

公務員敍用委員會主席



CHAIRMAN
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Jan Stephen,

**The Consultation Document on
Further Development of the Political Appointment System**

The Commission has studied the Consultation Document in response to the invitation of the Secretary for the Civil Service. I now forward a submission covering our general observations, suggestions and comments on those proposals that will impact on the civil service.

Briefly, the Commission considers that the effectiveness of the current 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 Secretary for the Civil Service, as head of the civil service, should remain as a civil servant. The 'revolving door' arrangement should not be applicable to him and the Commission suggests a way of achieving that. The Commission's views and suggestions on these as well as other issues which may impact on specific aspects of the civil service system are detailed in the submission.

For your information, the submission will be included in the Commission's 2006 Annual Report to be released around April 2007.

(Signed)

(Nicholas W.F. NG)

Submission of the Public Service Commission in response to the Consultation Document on Further Development of the Political Appointment System

INTRODUCTION

In July 2006, the Government published for public comment the Consultation Document on Further Development of the Political Appointment System (the Consultation Document). The Secretary for the Civil Service (SCS) wrote to the Chairman of the Public Service Commission (the Commission) on 26 July 2006 to invite the Commission's views on the Consultation Document. In response, the Commission has deliberated carefully on the relevance of the proposals in the Consultation Document to the Commission's role. It notes that the proposals will have a significant impact on the civil service. In particular, having regard to the Commission's role in ensuring the impartiality and integrity of the civil service appointment, promotion and disciplinary systems, the Commission considers it appropriate and important to assess whether the key proposal, under the Accountability System, to create two additional political tiers, by appointing in each Policy Bureau one Deputy Director of Bureau (DD of B) and one Assistant to Director of Bureau (A to D), will affect the operation and core values^{Note 1} of the civil service.

2. This submission is in two parts. The first part covers some general observations on the impact of the proposed further development of the Accountability System on the civil service. The second part goes into specific issues of concern.

I. GENERAL OBSERVATIONS

Effectiveness of the existing Accountability System

3. The starting premise for the proposals in the Consultation

^{Note 1} The core values of the civil service, which all civil servants are expected to share and uphold include – commitment to the rule of law; honesty and integrity; accountability for decisions and actions; political neutrality; impartiality in the execution of public functions; and dedication, professionalism and diligence in serving the community (paragraph 4.08 of the Consultation Document).

Document is that the Accountability System introduced in 2002 is to stay and the proposals will address some of the gaps observed in the System. The Commission considers it appropriate that, before further inroad is made into Hong Kong's governance structure by the expansion of the Accountability System, its effectiveness should be critically assessed and justified. An assessment should be made, from the civil service operation and morale points of view, to see what problems have surfaced. This will be a meaningful platform against which an assessment of the impact of the further expansion of the Accountability System can be made. The appointment of DDs of B and As to D will cut deeply into the operations of the policy bureaux and, once introduced, will have far-reaching impact on Hong Kong's future governance.

The integrity of the civil service system and its core values

4. The Commission believes firmly that the civil service system^{Note 2} and the core values of the civil service have been contributing to the effective governance of Hong Kong. Any attempt to disintegrate a single part of the system or a component of the core values will affect adversely the governance of Hong Kong. The further development of the Political Appointment System must not therefore result in the politicization of the civil service or the corruption of its core values. Indeed, it is noted that one of the arguments for the proposal to create two additional political tiers to the government structure is to further safeguard the integrity and neutrality of the civil service (paragraph 2.02(b) of the Consultation Document). It is also noted that the code on performance and behaviour to be applied to DDs of B and As to D as proposed in paragraph 3.15 of the Consultation Document does embrace the broad principle that "they shall at all times actively uphold and promote a permanent, honest, meritocratic, professional and politically neutral civil service". Faithful application of this principle requires the commitment and goodwill of all the parties. It would also help to smooth out the process if the modus operandi of the two new political tiers, particularly their interface with the civil service, is clearly defined and institutionalized. This will minimize misunderstanding. As a start, the existing code applicable to the Principal Officials (POs)^{Note 3} is an important reference document which should be reviewed and suitably

Note 2 The civil service system is built on the principle of meritocracy, with all civil servants being subject to common appointment procedures based on open and fair competition, and similar disciplinary codes.

