

Information Paper

21 November 2005

Legislative Council Panel on Public Service

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

PURPOSE

This paper sets out the revised policy and arrangements governing the taking up of outside work by directorate civil servants after they have ceased active government service.

PRESENT POSITION

2. Following a review, on 21 March 2005 the Secretary for the Civil Service briefed the Panel on Public Service on a set of preliminary proposals to modify the existing policy and arrangements governing the taking up of outside work by directorate civil servants after ceasing active government service. Staff consultation on the preliminary proposals subsequently ended in May 2005. Taking account of the feedback received during the staff consultation, views expressed by the general public and Members of the Legislative Council, as well as advice of an independent Advisory Committee on Post-retirement Employment, the Administration has finalized the revised policy and arrangements on the taking up of outside work by directorate officers after they have ceased active government service.

REVISED POLICY AND ARRANGEMENTS

3. Compared to the existing arrangements governing the taking up of outside work by directorate officers, **the revised arrangements are generally more stringent**. For example, they make a more explicit distinction between work for non-commercial organizations and work of a commercial nature, spell out in clear terms a set of across the board standard restrictions on scope of work for all cases of outside work involving directorate officers, as well as apply more stringent rules on

sanitization and disclosure of information especially for directorate officers at Directorate Pay Scale Point 4 (D4) or above (or equivalent). A comparison between the existing and revised arrangements governing outside work of directorate officers is at the **Annex**. The key elements of the revised control regime are highlighted in the ensuing paragraphs.

Control Coverage

4. **All directorate civil servants, irrespective of their terms of appointment and circumstances under which they leave the Government**, are required to seek prior permission if they wish to take up outside work, paid or unpaid, part-time or full time, if the principal part of the work is carried on in Hong Kong, during their final leave period and/or within a specified control period after they have left the Government.

Control Period

5. The control period is to count from an officer's formal departure from the Government (on exhaustion of final leave if any), and during the control period prior permission is required for taking up outside work. The control periods for different categories of directorate officers vary depending on their length of service before leaving the Government, with the great majority being subject to a two-year control period and the most senior ones to a three-year control period. We believe the control periods are long enough for the purpose of exercising control over ex-civil servants' outside work.

Approving Criteria

6. The two primary factors to be taken into account when considering an application for permission to take up outside work are whether there is real or potential conflict of interest between the applicant's former government duties and the proposed work, and whether any aspects of the proposed work would give rise to negative public perception. We will promulgate the specific pointers for consideration to help ensure thorough vetting and consistent handling of applications by the relevant parties, including the Permanent Secretaries, Heads of Department and Heads of Grade.

Standard Restrictions on Scope of Work

7. We will **apply a set of standard restrictions on scope of work across the board in all cases of outside work taken up by directorate officers during the final leave and/or control period** i.e up to two years or more after they have left the Government, to better guard against conflict of interest and negative public perception. In essence, a directorate officer cannot be personally involved, whether directly or indirectly, in any bidding for government land, property, projects, contracts or franchises, or be engaged in work which is connected with certain aspects of his/her former duties (e.g. the formulation of policy or decisions, access to sensitive information) undertaken during the last three (or more) years of government service. There is also a general restriction that the officer should not engage in any activities which will cause embarrassment to the Government or bring disgrace to the civil service. Instead of implicitly referenced to these considerations in the vetting process as is the present practice, setting out the said restrictions in clear terms, and upfront, will go a long way to more comprehensively forestall conflict of interest and embarrassment to the Government/civil service, to ensure consistent handling among cases, and to facilitate enforcement by removing possible grey area.

8. In addition to the standard restrictions mentioned above, further restrictions on scope of work may be imposed depending on the circumstances of a case.

Sanitization Period

9. The purpose of specifying a sanitization period is to forestall real or potential conflict of interest and/or negative public perception by instituting a break between an officer' government duties and outside work. During the sanitization period the officer is not permitted to take up any outside work, except for that covered by the blanket permission mentioned in paragraph 14 below. The sanitization period is to count from the date of an officer's ceasing active government service.

10. Diverse comments have been received on our original proposal of extending the minimum sanitization period across the board from six months to 12 months in respect of all directorate officers retired/retiring on pensionable or new permanent terms. There, however, seems to be general acceptance towards setting a more stringent sanitization requirement for higher ranking directorate officers than their junior counterparts, having regard to the difference in their levels of responsibilities. In light of the feedback received , we will put in place a two-tier

system whereby **officers at D4 or above (or equivalent) who have retired/are retiring on pensionable or new permanent terms will be subject to a minimum 12-month sanitization period, whereas directorate officers below D4 (or equivalent) will continue to be subject to a six-month minimum sanitization period.** We believe the difference in the minimum sanitization period is justified having regard to the general differences in the level of responsibilities and access to sensitive information between these two groups of officers. A longer sanitization period may be specified where such is required to more fully forestall conflict of interest or negative public perception. It is worth noting again that all directorate officers, in taking up any outside work during the final leave and/or control periods, will be subject to the standard restrictions mentioned in paragraph 7 above.

