

Legislative Council Panel on Public Service

Arrangements Governing the Taking Up of Outside Work by Directorate Civil Servants After Ceasing Active Government Service – Supplementary Information

Purpose

This note provides supplementary information and further clarification in response to Members' comments and suggestions made at the meeting of the Panel on Public Service held on 21 November 2005.

Supplementary Information

Specification of Minimum Sanitization Periods for Officers on Agreement or Non-Civil Service Contract (NCSC) Terms

2. Some Members asked us to look into whether minimum sanitization periods should be specified for officers appointed on agreement or NCSC terms, in particular those who had been employed for a period of time (i.e. not just a few months), and/or involved in the formulation of policy and/or had access to sensitive information.

3. We have indeed fully deliberated on the issue during our review, and we have concluded that minimum sanitization periods should only be specified for directorate officers retiring / retired on pensionable or new permanent terms. Having revisited the issue in response to Members' suggestion, we remain of the view it would not be appropriate to stipulate minimum sanitization periods for officers appointed on agreement or NCSC terms. This is because the need for and length of sanitization period should be determined on a case-by-case basis having regard to the circumstances in each case. The considerations are -

- (a) Officers retiring/retired on permanent terms have usually served in the Government for a long period of time and have reached the end of their normal career life. They enjoy financial security in terms of pensions or accrued benefits under the Civil Service

Provident Fund Scheme. On the other hand, the situations of officers formerly appointed on agreement or NCSC terms are far less uniform. The length of government service (which has a bearing on an officer's exposure to sensitive work or information) may vary greatly among cases. These staff are not entitled to the same financial security as their counterparts retiring/retired on permanent terms. They may still be in the middle of their career life and need to earn a living or to support their family. As the circumstances of officers appointed on agreement or NCSC terms vary greatly, it would be unreasonable and unduly inflexible to impose uniform minimum sanitization periods across the board.

- (b) In processing applications to take up outside work from officers appointed on agreement terms, the relevant Heads of Department/Heads of Grade/Permanent Secretaries, Civil Service Bureau (CSB) and the Advisory Committee on Post-service Employment of Civil Servants¹ will apply the same criteria as in the case of considering applications from officers retiring/retired on permanent terms. If an agreement officer has been involved in policy formulation work or decisions and/or has had access to sensitive information that would benefit his prospective employer or his own business, a sanitization period will normally be imposed having regard to the standards applicable to their counterparts on permanent terms. Furthermore, where the agreement officer's government duties are of particular sensitivity, the appointment authority may, at the point of offering the appointment, stipulate a sanitization requirement in the relevant employment agreement so as to guard against possible conflict of interest arising from outside work taken up by the officer after he has left the civil service.
- (c) Similarly, for staff appointed on NCSC terms at the directorate level, the relevant Heads of Department / Grade and Permanent Secretaries will examine each case having regard to the principles and control measures applicable to directorate civil servants. Where justifiable, the sanitization requirement and/or other restrictions can be stipulated in the relevant employment agreements upfront.

¹ Presently called the Advisory Committee on Post-retirement Employment.

Taking Up of Unremunerated Work With Specified Non-Commercial Organizations

4. With reference to the blanket permission for unremunerated work for certain non-commercial organisations, a Member raised the possibility that an ex-officer might take up unremunerated work during the control period but was subsequently given remuneration, and asked whether appropriate measures should be taken to strengthen the control on such cases.

5. The blanket permission is meant to streamline procedure and to facilitate the taking up of voluntary work with certain organisations that seek to achieve objectives of public interest. Hence it only covers unremunerated work with a few clearly defined categories of non-commercial organisations, i.e. (i) charitable, academic or other non-profit-making organisations not primarily engaged in commercial operations; (ii) non-commercial regional and international organisations; and (iii) the Central Authorities. In our view it is highly unlikely that such organisations would engage in the sort of arrangement speculated upon by the Member with a view to getting around the rules governing the outside work of former directorate officers.

