

ESTABLISHMENT SUBCOMMITTEE PROCEDURE

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ESTABLISHMENT SUBCOMMITTEE PROCEDURE

Role

The Establishment Subcommittee (ESC) of the Finance Committee (FC) is established under Rule 71(5) of the Rules of Procedure of the Legislative Council for the purpose of assisting the FC in the performance of its functions. The subcommittee examines requests for variations in the establishment of the civil service and makes recommendations to the FC, but has no independent functions or powers. It is the FC that must make the decisions; and in doing so, the FC is not bound in any way by the recommendations of the ESC.

Terms of Reference

2. The terms of reference of the ESC are -

- (a) To consider submissions from the Administration and, as appropriate, to recommend to the FC :
 - (i) the creation, redeployment and deletion of permanent and supernumerary posts remunerated at the directorate pay scales;
 - (ii) the retention of supernumerary directorate posts;
 - (iii) the creation of supernumerary posts held against permanent posts in ranks with a lower notional annual mid-point salary value;
 - (iv) the creation of individual consultancy positions at directorate level lasting more than one year;
 - (v) changes to the departmental establishment ceilings shown in the approved Estimates;
 - (vi) changes to the arrangements for the creation, redeployment and deletion of directorate posts;

- (vii) changes to the structure of civil service ranks and grades (including pay scales, new grades and new ranks) recommended by the Standing Commission on Civil Service Salaries and Conditions of Service, or the Standing Committee on Directorate Salaries and Conditions of Service, or the Standing Committee on Judicial Salaries and Conditions of Service, or the Standing Committee on Disciplined Services Salaries and Conditions of Service, and the consequential creation and deletion of posts in affected ranks; and
- (viii) changes to the organizational structure of the Government and consequential transfers of posts.

(b) To report to the FC on changes in departmental establishments shown in the Estimates and on the size and cost of the civil service.

Membership

3. The ESC comprises those FC members who elect to join the ESC by informing the Clerk to the ESC (the Clerk) in writing not later than seven clear days¹ before the first ESC meeting in a new legislative session. The ESC members² elect from among themselves a Chairman and a Deputy Chairman. The Chairman may agree to accept late membership on grounds of indisposition or absence from Hong Kong. A request for late membership on grounds other than indisposition or absence from Hong Kong shall be put to the Subcommittee. The Subcommittee shall accept such applications only when sufficient grounds have been provided. Any member joining the Subcommittee after the election of the Chairman and Deputy Chairman has taken place cannot seek a re-election of the Chairman and Deputy Chairman. Any Member whose application for late membership is turned down may put the case to the Finance Committee for a decision. New Members who join the Legislative Council in the middle of a session will be invited by the Legislative Council Secretariat to signify his wish to join the ESC within one month from the date at which he is declared elected as Member of the Council.

4. FC members who have not elected to join the ESC may attend ESC meetings and take part in the discussion but have no right to vote.

¹ The term “clear days” excludes the day of the giving of a notice, the day of the meeting and intervening Sundays and public holidays.

² The term “member” or “members” as used in the text refers to a member or members of the Establishment Subcommittee unless specified otherwise.

Chairman and Deputy Chairman

5. The Chairman and Deputy Chairman shall be elected by and from among its members at an open meeting and shall hold office until the election of the Chairman and Deputy Chairman of the ESC in the session next following that for which they are elected. In the event of the temporary absence of the Chairman and Deputy Chairman, the Subcommittee may elect a Chairman to act during such absence. Notwithstanding the provision in paragraph 39, the Chairman or the member presiding, as the case may be, shall have his original vote in addition to his casting vote in such elections [Rule 71(2)]³.