Note 3 Principal Officials under the Accountability System are required, as part of their condition of employment, to abide by a Code which includes provisions setting out their relationship with the civil servants working under them. The Code was published in the gazette on 28 June 2002 (GN No. 3845).

adapted for application to the DDs of B and As to D.

Incremental approach in implementing the expanded system

5. Quite apart from a clear definition of the need and modus operandi of the new political tiers, the Commission holds the view that the viability of the proposed expansion of the Political Appointment System will depend largely on whether the right people can be identified and appointed to take up the new political positions. To ensure that only those who are suitable and qualified are appointed, the expanded system should be allowed to be implemented incrementally, if appropriate. The Directors of Bureau (Ds of B), who supervise the two additional tiers of political appointees, should also be given the discretion to decide when to take in additional support.

II. IMPACT OF THE PROPOSALS ON SPECIFIC ASPECTS OF THE CIVIL SERVICE

6. The Commission's major concern in considering the Consultation Document relates to the impact of the expanded Political Appointment System on specific aspects of the civil service system. In this context, the Commission addresses the role of the civil service with reference to its changing career prospects, establishment and morale as well as the possible drain of civil service talents. To ensure a smooth implementation of the System, the Commission suggests that while some duplication of responsibilities between the political appointees and the civil service be acknowledged, clear parameters on their respective basic lines of responsibilities should be drawn up with political lobbying work eventually being confined to political appointees only. In addition, clear lines of command should be delineated for performance management and proper procedures for handling appeals from civil servants should be devised. The Commission also examines the "revolving door" arrangement and seeks to rationalize the concept with regard to the appointment of the SCS and to the need for the additional tiers of political appointees under him. The key considerations covering these areas are set out in succeeding paragraphs.

Role of the civil service

Changing position of the civil service

7. Under the Political Appointment System, there is a political tier

at the top underpinned by the civil service as the backbone of the Government (paragraph 1.17 of the Consultation Document). The further development of the Political Appointment System will have an effect on the civil service, but it will not diminish or change the fundamental importance of the civil service (paragraph 4.01 of the Consultation Document).

8. The Commission considers that civil servants appointed after the introduction of the Accountability System on 1 July 2002 should not expect to suffer any adverse career prospects as a result of the expansion of the Political Appointment System. They knew on joining the service that the political tier is above the civil service. However, civil servants joining the civil service prior to 1 July 2002, and in particular members of the Administrative Officer (AO) Grade who have climbed up the career ladder to become directorate AOs with longer term potential of reaching the top echelons of the civil service, may find themselves disadvantaged following the introduction of the new government structure. While the clock cannot be turned back, it behoves the Government to address properly the actual or even perceived diminution in the importance and role of the civil service. Any such erosion will affect adversely civil service morale and aspirations, leading to the less efficient operation of the Government.

9. Care should therefore be taken to ensure that the further development of the Political Appointment System will not aggravate the situation. The Commission proposes the following measures –

- (a) the Government, while expanding the Political Appointment System, should also reiterate its determination to keep the civil service system intact, and quash any speculations that the further development of the System would undermine the effectiveness and morale of the civil servants, that the Government would not be able to attract capable and aspiring young people to join the civil service or that the quality of the civil service could not be sustained in the long run; and
- (b) the civil service, led by the SCS, should strive to work in effective partnership with the political appointees. Senior civil servants, particularly those of the AO Grade, should be encouraged to embrace and adjust to the changes positively. The opportunity should also be taken to review and reinforce the functions of the civil service, and to continue with the reforms to further improve public sector productivity and efficiency.

