

研究摘要

1. 一般而言，對離任政府人員施加的限制可分為兩類：分別是對離任政府人員所進行的政治活動及商業活動施加限制。這些限制旨在確保政府人員堅守某些操守標準，以維持公眾對政府的信心，並保存政府的誠信。

對離任政府首長施加的限制

2. 法國及美國均無制定成文規則，規管離任政府首長所進行的活動。然而，在該兩個國家中，傳媒的批評、公眾不友善的反應及慣例似乎有阻嚇離任政府首長作出不誠信行為之效。
3. 英國的《大臣守則》規定，政府首長在離任後的兩年內如有意接受任何機構聘任，須向商業聘任諮詢委員會徵詢意見。英國的離任政府首長一般依循《大臣守則》行事。
4. 在加利福尼亞州及安大略省，對離任政府首長施加的限制均以法規為依據。這些限制規管離任政府首長與政府之間的業務往來，以及離任政府首長日後從事的工作。

對離任政府高級人員施加的限制

5. 法國雖然並無法例規管政府部長離任後所進行的活動，卻有法令規管部長辦公廳成員在離任後 5 年內所進行的活動。
6. 在英國，對離任大臣施加的限制與對離任政府首長施加的限制相同。雖然英國並無規定大臣必須遵守《大臣守則》所訂的規則，但他們一般按照該等規則行事。
7. 美國、加利福尼亞州及安大略省均有法例訂定政府高級人員離任後所受到的限制。

對離任高級公務員施加的限制

8. 除安大略省外，所研究的其他 4 個國家和地區均訂有成文規則，規

管離任高級公務員所進行的活動。就這方面而言，本部並無接獲任何有關安大略省的資料。

為離任政府高級人員提供的福利

9. 所研究的 5 個國家和地區均有為離任政府高級人員提供各種福利。最常見的福利為退休金。雖然在英國及安大略省，導致首相/總理及部長離任的因素(例如辭職、退休或革職)不會影響他們離任後享有福利的權利；但在美國，總統和經政治任命的官員如被彈劾而且罪名成立，或因行為不當而被免職，則可影響他們離職後享有福利的權利。就這方面的安排而言，本部並無接獲任何關於法國及加利福尼亞州的資料。本部亦無接獲資料，顯示在所研究的 5 個國家和地區內，有因素影響高級公務員離任後享有福利的權利。

與離任後的限制有關的機制

10. 在法國，政府須就部長辦公廳成員及高級公務員在離職政府後 5 年內擬從事的工作是否適合一事，諮詢道德操守委員會。然而，最後決定由政府作出。
11. 在英國，離任政府首長及大臣會按照慣例，就離任後兩年內擬接受的聘任向商業聘任諮詢委員會徵詢意見。然而，即使他們不依從諮詢委員會的意見行事，諮詢委員會亦不會對他們採取任何行動。英國的高級公務員在離開政府後兩年內則須獲得政府批准，才可從事任何工作。
12. 美國、安大略省及加利福尼亞州並無規定政府人員須就其工作計劃申請批准。然而，如離任政府人員作出某些行為，違反有關法例對他施加的限制，則須處以罰款及／或監禁，或接受有關法例所訂定的其他制裁。

PART 6 - ANALYSIS**12. A Comparison of Post-Office Restrictions for Senior Members of Government Among Hong Kong and Countries and Places Studied**

12.1 Tables 16 to 19 compare post-office restrictions for senior members of government among Hong Kong and the five countries and places studied.

Table 16 - A Comparison of Post-Office Restrictions for Former Heads of Government

Countries / Places	Post-Office Restrictions	Restriction Period
Hong Kong	~ Standing for elections to the Head of Government after serving 2 consecutive terms	~ Not applicable
France	~ Not applicable	~ Not applicable
The United Kingdom	~ Future employment	~ 3 months to 2 years
The United States	~ Standing for elections to the Head of Government after serving 2 terms	~ Not applicable
California	~ Standing for elections to the Head of Government after serving 2 terms;	~ Not applicable
	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year
Ontario	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year

Table 17 - A Comparison of Post-Office Restrictions for Former Ministers / Political Appointees / Elected Officials

