

立法會
Legislative Council

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Panel on Public Service

**Extract from the minutes of meeting
held on Monday, 21 November 2005 at 10:45 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon LI Fung-ying, BBS, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon WONG Kwok-hing, MH
Hon KWONG Chi-kin
- Member attending** : Hon Emily LAU Wai-hing, JP
- Public officers attending** : Agenda Item IV
Mr Joseph W P WONG, GBS, JP
Secretary for the Civil Service

Miss Jennifer MAK, JP
Deputy Secretary for the Civil Service (1)

Ms Ellen CHOY
Principal Assistant Secretary for the Civil Service
(Appointments)

Agenda Item V

Mr Joseph W P WONG, GBS, JP
Secretary for the Civil Service

Mr K S SO
Deputy Secretary for the Civil Service (2)

Attendance by invitation : Agenda Item V

Police Force Council Staff Side

Mr David WILLIAMS
Secretary
Overseas Inspectors' Association

Mr CHUNG Kam-wa
1st Vice-Chairman
Junior Police Officers' Association

Clerk in attendance : Miss Salumi CHAN
Chief Council Secretary (1)5

Staff in attendance : Ms Rosalind MA
Senior Council Secretary (1)8

Ms May LEUNG
Legislative Assistant (1)8

Action

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IV. Review of policy on post-service employment of former directorate civil servants

(LC Paper No. CB(1)295/05-06(03) — Paper provided by the Administration on “Arrangements governing the taking up of outside work by directorate civil servants after ceasing active government service”

LC Paper No. CB(1)295/05-06(04) — Background brief prepared by the
Legislative Council Secretariat)

Overall comments on the revised arrangements

9. Mr KWONG Chi-kin welcomed the revised arrangements put forward by the Administration to improve the existing control regime. In particular, Mr KWONG appreciated the Administration's efforts in consulting staff on the preliminary proposals before finalizing the revised arrangements and the lengthening of the minimum sanitization period for directorate officers at D4 level and above to 12 months.

10. While recognizing that the revised arrangements would bring about improvement to the control regime, Ms LI Fung-ying pointed out that the effectiveness of the proposed arrangements would hinge on their smooth implementation and the Administration's continued monitoring to ensure compliance with the approving criteria. In this connection, Ms LI enquired about the measures to be put in place to ensure the smooth implementation of the revised arrangements.

11. SCS explained that improvements in different areas had been proposed with a view to putting in place a comprehensive control regime. In brief, the areas of improvements included: imposing more stringent control on the applications in respect of the length of minimum sanitization period and the standard restrictions on scope of work; enhancing the transparency of the approved applications by placing the basic information on approved outside work taken up by officers at D4 level or above in a register for public inspection upon request; and requiring officers concerned in all cases of approved outside work to provide updates on their involvement in the approved work annually or as requested by the Civil Service Bureau (CSB). Responding to Ms LI Fung-ying's further enquiry, SCS confirmed that failure to comply with the requirement on providing annual updates on their approved work would constitute a breach of rule under the control regime.

12. Ms Emily LAU pointed out that the trend of retired civil servants at senior ranks taking up employment with consortia shortly after their retirement in recent years had aroused wide public concern and disappointment. She opined that the revised arrangements still fell short of the public expectation for a more stringent control regime. Apart from staff consultation, Ms LAU doubted whether the Administration had conducted thorough consultation on the proposed arrangements before recommending for implementation in early 2006.

13. SCS assured members that the Administration had conducted thorough consultation in formulating the final set of revised arrangements. He pointed out that the Administration had taken on board the major proposals endorsed by Members in a motion debate on the subject at the LegCo meeting held on 2 February 2005. On 21 March 2005, the Administration consulted the Panel on a set of preliminary

proposals in parallel to staff consultation. Taking account of the feedback received during the staff consultation period, views expressed by the general public and the LegCo Members, as well as advice of the independent Advisory Committee on Post-retirement Employment (ACPE), the Administration had finalized the revised policy and arrangements on the taking up of outside work by directorate officers after they had ceased active government service. The Administration presented the revised arrangements to the Panel at the meeting today before their implementation on 1 January 2006. SCS stressed that the revised arrangements were generally more stringent compared to the existing ones.

Approving criteria

14. Given that land was an important and valuable asset to Hong Kong, Mr KWONG Chi-kin was of the view that former directorate officers involved in the formulation of land-related policy should be subject to more stringent control, for instance, in the form of a longer control period during which they had to seek prior permission for taking up outside employment.

