

立法會
Legislative Council

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by the Administration)

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Panel on Constitutional Affairs

**Minutes of special meeting
held on Monday, 31 July 2006, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** :
- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
 - Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Dr Hon David LI Kwok-po, GBS, JP
 - Hon Margaret NG
 - Hon CHEUNG Man-kwong
 - Hon Bernard CHAN, GBS, JP
 - Hon CHAN Kam-lam, SBS, JP
 - Hon LEUNG Yiu-chung
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon Howard YOUNG, SBS, JP
 - Hon LAU Wong-fat, GBM, GBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon CHOY So-yuk, JP
 - Hon Timothy FOK Tsun-ting, GBS, JP
 - Hon TAM Yiu-chung, GBS, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon LEE Wing-tat
 - Hon Daniel LAM Wai-keung, SBS, JP
 - Hon LEUNG Kwok-hung
 - Dr Hon KWOK Ka-ki
 - Hon CHEUNG Hok-ming, SBS, JP
 - Hon CHIM Pui-chung
 - Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** :
- Hon James TIEN Pei-chun, GBS, JP
 - Hon Albert HO Chun-yan
 - Hon LEE Cheuk-yan
 - Hon Martin LEE Chu-ming, SC, JP

Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon WONG Yung-kan, JP
Dr Hon YEUNG Sum
Hon LAU Chin-shek, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Lik, GBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon KWONG Chi-kin
Hon TAM Heung-man

Public Officers : Item I
attending

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Ms Denise YUE Chung-ye
Secretary for the Civil Service

Mr Andrew WONG Ho-yuen
Permanent Secretary for the Civil Service

Ms May CHAN Wing-shiu
Principal Assistant Secretary for Constitutional Affairs

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

Staff in : Mrs Eleanor CHOW
attendance Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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- I. Further Development of the Political Appointment System**
(Consultation Document on "Further Development of the Political Appointment System")

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LC Paper No. CB(2)2858/05-06(01) – Paper provided by the Administration on "Further Development of the Political Appointment System"

LC Paper No. CB(2)2848/05-06(01) – Note on the comparison of the proposed political appointment system for Hong Kong and the system in the United Kingdom and Canada provided by the Administration)

Meeting arrangement

Mr LEUNG Yiu-chung expressed dissatisfaction that this meeting and the meeting held on 26 July 2006 were arranged in such a rush, thus giving insufficient notice for members to attend the meetings. He queried whether the Chairman had made a good judgment in acceding to the request of the Administration in holding the two meetings, given that there was no urgency in discussing the Consultation Document on "Further Development of the Political Appointment System" (the Consultation Document).

2. Secretary for Constitutional Affairs (SCA) explained that the Chief Secretary for Administration and the House Committee had previously agreed that the Administration should brief the relevant Panel on major policy issues prior to its announcement to the media. The Administration therefore requested the Panel to hold a meeting on 26 July 2006, prior to the press conference to be held by the Administration in the afternoon on the same day to announce the publication of the Consultation Document.

3. The Chairman explained that his decision to convene the meeting on 26 July 2006 was to tie in with the work of the Administration. The Administration had briefed the Panel on its proposals relating to further development of the Political Appointment System, as set out in the Consultation Document, at the meeting on 26 July 2006 which was held as an informal meeting because of the lack of a quorum. In response to the request made by members at that meeting, a special meeting was arranged today for members to continue discussion on the Consultation Document.

The proposal of creation of additional positions of political appointees

4. Members noted that the Administration had proposed to create new positions within the Government, namely Deputy Directors of Bureau and Assistants to Directors of Bureau, with the aim of strengthening support for Principal Officials (POs) in carrying out political work. In principle, each Director of Bureau would be provided with one Deputy Director of Bureau and one Assistant to Director of Bureau.

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5. Noting that Deputy Directors of Bureau would be responsible principally for assisting Directors of Bureau in undertaking the full range of political work and deputising for POs during the latter's temporary absence, Mr CHAN Kam-lam asked whether their appointment required the consent of the Central People's Government (CPG).

6. SCA explained that Article 48(5) of the Basic Law provided that the Chief Executive (CE) should nominate and report to CPG for appointment of POs, and to recommend to CPG the removal of POs. However, the provision did not cover the new positions proposed to be created. Deputy Directors of Bureau would be appointed and removed by CE on the recommendation of Directors of Bureau.

7. Mr CHAN Kam-lam held the view that the distribution of policy portfolios among the 11 bureaux was uneven. Some POs were responsible for an exceptionally wide policy portfolio. Even with the addition of the new positions, the POs concerned would still be overburdened. He asked whether the Administration would take the opportunity to split some of the bureaux into two separate bureaux, e.g. the Health, Welfare and Food Bureau.

