

立法會
Legislative Council

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LC Paper No. CB(2)955/07-08
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

**Minutes of special meeting
held on Wednesday, 16 May 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** :
- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon Albert HO Chun-yan
 - Hon Margaret NG
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon CHEUNG Man-kwong
 - Hon CHAN Yuen-han, JP
 - Hon Bernard CHAN, GBS, JP
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon WONG Yung-kan, JP
 - Hon Jasper TSANG Yok-sing, GBS, JP
 - Hon Howard YOUNG, SBS, JP
 - Dr Hon YEUNG Sum
 - Hon Emily LAU Wai-hing, JP
 - Hon CHOY So-yuk, JP
 - Hon Timothy FOK Tsun-ting, GBS, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon WONG Kwok-hing, MH
 - Hon LEE Wing-tat
 - Hon Daniel LAM Wai-keung, SBS, JP
 - Hon Alan LEONG Kah-kit, SC
 - Dr Hon KWOK Ka-ki
 - Hon CHEUNG Hok-ming, SBS, JP
 - Hon WONG Ting-kwong, BBS
 - Hon Ronny TONG Ka-wah, SC
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Hon KWONG Chi-kin
- Members attending** :
- Dr Hon Fernando CHEUNG Chiu-hung
 - Hon TAM Heung-man

Members absent : Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon MA Lik, GBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung

Public Officers attending : Item I

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Miss Denise YUE Chung-yee
Secretary for the Civil Service

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

Mrs Cherry TSE LING Kit-ching
Permanent Secretary for Constitutional Affairs

Ms CHANG King-yiu
Permanent Secretary, Chief Executive's Office

Mr Ian WINGFIELD
Solicitor General

Ms Fanny IP Fung-king
Deputy Law Draftsman
(Bilingual Drafting & Adm) (Acting)

Ms Vicki LEE Yuet-ming
Senior Government Counsel

Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional Affairs

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

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Proposed re-organisation of policy bureaux of the Government Secretariat

(CAB F19/6/3/2(2007) - Legislative Council Brief on "Re-organisation of policy bureaux of the Government Secretariat : Legislative Amendments"

LC Paper No. CB(2)1855/06-07(01) - Administration's letter dated 14 May 2007 concerning the grading of the post of the Commissioner for Rehabilitation

LC Paper No. CB(2)1868/06-07(01) - Marked-up copy of the draft Resolution to be made under section 54A of Cap. 1)

Briefing by the Administration

Secretary for Constitutional Affairs (SCA) said that at the last two special meetings, the Administration had explained to Members the proposal to re-organise the policy bureaux of the Government Secretariat with effect from 1 July 2007 and the changes in the organisation structure consequential to the proposed re-organisation. Further steps would be taken by the Administration as follows -

- (a) a paper had been issued for the consideration by the Establishment Subcommittee at its meeting on 22 May 2007. If the Establishment Subcommittee endorsed the changes of the organisational structure arising from the proposed re-organisation, proposed changes to the 2007 - 08 Estimates would be submitted to the Finance Committee for approval;
- (b) the Administration would give notice on 23 May 2007 to move a Resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Council meeting on 13 June 2007 to effect the transfer of statutory functions arising from the re-organisation (the Resolution); and

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- (c) at the House Committee meeting on 4 May 2007, members agreed to the suggestion of Mr Abraham SHEK that the Panel on Constitutional Affairs should follow up the proposed re-organisation. In line with the established practice, the Administration had provided a copy of the draft Resolution for the consideration of the Panel on 9 May 2007. The Administration would listen to members' views prior to giving notice of the Resolution on 23 May 2007.

2. Dr Fernando CHEUNG reiterated his view that the Chief Secretary for Administration (CS) should be the public officer responsible for explaining details of the proposed re-organisation, which involved a reshuffle of responsibilities among various policy bureaux, to Members.

3. SCA explained that he and the Secretary for the Civil Service (SCS) had been designated to represent the Government in discussion with Members on matters relating to the proposed re-organisation. In 2002, the Constitutional Affairs Bureau was also responsible for discussing the Accountability System for Principal Officials (POs) (the Accountability System) with Members.

4. Some members, including Ms Audrey EU, Dr YEUNG Sum, Ms Margaret NG, Dr Fernando CHEUNG and Ms Emily LAU, suggested that the two special meetings scheduled for 18 and 26 May 2007 should be used for receiving public views. Members agreed.