Countries / Places	Post-Office Restrictions	Restriction Period
Hong Kong	~ Not applicable	~ Not applicable
France ¹	Members of ministerial cabinets: ~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	Members of ministerial cabinets: ~ 5 years
The United Kingdom	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 3 months to 2 years
The United States	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year / lifetime
California	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year
Ontario	~ Future employment; and ~ Making contracts with the government or seeking to influence government decisions for compensation	~ 1 year

Remark:

1. We have not found any legislation governing activities of former French ministers.

Table 18 - A Comparison of Post-Office Restrictions for Former Senior Civil Servants

Countries / Places	Post-Office Restrictions	Restriction Period
Hong Kong	~ Future employment	~ Officers who are pensioners: 2 to 3 years; ~ Officers who are on agreement terms: 1 year
France	~ Future employment; ~ Making contracts with the government or seeking to influence government decisions for compensation; ~ Activities specified under the law; and ~ Imposition of behavioural conditions	~ 5 years
The United Kingdom	~ Future employment; and ~ Imposition of behavioural conditions	~ 2 years
The United States	~ Future employment; and ~ Switching sides rules for 1 year or lifetime	~ 1 year to 2 years / lifetime
California	~ Future employment; and ~ Certain activities specified under the law	~ 1 year / lifetime
Ontario	We have not received any information	We have not received any information

Table 19 - Deterrence / Sanctions Against Non-Compliance with Post-Office Restrictions

Countries / Places	Heads of Government	Ministers / Political Appointees / Elected Officials	Senior Civil Servants
Hong Kong	Not applicable	Not applicable	Pension suspension
France	Hostile public reactions and media comments	Fine and imprisonment	Fine and imprisonment
The United Kingdom	Relationship between the government and the company in which the former head of government concerned intends to join will be affected	Relationship between the government and the company in which the former senior member of government concerned intends to join will be affected	We have received no information
The United States	Hostile public reactions and media comments	Fine and/or imprisonment	Fine and/or imprisonment
California	Several possible outcomes: ~ a settlement agreement; or ~ an administrative fine; or ~ other appropriate action determined by the Fair Political Practices Commission	Several possible outcomes: ~ a settlement agreement; or ~ an administrative fine; or ~ other appropriate action determined by the Fair Political Practices Commission	We have received no information
Ontario	If he remains a member of the Ontario Provincial Parliament: ~ no penalty; or ~ a reprimand; or ~ suspension of member's rights to sit and vote in the Legislative Assembly; or ~ expulsion from the Parliament If he is no longer a member of the Ontario Provincial Parliament: ~ repercussions for the company who employs him and is attempting to do business with the Ontario government	If he remains a member of the Ontario Provincial Parliament: ~ no penalty or ~ a reprimand; or ~ suspension of member's rights to sit and vote in the Legislative Assembly; or ~ expulsion from the Parliament If he is no longer a member of the Ontario Provincial Parliament: ~ repercussions for the company who employs him and is attempting to do business with the Ontario government	We have received no information

13. Sources of Authority of Post-Office Restrictions

13.1 In California and Ontario, there is legislation governing activities undertaken by former heads of government. However, there is no such legislation governing activities undertaken by former heads of government in France, the UK and the US. They are free to participate in any political or commercial activities. Nonetheless, there is always an expectation that heads of government should conduct themselves in a manner that does not detract from the positions they held before, during and after leaving public office but this would be a matter of individual judgement.

13.2 Except in France where there is no written rule governing activities undertaken by former senior members of government, the other four countries and places studied all have written rules in the forms of statute or codes which govern activities of former senior members of government.

13.3 There are explicit written rules restricting activities undertaken by senior civil servants after leaving office in the other four countries and places studied, except Ontario on which we have not received any information in this respect.

14. Enforcement of Post-Office Restrictions

14.1 In France, the UK and the US, post-office restrictions for former heads of government are not enforceable by statute but by convention and/or an advisory system. According to the Nolan Report¹ (1995), a system enforceable by convention or an advisory system may still achieve the necessary liberty of movement of individuals as well as secure public confidence and ministerial compliance, without the complication of a statute.²

14.2 The effectiveness of this system hinges on whether the subsequent appointments taken up by former members of government will be reported in public. This is because the threat of hostile public reaction and media comment can be a powerful disincentive to former members of government from engaging in activities which invite suspicion of impropriety. However, in the three countries studied, only the UK has put in place a mechanism which announces to the public the advice given by the Advisory Committee on appointments taken up by former members of government.