8. SCA responded that the proposal sought to create within the Government a small number of positions dedicated to political affairs. Public Consultation would end on 30 November 2006. The views collected would be analysed with a view to announcing the Government's decision on the way forward some time during the first half of 2007. It would be for the third term CE to decide how to implement the proposal, and whether any adjustment should be made to the policy portfolios of the 11 bureaux.

9. Mr Howard YOUNG agreed that the support provided to POs was insufficient for them to engage in liaison with Legislative Council (LegCo) Members, the media and political parties in order to secure the requisite support for Government initiatives. He also agreed that additional political appointments would be conducive to maintaining the political neutrality of the civil service. He was, however, concerned about the funding required for implementing the proposal. Given that these new political appointees would take up some of the political work originally shouldered by Permanent Secretaries and senior civil servants, he asked whether there was room for achieving savings in manpower. He also asked whether a person appointed initially to fill a position would be subject to transfer to another position during the term of his appointment.

10. SCA said that the Administration was cautious about the use of public money. In implementing the Political Appointment System in 2002, emphasis was made to retain the positions of Permanent Secretaries in order to preserve the permanent and professional civil service structure. Under the present proposal, it was expected that the political appointees would relieve senior civil

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servants from some of the political work, so that the latter could conduct more research and analysis on policy options. The further development of the Political Appointment System would not reduce the responsibilities and workload of civil servants.

11. SCA further said that some POs had been appointed to fill other positions in the past four years, as in the case of Mr Joseph WONG (former Secretary for the Civil Service, now the Secretary for Commerce, Industry and Trade) and Mr Henry TANG (former Secretary for Commerce, Industry and Trade, now the Financial Secretary). He, therefore, would not rule out the possibility for a political appointee to be redeployed to another bureau during the term of his appointment.

12. Ms LI Fung-ying asked about the term of office of Deputy Directors of Bureau and whether a Director of Bureau would shoulder political responsibility if his deputy had failed in his duties.

13. SCA responded that the term of office of the Deputy Directors of Bureau would not exceed that of the Chief Executive who appointed them, which was normally five years. The existing Code for Principal Officials (the Code), which set out the requirements on declaration of interests, disclosure of official information, and acceptance of employment after leaving office, etc, would, with any necessary modifications, apply to the new political appointees. Given that Deputy Directors of Bureau were recommended for appointment by the Directors of Bureau and depending on the circumstances, the latter might be required to shoulder political responsibility for policy failures of the former to a certain extent.

14. Mr LEUNG Kwok-hung and Dr KWOK Ka-ki said that only persons returned from direct elections and had the mandate of the people should be appointed to political positions. Dr KWOK added that the existing Political Appointment System was not conducive to political party development and lacked transparency. The additional political appointments were meant as rewards to pro-government parties and consortiums. He could not support the system.

15. SCA said that CE and POs were both accountable to the public under the Political Appointment System. In the past few years, the work of POs was highly transparent as they were required to report their work to LegCo and the public. If a CE was charged with serious breach of law or dereliction of duty, Article 73(9) of the Basic Law provided the procedure for impeaching a CE. SCA further said that although Hong Kong had yet to achieve universal suffrage, its system of government was more akin to the presidential system. However, the Administration did not intend to model its Political Appointment System on that of the United States in which, reportedly, some several thousand political appointments were made whenever there was a change of government.

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Widespread staffing changes following a change in political leadership might have an adverse impact on the continuity of governance.

16. Ms Emily LAU said that Hong Kong should develop a multi-party system in order to take forward constitutional development. Members of major political parties/groups returned in direct elections should become members of the governing team. While she noted that further development of the Political Appointment System sought to improve governance, provide better service to the people, provide a more comprehensive career path for political talents and enhance the relationship between the executive and the legislature, she was not convinced that the proposal could achieve these objectives. Ms LAU further said that the information provided by the Administration on the comparison of the proposed Political Appointment System for Hong Kong and the systems in the United Kingdom (UK) and Canada (LC Paper No.2848/05-06(01)) was misleading as it only illustrated that each minister in UK and Canada had two groups of officials working under him, i.e. civil servants and political appointees, without mentioning the party system that underpinned the political appointment system. Ms LAU pointed out that in UK and Canada, a political party which won a majority of seats in parliament in an election could become the ruling party. The leader of the ruling party would form a government and appoint his cabinet ministers who would in turn make further political appointments. Ms LAU asked the Administration to explain how the appointment of political appointees, who were not drawn from political parties/groups, could strengthen its capability in securing support from LegCo on its policy initiatives.

