

Open Agenda

Copy No:

No: 42/2020

Memorandum for Executive Council

SUBJECT

COUNCIL COMMITTEES ORDERS AND DIRECTION

Memorandum by the Attorney General

ADVICE SOUGHT

- 1) **Executive Council is asked to consider and advise on whether:**
 - (i) **The Council Committees (Rules of Procedure) (Amendment) Order, 2020, (Annex A) should be approved and come into effect on publication.**
 - (ii) **The Council Committees (Constitution) (No. 2) (Revocation) Order, 2020, (Annex B) should be approved and come into effect on publication.**
 - (iii) **The Direction - Appointment of Council Committees and Direction to Council Committees Regarding Responsibility (Annex C) - should be approved and made.**

**BACKGROUND &
CONSIDERATIONS**

- 2) The attached Orders and Direction have been drafted following instructions from the Governor and Committee Chairs/Elected Members of Executive Council.
- 3) The changes made to Council Committees by the Orders and Direction are detailed below.

Change in Structure of Orders and Direction

- 4) Section 58 of the Constitution enables the Governor to appoint Council Committees for general or specific purposes and by directions in writing to charge a Committee with responsibility for any subject or department of government (except those in sections 44(1) (a), (b), (c), (d) or (e) of the Constitution (defence, external affairs, internal security, public service appointments and the administration of justice)).
- 5) Section 59 of the Constitution allows the Governor by Order to make rules of procedure for Council Committees.
- 6) Section 58 is by written direction while section 59 is by Order. At present both have incorrectly been made by Orders. The section 58 Order is therefore repealed and

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replaced by a direction while the section 59 Order is amended.

- 7) A written direction does not have the same publication rules as an Order. However, so that the functions of Committees are clear and accessible, it is proposed that the section 58 written direction is publicised as a schedule to the section 59 Order.

Creation of Education and Employment Committee (Direction)

- 8) In order to give a more equal balance of work between committees Employment is moved from SCDC and transferred to the newly named Education and Employment Committee.

Addition of Air Access to EDC (Direction)

- 9) Air Access is added to the portfolio of EDC. At present Air Access is not allocated to a Committee.

Creation of the Finance Committee (Direction)

- 10) Members have requested the creation of such a committee which will have policy responsibility for finance and audit. The Committee has been considered to only be workable if it is made up of the five Committee Chairs along with the Financial Secretary. For the Committee to operate on this basis all Elected Members would need to be in agreement that they will vote a current Committee Chair as the Finance Committee Chair. This would work as a similar convention to the agreement between Elected Members that only Executive Council members are voted as Committee Chairs.

Changes to rule for Minutes (Rule 8)

- 11) The time limit for Committee chairs to send draft minutes to Committee Members is extended from two days to five days. In addition, the requirement to send draft minutes to *ex officio* members of the Legislative Council is removed. As with all Legislative Council Members *ex officio* members will still receive completed and signed minutes.

Mechanism to address delays in Committee decisions (Rule 10A)

- 12) The new Rule 10A addresses the situation where a Committee is unable to make a decision and a reasonable amount of time has passed. It allows Committee Chairs, subject to specified procedures, to make the determination

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themselves. The rule also allow members of the Committee, who disagree with the Chairs decision, to appeal to the Governor for the decision to be quashed. This new mechanism is independent of the rights of Executive Council to themselves consider, outside of a Committee recommendation, matters of policy that are of such importance or are cross cutting and legislative powers delegated to them.

Governor to be consulted on international shipping or international air access (Rule 17A)

- 13) This recognises that policy involving shipping or air access often involves international considerations. When there are international considerations this will touch on the Governor’s special powers for External Affairs. Under rule 17A when these matters have an international dimension the Governor must be consulted and he must approve any determination.

Chair may act on Committee’s behalf between meetings (Rule 17)

- 14) At present rule 17 allows the Chair to “take action on the Committee’s behalf on matters which are of a routine nature or are of such urgency that it is impossible to convene a meeting by the time within which it might be necessary for the Chair to act”. This is amended so the second part states “are of such a nature that it is impracticable for a meeting of the Committee to be convened by the time within which it might be necessary for the Chair to act”. This change will allow for Government to act more quickly and efficiently when needed. The Committee Chair as before must report all acts under this rule at the next Committee meeting.

FINANCIAL IMPLICATIONS

- 15) No direct financial implications.

ECONOMIC IMPLICATIONS

- 16) No direct economic implications

CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

- 17) N/A

PUBLIC/SOCIAL IMPACT

- 18) No direct impact.

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- ENVIRONMENTAL IMPACT** 19) No environmental impact.
- PREVIOUS CONSULTATION/ COMMITTEE INPUT** 20) The Orders and Direction have been approved by the Governor and Committee Chairs/Elected Members of ExCo informally.
- 21) Following preparation of the draft Orders and Direction Members of Legislative Council met informally on 29th May to discuss them. All Members present were of the following views:
- i. That under rule 8(1) there should be 7 days for the preparation of draft minutes.
 - ii. That the subject area “employment rights” should be changed to just “employment” in the Committee Responsibilities section of the Direction. This is to reflect the full scope of the subject.
- 22) Two members were of the view that the new Finance Committee in addition to all Committee Chairs should also include further members of the Legislative Council.
- PUBLIC REACTION** 23) A positive public reaction is expected as the Orders and Direction demonstrate the review and updating of the Council Committee system.
- PUBLICITY** 24) The decision will be covered in the radio briefing following the meeting.
- SUPPORT TO STRATEGIC OBJECTIVES** 25) This paper supports the *Effective, Efficient and Accountable Public Sector* goal and Strategic Objective 6.1 *Ensure effective governance through efficient and effective systems and processes.*
- LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS** 26) N/A
- OPEN/CLOSED AGENDA ITEM** 27) This paper is recommended for the open agenda.

ATC

Corporate Support
Corporate Services

29th May 2020

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