Civil service establishment

10. The proposed addition of two tiers of political appointees is intended partly to provide stronger support to the POs for carrying out political work, so that they will be in a better position to meet the demands of people-based governance. The creation of these political positions is also aimed at providing a new channel for public-spirited individuals to acquire practical knowledge of government operations and nurture their political skills in the interest of Hong Kong's long-term constitutional development (paragraph 2.02 of the Consultation Document). The proposed additional political layers will not be created at the expense of the civil service (paragraph 2.05(c) of the Consultation Document).

11. The Commission holds the firm view that any suggestion of creating the additional political positions at the expense of civil service jobs must be strongly refuted, as otherwise it will be tantamount to inviting the political system to encroach on the civil service system. Furthermore, the new political appointees, apart from having a full portfolio of a mix of work and training, will generate extra demands on the civil service. They will request civil servants to prepare and provide information and data, including internal analyses and papers, and to attend meetings held by them to discuss the advice being put to POs (paragraph 4.13 of the Consultation Document). For those who have no background of public administration, they will also demand more time of the civil servants in coaching them on Government operations. It is not realistic to expect that the workload of the civil servants would be reduced following the creation of the additional political tiers.

Civil service morale

12. The DDs of B and As to D are not civil servants. They can enter the Government by direct appointment, and will leave the Government in accordance with the terms in their contracts which are different from those applicable to civil servants (paragraph 3.03 of the Consultation Document).

13. There is currently a robust civil service system with appointments and promotions being made on the basis of merit. The appointment of the DDs of B and As to D will not be subject to such vigorous procedures and can be tied simply to the appointees' political affiliations. The morale of the civil service in the face of the direct appointment of such senior positions will need to be carefully managed. The Commission, on its part, will continue to ensure that the civil service system, including its core

values, its merit-based appointment procedures and its impartial disciplinary mechanism, will remain intact despite the wider political developments.

Possible drain of civil service talents

14. The proposal to further develop the Political Appointment System would allow civil servants aspiring to a political career to leave the civil service to take part in politics (paragraph 1.02 of the Consultation Document).

15. Judging from the experience of the past four years, it is possible that a substantial number of the PO positions will continue to be occupied by former top civil servants as they have intimate knowledge of and experience in Hong Kong's public administration. Should such a trend continue and the drain of quality civil servants be extended to the lower levels with the proposed two additional tiers of political appointees, a further thinning-out of the civil service at the directorate level would result. To prepare for such a development, the Commission considers that it will be necessary for the Administration to train up civil servants faster and in a structured manner to meet the succession problems at different directorate tiers of the civil service hierarchy. To minimize the thinning-out effect, the Government should be cautioned against trawling the top echelons of the civil service all at the same time.

Duplication and division of responsibilities between the new political appointees and the civil service

Duplication of responsibilities

16. As set out in the Consultation Document, the POs, the DDs of B and As to D constitute the political team, while civil servants carry out the administrative and executive tasks of the Government (paragraph 3.03 of the Consultation Document). The DDs of B are responsible for providing political input to the POs in setting policy objectives and priorities, formulating policy and legislative initiatives to achieve agreed objectives and priorities, scheduling the roll-out of these policies and legislation, and mapping out overall strategies to secure public support of these initiatives. They also coordinate with other bureaux/departments on cross-bureau issues (paragraph 3.07 of the Consultation Document). Civil servants assist POs in formulating their policies, in carrying out their decisions and in administering public services for which they are responsible (paragraph 4.11 of the Consultation Document). In the area of policy formulation, civil

servants should continue to develop proposals on policy initiatives, assess their full implication, and offer frank and objective advice and analysis on policy options. They should continue to comment on the political realities within which the policy options will operate and advise POs on the possible political consequences of adopting or not adopting a particular course of action (paragraph 4.16 of the Consultation Document).