17. SCA responded that each country developed its system of government based on its own needs and characteristics. Both UK and Canada had a long history of political party development. Hong Kong was still shaping its electoral systems, political traditions and development of political talent. The Administration was adopting a two-pronged approach in pursuing constitutional development. On one hand, it was creating an environment that was conducive to the development of political parties and grooming of political talents; and on the other hand, it was exploring models of a universal suffrage system for CE and LegCo. Irrespective of whether a CE was to be elected by the Election Committee or through universal suffrage, the CE should have sufficient room to form his own political team to help implement his electoral manifesto. The proposed additional political layers sought to provide more room for CE to bring in political talents from political parties, civil service, professional or business sectors to participate in government work, and provide opportunities for them to establish a network with various stakeholders while engaging in political work.

18. Ms Emily LAU said that some members of the public had expressed serious concern whether the creation of the new political tier at a cost of some \$60 million would result in better governance. According to the Administration, a main reason for introducing the proposal was to provide additional support to POs in their political work. In her view, it was not necessary for the

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Administration to create additional political appointee positions for the purpose of lobbying for Members' support on its policies. What the Administration should do was to consult political parties beforehand on any policy proposals, and this would help secure the requisite support in LegCo. Taking the Consultation Document as an example, Ms LAU asked whether the Administration had taken into account the comments of any political parties in drawing up the proposals therein.

19. SCA said that since the publication of the Consultation Document, the proposal had been widely discussed by the public, media and academics. The major concerns raised were related to the division of responsibilities between political appointees and civil servants, and the financial implications of the proposal. He assured members that the Administration would exercise great caution in the use of public funds. With the implementation of the proposal, it was expected that the communication and relationship between political parties and the Administration would be enhanced. As regards consultation with political parties prior to policy formulation, SCA said that, at present, the Administration was gathering views from political parties through three different avenues, namely, meeting with CE prior to the delivery of CE's Policy Address, meeting with the Financial Secretary prior to the preparation of the Budget, and briefings given to Panels on legislative and financial proposals.

20. Mr LEE Wing-tat advocated the formation of a ruling coalition comprising different political parties to assist CE in governance. He considered that the present arrangement of appointment of members of political parties as Members of the Executive Council was not conducive to political party development, as the number was small and they were only appointed in their individual capacity.

21. SCA said that the further development of the Political Appointment System would open up the top government positions to individuals outside the civil service including members of political parties and help develop political leadership for Hong Kong. Unlike some countries where the government was formed by one of the major political parties, the situation in Hong Kong was different in that no single political party had emerged as the dominant party in LegCo.

22. Mr TAM Yiu-chung expressed concern that the proposal would not be conducive to grooming political talents. He pointed out that the range of political work proposed to be carried out by the political appointees, such as providing political input in setting policy objectives and priorities, formulating policy and legislative initiatives, and preparing political statements for POs required the appointees to be highly competent and to have substantial experience in political work. He pointed out that persons of such calibre were rare even among members of political parties.

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23. Mr LEUNG Yiu-chung expressed dissatisfaction that political appointees would be asked to work from the very start without undergoing any training. The arrangement was like deploying untrained soldiers to fight in a war and let them die on the battlefield.

24. SCA responded that the proposal was not meant to provide a training school for political talents. Those appointed would be expected to take up substantive work. The proposal would open an option for young aspirants to pursue a political career and to serve the community, apart from standing for elections of the District Councils and LegCo.

25. Dr Philip WONG said that there should be room for an elected CE to appoint like-minded individuals to be members of his political team to help him deliver his policy and political agenda. Dr WONG expressed support for the proposal.

Role and responsibilities between the political tier and the civil service and related issues

26. Mr CHAN Kam-lam asked about the division of responsibilities and work between the new political appointee positions and the civil service. He expressed concern that unclear delineation would cause confusion in the civil service.

27. Mr TAM Yiu-chung noted that Permanent Secretaries currently handled work with political content such as explaining and defending Government policies and lobbying for support in this regard. If the proposal was implemented, Permanent Secretaries would assume a supporting role in these areas of work within the limits of political impartiality. He expressed concern whether Permanent Secretaries would be able to undertake such work without undermining political neutrality. He also expressed concern whether the proposed establishment of political appointees could cope with the range of political work proposed for them to take on.

28. Mr Daniel LAM expressed support for the proposal but considered that the Administration should make an assessment on the financial implications of the proposal, the effectiveness of the proposal in grooming political talents and taking forward constitutional development towards the aim of universal suffrage. He said that there should be clear division of role and responsibilities between Deputy Directors of Bureau and Permanent Secretaries to prevent confusion and waste of resources.