15. SCS advised that a set of standard restrictions on scope of work would be imposed across the board to all cases of outside work taken up by directorate officers during the final leave and/or control period, to better guard against conflict of interest and negative public perception. In essence, a directorate officer could not be personally involved, whether directly or indirectly, in any bidding for government land, property, projects, contracts or franchises, or be engaged in work which was 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. SCS pointed out that the approving authority would decide on the specific restrictions on the scope of work, if any, after detailed examination of individual applications and taking into consideration the advice of the independent Advisory Committee on Post-service Employment of Civil Servants (the Advisory Committee, currently known as the ACPE).

16. Ms Emily LAU noted that the primary factors to be taken into account when considering an application were whether there was 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. She queried whether there were any objective criteria and/or definition in the consideration of these two factors.

17. In response, SCS explained that the procedures for processing directorate officers' applications to take up post-service outside work would help safeguard objectivity in the assessment of the applications. Under the control regime, applications were first scrutinized by the Head of Department (HoD) concerned and where necessary, forwarded to the relevant Bureau as well, and then passed to the independent Advisory Committee for advice. The recommendations of HoD/Bureau and the advice of the Advisory Committee would be considered by CSB in deciding

whether there was any real or potential conflict of interest and/or negative public perception involved. Depending on the circumstances of individual cases, specific restrictions on the scope of work or longer sanitization period might be imposed.

Sanitization period

18. Mr LEE Cheuk-yan opined that the minimum sanitization period for directorate officers retired/retiring under pensionable terms should be lengthened to three years to guard against any real or potential conflict of interest between their post-service employment and their previous work in the Government. In his view, these former directorate officers, who were entitled to pension benefits, should not have any real financial needs to take up paid employment after retirement. Mr LEE was particularly concerned that under the revised arrangements, the sanitization period would be counted from the cessation of active service, i.e. including the period of final leave. Such arrangement could not guard against conflict of interest as officers who had accumulated long period of leave, say up to one year, would be able to take up outside work immediately or very soon after ceasing active service.

19. While appreciating Mr LEE Cheuk-yan's concern, SCS explained that in working out the revised arrangement on the length of minimum sanitization period, the Administration had taken into consideration the views of LegCo Members as well as civil service unions, and had struck a balance in this respect. SCS pointed out that under the revised arrangements, directorate officers were not permitted to take up any full-time remunerated work or any work of a commercial nature during the final leave period. In this regard, directorate officers on final leave might, on application, only take up part-time or notionally remunerated work with certain non-commercial organizations. Moreover, directorate officers had to seek prior permission for taking up outside work during the control period and approval would only be granted for applications which met the approving criteria. The Deputy Secretary for the Civil Service 1 (DSCS1) added that the approving authority might impose a longer sanitization period having regard to the circumstances of a particular case so as to more fully forestall conflict of interest or negative public perception. Referring to the figures on applications from former directorate officers for taking up outside work, DSCS1 pointed out that the majority of the applications were submitted on average 15 months or more after the officers concerned had ceased active service.

20. Mr Howard YOUNG supported the revised arrangement of imposing a longer minimum sanitization period for former officers at D4 level or above. In this connection, Mr YOUNG sought information on the minimum sanitization periods for former directorate officers appointed on non-civil service contract (NCSC) terms.

21. In response, DSCS1 explained that for officers appointed on agreement or NCSC terms, the need for and length of sanitization period would be determined on a case-by-case basis having regard to the circumstances of each case. As the circumstances of officers appointed on agreement or NCSC terms varied greatly, for instance, in terms of the length of government service which had a bearing on an

officer's exposure to sensitive work or information, it would be reasonable to decide the length of sanitization period having regard to the circumstances of each case.

22. Given that more and more directorate officers were employed on agreement terms or NCSC terms, Mr CHEUNG Man-kwong and Ms LI Fung-ying were of the view that minimum sanitization period should be specified for these officers. Mr CHEUNG suggested the Administration to impose minimum sanitization period for those officers who had been employed for a period of time, for example, for three years or more, and/or involved in the formulation of policy and/or had access to sensitive information. Ms LI opined that clear requirements on the control period and sanitization period for former directorate officers appointed on agreement or NCSC terms should be set out under the revised arrangements, instead of assessing each application on a case-by-case basis, so as to ensure consistency in the handling of applications.

23. SCS explained that the taking up of outside work by directorate officers appointed on agreement terms were also subject to control under the revised arrangements. Nevertheless, as officers formerly appointed on agreement terms would not enjoy financial security in terms of pensions or accrued benefits under the Civil Service Provident Fund Scheme, their situations were far less uniform. The Administration therefore considered it reasonable to determine the need for and length of sanitization period or other restrictions on their applications on a case-by-case basis. SCS pointed out that where an agreement officer's government duties were of particular sensitivity, the appointment authority might, at the point of offering the appointment, stipulate a sanitization requirement in the employment agreement so as to guard against possible conflict of interest arising from outside work taken up by the officer after he/she had left the civil service. Nevertheless, SCS took note of members' concerns on the need to specify minimum sanitization period for directorate officers formerly appointed on agreement terms or NCSC terms and undertook to consider whether the proposed arrangement should be improved in this regard.