15. Types of Post-Office Restrictions

15.1 Post-office restrictions can roughly be classified into two types: one is to restrict all kinds of employment for a certain restriction period, whilst the other is to restrict a particular kind of employment during the restriction period. The UK has imposed the first type of post-office restrictions whilst the other four countries and places studied have imposed the latter type. It appears that the aims of these post-office restrictions are threefold:

¹ In 1994, the then UK Prime Minister, John Major, invited Lord Nolan to become the Chairman of the Committee on Standards in Public Life to examine concerns about standards of conduct of all holders of public office. In 1995, Lord Nolan published the first report of the Committee on Standards in Public Life.

² Nolan, *Standards in Public Life. First Report of the Committee on Standards in Public Life, Volume 1: Report*. May 1995.

- (a) to strike a balance between the desirability of former senior members of government being able to move into business and the need to avoid suspicion of impropriety over how they should behave, and not to discourage high-calibre prospects from joining the government, i.e. the 'public interest' principle;
- (b) to ensure that decisions made by senior members of government while in office would not be affected by their prospects of employment after leaving government, i.e. the 'conflict of interest' principle; and
- (c) to ensure that the disclosure of sensitive information (except for information protected by the legislation relating to official secrets) possessed by a former member of government may not give the company he intends to join an unfair advantage over its competitors, i.e. also the 'conflict of interest' principle.

15.2 In the US and California, a lifetime ban on 'switching sides' is imposed on former senior members of government. This post-office restriction is designed to prevent pecuniary gains by former senior members of government due to a prior relationship with their former offices (the 'revolving door' principle).

15.3 In the five countries and places studied, post-office restrictions imposed are of varying duration, ranging from one year to five years. Very often, the duration of the restriction period reflects the social, political and economic development in the countries and places concerned.

15.4 Some people view that a one-year restriction period is equivalent to a cooling-off period when a member of government may not have to change his career, while a five-year restriction period is a commitment to essentially changing careers.³ It has been recognized that, in the public interest, former members of government should be free to put their skills and general experience in good use in the private sector, provided that there is no cause for any suspicion of impropriety. Perhaps this is best summarized by the Nolan Report (1995)⁴, "*Any waiting period [restriction period] would be insufficient in a case of genuine corruption. Waiting periods are not punishments, but a means of maintaining public confidence*".

³ Transcript of the forum, "The Ramifications of the Revolving Door: The Outgoing Government Official" organized by the American Enterprise Institute on 14 February 2001.

⁴ Nolan, *Standards in Public Life. First Report of the Committee on Standards in Public Life, Volume 1: Report*. May 1995.

16. Implications for Hong Kong

16.1 To sum up:

- (a) there are post-office restrictions on commercial activities for former heads of government in the UK, California and Ontario;
- (b) there is a post-office restriction on the number of terms a head of government may serve in the US, California and Hong Kong;
- (c) there are post-office restrictions for former ministers, political appointees and elected officials in all of the five countries and places studied; and
- (d) former senior civil servants in France, the UK, the US, California and Hong Kong are subject to written post-office restrictions.

16.2 Having examined the underlying principles of post-office restrictions, and both overseas and Hong Kong's experience and practices, the Panel may wish to consider the following points:

- (a) whether post-office restrictions for the Chief Executive should be introduced as in some of the countries and places studied;
- (b) whether post-office restrictions should be underpinned by statute as in California and Ontario or laid down in the form of guidelines as in the UK or enforced by convention as in France or the US;
- (c) whether the scope of post-office restrictions should cover the number of terms a head of government may serve and his freedom to seek employment after leaving office as in some of the countries and places studied, or whether it should cover other aspects;
- (d) whether there should be an independent authority to assess if any conflict exists between the proposed activity and the prior responsibilities of the Chief Executive, and whether the authority should be advisory only as in all of the five countries and places studied; and
- (e) what sanctions are to be imposed if there are violations of post-office restrictions.