum of 102 members but did not specify a minimum number. Miss NG said that the law should be interpreted on the basis of its plain and literal meaning, and not the policy intention of the Government. She asked SCA to point out the specific provisions in DCO which supported the Government's view. SCA said that he had just seen LA's paper, and would need to seek legal opinion before he could give a response to members.

10. The Chairman requested SCA to provide a written response to paragraphs 9 and 16 of LA's paper.

(Post-meeting note : The response of the SCA was issued to Members vide LC Paper No. CB(2)694/03-04 dated 12 December 2003.)

Recommendations for appointment by CE

11. Referring to Annex C to the Administration's paper, Mr Fred LI pointed out that about 40% of the appointed members in the first term DC had political affiliations and were members of the four political parties/groups, namely, Democratic Alliance for the Betterment of Hong Kong (DAB), Hong Kong Progressive Alliance, Liberal Party, and New Century Forum. These political parties/groups would of course support appointed membership. He further pointed out that some elected members of the first term DC had earlier announced that they would not stand in the 2003 DC election as they would be offered appointed membership. Mr LI asked whether the Government would appoint these persons as members of the second term DC.

12. SCA responded that the decision on the number of appointed members was arrived at after lengthy deliberation during the review of district organizations in 1998. The Government would review the appointed membership in the context of the review on the role, functions and composition of DCs to be conducted. Director of Home Affairs (DHA) clarified that political affiliation was not a consideration in appointing DC members; 65% of the appointed members in the first term DC had no political affiliation. The spirit of the appointment system was appointment by merit. The main considerations

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were the individuals' ability, experience, commitment to serve the public and knowledge of community affairs. DHA added that the Government had made no commitment on the offer of appointed membership prior to the 2003 DC election.

13. Mr Fred LI asked whether the Administration had received recommendations on the second term DC appointments from political parties, and whether the Administration would appoint the recommended persons. DHA responded that the Administration had received a number of recommendations. As the appointment of members to the second term DC was still in process, she was not in a position to advise whether certain persons would be appointed. However, candidates who failed in the 2003 DC election would not be appointed.

14. Ms Audrey EU asked whether the four political parties/groups (paragraph 11) had submitted recommendations on the second term DC appointments to the Government. DHA responded that the Administration had received various recommendations from individuals and organizations, including political parties. As some of the recommendations were not received by her, she was not in a position to advise whether the four political parties/groups had submitted any recommendations. She would need to check before she could reply to members.

15. Mr CHEUNG Man-kwong requested the Administration to disclose the names of the persons recommended by political parties for appointment as members of the second term DC. DHA said that it would not be appropriate for the Government to disclose the names which were forwarded to it in confidence. Dr YEUNG Sum requested DHA to provide the number, instead of names, of the persons recommended by each of the political parties/groups.

Second term DC appointments

16. Mr Martin LEE asked whether the Government would take into account new considerations in deciding on appointed membership of the second term DC, e.g. the mass rally on 1 July 2003 and the high voter turnout rate of the 2003 DC election.

17. Mr Albert HO pointed out that CE was not required to appoint to the maximum the number of appointed DC members specified in Schedule 3 of DCO. He asked whether the Government would consider appointing a minimum number of DC members to respond to strong public demand for full democracy, as demonstrated by the voting results in the 2003 DC election. He was of the view that the Government should not go against the will of the public by altering the composition of DCs as reflected in the result of the DC election, through appointments by CE.

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18. Mr Albert CHAN said that he had been a member of the Tsuen Wan DC in the past four years. Some appointed members had not made any contribution to the work of the DC. He also pointed out that the names of some appointed members were unheard of before they were appointed. On the contrary, some prominent persons in the district were not appointed as DC members. As DC members received a monthly honorarium and allowance, Mr CHAN was of the view that the Government was in fact subsidizing these appointed members who would eventually stand as candidates in direct elections.

19. Mr CHEUNG Man-kwong queried the Government's objective in appointing members to DCs. He said that the fact that one-third of the appointed members in the first DC term were members of three particular political parties had clearly indicated that it was the intention of the Government to appoint pro-Government supporters in order to influence the operations of DCs. Mr CHEUNG cautioned the Government of the consequences of going against public opinion, and urged the Government to consider appointing the least number of members to the second term DC for the sake of preserving social stability.

20. Mr Howard YOUNG said that the Liberal Party supported appointed membership of DCs, and was of the view that capable individuals should not be excluded from consideration of appointment on the ground that they had political affiliations. The Liberal Party had submitted recommendations on the second term DC appointments to the Government for consideration. On whether elected members of the first term DC who had not stood in the 2003 DC election should be offered DC appointments, he said that the Government should consider the matter very carefully.