17. The Commission notes the apparent overlap of work between the political tier and the civil service. The question of whether the civil servants and the political appointees should have completely different areas of work does arise. The Commission considers that ideally the responsibilities of the civil servants and the political appointees should be compartmentalized. It also notes that in reality some overlap, particularly in the formulation of policies and cross-bureau coordination, is unavoidable. The Commission suggests that the Government should acknowledge this right from the start, emphasizing that such duplications are expected as their dual participation is meant to serve their respective roles as public administrators and political appointees.

Clear division of basic lines of responsibilities

18. To ensure organizational efficiency, and to minimize misunderstanding between the political appointees and the civil servants, the Commission considers that clear parameters should be set on what each team can and cannot do. Proper job descriptions of the DDs of B and As to D as against those of senior civil servants with whom they closely interact should be drawn up. There should be a clear delineation of their respective basic division of responsibilities and a caution that they must not cross over the dividing lines. For example, it should be clearly spelt out that unlike the political appointees, civil servants, who are politically neutral, must not be involved in party politics or electioneering for a political candidate, and they are also not expected to strike political deals. It should also be emphasized that civil servants are expected to play the role of public administrators and therefore the political appointees should neither direct the running of a department nor be involved in the execution of any policy as these are the primary responsibilities of the civil servants.

Political lobbying work

19. The additional layers of political appointees are required to undertake the full range of political work and to cover liaison and dealings with political parties and other stakeholders on legislative and other policy

issues; to underpin POs and, where appropriate, deputise for them; and to present a more comprehensive career path to individuals who want to serve Hong Kong by entering politics (paragraph 2.06(b) of the Consultation Document).

20. The Commission has deliberated carefully whether the political appointees should be primarily responsible for political lobbying work but assisted by civil servants or the political appointees should be wholly responsible for such work. The Commission concludes that the appointment of the additional two tiers of political appointees can be justified mainly on the basis that such appointment is required to take up the extra political work required to support the POs. With such appointment, civil servants should retreat from the political fray and maintain an absolute degree of political neutrality. They should continue their traditional role as public administrators and take on the new role of training the political appointees in understanding the operations of the Government. They should also continue to help explain to the Legislative Council and the community Government policies, but the securing of votes for the passage of a bill or in support of a policy should be the responsibility of the political appointees.

21. The Commission, however, considers that whether or not the political work could be taken up entirely by the political team would depend very much on the experience and readiness of the political appointees. It is possible that not all political appointees can readily undertake the entire political role on first appointment especially during the early stages of the new system. To address such a concern, some overlapping of the political role by the political appointees and civil servants in the early stages of the transition would be acceptable but only on the premise that such work should eventually be the sole responsibility of the political appointees.

Line of command and related considerations

Line of command

22. The Consultation Document envisages that after the appointment of the DDs of B and As to D, civil servants should continue to report direct, and enjoy direct access, to POs through their Permanent Secretaries (PSs). DDs of B and As to D should have no direct line of command vis-à-vis PSs who will, for the purpose of organizational structure and performance appraisal, continue to report to POs. However, political appointees may convey to civil servants the views and work priorities of POs, request civil

servants to prepare and provide information and data including internal analyses and papers and hold meetings with civil servants to discuss the advice being put to POs (paragraph 4.13 of the Consultation Document).

23. The Commission notes that the appointment of the additional tiers of political appointees will pose a challenge to the traditional line of command within the civil service, as DDs of B and As to D have no hierarchical relations with the civil servants, and yet carry the authority of the POs. Clear lines of command applicable to the political tier and the civil service must be drawn to ease the concern of the civil servants in giving their frank and objective opinions in support of the work of the political appointees. For example, it should be clearly stated that the PSs should have unrestricted access to the POs and should report directly only to the POs. It is important to remember that for the Political Appointment System to work, mutual trust and teamwork between the political tier and the civil service must be established.

Performance management

24. DDs of B will deputize for POs during the latter's temporary absence (paragraph 3.07 of the Consultation Document). It is envisaged that the political tier should not be involved in issues affecting civil servants' career such as appointment, promotion and discipline, though their views will be sought as an input to civil servants' performance appraisals where appropriate. The Public Service Commission will continue to ensure the impartiality and fairness in the management of the civil service (paragraph 4.21 of the Consultation Document).