Timetable and formation of a subcommittee

5. Ms Emily LAU said that on behalf of pan-democratic Members, she had written to request the House Committee to consider at the coming meeting on 18 May 2007 the setting up of a subcommittee to scrutinise the Resolution. Dr YEUNG Sum said that the established procedure for scrutinising subsidiary legislation by a subcommittee formed under the House Committee should be respected and adhered to by the Administration. Members belonging to the Democratic Party supported the setting up of a subcommittee to study the Resolution.

6. Mr Albert HO questioned why a deadline had to be set on 1 July 2007. He queried the need for the Government of the day to decide on the organisational structure of the next term Government, given that the incumbent Chief Executive (CE) might not be re-elected in the subsequent term. He pointed out that Members needed time to discuss the proposed re-organisation in an in-depth manner, and would not rubber stamp the proposal. His view that the tight timetable was unacceptable was echoed by Ms Margaret NG and Mr Ronny TONG.

7. SCA said that in his election platform, the CE had indicated, inter alia, that he would review the distribution of work among policy bureaux. The Administration hoped that the Resolution would be passed by the LegCo at the Council meeting on

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13 June 2007 so that the CE could nominate the POs for the third term Government for appointment and honour his pledge made during the election. It was not uncommon in some overseas countries for a government of the day to prepare for the re-organisation prior to the commencement of a new term, with a view to effecting the changes after the inauguration of a new term government. He noted that some Members might have different views on when the proposed re-organisation should take effect, and it was the Administration's intention to implement it on 1 July 2007.

8. SCA further said that following the CE election in March 2007, it had taken several weeks to finalise the re-organisation proposal before the CE could make a formal announcement on 3 May 2007. In the past two weeks, the Administration had followed the established procedure and briefed the Panel on the re-organisation proposal. It was for the House Committee to decide whether a subcommittee should be set up to scrutinise the Resolution when it was introduced into the LegCo.

Review of the Accountability System and public consultation

9. Some members, including Dr YEUNG Sum, Ms Margaret NG, Ms Emily LAU, Dr Fernando CHEUNG and Mr Albert HO considered that the Administration should review the Accountability System implemented in 2002 before making any proposals to re-organise policy bureaux of the Government Secretariat. They also considered that the Administration should consult the public on the proposed re-organisation.

10. SCA responded that the Administration had, over the last few years, in the context of consulting the community, Members and various advisory groups, received feedback that there was a need to review the existing distribution of policy responsibilities to take account of the changes in workload and scope of policy bureaux. In response to the comments received and in order to honour his pledge during election, the CE had decided to re-organise the Government Secretariat with effect from 1 July 2007.

11. SCA further said that Chapter 1 of the Consultation Document entitled "Further Development of the Political Appointment System" issued in July 2006 had already set out the development of the Accountability System since July 2002. The Administration would analyse the views collected during the consultation period and announce its decision on the way forward in the latter half of 2007. The Administration would address issues relating to the Accountability System in the light of the views received.

12. Ms Margaret NG and Ms Emily LAU expressed dissatisfaction with the SCA's reply. Ms Margaret NG considered that the Panel should discuss the effectiveness of the Accountability System at the meeting. Ms Emily LAU said that Mr Nicholas NG Wing-fui, Chairman of the Public Service Commission (the Commission), gave the Commission's view on the Accountability System in the 2006 Annual Report as follows -

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"In summary, the Commission considers that the effectiveness of the Accountability System should be critically reviewed and the proposal of appointing two additional layers of political appointees, if implemented, should be taken forth incrementally. In implementing the proposal, civil servants should not have any political role after the settling in of the additional tiers of political appointees. The Commission considers that the SCS, who is responsible for the policy and management of the civil service, should remain as a civil servant. The "revolving door" arrangement should not be applicable to the SCS and the Commission has suggested a way of achieving that."

13. Ms Emily LAU requested the Administration to respond to the concerns raised by the Commission, e.g. whether the "no revolving door" requirement should apply to the position of the SCS. She also questioned how senior civil servants, who were often required to undertake political work such as explaining Government policies to Members, could maintain political neutrality.

14. SCA said that the principles behind the Accountability System had been fully explained to Members in 2002. The proposed re-organisation did not involve any changes to the fundamental principles of the Accountability System. It merely proposed the reshuffling of responsibilities among the bureaux and the net creation of one new bureau. He noted that, in response to the Consultation Document on Further Development of the Political Appointment System, the Commission had submitted its view to the Administration. One of the views expressed, which was shared by the Administration, was that the civil service should maintain political neutrality. The Administration would respond to the views received in the context of the consultation exercise on the "Further Development of the Political Appointment System" in the latter half of 2007.