6. The election of the Chairman and Deputy Chairman for the first session of a term shall be conducted at the first meeting of the ESC in the session. The member who has the highest precedence in the Council [Rule 1A] shall be responsible for calling the first meeting of a term of the ESC, and shall preside at the election of the Chairman of the ESC. If the member who has the highest precedence in the Council is being nominated for the office of Chairman, the member who is next in the order of precedence of Members and who is not being nominated for the office shall be the presiding member. For the second and subsequent sessions in a term, the election may be conducted at a meeting held before the session commences.

7. At the meeting held for the purpose of the election of the Chairman and Deputy Chairman, the member presiding at the meeting shall call for nominations for the election for these two offices. All members may stand for election. Each nomination shall be made orally by a member, seconded by at least one other member present and accepted by the member being nominated. A member who nominates an absent member for an office shall state that the absent member's acceptance of the nomination has been secured. If there is only one nomination, the member presiding shall declare the nominee elected. If more than one nomination is received for an office, the election shall be decided by secret ballot by the members present, including the presiding member, on the basis of a simple majority of votes. In case of a tie, the presiding member shall draw lots to give the casting vote to one of the nominees in accordance with the lot drawn, and shall forthwith declare that nominee elected to an office.

Clerk to the Establishment Subcommittee

8. The Clerk shall attend the meetings of the ESC, keep a record of the proceedings of the ESC, and distribute a copy thereof to each member before the FC meeting at which the ESC recommendations are considered. The record is kept in the form of minutes, recording the members attending, the gist of proceedings and the decisions taken. The Clerk will not normally clear the minutes with the Administration and outside parties except in respect of those parts of the record which relate to the statements made by these parties at the meeting.

Meetings

³ The term [Rule 71(2)] means reference is made to Rule 71(2) of the Rules of Procedure of the Legislative Council.

9. After the Chairman is elected, the Clerk shall seek the Chairman's agreement to a provisional schedule of dates of ESC meetings for the session and inform members and the Administration accordingly. The Chairman may decide to convene special meetings to consider urgent items.

10. The Clerk shall give members written notice of every meeting at least five clear days before the day of the meeting but shorter notice may be given in any case where the Chairman so directs [Rule 71(6)]. Meetings will be held in public unless the Chairman otherwise orders in accordance with any decision of the ESC [Rule 71(7)]. Any items on the agenda scheduled for discussion but not dealt with at the meeting will be carried over to the next meeting or, if the Chairman decides, to a special meeting.

11. The Chairman or, if he is not available, the Deputy Chairman, chairs an ESC meeting. If neither of them is present within 15 minutes of the time appointed for a meeting or if both of them have notified the Clerk that they will not be present at the meeting, the members present shall elect one from among themselves to chair the meeting. If the Chairman decides that he is unable to act for a particular item, or if so decided by the ESC, the Deputy Chairman shall chair the meeting for that particular item. If both of them decide that they are unable to act, or if so decided by the ESC, the members present shall elect one from among themselves to chair the meeting for that item.

Quorum

12. The Chairman and three members or the Chairman and one-seventh of the members, whichever is the greater, form a quorum. Members should confirm their attendance with the Clerk before an ESC meeting; otherwise, the Clerk will assume their absence for the purpose of determining whether there will be a quorum present at the meeting. The meeting will not be held unless a quorum is present within 15 minutes after the time appointed for the meeting.

13. If the attention of the Chairman during a meeting is drawn to the fact that a quorum is not present, he shall direct the members to be summoned. If after 15 minutes have expired and a quorum is still not present, he shall adjourn the meeting without questions put.

14. The Chairman shall ensure that a quorum is present before he orders the ESC to proceed to making a decision.

Attendance of Public Officers and Other Persons

15. The Chairman or the ESC may invite any public officer, or, in the case of a head of Estimates relating to a non-government body or organization, any member or employee of that body or organization to give information or any explanation or to produce any records or documents which the ESC may require in the performance of its duties. The ESC may also invite any other person to assist the ESC in relation to any such information, explanation, records or documents [Rule 71(12)]. The Clerk will state in the agenda the office of the public officers and other persons invited for discussion of the particular items.