25. The Commission believes that the existing performance management system of the civil service must be preserved and not be modified for political considerations following the expansion of the political tier. As a safeguard, the DDs of B should not be asked by the POs to comment on the performance of PSs. It is, however, accepted that the views of the DDs of B and As to D may be sought as an input to the performance appraisals of the relevant civil servants other than PSs. But the weighting to be attached to the input from these political appointees on a civil servant's performance appraisal should be clearly defined to prevent the perception of a de-facto supervisor/subordinate relationship between the two parties.

Appeal channel

26. A channel is provided for a civil servant to discuss and escalate

his concern about a request from a DD of B or A to D through his PS to the PO or the SCS, and finally up to the Chief Executive (CE) (paragraph 4.15 of the Consultation Document).

27. The Commission supports the proposed appeal channel. The avenue of redress which includes the SCS, who must also be a civil servant for reasons and considerations as elaborated in paragraphs 32 to 38 below, should address the concern that the interests of civil servants will not be affected by political considerations. A separate “watchdog” independent of the Government to assume the role of redressing any concerns/grievances from civil servants is therefore not considered necessary. It should, however, be made clear of the arrangements applicable to the redress mechanism as follows –

- (a) when there are conflicts between the political appointees and the civil servants, they should firstly be resolved between the PO and the PS; and
- (b) failing (a) above, for those conflicts relating to human resource management and the core values of the civil service, they should be escalated and drawn to the attention of the SCS. For those conflicts relating to policy issues, they should be raised with the Chief Secretary for Administration and Financial Secretary at the appropriate policy group meeting.

28. The Commission presently receives direct representations from civil servants in relation to matters falling within its purview of appointment, promotion and discipline. If an individual civil servant chooses to submit representations to the Commission on such matters against a political appointee, the Commission, under Section 6(1)(c) of the Public Service Commission Ordinance^{Note 4}, is obliged to deal with such representations. This is an additional safeguard against any political interference in the appointment, promotion and discipline of the civil service.

“Revolving door”

29. The Consultation Document proposes that civil servants aspiring to a political career can leave the civil service to take part in politics.

^{Note 4} Section 6(1)(c) of the Public Service Commission Ordinance (Cap 93)

(1) The Commission shall advise the Chief Executive regarding –

(c) such representations from an officer as may be referred to it by the Chief Executive or made to the Commission in accordance with government regulations.

Should he wish to serve in the civil service again, he would have to go through an open and competitive recruitment process in the usual way. This mechanism strikes the right balance between developing political leadership for Hong Kong on the one hand, and safeguarding against the risk of confusion of roles and the undermining of the impartiality of the civil service (paragraph 4.22 of the Consultation Document). The Government explains that it also avoids the problems of a civil servant having to serve, upon returning to the civil service after a political appointment, a future government of perhaps a different political persuasion.

30. The Commission notes that some civil servants may find the absence of a “revolving door” provision unattractive to switch to a political career. However, the Commission supports the rejection of such a provision as otherwise the distinction between the political appointees and civil servants will become blurred over the years, and this will affect the political neutrality of the civil service in the longer run. Furthermore, the flexibility accorded to political appointees may not be fair to those civil servants who will be asked to vacate particular posts in order to allow for the political appointees’ return, not to mention the disruption to succession planning in the civil service.

31. Following this rationale, the Commission finds it odd that the “revolving door” arrangement, which now exists exceptionally for the incumbent of the SCS position, is proposed to continue. The Commission’s views on this subject are set out in paragraphs 32 to 38 below.

Position of the SCS

32. The Consultation Document proposes that the SCS should remain a member of the political tier, on par with other POs and be accountable for matters within his portfolio. He is not obligated to resign or retire from the civil service before taking up the position. He may choose to do so during his term as the SCS, or he may choose to revert to the civil service immediately upon termination or completion of his term of appointment as the SCS if he has not yet reached the retirement age specified for civil servants (paragraphs 4.23 and 4.25 in the Consultation Document).