29. Ir Dr Raymond HO asked whether the Administration had reviewed the Accountability System for POs implemented in 2002. He noted that some senior civil servants were unhappy about the system because of unclear division of responsibilities, e.g. they were required to attend meetings of LegCo committees

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to explain Government policies on behalf of POs. With the proposed creation of another two levels of political appointees, he expressed serious concern about the delineation of role and responsibilities between the political tier and the civil service. As indicated in paragraph 18 of the Administration's paper, this would need to be clearly spelt out.

30. Ms Margaret NG said that she failed to see how the system implemented in 2002 had enhanced the accountability of POs and allowed the civil service to maintain political neutrality. It was observed that senior civil servants had been engaged in political work in the past few years, e.g. to lobby for Members' support for Government policies and decisions.

31. SCA explained that the interface between the political tier and the civil service was crucial to good governance. The delineation of role and responsibilities between the political tier and the civil service was covered in Chapter 4 of the Consultation Document. In brief, Deputy Directors of Bureau would deputise for Directors of Bureau in their absence and attend the main meetings of LegCo to respond to motion debates, respond to LegCo questions and handle legislative work. The civil service would remain as a permanent, professional and politically neutral institution contributing to the effective governance of Hong Kong. It was expected that at the commencement of each LegCo session, Directors of Bureau would discuss with Deputy Directors of Bureau and Permanent Secretaries the division of work in the coming year. The Administration would seek to clearly spell out the role and responsibilities between the political tier and the civil service under the further development of the Political Appointment System in the finalised package.

32. SCA said that the Administration had gained some experience from the 2002 system after four years of operation. Its implementation was not entirely smooth in its initial period as POs, especially those who came from the private sector, and the civil service had to get used to the new working relationship. When the system was first implemented, all POs reported direct to CE. As the direct span of control of CE was too wide, arrangement had recently been made for the 11 Directors of Bureau to report to the Financial Secretary and the Chief Secretary for Administration respectively. This arrangement allowed the involvement of at least two levels of POs in the process of formulation of major policies.

33. SCA further said that a number of incidents in the past few years had demonstrated that separating the political tier from the civil service helped uphold the political neutrality of the civil service. For example, the POs concerned had borne the brunt of political responsibility in both the Penny Stocks and SARS incidents.

34. Secretary for the Civil Service (SCS) said that since the creation of a political tier in 2002, civil servants had assisted POs in attending meetings of

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LegCo to explain Government policies. The concept of a politically neutral civil service did not mean that civil servants should not engage in work with political content. Senior civil servants, in particular, were expected to assist POs in certain political work, such as explaining policies decided by the Government to political parties and the media, and helping to secure the support of the community and LegCo on these policies. However, they should refrain from taking part in election politics and other electioneering activities.

35. SCS added that according to her understanding, the major concerns initially expressed by civil servants on the proposals in the Consultation Document were as follows. First, there should be clear delineation of the role and responsibilities between the political tier and the civil service. Second, civil service posts should not be reduced to offset for the creation of the additional political appointee positions. Third, the existing system of appointment, promotion and discipline for the civil service should remain unchanged. The Administration welcomed feedback from civil servants on the proposals set out in the Consultation Document.

36. SCA also advised members that the implementation of the proposals set out in the Consultation Document would not take place before the third term CE assumed office. The actual timing and pace of implementation would be subject to, among others, the availability of resources and individuals of the right calibre to fill the new positions.

37. Referring to the remark of CE that he had closer relationship with some political parties and more distant relationship with others, Mr LEE Wing-tat expressed concern whether civil servants could maintain its neutrality if the additional political appointee positions were mainly filled by members of pro-government political parties. He further expressed concern about the line of command between the enhanced political tier and the civil service. He said that although there was no direct line of command between civil servants and Deputy Directors of Bureau and civil servants would continue to report direct to POs through their Permanent Secretaries, one should not ignore the fact that when deputised as POs, the rank of Deputy Directors of Bureau was higher than that of Permanent Secretaries. Mr LEE requested the Administration to consider conducting an anonymous opinion survey on Administrative Officers to find out whether the neutrality of the civil service had been compromised due to political pressure, after the proposal was implemented. The opinion survey could be conducted on a six-month or yearly basis with its result for internal reference of the Administration.