16. When the Secretary for the Treasury or a Deputy Secretary for the Treasury attends ESC meetings in the absence of the Financial Secretary, he is responsible for advising the Chairman on public finance procedures and coordinating the Administration's presentation at meetings including withdrawal or modification of a proposal.

Information Note

17. The Administration may provide information notes to members in response to a request by members made at a previous meeting or on the Administration's own initiative. Information notes are issued by the Clerk under a serially-numbered cover.

Agenda Item

18. The Financial Secretary, the Secretary for the Treasury, or a Deputy Secretary for the Treasury, being public officers designated by the Government of the Hong Kong Special Administrative Region, or any member may give notice to the Clerk of the items of business to be included in the agenda of the ESC [Rule 9(2)]. The notice of agenda items should reach the Clerk at least six clear days before the meeting concerned, but shorter notice may be given if the Chairman so directs.

19. An ESC agenda item is normally a discussion paper proposing for ESC's recommendation to the FC the establishment proposals submitted by the Administration as well as a motion from any member of the Establishment Subcommittee. The Clerk shall despatch papers for discussion to members at least five clear days before the meeting at which the papers are to be considered, unless on grounds of urgency the Chairman directs otherwise.

Open and Confidential Items

20. Non-confidential ESC agenda items are discussed in public unless the Chairman otherwise orders in accordance with any decision of the ESC [Rule 71(7)]. If there is a confidential item and members have questions on it, the ESC will discuss the item in closed session normally after the discussion of all the non-confidential items, unless the Chairman otherwise orders in accordance with a decision of the ESC. If the Administration considers it necessary to classify an agenda item as confidential, there must be a paragraph in the submission explaining the reason for confidentiality.

21. The Clerk delivers papers relating to a confidential item to members in a sealed envelope. Members should take care to ensure that such papers are kept in safe custody and should not disclose their content, in part or in full, to any unauthorized person.

Consideration by Circulation

22. Where the Chairman so orders, any matter for the recommendation of the ESC may be considered by circulation of papers to the members of the ESC and each member may signify his endorsement in writing submitted to the Chairman. If a majority of the members so signify before the expiry of the period specified by the Chairman for the purpose, and if upon expiry of that period no member has (in writing submitted to the Chairman) signified disagreement to the matter or requested that the matter be referred for discussion at a meeting of the ESC, it shall be deemed to be endorsed by the ESC.

Withdrawal of Agenda Items

23. At an ESC meeting, the Financial Secretary or, in his absence, the Secretary for the Treasury, or a Deputy Secretary for the Treasury may withdraw an item -

- (a) at any time before it is put to the vote; or
- (b) by unanimous consent of the ESC after it has been put to the vote but the result is not yet declared by the Chairman.

Amendments to the Administration's Proposals

24. Under section 8 of the Public Finance Ordinance, proposals to change the approved Estimates of Expenditure must come from the Financial Secretary, and members cannot amend the Financial Secretary's proposals. The ESC must discuss and vote on any proposal as it stands. If the ESC does not approve the proposal, it would then be for the Financial Secretary to consider whether to make a fresh proposal amended in such a way as may make it acceptable to the ESC.

Practice and Procedure of the Establishment Subcommittee

25. Subject to the Rules of Procedure of the Legislative Council and the procedure endorsed by the FC, the ESC determines its own practice and procedure [Rule 71(13)].

Order in the Establishment Subcommittee

26. The Chairman is responsible for the observance of the rules of order in the ESC and his decision on a point of order shall be final [Rule 44].

27. The Chairman, after having called the attention of the ESC to the conduct of a member who persists in irrelevance or tedious repetition of his own or other members' arguments in the discussion, may direct him to discontinue his speech [Rule 45(1)].

28. A member shall not interrupt another member except -

- (a) on a point of order which he wishes to bring to notice for the Chairman's decision; or
- (b) to seek elucidation on some matters raised by that member in the course of discussion, if the member speaking is willing to give way and the Chairman agrees [Rule 39].