33. The Commission considers that the public and service-wide perception of a politically impartial civil service will be tinted by the proposed hybrid term of appointment of the SCS. The criticism that the unique arrangement for the SCS position is not in keeping with the principle of a politically impartial civil service should not therefore be dismissed

lightly. The caution in the Consultation Document that whoever filling the SCS position should refrain from taking part in election politics and other electioneering activities simply does not remove the doubts on his political impartiality so long as he remains a political appointee and, in particular, if he retains the SCS position on resignation/retirement from the civil service during his term of office.

34. The Commission believes that it is important to have a clearly identified head of the civil service to provide the “backbone of the Government” with the leadership and the continuity, as well as the focal point of interface between the civil service and the political tier in the Government structure. This position should be reserved for the civil service and selected from amongst serving top civil servants with known good track record and sufficient seniority to command the respect of the civil service. The SCS who retains his status as a civil servant will command the respect of the civil service, will be perceived as being able to help protect the integrity of the civil service system and to defend more adequately the interests of the civil service.

35. In keeping with the spirit of the Accountability System that the SCS should also be accountable for the success or failure of civil service-related policies and matters, the Commission suggests that his appointment should be made on the condition that it would be his last appointment in the civil service. His tenure will coincide with that of the CE. If he is due to retire on reaching his normal retirement age before the CE’s term of office ends, his service should be extended in order that his appointment as SCS could tie in with the completion of the term of office of the CE. If the SCS has not yet reached his normal retirement age on completion of the usual term of office of the CE and if he is not re-appointed to serve as SCS for another term by the incoming CE, he should still be required to leave the service to satisfy the condition that his appointment as SCS should be his last civil service appointment. His pensionable service should be suitably compensated for the service forgone. But given the seniority expected of the selected officer, only a short gap of service forgone is anticipated and hence the compensation payable should not be significant.

36. The Commission considers it sensible to reserve the job of the SCS for the civil service and to make the appointment of SCS on the condition that it would be his last civil service appointment. The SCS is the head of the civil service and the PSs report to him on civil service management issues. It will be untenable to create a reversed supervisor-subordinate relationship if, when he steps down from the position

of SCS, he is made a PS and report to a former subordinate who is escalated to the position of SCS.

37. Separately, to ensure that the SCS will have direct access to the CE and his status will be on a par with other POs, the Commission further suggests that the SCS should continue to be appointed as a PO, and like the other POs, a Member of the Executive Council.

38. Any civil servant appointed to be the SCS may of course be subsequently selected by the CE to hold a different PO position as a political appointee. His career in the civil service ceases with his SCS job.

Appointment of DD of B and A to D to the Civil Service Bureau (CSB)

39. The DDs of B will be appointed by the CE on the recommendation of Ds of B while As to D will be appointed by Ds of B with the consent of the CE (paragraph 3.10 of the Consultation Document).

40. The Commission considers that if the SCS should remain a civil servant and be detached from the political tier, it would not be necessary for him to have the intermediate tiers of political appointees. A limited area of work of the CSB may on occasions demand political lobbying or even the striking of political deals. An example is the handling of pay adjustments or pay disputes. Should such service-wide issues require the lobbying for the support of political parties, it would not be unreasonable to involve the other POs, including the CS and the FS, and if necessary, the CE, in mobilising the requisite political support in the overall interest of Hong Kong's governance. Such occasions should be rare.

Conclusion

41. The Commission's overriding concern is that civil servants should work in concert with political appointees for the effective governance of Hong Kong. The comments and suggestions in this submission are intended to achieve an amicable interface between the new political appointees and the civil servants so that the further development of the Political Appointment System would not generate mistrust or conflicts that will put services to the public at stake.

Public Service Commission
26 October 2006