

Discussion Paper

21 March 2005

## **Legislative Council Panel on Public Service**

### **Review of Policy on Post-service Employment of Former Directorate Civil Servants**

#### **PURPOSE**

This paper sets out the findings and preliminary proposals from Civil Service Bureau's review of the policy on post-service employment of former directorate civil servants.

#### **NEED FOR REVIEW**

2. The objective of post-retirement employment control is to ensure that former civil servants will not enter into business or take up employment which may constitute conflict of interest (real, potential or perceived) with their former government duties or cause negative public perception embarrassing the Government and affecting the image of the civil service.

3. The existing policy and arrangement governing post-retirement employment were put in place in 1987. Under the current control framework, retiring or retired pensionable officers must seek prior permission to undertake outside employment during the control period (three years from retirement for AOSGA1 officers and two years for all other officers), if the principal part of the business, business of partnership or company, or employment is carried on in Hong Kong. In addition, since January 1997, officers on agreement term who are ranked at Directorate Pay Scale D3 and above are also required to seek approval before they take up employment in the same field as their government service and where there is a possible conflict of interest, within one year of completion of their agreement. All applications from directorate officers are submitted to the Advisory Committee on Post-retirement Employment for advice before putting to the Secretary for the Civil Service (SCS) for decision under delegated authority.

4. The current framework does not cover agreement officers remunerated below D3, officers appointed on new terms, and pensionable officers who resign from the Government. The coverage of staff needs to be reviewed and extended in order to meet the policy objective of post-service employment control in full.

5. Members of the public and Legislative Council (LegCo) have expressed concern from time to time on the adequacy of the existing control measures; the areas of concern include whether civil servants should be permitted to undertake outside employment during final leave, the length of sanitization period, and the need for more transparency. This is not conducive to public confidence in the integrity and impartiality or a positive image of the civil service.

6. In May 2004, amidst concerns by the public and LegCo Members about the effectiveness of the policy, SCS undertook to conduct a comprehensive review of the policy. The original plan was to complete the review and brief the Panel on the review findings in May 2005. In view of the Panel's wish to have an early opportunity to discuss the matter, SCS agreed at the Panel meeting on 21 December 2004 to expedite the review and advance the discussion with the Panel to the forthcoming meeting on 21 March 2005.

## **THE REVIEW**

7. The aim of the review is to make improvements to the existing regime governing post-service employment to better safeguard against conflict of interest and to meet the community's high and rising expectation of the integrity of the civil service. The review is guided by the principles of lawfulness, reasonableness and fairness. It seeks to balance various factors, such as former civil servants' right to pursue employment after leaving government service, the community's aspirations regarding the integrity and impartiality of the civil service, the former civil servants' continued contribution of their expertise and experience to the community, and the overriding need to maintain and enhance public confidence in the civil service system.

8. The risk of conflict of interest and negative public perception is generally higher in the case of directorate officers than non-directorate officers, and there have all along been differences in the arrangements for the two groups of officers, e.g. all applications from directorate officers are subject to the advice of the Advisory Committee on Post-retirement Employment but not those from

non-directorate officers. Indeed the public and LegCo are particularly concerned about the post-service employment of directorate civil servants. We have therefore focused on the arrangement for directorate officers in the current review, and will look into the arrangement for non-directorate civil servants, if necessary, at a later stage.

9. In considering the direction of our review, we have also looked at the regulatory systems and practices of the United Kingdom, United States, Canada, Australia, France and Singapore. Indeed the control regimes in these places vary considerably in terms of the scope and stringency rendering direct borrowing and direct comparison with our regime inappropriate. The information gathered however provides a useful reference. A summary description of the practices of the aforementioned places is at Annex A.

## **FINDINGS AND PRELIMINARY PROPOSALS**

10. The key findings and our preliminary proposals are highlighted in the ensuing paragraphs. A more detailed comparison between the existing and proposed arrangements in tabular form is at Annex B.