Transparency

24. On the issue of enhancing transparency, Mr CHEUNG Man-kwong opined that the information on outside work taken up by all directorate officers irrespective of their rank should be made available for public inspection. Ms Emily LAU shared Mr CHEUNG's view. In their view, if the information of approved cases involving directorate officers ranked below D4 level would not be disclosed upon their approval, the public would have no means to know about and comment on the cases, and the Administration had no basis to decide whether there was negative public perception on the cases.

25. In response, SCS explained that the new arrangement already represented a significant improvement over the present practice whereby information on cases of approved outside work was normally not disclosed without consent of the officers concerned. In devising the two-tier system for disclosure of information, the

Administration had 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 (Cap. 486). The proposed disclosure requirement represented a reasonable balance between the need to protect the officers' privacy and to enhance transparency of the control regime. He said that where there was a need, the effectiveness of the disclosure requirement could be reviewed after its implementation. As to the assessment on whether the proposed outside work would give rise to negative public perception, SCS advised that under the control regime, all applications from directorate officers would have to go through a due process, including consideration by the relevant HoD/Bureau, seeking advice of Advisory Committee and making a decision on approval or otherwise by CSB on the basis of the recommendation and advice of the former parties. With the three-stage procedures for handling applications as well as the involvement of the independent Advisory Committee which was chaired by a judge and comprised members outside the civil service, SCS believed that all applications would be assessed in an objective and fair manner.

26. Ms Emily LAU was of the view that the approving authority, including the HoD/Bureau concerned, should be held responsible for wrong judgment if the approved outside work subsequently did give rise to negative public perception. Mr CHEUNG Man-kwong shared her view and opined that the requirement to disclose employment information to the public should be the obligation of former directorate officers who wished to seek permission for taking up outside work during the control period, and should not be regarded as an intrusion on their personal privacy. SCS responded that mishandling the applications or negligence on the part of the HoD/Bureau in processing the applications could be followed up in accordance with the provisions in the Civil Service Regulations, where appropriate. SCS undertook to consult the staff side on members' suggestion on the arrangement to enhance transparency.

Geographical scope of activities subject to control

27. Mr WONG Kwok-hing opined that the requirement for seeking prior permission for the taking up of a business or employment the principal part of which was carried on in Hong Kong might be abused by retired civil servants who took up employment with international enterprises in their overseas offices. As business and employment carried on outside Hong Kong might also constitute a conflict of interest with the retired officer's previous service in the Government, Mr WONG urged the Administration to put in place adequate control in this respect.

28. In reply, SCS explained that under the control regime, all directorate officers retired on pensionable terms were required to inform CSB of any paid employment undertaken anywhere during the control period. The authority to determine whether the principal part of the reported employment was carried on in Hong Kong rested with CSB. CSB would advise the officer concerned where necessary if the prospective employment might constitute a conflict of interest with the officer's

previous service in the Government. DSCS1 supplemented that directorate officers were required to seek prior permission to take up paid outside work involving duties outside Hong Kong during their final leave and/or control period if they were to be based in Hong Kong, or if they were to work outside Hong Kong in a business that had any connection with Hong Kong.

29. Mr WONG Kwok-hing maintained his view and requested the Administration to remove any geographical scope for the control coverage so that directorate officers would have to seek prior permission for paid outside work taken up in anywhere of the world.

30. SCS pointed out that in making improvements to the control regime, the Administration needed to strike a balance between the rights of the former officers as individuals to pursue employment or business after ceasing government service and the views and expectation of the public regarding the integrity and impartiality of the civil service. SCS advised that under the pensions legislation, the requirement for retired officers to seek prior permission only applied if the principal part of the business or employment was carried on in Hong Kong. Hence, legislative amendments would be necessary to implement the extension of the geographical scope of application. He said that the current arrangement for former officers to report to CSB on their employment outside Hong Kong during the control period had been effective in monitoring the cases. Nevertheless, SCS took note of Mr WONG Kwok-hing's concern and agreed to take this into consideration in any future reviews of the control regime.