15. SCS supplemented that the comment made by the Commission was not new. Since the introduction of the Accountability System in 2002, the Commission had been advocating the political neutrality of the civil service. In her view, civil servants should support the work of POs by explaining policies decided by the Government of the day to Members, the public and the media, and helping secure the support of the community and the LegCo on government policies. Undertaking political work of this nature was not in conflict with the political impartiality of the civil service.

16. On the position of the SCS, SCA said that before the introduction of the Accountability System in 2002, the CS was the head of the civil service. Since the introduction of the Accountability System, the CS was a political appointee and his portfolio was already very stretched and could not include managing the civil service. SCS supplemented that the position of the SCS was rather unique. The SCS was one of the POs nominated for appointment by the CE. The person filling the SCS position was drawn from the body of serving civil servants and not obligated to resign or retire from the civil service before taking up the position. He could choose

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to do so during his term as the SCS, or he could choose to revert to the civil service immediately upon termination or completion of his term of appointment as the SCS if he had not yet reached the retirement age specified for civil servants. The Administration would address any views on the position of the SCS in the context of the consultation exercise on further development of the political appointment system.

17. Dr Fernando CHEUNG said that if a system was built on quick sand, any improvement to it would not serve any meaningful purpose. He asked what lessons had been learnt by the Administration in the last five years.

18. SCA responded that the design of the Accountability System had taken into account the constitutional framework laid down in the Basic Law and the democratic system in western countries. Allowing the CE to form his own governing team and making POs politically accountable had made the political system in Hong Kong more akin to that of democratic countries. The Accountability System which allowed the CE to form his own team had paved the way for returning the CE by universal suffrage and set out the direction to attract more people of the right calibre to serve as political appointees and to participate in public administration. In the past five years, experiences gained in implementing the Accountability System had demonstrated the following -

- (a) it was not desirable for each PO to handle a span covering too many policy portfolios;
- (b) clearer delineation of responsibilities between political appointees and civil servants should be drawn; and
- (c) in order to enhance co-operation with political parties and different sectors in the community, more government positions dedicated to political affairs should be created.

19. Mr Howard YOUNG said that the Accountability System had been implemented for over five years, and the public had not asked to revert to the previous system. The review of the Accountability System was an important issue and could be dealt with at future Panel meetings as a standard discussion item.

20. Ms Margaret NG requested to put on record her view that the Accountability System implemented in 2002 was unconstitutional because the status of the new category of public officers, i.e. POs, was not established by means of legislation before resorting to the use of a resolution under section 54A of Cap. 1 to transfer the relevant statutory functions.

21. SCA disagreed with the view of Ms NG. He said that the political appointments of POs and the statutory functions they exercised complied with the Basic Law and the relevant local legislation.

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Legislative amendments

22. SCA briefed members on the draft Resolution. The draft Resolution provided that with effect from 1 July 2007, the functions currently exercisable by a specified Director of Bureau by virtue of the ordinances set out in the draft Resolution be transferred to a specified Director of Bureau who would take charge of the relevant policy responsibilities following the re-organisation of the Government Secretariat. The draft Resolution did not involve substantive amendments to the statutory functions (including powers and duties) provided for in the relevant ordinances. The draft Resolution provided for the simple substitution of the current title of the Director of Bureau by the new title of the Director of Bureau in whom policy responsibility for the provisions in question was to be vested with effect from 1 July 2007.

23. Senior Assistant Legal Adviser 2 (SALA2) said that on the instruction of the Chairman, the Legal Services Division (LSD) had prepared a marked-up copy of the draft Resolution for reference of members. The marked-up copy was voluminous and the amendments proposed were largely technical in nature. Given the limited time available, legal advisers in the LSD had only been able to conduct a preliminary vetting on the draft Resolution. The LSD had been liaising with the Administration on some of the drafting issues so far identified. If necessary, the LSD would prepare another marked-up copy when the Resolution was formally introduced into the LegCo. SALA2 said that in this exercise, the legislative approach adopted by the Administration was basically the same as the one adopted for the implementation of the Accountability System in 2002.