### Policy Objective

11. We reaffirm that the policy objective is to ensure that former civil servants will not enter into business or take up employment which may constitute conflict of interest (real, potential or perceived) or cause negative public perception, without at the same time unduly restricting individual former civil servants' right to pursue further employment after leaving the Government.

### Coverage of Staff

12. The existing control regime covers only officers retired on pensionable terms and ex-agreement officers remunerated at D3 or above. In principle, all directorate civil servants should be covered by the regime i.e. including those appointed on new terms on or after 1 June 2000 upon their progression to the directorate level and all directorate agreement officers, irrespective of the circumstances under which they leave the Government i.e. retirement, contract termination or resignation. We have to accept, however, that given the different terms of appointment and different circumstances of various classes of officers (e.g. length of service), it would not be appropriate to subject all directorate officers to

exactly the same measures in regard to control period, sanitization and sanction, which are further discussed in the ensuing paragraphs.

#### Outside Work during Final Leave

13. Currently officers on final leave may be allowed to take up outside employment where there is no conflict of interest, on the grounds that they have ceased active service and no longer have access to government information. Such arrangement, however, has been increasingly questioned by the public and LegCo Members, as the officers concerned still receive full salary from the Government as civil servants. We need to address the dual identity problem and the negative public perception. We therefore propose that directorate officers on final leave will only be permitted to take up unremunerated or notionally remunerated work for charitable / other non-profit making bodies or public service, either on a full-time or part-time basis. The approving authority, however, may exceptionally give approval for paid employment during final leave under very special circumstances e.g. in cases where significant public interest is involved.

#### Geographical Scope of Activities Subject to Control

14. We do not see strong grounds or a pressing need to extend the prior approval requirement to business activities or employment the principal part of which is carried on outside Hong Kong at the present stage. The existing notification arrangement whereby directorate officers should inform CSB of paid employment undertaken outside Hong Kong enables the Government to review periodically and monitor the situation. We consider the existing arrangement sufficient and have not discovered any irregularity. But we will keep the matter under regular review and may propose changes as necessary.

#### Control Period

15. Currently officers on pensionable terms are subject to the prior permission requirement for two years after retirement, and for officers at AOSGA1 the control period is extended to three years. For agreement officers at D3 and above, the control period is one year (only in respect of employment in the same field as an officer's previous employment and where there is possible conflict of interest). To more fully achieve the policy objective and for parity, we propose that directorate officers on new permanent terms and directorate agreement officers with six or more years of government service should also be subject to a control period of two or three years, commensurate with their pensionable counterparts on

the same ranks. For agreement officers with less than six years of service, in view of their relatively shorter service period which entails relatively lesser exposure to government duties, we consider that there is a case to reduce the control periods by half unless otherwise advised by individual Heads of Grade.

### Approving Criteria

16. The key factors of considerations in vetting an application remain to be real, potential or perceived conflict of interest and public perception angle. The specific points to be borne in mind are set out under item 6 in Annex B. The approving authority would normally focus on the duties of an applicant in the last three years of his/her active service. In the case of a senior directorate officer or if the work handled while in service is of particular sensitivity, his/her duties prior to the three-year period may also be taken into account.

### Restrictions on Scope of Work

17. We propose to apply a set of standard restrictions on the scope of work (listed out under item 7 in Annex B) across the board in all cases of outside employment during final leave and/or control period, to better guard against conflict of interest and embarrassment to the Government. Currently, such restrictions are implicitly referenced in the vetting process. We see merits in setting out the restrictions expressly to prohibit an officer from taking up any work which is connected with his former government duties during the control period. Not only would this help cut down grey area, this would also facilitate enforcement as well as make it clearer to the officers concerned as regards the restrictions on the scope of work.

### Sanitization

18. Sanitization as a means to control post-service employment has the advantages of being highly effective, simple, well established and easily understood by the public. As reflected from the public's focus on the period of sanitization in individual cases and commentaries, sanitization plays a key part in sustaining public confidence in the system. Prohibition on paid outside work during final leave alone cannot ensure a reasonable break between an officer's active government service and outside employment, as the length of final leave varies from one officer to another.