6. There are sufficient safeguards against abuses of the blanket permission. The authority to determine whether an organisation is covered by the blanket permission rests with the Civil Service Bureau (CSB). Former civil servants who wish to take up outside work under the blanket permission are still required to notify CSB of the outside work beforehand, and to report any material change to their outside work and update CSB on their involvement in the outside work annually and as requested by CSB. If at any point in time during the control period an officer becomes aware of the payment of remuneration, he is required to apply for permission. A breach of any of these rules may trigger one or more forms of sanction set out under item 12 in the Annex to *LC Paper No.CB(1)295/05-06(03)*. In addition, our lawyer has advised that, depending upon the evidence available, if the arrangement speculated upon the Member was pursuant to an undisclosed prior agreement, it might amount to a conspiracy to defraud.

Data Disclosure Arrangement Applicable to Directorate Civil Servants Ranked Below D4 Level

7. A Member opined at the meeting that the basic information on

outside work taken up by directorate officers ranked below D4 level should also be placed in a register available for public inspection, and asked us to discuss with the staff sides on this particular suggestion.

8. While we agree that transparency is key to fostering the public's trust in the control mechanism, we are mindful that the disclosure arrangement should not be more extensive than what is required to achieve the policy objective. As we explained at the meeting on 21 November 2005, we believe there is a case to subject officers at D4 or above level to a more stringent requirement on disclosure of information given their higher level of responsibilities and greater access to sensitive information, as well as the public's generally greater concern about the taking up of outside work by these officers. On the other hand, it should suffice, and represent a reasonable balance between the need to protect the individuals' privacy and transparency, to disclose basic information on outside work taken by directorate officers ranked below D4 level as and when there is public concern about the propriety of the outside work on a case-by-case basis. The new arrangement already represents a significant improvement over the present practice whereby information on cases of approved outside work is normally not disclosed without consent from the officers concerned.

9. In devising the two-tier system for disclosure of information, we have taken account of staff feedback, legal advice, and advice of the Office of the Privacy Commissioner for Personal Data on compliance with the Personal Data (Privacy) Ordinance. In response to Members' comments, we have sounded out staff representatives on Members' suggestion to extend the disclosure of information through a register to outside work taken up by directorate officers ranked below D4. They do not think the proposed extension is necessary. Taking account of all relevant views received, we remain of the view that the two-tier disclosure arrangement is reasonable and appropriate. We will monitor the implementation of the new arrangement.

Control on Taking Up of Outside Work by Non-Directorate Civil Servants

10. In response to a Member's concern about the need to strengthen the mechanism governing post-service employment of former non-directorate officers, we undertook , as a next step, to discuss with the bureaux/departments on whether similar changes should be made to the mechanism governing non-directorate officers.

11. As we advised the Panel in March 2005, in the present review we have focused on the arrangement for directorate officers, given that the risk of conflict of interest and negative public perception is generally higher in the case of directorate officers than non-directorate officers (indeed the public and LegCo Members are particularly concerned about the taking up of outside work by the former group of officers). At the present stage, we do not see a need to review or revise the existing arrangements applicable to non-directorate civil servants, who if retiring/retired on pensionable terms, will still need to apply for permission to take up outside work during final leave and up to two years after they have left the Government. In the meantime, we will ask heads of bureaux and departments to take note of the revised arrangements for directorate officers and to consider whether some of the provisions may be of relevance, for example, those relating to standard restrictions, when they examine particular applications from non-directorate officers.

Way Forward

12. We have fully taken account of all relevant views expressed by the staff sides, Members of the Legislative Council, the community and the independent Advisory Committee on Post-retirement Employment, and have been guided by legal advice in finalizing the revised arrangements governing the taking up of outside work by directorate officers who have ceased active government service. We believe the revised arrangements represent a reasonable balance between addressing the community's concern about any conflict of interest connected with outside work of former senior civil servants, and respecting the individuals' right to employment or other work after they have ceased government service. We shall soon issue a circular to apply the revised arrangements to directorate officers on pensionable/ new permanent terms who will cease active service on or after 1 January 2006, and to officers who enter into new agreements on or after that date.

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