24. Ms Audrey EU asked why the Administration did not provide members with the final version of the Resolution. SCA explained that the Administration would listen to members' views before finalising the Resolution for introduction into the LegCo. In further response to Ms EU, SCA said that to implement the proposed re-organisation, it was necessary to introduce legislative amendments to transfer the statutory functions of eight existing Directors of Bureau to nine Directors of Bureau. The statutory functions of three Directors of Bureau would not be affected by the proposed re-organisation, namely the Secretary for the Civil Service, the Secretary for Security and the Secretary for Financial Services and the Treasury. At the request of Ms EU, SCA undertook to provide a paper setting out the statutory functions of the re-organised bureaux.

(Post-meeting note : The paper was issued to Members vide LC Paper No. CB(2) 2101/06-07(02) on 30 May 2007.)

25. Ms Margaret NG pointed out that the transfer of statutory functions from one PO to another PO was not necessarily a drafting issue. When a PO's existing functions and the functions proposed to be transferred to him would constitute a conflict of interest, it would involve policy considerations which Members should consider carefully.

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Proposed re-organisation

General

26. Mr Ronny TONG said that under the Accountability System, POs were accountable to the CE and not the public. The CE, given that he was not elected by universal suffrage, was not accountable to the public. In the circumstances, he doubted whether the proposed re-organisation would help improve governance.

27. SCA responded that the CE was accountable to the Central People's Government and the people of Hong Kong. Under his leadership, the POs were not only accountable to the Government of the Hong Kong Special Administrative Region, but also to the people of Hong Kong. Although the CE of Hong Kong had yet to be returned by universal suffrage, he and the POs were expected to respond to public demands. In the past five years, POs had explained Government policies to the LegCo, the media and the public in an open manner. Given that CE had secured support from the majority members of the Election Committee in his recent election, and had the support of over 70% of the people of Hong Kong as reflected in opinion polls, he had the mandate of the people to formulate policies to govern Hong Kong in the coming five years. The proposed re-organisation sought to consolidate the structure of the Government with a view to meeting future challenges in economic, social and other fronts. Taking the new Development Bureau and the Labour and Welfare Bureau as examples, SCA said that the Secretary for Development who would oversee matters relating to planning, lands and works would speed up the implementation of large-scale projects and enhance planning and implementation efficiency, while the merging of the labour and welfare portfolios under one PO would enhance the policy interface between the two and provide better support to those in need. Some political parties had already expressed support for the proposed re-organisation.

28. Mr Howard YOUNG said that the position of the Liberal Party (LP) was as follows -

- (a) the Administration had the prerogative to decide on the final structure of the proposed re-organisation;
- (b) for the purpose of improving governance, the LP supported the proposal of creating a new Director of Bureau; and
- (c) the redistribution of duties among bureaux and the transfer of statutory functions among POs and some civil service posts were technical. The Panel could consider the draft Resolution at the next meeting if time allowed.

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Legal aid portfolio

29. Ms Margaret NG expressed concern that the proposal to transfer the legal aid portfolio from the Administration Wing of the Chief Secretary for Administration's Office to the Home Affairs Bureau (HAB), a policy bureau, could downgrade the status of the Legal Aid Department (LAD) and undermine its independence. She expressed concern that the Administration had not conducted prior consultation with the Legal Aid Services Council (LASC), the two legal professional bodies and the public on the proposal. Given that the proposed transfer did not involve the creation of a new policy bureau and additional manpower resources, she considered that there was no urgency to consider the proposed transfer in this re-organisation exercise. She requested the Administration to provide a paper to explain the personnel and operational arrangements on legal aid matters within the Government Secretariat.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(2)1945/06-07(01) on 23 May 2007.)

30. SCA responded that as legal aid was a complex stand-alone policy subject that involved provision of services to the community, it was appropriate for the subject to be placed under the purview of the HAB. The LAD's exercise of its powers and functions would not be affected irrespective of whether the portfolio was under the Director of Administration under the current set-up or under the Secretary for Home Affairs after the re-organisation. There were safeguards to ensure that the Director of Legal Aid would continue to exercise statutory functions vested in him and to consider legal aid applications according to the established criteria. The proposed transfer would not affect the statutory role of the LASC, the legal aid services provided by the LAD in accordance with the relevant legislation, and the progress of the various reviews in the pipeline.

31. Ms Margaret NG sought advice as to whether the proposed transfer of legal aid portfolio would require any transfer of the statutory function. SALA 2 responded that his preliminary view was that the transfer of the legal aid portfolio to the HAB did not involve the transfer of statutory functions as the ordinances relevant to legal aid did not make any reference to POs affected by the current exercise.

II. Any other business

32. The Chairman informed members that the next meeting would be held on 18 May 2007 after the House Committee meeting to receive views from the public.

33. The meeting ended at 10:40 am.