19. At present, there is a minimum sanitization of six months for pensionable directorate officers and the period may be shortened or lengthened depending on the merits or circumstances of individual cases. To better guard against real, potential or perceived conflict of interest and to forestall negative public perception, we propose to lengthen the period of minimum sanitization for directorate civil servants retiring / retired on pensionable and new permanent terms to 12 months during which paid employment is prohibited. The approving authority may waive or shorten the period in exceptional cases where there are special considerations (e.g. significant public interest) and where there is clearly no real, potential or perceived conflict of interest. As a working guideline, the reduced sanitization period for paid employment should normally not be shorter than six months. As a general rule, exception of less than 12 months will not be given for paid employment with commercial organizations. A longer sanitization period than 12 months may be imposed having regard to the circumstances of a case.

20. As the circumstances of directorate agreement officers (e.g. length of service, post-service financial security) are less uniform, it is considered more appropriate to determine the sanitization period on a case-by-case basis.

21. Sanitization will normally be waived in all cases of unremunerated or notionally remunerated work for charitable / other non-profit making organizations or public service.

### Transparency

22. Hitherto, because of the statutory restriction on disclosure of personal data and as a matter of practice, we normally do not divulge information pertaining to individual cases to the public. This practice has constrained the Administration's ability to respond to queries on individual cases, thereby fuelling unnecessary speculation on the manner in which the applications had been processed and is not conducive to public trust in the system. To enhance transparency, we propose instituting an administrative system whereby CSB will disclose basic information (limited to last government post title of the officer, date of cessation of active service, identity of the outside employer, position/title of the ex-officer in the relevant company/organization, a brief description of his/her main duties, and restrictions/sanitization imposed on the employment and commencement date of the employment), in respect of all cases in which the applicant has taken up the approved employment. The disclosure requirement will be expressly made known to applicants at the time of application. The relevant

information is proposed to be made available for public inspection and be updated regularly.

### Monitoring

23. To facilitate and strengthen the monitoring of approved cases involving former directorate officers, we propose that in each case the applicant will be required to confirm in writing whether he/she has taken up the approved work and whether his/her prospective employer has been informed of the terms of approval including any sanitization or restrictions on the scope of work. He/she will also be required to update CSB annually on the status of his/her employment.

### Sanction

24. For officers appointed on pensionable terms, the sanction continues to be suspension of pension by virtue of the pension legislation and, where warranted, civil action may also be taken to seek injunction or sue for damage. For other officers, they will be liable to civil action taken against them for non-compliance. In addition, an officer and his/her employer will also be subject to Government and public criticism in the event of non-compliance with the terms of approval.

## **WAY FORWARD**

25. In accordance with the established mechanism, the staff sides and departmental management are being consulted on the preliminary proposals outlined in this paper. The Administration will take account of feedback from the staff sides and departmental management, as well as the views expressed by Members and the community on the preliminary proposals before reaching a final decision on the proposed changes. Our plan is to commence the operation of the revised system in the latter half of this year, applying to officers who cease active government service after the new system has been put in place.

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**Regulatory Practices in Other Places Regarding Post-service Employment of Civil Servants**

<b>Place</b>	<b>Nature of regulatory control</b>	<b>Restriction provisions</b>	<b>Sanction (if any)</b>
<b>United Kingdom</b>	Civil servants are subject to the Business Appointment Rules (BARs) which are not enshrined in legislation.	A civil servant is required to seek prior approval in the two years after he has left the service. Applications from senior civil servants are subject to approval by the Prime Minister on the advice of the Advisory Committee on Business Appointments.  Senior civil servants at the rank of Permanent Secretaries or the equivalent are subject to an automatic waiting period of three months.	The Civil Service Pension Scheme contains no provision for withholding pension where an individual acts in breach of BARs.  Government may in appropriate circumstances seek an injunction to stop a former employee from taking up an outside employment in breach of the rules. An effective sanction is that for senior civil servants, the Advisory Committee will make public its advice subjecting the employee to public criticism.
<b>United States</b>	The restrictions are set out in the US Code which is law made by the US Congress.	In general, the Code imposes a one-year time bar (after leaving the service) on former senior employees in making representational contacts with their former agencies on any matter.  In addition, very senior employees are subject to a one-year bar on representational contact with high-level officials in any agency.	Violation of the Code will lead to fine and/or imprisonment.