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Blanket permission

31. Mr WONG Kwok-hing was concerned that the blanket permission to be given for unremunerated work with certain organizations would be subject to abuse by former directorate civil servants who took up unremunerated work during the control period but was subsequently given remuneration by the organizations after completion of their work. Mr James TO expressed similar concern. In this connection, Mr TO asked whether the officers concerned had to seek permission under the control regime for acceptance of a lump sum remuneration in the form of a bonus upon completion of their work with the non-commercial organizations.

32. Mr CHEUNG Man-kwong opined that if a former officer had taken up unremunerated work under the blanket permission and subsequently received financial reward after completion of service, he/she had in fact breached the rule under the control regime and the Administration should take necessary actions against the officer concerned.

33. Mr Bernard CHAN supported the idea of facilitating the taking up of voluntary work by former directorate officers so that they could contribute to the community with their experience in the public service. Mr CHAN enquired whether former directorate officers who wished to take up notionally remunerated work with

non-commercial organizations would be subject to the same control mechanism governing the taking up of employment with commercial organizations.

34. SCS explained that the blanket permission was meant to streamline the procedure and to facilitate the taking up of voluntary work with certain organizations that sought to achieve objectives of public interest. He pointed out that the blanket permission only covered unremunerated work with a few clearly defined categories of non-commercial organization having considered the possible ambiguity arising from the definition of “notional remuneration”. While former directorate officers taking up remunerated work with non-commercial organizations would have to seek prior permission during the control period, consideration might be given to shortening the minimum sanitization period for their work where the work would not give rise to conflict of interest and would unlikely cause negative public perception. In response to Mr James TO’s concern, SCS undertook to seek legal advice on the appropriate measures to strengthen control on acceptance of remuneration in cases of outside work undertaken under the blanket permission.

35. DSCS1 added that former directorate officers who wished to take up outside work under the blanket permission were still required to notify CSB of the outside work beforehand, and to report any material change to their outside work. CSB would follow up with the officers concerned if any irregularities were detected in the outside work undertaken under the blanket permission.

Sanctions and Monitoring

36. Pointing out that the forms of sanctions to be invoked in the event of a breach of rules stipulated in the approvals mainly covered the suspension of pension for officers on pensionable terms, Mr CHEUNG Man-kwong doubted whether the sanctions would have adequate deterrent effect on former directorate officers, especially where the prospective employment to be taken up would bring about an amount of financial gain which far exceeded their pensions.

37. Referring to paragraph 16 of the paper provided by the Administration, Ms Emily LAU noted that the control regime would remain essentially an honour system. In this connection, Ms LAU was concerned whether the officers concerned would have a continued duty to report changes to their employment; and if not, how SCS could monitor compliance with the rules governing the employment and decide whether to invoke suspension of pension for any breaches.

38. In reply, SCS explained that while the control regime would remain essentially an honour system under which approvals would be granted on the basis of the information provided by the officers concerned in their applications, the Administration would make it clear to all directorate officers from the outset that where there was a breach of the rules governing the taking up of outside work by directorate officers, depending on the nature and gravity of the breach, SCS might consider invoking suspension of pension under the pension legislation and/or other

forms of sanctions as set out in item 12 of the Annex to the paper provided by the Administration, such as initiation of civil action to seek an injunction or sue for damage. SCS pointed out that the risk of sanctions should have considerable deterrent effect on the officers who took up outside employment, bearing in mind the impact on their reputation and work. Responding to Mr CHEUNG Man-kwong's further enquiry, SCS said that depending on the nature of the cases and subject to the legal advice obtained by the Administration, the Administration would initiate appropriate legal proceedings against the officers concerned. SCS confirmed that the officers concerned would have a duty to report changes to their employment to CSB.

Control on the taking up of outside work by non-directorate civil servants

39. Mr James TO pointed out that the Administration should also consider measures to strengthen the mechanism governing post-service employment of former non-directorate officers, as some of these officers, such as officers in the Customs and Excise Department and police officers responsible for investigation of commercial crimes, would have access to sensitive information during their service in the Government. In response, SCS advised that under the current mechanism, applications from non-directorate officers to take up outside work during the control period were processed by their respective HoDs/Bureaux. He believed that HoDs/Bureaux would take note of the revised arrangements for directorate officers and consider whether some of the provisions might be of relevance when they examined particular applications from non-directorate officers. SCS also undertook, as a next step, to discuss with the departments on whether similar changes should be made to the mechanism governing non-directorate officers.

40. Mr WONG Kwok-hing requested the Administration to report to the Panel on whether any changes had been made to the proposed arrangements for addressing the various issues raised by members at the meeting. SCS undertook to provide a written response.

(Post-meeting note: The supplementary information provided by the Administration in response to members' requests in paragraphs 23, 26, 34, 39 and 40 was issued vide LC Paper No. CB(1)427/05-06(01) on 30 November 2005.)

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