Language

29. A member may address the ESC orally in either Putonghua, Cantonese or English. Replies by the public officers and others persons attending may likewise be in either Putonghua, Cantonese or English. All ESC papers are in both Chinese and English.

Manner at Meetings

30. Members should remain seated at meetings and need not rise in order to speak. There is no need to stand when the Chairman enters or leaves.
31. Members should raise their hands to signify that they wish to speak.

Adjournment of Proceedings

32. A member when speaking on a proposal in the Subcommittee may move without notice that discussion on an item or further proceedings of the ESC be adjourned. Thereupon the Chairman shall put the question on the motion to adjourn.

Pecuniary Interest to be Disclosed

33. Rule 84 of the Rules of Procedure shall apply to the proceedings of the ESC.
34. There are situations in which the usual rules regarding pecuniary interests do not apply, such as when an item concerns an establishment proposal where members would benefit no more or no less than any other resident of Hong Kong. In these cases, there is no need for members to declare their individual interests. The Chairman shall declare that all members have the same pecuniary interest in the question and the Clerk records the statement. Members may then speak and vote.

Questions

35. After the Chairman calls a meeting to order, he normally deals first with the business left over from a previous meeting, if any. The Chairman then gives a brief summary of each item (except confidential items) for the benefit of members of the public who do not have copies of the item, and introduces the persons at the meeting responsible for answering questions on the item. Members then discuss the item or put questions to the persons responsible for answering them.
36. Members' questions on a proposal must relate directly to the contents of the agenda item. On wider questions of policy, members should raise them either in the full Council or at an appropriate Legislative Council Panel. In determining whether questions are in order, the Chairman shall have regard to Rule 25 of the Rules of Procedure on contents of questions where appropriate.

37. Representatives from the relevant bureau and/or department are in attendance to answer questions which members may have. Any member who requires

a comprehensive or very technical oral reply to his question at the meeting should notify the Clerk beforehand so that the answer can be prepared. If the Administration cannot give a full or definite answer at the meeting, the representative concerned may supplement his answer in writing by subsequently providing an information note to the ESC or a letter to the member who asked the question with copies to other members as appropriate.

Voting

38. The ESC makes decisions on all matters by a majority of the members present and voting. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall have a casting vote [Rule 71(8)], but the casting vote shall not be exercised in such a way as to produce a majority vote in favour of the question put.

39. Before putting an item to the vote, the Chairman shall ask members if they have any further questions. When the Chairman puts a question to the ESC for its decision he shall first call upon those members who are in favour of the question to raise their hands and then shall call upon those who are against the question to raise their hands. The Chairman shall then, according to his judgement state whether or not that he thinks the majority of the members present and voting are in favour of the question. If no member challenges his statement, the Chairman shall declare the question to have been so decided. If a member challenges the statement of the Chairman by claiming a division, then the Chairman shall order the ESC to proceed to a division and a division shall be held forthwith immediately after a division bell has been rung for one minute [Rule 47(1)]. When a division has been ordered, Rules 48 and 49 of the Rules of Procedure shall apply to the proceedings of the ESC.

40. If a member fails to declare that he has a direct pecuniary interest in an item in accordance with Rule 84 of the Rules of Procedure, and has voted on it, then his vote stands (and the decision of the ESC is valid) unless his vote is disallowed under Rule 84(4) of the Rules of Procedure.

Adverse Weather

41. Unless directed otherwise by the Chairman, all meetings shall be cancelled if Storm Signal No. 8 or Rainstorm Black Warning is hoisted and/or remains in force two hours before the appointed time of the meeting. If Storm Signal No. 8 is hoisted while a meeting is in progress, the Chairman should adjourn the meeting. In the case of a Rainstorm Black Warning, the Chairman should decide whether to adjourn or continue with the meeting.