		In case of doubt, former employees may seek guidance from the US Office of Government Ethics.	
<b>Canada</b>	The restrictions are set out in the Conflict of Interest and Post-Employment Code for the Public Service, which is not a part of the Canadian law and provides for internal governmental guidelines to guide the conduct of federal public office holders and federal public servants.	In general, former civil servants are prohibited from engaging in proceedings to which the government is a party.  They are also not permitted, within one year after leaving office, (i) to accept appointments with an entity, (ii) make representations on behalf of any person/entity to a department, or (iii) give counsel concerning the programmes or policies of a department, with which they had significant official dealings during the one-year period immediately prior to termination of service.	Where the former employee obtains a contract with the government, the contract will be terminated; where the employee tries to lobby the government, the government will refuse cooperation. Pension will not be affected in the case of non-compliance.
<b>Australia</b>	Regulations are set out in the Australian Public Service Values and the Code of Conduct under the Public Service Act 1999.	Regulation is decentralized and, under the Code, individual government agencies may develop broad guidelines for staff to observe. But these guidelines have no legislative force.  In general, there is a waiting period of six months for staff in sensitive positions.	The government cannot stop a former civil servant from taking up employment unless the person has breached criminal law.
<b>France</b>	Post-service activities of senior civil servants are subject to Decree 95-168 of 17 February 1995 which is part of the	Former civil servants are not allowed to engage in professional activities in a private company with which they had dealings or which they were	Part of the pension can be withheld or there could be a loss of pension rights.

	administration law.	<p>responsible for monitoring during the last five years preceding retirement. They are also not allowed to engage in lucrative activities which are damaging to the dignity of their previous government posts or endanger the normal working, independence or neutrality of the service.</p> <p>The restrictions apply for a period of five years after retirement. A retired civil servant who intends to work for the private sector should inform the authority in writing of his intention and must also inform the authority of any change of activity within the 5-year period. They do not however apply to creation of scientific, literary or artistic work.</p>	
<b>Singapore</b>	No specific regulation according to information available.	<p>Former civil servants are required to observe the Official Secrets Act which bars them from revealing sensitive/confidential government data.</p> <p>A former employee can in theory take up an outside job immediately upon leaving the service.</p>	No specific provision according to information available.

**Control on Post-service Employment of Former Directorate Civil Servants**

<b>Existing Arrangement</b>	<b>Proposed Arrangement</b>
<b>1. Policy Objective</b>	
<p>* To ensure that former civil servants will not enter into business or take up employment which may constitute conflict of interest (real, potential or perceived) or cause negative public perception, without unduly restricting former civil servants' right to employment.</p>	<p>* No change</p>
<b>2. Coverage of staff</b>	
<p>* Directorate Officers retiring / retired on pensionable terms</p> <p>* Agreement officers at D3 and above</p>	<p>* To extend the coverage to include all directorate officers i.e. -</p> <ul style="list-style-type: none"> <li>– all pensionable directorate officers;</li> <li>– officers first appointed on new terms on or after 1 June 2000 upon their progression to the directorate level; and</li> <li>– all directorate agreement officers,</li> </ul> <p>irrespective of the circumstances under which they leave the Government, i.e. retirement, contract termination or resignation.</p>
<b>3. Restriction on outside work during final leave</b>	
<p>* The taking up of paid outside work during pre-retirement leave, irrespective of whether such work is undertaken in Hong Kong or elsewhere, is</p>	<p>* All directorate officers, irrespective of their terms of appointments, ranking before leaving, or circumstances under which they leave the Government, will normally only be allowed to undertake, on a full-time or part-time basis, unremunerated or notionally remunerated work</p>