11. Under the new arrangements, consideration may be given to shortening the minimum sanitization period for outside work to be taken up with the non-commercial organizations listed in paragraph 14 below, where the work will not give rise to conflict of interest and is unlikely to cause negative public perception. The minimum sanitization period will be strictly adhered to in respect of other outside work (in particular that of a commercial nature), save in cases where there are special considerations and where there is clearly no conflict of interest and no negative public perception. For illustration, special considerations may include significant public interest that will be advanced by the taking up of the proposed work, and personal circumstances that warrant compassionate consideration.

12. No minimum sanitization periods are specified for directorate officers not retiring / retired on pensionable or new permanent terms such as agreement officers and resignees as the circumstances of these officers vary from case to case. For outside work involving these officers, the length of the sanitization period will be considered on a case-by-case basis.

Restrictions on Outside Work During Final Leave

13. The taking up of outside work during the final leave period is subject to the rules governing sanitization. In addition, **as directorate officers on final leave remain civil servants on full pay, they are not permitted to take up any full-time remunerated work or any work of a commercial nature (including self-employment) during the final leave period,** unless there are special considerations and no problem of dual identity. In this regard, directorate officers on final leave may, on application, normally only take up part-time or notionally remunerated work with the non-commercial organizations listed in paragraph 14

below, subject to the sanitisation rules and there being no problem of dual identity. We believe the new arrangement, as compared to the existing one, will be more effective in guarding against possible dual identity problem.

Blanket Permission

14. To streamline procedure and to facilitate the taking up of voluntary work by directorate officers after ceasing active service, blanket permission will be given for all directorate officers to take up unremunerated work with the following non-commercial organisations –

- (a) charitable, academic or other non-profit-making organizations not primarily engaged in commercial operations;
- (b) non-commercial regional / international organizations; or
- (c) the Central Authorities,

throughout the final leave and control periods.

Transparency

15. To enhance transparency, and since the public is generally more concerned with the taking up of outside work by senior directorate officers who, compared to their junior counterparts, have more access to sensitive information and are more likely to have built up influence within the Government, **we will place the basic information** (e.g. the last government post title of the officer, date of cessation of active government service, identity of the outside employer if applicable etc.) **on approved outside work taken up by officers at D4 or above** (or equivalent), **in a register for public inspection upon request.** Relevant information in the register will be removed as and when an officer's control period has expired or he/she has ceased the outside work, whichever happens earlier. For approved outside work taken up by directorate officers below D4 (or equivalent), the relevant information will be disclosed in response to public enquiries / queries on a case-by-case basis, where there is public concern about the propriety of the outside work.

Sanctions and Monitoring

16. While the post-service employment control regime will remain essentially an honour system, we will make it clear to all directorate officers from the outset that where there is a breach of the rules governing the taking up of outside

work after ceasing active service, depending on the nature and gravity of the breach, SCS may consider invoking suspension of pension under the pension legislation and /or any other forms of sanction listed in item 12 of the **Annex**.

17. To facilitate compliance with any restrictions placed on an approved employment, the officer concerned will be required, before commencing the employment, to notify the prospective employer of the terms of approval including any sanitisation or restrictions imposed. In all cases of approved outside work, the officers concerned will need to confirm the commencement date of the approved work, report any material change to the approved work, and provide updates on their involvement in the approved work annually or as requested by the Civil Service Bureau.

Advisory Committee on Post-service Employment of Civil Servants

18. Directorate officers' applications to take up outside work will continue to be forwarded to the independent Advisory Committee on Post-service Employment of Civil Servants for advice (currently known as the Advisory Committee on Post-retirement Employment). This is an important feature of the vetting procedure that helps ensure that all cases are handled impartially.

WAY FORWARD

19. We believe the finalized arrangements represent a reasonable balance between addressing the community's concern about any conflict of interest connected with the taking up of outside work by senior civil servants, and respecting the individual civil servants' right to employment or other work after they have ceased government service. We have informed the staff sides of the revised arrangements through the issue of an advance copy of the relevant circular in accordance with established practice. Our plan is to implement the new arrangements with effect from 1 January 2006.

-0-0-0-

Arrangements Governing the Taking Up of Outside Work by Directorate Officers After Ceasing Active Service

Existing Arrangement	Revised Arrangement
1. Policy objective	
* To ensure that civil servants will not enter into business or take up outside work which may constitute conflict of interest (real or potential) or cause negative public perception, without unduly restricting their right to employment or other work after ceasing active government service.	* No change
2. Coverage of staff	
* Directorate officers retiring / retired on pensionable terms * Agreement officers at D3 and above	* All directorate officers appointed on civil service terms, including <ul style="list-style-type: none">– all pensionable directorate officers;– officers first 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 (retirement, completion/termination of agreement, resignation, etc.)