21. Mr TAM Yiu-chung opined that Mr Albert CHAN's earlier remarks had demeaned the appointed members and negated their dedication in serving the community. He said that Mr CHAN might not have heard of the names of some appointed members, but this would not necessarily mean that the persons were unsuitable for appointment. Also, he did not see a problem for political parties to submit recommendations for CE's consideration. Mr TAM further said that DAB had considered requesting CE not to appoint members of DAB as DC members, but subsequently agreed that this would be unfair to those DAB members who were interested in serving the community. Mr TAM asked the Government to consider the suggestion from some academics that the number of appointed seats for political parties in DCs could be in proportion to the number of elected seats obtained by the political parties. Any appointed seats not taken up by political parties could be left vacant.

22. Mr James TO asked the Government whether a "pro-Government stance" would be considered as a criterion for appointment as DC members. Mr TO cautioned that the support of pro-Government members could sometimes be

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counter-productive. Quoting the legislative exercise to implement Article 23 of the Basic Law, Mr TO said that although the majority of DCs strongly supported the proposals made by the Administration, the exercise had subsequently turned into a political blunder.

23. Ms Cyd HO said that according to the Administration, DC appointments were made on the basis of the ability of individuals. The Administration should therefore, following the election, publicize the types of expertise which were lacking in each DC so that the information could be compared with the profile of the appointed members for voters' reference. If a DC did not lack a particular type of expertise, the Government should consider increasing the number of elected seats instead of appointing members. Ms HO further said that she had no objection to Mr TAM Yiu-chung's suggestion that the appointed membership should be proportional to the elected membership of political parties, but would respect the Democratic Party's position against the dilution of elected seats through appointed membership.

24. Ms Audrey EU said that despite the Government's advice that DC members were offered appointments by merit, the fact that none of the members of political parties such as the Democratic Party were appointed in the first DC term had clearly indicated that there were political considerations in the appointment process. Ms EU considered appointed membership unnecessary, and there was no point in pursuing Mr TAM Yiu-chung's suggestion. She said that the Government should respect the choices made by the voters in the 2003 DC election, and consider the negative impact on social stability, if it decided to appoint the maximum number of members for the second term DC.

25. In response to members' comments and questions, SCA reiterated that appointed membership was intended to provide a channel for individuals with the ability and interest to serve the community. The proportion of appointed membership was decided by the Government after thorough consultation and deliberation in 1998. The Government had committed to conduct a review on DCs after the 2003 election, and the issue of appointed membership would be included in the review.

26. SCA said that when appointing members to DCs, CE would exercise his power in accordance with DCO, having regard to the criteria for appointment and the circumstances in each DC. CE would also consider the policy intention of the appointment system. SCA pointed out that DCO did not specify a minimum number of appointed members. However, it was the policy intention for DCs to be composed of three types of membership, namely, elected, appointed and ex-officio members.

27. SCA assured members that the views expressed by Members at the motion debate held in the Council last week and the views expressed by various

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sectors of the community in the past few weeks on DC appointed membership would be reported to CE for his consideration.

28. DHA reiterated that an important consideration in DC appointments was whether the individuals had the ability and experience to serve the community. Appointed members could help reflect the views of different sectors in the districts. All DC members, irrespective of whether they were appointed or elected members, had roles to play in making contributions to the diversified nature of the work of DCs.

29. DHA said that the major role of DC members was to advise the Government on matters affecting the well being of the people in the districts. The political stance of the individuals was not a consideration in making appointments. DHA advised members that the Government had offered DC appointments to members of the Democratic Party in 1999, but the offers were declined.

30. On Mr TAM Yiu-chung's suggestion (paragraph 21), DHA said that the suggestion was a departure from the existing arrangements as political affiliation of individuals was not a consideration for DC appointments. SCA said that he shared DHA's view. Nevertheless, he would convey Mr TAM's suggestion to his colleagues for consideration.

Appointed membership of the first term DC

31. Dr YEUNG Sum requested the Administration to provide information on the following -

- (a) the number of members appointed in the first term DC who had stood in the 2003 DC election, their declared political affiliations, and how many of them had been elected; and
- (b) whether CE had appointed any persons who failed in the 1999 DC election as members of the first term DC, and the political affiliation of these persons.

32. Mr James TO requested the Administration to provide the following information -

- (a) of the 102 appointed members in the first term DC, how many were members of the National People's Congress and the National Committee of the Chinese People's Political Consultative Conference, at both national and local levels; and

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- (b) of the appointed members in the first term DC who had no declared political affiliation, the number recommended by political parties for appointment as members of the second term DC.

33. Mr TO expressed concern that some of the "independent" members in the first term DC were in fact members of political parties, but had chosen not to disclose their political affiliations.

(Post-meeting note : The response of DHA to issues raised in paragraphs 14, 15, 31 and 32 was issued to Members vide LC Paper No. CB(2)710/03-04 on 15 December 2003.)

34. The meeting ended at 4:20 pm.

Council Business Division 2
Legislative Council Secretariat
26 January 2004