Existing Arrangement	Proposed Arrangement
<p>subject to prior permission.</p>	<p>for charitable / other non-profit-making organizations or public service during their final (i.e. pre-retirement, end-of-agreement or pre-resignation) leave.</p> <p>* The approving authority may exceptionally give approval for paid employment during final leave under very special circumstances, e.g. in cases where significant public interest is involved.</p>
<p><b>4. Geographical scope of activities subject to control</b></p>	
<p>* The taking up of a business / employment the principal part of which is carried on in Hong Kong is subject to prior permission.</p> <p>* All directorate officers retired on pensionable terms are required to inform CSB of any paid employment undertaken anywhere during the control period.</p>	<p>* No change.</p> <p>* For the avoidance of doubt, directorate officers (including those on agreement terms) who are leaving or have left government service should seek prior permission in respect of paid employment involving duties outside Hong Kong, if they are based in Hong Kong or are to work overseas for a company that has any business connections with Hong Kong.</p>
<p><b>5. Control period (counted from leaving the Government during which prior permission is required for taking up outside employment)</b></p>	
<p>* Directorate officers on pensionable terms AOSGA1 – 3 years Others – 2 years</p> <p>* Directorate officers on agreement terms D3 and above – 1 year (only in respect of employment in the same field as an officer's</p>	<p>* Directorate officers on pensionable terms and new permanent terms AOSGA1 – 3 years Others – 2 years</p> <p>* Directorate officers on agreement terms With 6 or more years of government service – same periods as applicable to their counterparts on permanent terms</p>

Existing Arrangement	Proposed Arrangement
<p>previous employment and where there is a possible conflict of interest) Others – nil</p> <p>* Directorate officers on new terms and resignees – nil</p>	<p>With less than 6 years of government service – half of the periods applicable to their counterparts on permanent terms.</p> <p>* Resignees – same periods as applicable to their respective counterparts who leave Government under normal circumstances.</p>
<b>6. Approving criteria</b>	
<p>* The key factors of consideration are conflict of interest (real, potential or perceived) and public perception.</p> <p>* In applying the tests of conflict of interest or possible negative public perception, the HoD/HoG and approving authority normally focus on the duties in which the applicant was involved in the last two years of his/her active service.</p>	<p>* The key factors of consideration remain to be conflict of interest (real, potential or perceived) and public perception.</p> <p>* The specific points to be taken account of by the approving authority include:</p> <p>(a) <i>Conflict of interest</i></p> <ul style="list-style-type: none"> <li>- whether the officer was involved in policy formulation or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her prospective employer;</li> <li>- whether the prospective employer might gain unfair advantage over competitors because of the officer’s access to sensitive information while in government service;</li> <li>- whether the officer was involved in any contractual or legal dealings to which the prospective employer was a party; and</li> <li>- whether the proposed employment would have any connection with the assignments / projects and/or regulatory / enforcement duties in which the officer was involved before leaving the service.</li> </ul>

Existing Arrangement	Proposed Arrangement
	<p><i>(b) Public perception</i></p> <ul style="list-style-type: none"> <li>- whether the officer’s taking up of the proposed employment would give rise to public suspicion of impropriety or conflict of interest; and</li> <li>- whether the proposed employment would cause embarrassment to the Government.</li> </ul> <p>* In applying the tests of conflict of interest or possible negative public perception, the HoD/HoG and approving authority would normally focus on the duties in which the applicant was involved in the last three years of his/her active service. However, where the applicant is a senior directorate officer or if the work he has handled is of particular sensitivity, his/her duties prior to the three-year period might also be taken into account.</p>
<b>7. Restrictions on scope of work</b>	
<p>* Work-specific restrictions may be imposed on a case-by-case basis.</p>	<p>* As across-the-board standard restrictions, in all cases of outside employment during final leave and/or control period, an ex-directorate officers should not –</p> <ul style="list-style-type: none"> <li>– be involved, directly or indirectly, in the bidding for any government land, property, projects or contracts;</li> <li>– undertake any work that is connected in any way with – <ul style="list-style-type: none"> <li>(a) policy formulation or decisions;</li> <li>(b) sensitive information;</li> <li>(c) contractual or legal dealings;</li> <li>(d) assignments or projects; and/or</li> <li>(e) enforcement or regulatory duties</li> </ul> </li> </ul> <p>in which he/she was involved or to which he/she had access during his/her last three</p>