Existing Arrangement	Revised Arrangement
3. Geographical scope of activities subject to control	
<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, all directorate officers should seek prior permission in respect of paid outside work involving duties outside Hong Kong during their final leave and/or control period, if they are to be based in Hong Kong, or if they are to work outside Hong Kong, either for an organization or on their own account, in a business that has any connection with Hong Kong.</p>
4. Control period (counting from formal departure from the Government during which prior permission is required for taking up outside work)	
<p>* Directorate officers retired on pensionable terms AOSGA1 – 3 years Others – 2 years</p> <p>* Agreement officers at D3 and above- 1 year (in respect of outside work in the same field and where there is a possible conflict of interest)</p>	<p>* Directorate officers below D8 or equivalent</p> <ul style="list-style-type: none"> – who have retired on pensionable / new permanent terms 2 years – who have left the Government for a reason other than retirement after six or more years of continuous service 2 years – who have left the Government for a reason other than retirement after less than six years of continuous service 1 year <p>* Directorate officers at D8 or equivalent</p> <ul style="list-style-type: none"> – who have retired on pensionable / new permanent terms 3 years – who have left the Government for a reason other than retirement after six or more years of continuous service 3 years

Existing Arrangement	Revised Arrangement
	<p>– who have left the Government for a reason other than retirement after less than six years of continuous service 1-1/2 years</p>
<p>5. Approving criteria</p>	
<p>* The key factors of consideration are conflict of interest (real or potential) and public perception.</p> <p>* In applying the tests of conflict of interest or possible negative public perception, the Head of Department (HoD)/Head of Grade (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 or potential) and public perception.</p> <p>* The specific considerations include –</p> <p>(a) whether the officer was involved in the formulation of any policy or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her prospective employer/own business;</p> <p>(b) whether the prospective employer or officer might gain unfair advantage over competitors because of the officer’s access to sensitive information while in government service;</p> <p>(c) whether the officer was involved in any contractual or legal dealings to which the prospective employer was a party;</p> <p>(d) whether the proposed work would have any connection with the assignments/projects and/or regulatory/enforcement duties in which the officer was involved while in government service;</p> <p>(e) whether the officer’s taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety; and</p> <p>(f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the civil service.</p> <p>* In applying the considerations above to an application, the relevant Head of Department (HoD) / Head of Grade (HoG) / Permanent Secretary and the Secretary for the Civil Service (SCS) as the approving authority would normally focus on the duties in which the applicant was involved during the last three years of his/her active government service. However, where the applicant is a directorate officer at D4 or above (or equivalent) or if the work handled is of particular sensitivity, duties prior to the three-year period may also be taken into account.</p>

Existing Arrangement	Revised Arrangement
6. Standard restrictions on scope of work	
<p>* Work-specific restrictions may be imposed on a case-by-case basis.</p>	<p>* The taking up of any outside work by a directorate officer during final leave and / or the control period is subject to the standard restrictions that the officer should not –</p> <ul style="list-style-type: none"> (a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises; (b) undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with – <ul style="list-style-type: none"> (i) the formulation of any policy or decisions; (ii) sensitive information; (iii) contractual or legal dealings; (iv) assignments or projects; and/or (v) enforcement or regulatory duties in which he/she was involved or to which he/she had access during his/her last three years of government service; or (c) engage in any activities which will cause embarrassment to the Government or bring disgrace to the civil service. <p>* In addition, further specific restrictions on scope of work may be imposed on a case-by-case basis.</p>
7. Sanitization (counting from cessation of active service during which outside work is not permitted)	
<p>* Directorate officers retired on pensionable terms – minimum 6 months counting from cessation of active service, may be</p>	<p>* Minimum sanitization period for directorate officers retired / retiring on pensionable / new permanent terms –</p> <ul style="list-style-type: none"> – D4 or above or equivalent : 12 months – Below D4 or equivalent : 6 months, <p>counting from cessation of active service and inclusive of final leave where applicable.</p>