38. SCA assured members that the new political tier was not tailor-made for any particular political party. Only persons with the right calibre and ability could be appointed as political officials. Those appointed must share the vision and mission with CE in order to assist CE to realise his political aspirations and to deliver effective governance. He envisaged that only a few of the political

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appointees would come from political parties, as many political talents would participate in the District Council and LegCo elections to be held in 2007 and 2008 respectively.

39. SCS said that she had maintained close liaison with civil servants on both formal and informal basis. She held regular meetings with Permanent Secretaries and heads of departments. She paid visit to a government department about every 10 days or so and during which views were exchanged with the senior officials of the department on a wide range of issues for about half an hour, to be followed by another 90-minute or so discussion with representatives of civil servants and staff associations of the department. Informal meetings were also held with some 20-30 middle ranking Administrative Officers for two hours every fortnight or so during which they could raise any issues for discussion. These arrangements would continue during the term of her appointment as SCS.

40. Ms LI Fung-ying pointed out that different cost-cutting measures implemented by the Administration in the past few years had dampened staff morale, e.g. freezing of recruitment, introducing voluntary retirement schemes and freezing or reducing civil service pay. She asked whether the proposal would have a negative impact on the morale and promotion prospect of civil servants.

41. SCA responded that since the financial crisis in 1998, the establishment of the civil service had been reduced from 180 000 to 160 000 in order to contain Government expenditure. Despite the reduction in the staff establishment and increasing workload, the civil service continued to render professional service to the community. One of the guiding principles in pursuing the proposal was that additional positions of political appointees would not be created at the expense of the civil service establishment. As the Government would have surplus in the current year, it was expected that provision would be earmarked for 2006-07, and even 2007-08, for increasing staff establishment to alleviate the workload in the relevant departments. As regards the impact of the proposal on staff morale, the Administration would listen to the views of civil servants during consultation. Given that the current Permanent Secretary structure and civil service establishment would be maintained, the proposal would not affect the promotion prospect of civil servants.

Prevention of conflict of interest

42. Mr LEE Wing-tat and Mr CHEUNG Man-kwong said that since the publication of the Consultation Document, there was a view in the community that consortiums could easily make arrangement for their representatives to join the new political tier, given that the appointment procedure for political appointees only involved the recommendation of Directors of Bureau and appointment by CE. The consortiums' representatives, once appointed, could influence the direction of the formulation of Government policies to the

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advantage of the consortiums. This could result in collusion between the Government and the business sector, especially in areas of finance and land development. Mr CHEUNG asked about the measures to guard against conflict of interest of political appointees during office and after stepping down from office.

43. SCA said that the Political Appointment System had been implemented for four years and the core value of the system was a clean and accountable government. It attached a lot of importance to the integrity of POs and their accountability to the public. The two incumbent POs who came from the private sector, namely Mr Frederick MA and Mr Henry TANG, had formulated policies under their respective portfolios in an impartial manner. To uphold public confidence in public offices, rules similar to those applicable to POs would be formulated to forestall the risk of real or perceived conflict of interest. The requirement for POs to declare their investments and interests to CE and to make available a set of declarations to LegCo and the public would also be applicable to the new positions of political appointees. Under the proposal, persons from the professional or private sector should sever their ties with the relevant bodies or organisations once appointed to the political positions to ensure that there would be no actual or apparent conflict of interest.

44. SCA further said that under the existing arrangement, a PO should, within one year after stepping down from office, seek the advice of the Advisory Committee on Post-Office Employment for Principal Official under the Accountability System (the Advisory Committee) chaired by a Judge of the Court of First Instance of the High Court on his plan to take up employment. The PO concerned should state to the Advisory Committee that there was no conflict of interest arose between his previous public duties and the new employment. The Advisory Committee after studying the case would advise the PO whether he should go ahead with his plan and it could make public its advice. Over the past few years, a few POs had stepped down from office and none of them had acted against public interest. This proved that the existing system had upheld the principles of openness and fairness.

45. Mr CHEUNG Man-kwong commented that the advice of the Advisory Committee was not binding. He pointed out that it was possible for a PO or political appointee to formulate Government policies which were favourable to a consortium with which he planned to take up employment after stepping down from office. Given that political appointees were not elected and accountable to the people, he asked how the Administration intended to plug such loopholes.

46. SCA responded that the Administration would consider how the existing system could be improved. While POs were subject to the 12-month sanitisation period, there was no intention to impose an absolute ban to prohibit them from returning to their original profession or business within the 12 months after stepping down from office. Moreover, any policies formulated by the

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Government while the POs were in office would be subject to LegCo scrutiny and public monitoring.

47. The meeting ended at 4:24 pm.

Council Business Division 2
Legislative Council Secretariat
16 October 2006