Existing Arrangement	Proposed Arrangement
	<p>years of active service.</p> <ul style="list-style-type: none"> <li>– engage in any activities which will cause embarrassment or bring disgrace to the civil service.</li> </ul> <p>If in doubt, the officer should seek clarification and/or prior permission from the approving authority.</p> <p>* In addition, specific restrictions on the scope of work may be imposed on a case-by-case basis.</p>
<b>8. Sanitization (counted from cessation of active service during which outside employment is not permitted)</b>	
<p>* Directorate officers retired on pensionable terms – minimum 6 months counted from cessation of active service, may be shortened if there is no clear conflict of interest or be lengthened having regard to the circumstances of a case.</p> <p>* Directorate agreement officers – no specified minimum sanitization period.</p> <p>* Directorate officers on pensionable or new permanent terms who resign from government service – no specified minimum sanitization period.</p>	<p>* In respect of directorate officers retired on pensionable / new permanent terms –</p> <ul style="list-style-type: none"> <li>– paid employment will normally be subject to a 12-month sanitization period counted from cessation of active service;</li> <li>– the above sanitization period may be shortened in cases where there are special considerations (e.g. significant public interest) and where there is clearly no real, potential or perceived conflict of interest. As a working guideline, the reduced sanitization should normally not be shorter than six months for paid employment. As a general rule, exception will not be given for paid employment with commercial organizations; and</li> <li>– a longer than 12 months sanitization period may be imposed having regard to the circumstances of a case.</li> </ul> <p>* In respect of directorate agreement officers and directorate officers on pensionable / new permanent terms who resign from government service – no minimum sanitization period</p>

<b>Existing Arrangement</b>	<b>Proposed Arrangement</b>
	<p>will be specified; sanitization would be considered on a case –by-case basis.</p> <p>* Sanitization will normally be waived in respect of unremunerated or notionally remunerated work for charitable / other non-profit-making organizations or public service.</p>
<b>9. Transparency</b>	
<p>* Information pertaining to individual cases are not disclosed as a matter of policy, unless prior consent of the officers concerned has been obtained.</p>	<p>* The approving authority will disclose basic information on approved applications (limited to last government post title of the officer, date of cessation of active government service, identity of the outsider employer, position/title of the ex-officer in the company/ organization, a brief description of his/her main duties, restrictions/sanitization imposed on the employment, and commencement of the employment) where the approved employment has been taken up.</p>
<b>10. Monitoring</b>	
<p>* The former directorate officers concerned are required to notify the approving authority of any material change to their approved employment.</p> <p>* Investigation would be launched as and when there are complaints or information showing a potential breach of the terms of approval.</p>	<p>* Before commencing the approved employment, an applicant should confirm in writing to CSB whether he/she has taken up the approved employment, and whether the prospective employer has been informed of the terms of approval including the restrictions on the scope of work. He/she would also be required to update CSB on the status of their approved employment annually within the control period.</p> <p>* Investigation would be launched by the approving authority as and when there are complaints or information showing a potential breach of the terms of approval.</p>

Existing Arrangement	Proposed Arrangement
<b><i>11. Sanction</i></b>	
<p>* Directorate officers on pensionable terms – pension suspension under pension legislation</p>	<p>* Directorate officers on pensionable terms – pension suspension under pension legislation, civil action to seek injunction or sue for damage, as well as Government and public criticism.</p> <p>* All other directorate officers – civil action to seek injunction or sue for damage, as well as Government and public criticism.</p>