Existing Arrangement	Revised Arrangement
<p>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 at D3 or above – no specified minimum sanitization period but such requirement may be imposed on a case-by-case basis.</p>	<p>The minimum sanitization period will normally be shortened or waived for notionally remunerated work and may be shortened for remunerated work taken up with the following organizations –</p> <ul style="list-style-type: none"> (i) charitable, academic or other non-profit making organizations not primarily engaged in commercial operations; (ii) non-commercial regional / international organizations; or (iii) the Central Authorities, <p>where the work will not give rise to conflict of interest and is unlikely to cause negative public perception.</p> <p>* For all other outside work (in particular those of a commercial nature), the minimum sanitization period will only be shortened where there are special considerations, and provided that the work will not give rise to conflict of interest or negative public perception. For illustration, special considerations may include –</p> <ul style="list-style-type: none"> – significant public interest that will be advanced by the taking up of the work; – personal circumstances that warrant compassionate consideration. <p>* Notwithstanding the above, having regard to the circumstances of a particular case, a longer sanitization period may be imposed if so required to more fully forestall conflict of interest or negative public perception.</p> <p>* No minimum sanitization periods are specified for directorate officers not retiring / retired on pensionable or new permanent terms such as agreement officers and resignees. For outside work involving such officers, the relevant HoD, HoG, Permanent Secretary and SCS will consider the length of the sanitization period on a case-by-case basis.</p>
8. Restrictions on outside work during final leave	
<p>* The taking up of paid outside work during pre-retirement leave, irrespective of whether</p>	<p>* The taking up of outside work during the final leave period is subject to the rules governing sanitization.</p> <p>* In addition, directorate officers are not permitted to take up any full-time remunerated work or any work of a commercial nature (including self-employment) during the final leave period, unless there are special</p>

Existing Arrangement	Revised Arrangement
such work is undertaken in Hong Kong or elsewhere, is subject to prior permission.	<p>considerations. In this regard, directorate officers on final leave may, on application, normally only take up part-time or notionally remunerated work with the following organizations –</p> <ul style="list-style-type: none"> (i) charitable, academic or other non-profit-making organizations not primarily engaged in commercial operations; (ii) non-commercial regional / international organizations; or (iii) the Central Authorities, <p>subject to the rules on sanitization and there being no problem of dual identity.</p>
9. Blanket Permission	
Nil	<ul style="list-style-type: none"> * Blanket permission is given for unremunerated work with the following organizations – <ul style="list-style-type: none"> (i) charitable, academic or other non-profit-making organizations not primarily engaged in commercial operations; (ii) non-commercial regional / international organizations; or (iii) the Central Authorities, <p>where there is no conflict of interest and the work is unlikely to cause negative public perception, throughout the entire period from cessation of active service to the expiry of control period.</p> * No application for permission is required for the said work but the officers should notify the Civil Service Bureau (CSB) of the taking up of such work beforehand.
10. Monitoring of Approved Cases	
* The former directorate officers concerned are required to notify the approving authority of any material change to their approved	* Before commencing any approved outside work (including self-employment), the officer should confirm the commencement date of the work with CSB, and where applicable, notify the prospective employer of the terms of approval including any sanitization or restrictions imposed. Thereafter, the officer should notify CSB of any material change to the approved work including cessation, and update CSB on the status of his/her

Existing Arrangement	Revised Arrangement
<p>employment.</p> <p>* Investigation would be launched when there are complaints or information showing a breach of the terms of approval.</p>	<p>involvement in the approved work annually within the control period or upon request by CSB.</p> <p>* Investigation would be launched by the approving authority when there are complaints or information showing a possible breach of the terms of approval.</p>
11. Transparency	
<p>* Information pertaining to individual cases of outside work is not disclosed as a matter of policy, unless prior consent of the officers concerned has been obtained.</p>	<p>* For approved outside work taken up by officers at D4 or above (or equivalent), the basic information (limited to the last government post title of the officer; date of cessation of active government service; restrictions/sanitization imposed on the approved work; commencement date of the approved work; and where applicable, identity of the outside employer, position/title of the ex-officer in the outside organization and a brief description of his/her main duties in the outside organization) will be included in a register for public inspection on request. An entry will be kept until the expiry of the officer's control period or after the officer has notified CSB of the cessation of the outside work, whichever happens earlier.</p> <p>* For approved work taken up by directorate officers below D4, CSB may, where there is public concern about the propriety of the work, disclose the basic information in response to public enquiries / queries on a case-by-case basis.</p>
12. Sanction	
<p>* Suspend pension for officers on pensionable terms under the pension legislation</p>	<p>* Where there is a breach of the rules, depending on the nature and gravity of the breach, SCS may consider invoking either one or a combination of the following forms of sanction –</p> <ul style="list-style-type: none"> (a) pension suspension under the pension legislation for officers on pensionable terms; (b) initiating civil action to seek an injunction or sue for damage; (c) withdrawal of approval;

Existing Arrangement	Revised Arrangement
	<ul style="list-style-type: none"> (d) suspension of approval for a specified period; (e) reporting of an incident to the relevant professional body where it concerns professional negligence/misconduct or may involve a possible breach of the code of conduct of the relevant profession; (f) issue of a public statement of criticism; (g) placing a warning/reprimand in a register for public inspection; (h) issue of a reprimand letter which may be copied to the outside employer (if applicable); and/or (i) issue of a warning letter which may be copied to the outside employer (if applicable).

-0-0-0-

Civil Service Bureau
November 2005