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11 August 2011

Ms Sarah YUEN  
Clerk to Panel on Public Service  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

Dear Ms YUEN,

**Panel on Public Service**  
**Follow-up to meeting on 16 March 2011**

**Legal assistance for frontline enforcement staff of  
the Food and Environmental Hygiene Department**

At the meeting of the Panel on Public Service on 16 March 2011, Members requested the Administration to take the ensuing follow-up actions –

- (a) seek advice from the Department of Justice on whether the Civil Service Bureau was empowered by the Public Service (Administration) Order, the Public Service (Disciplinary) Regulation and the Civil Service Regulations to unilaterally amend the employment conditions of civil servants, as in the present case of ceasing the Private Solicitors Scheme (“PSS”) for staff of the Food and Environmental Hygiene Department (“FEHD”), which had been in operation for over 20 years and should be regarded as part and parcel of the employment terms of the staff concerned under the common law system;

- (b) provide in writing the detailed justifications and considerations for discontinuing the provision of such an important legal assistance service as the PSS; and
- (c) provide a response to the following motion passed at the meeting :

“That this Panel urges the Government to immediately resume the Private Solicitors Scheme for frontline enforcement staff of the Food and Environmental Hygiene Department.”

### **Legal advice**

As we explained at the Panel meeting on 16 March 2011, there was no record of any undertaking given to staff on the continued provision of the PSS in FEHD in the context of the 1994 Foreman-to-Hawker Control Officer re-grading exercise and when FEHD was set up in 2000. The provision of the PSS did not form part of the conditions of service or terms of employment, but only one form of legal assistance. Indeed, with the cessation of the PSS, eligible staff in FEHD may continue to apply for legal assistance under the service-wide legal assistance scheme. We have consulted the Department of Justice and the Administration’s position is that the cessation of the PSS does not constitute a variation of the concerned staff’s terms of employment.

### **Justifications and considerations for discontinuing the PSS**

Civil servants performing law enforcement duties, including those in disciplined services grades and civilian grades, rely on the service-wide legal assistance scheme for legal assistance when they are involved in criminal proceedings arising from the discharge of their duties. The scheme has been operating smoothly.

The coverage of the service-wide legal assistance scheme largely overlapped with the PSS. The only difference was that under the PSS, legal assistance was provided for staff under criminal investigation in connection with suspected criminal offences arising from their duties. The Administration considers there is no strong justification to continue to provide legal assistance at the pre-charge stage as the concerned civil servants are expected to assist the law enforcement agencies in the investigation and state all facts and information relevant to the investigation process. In this connection, we note that other civilian grade civil servants who are required to perform enforcement duties have carried

out their duties effectively in the absence of any legal assistance at the pre-charge stage.

To prepare concerned staff for the cessation of the PSS, FEHD had briefed them five months in advance of the implementation date. The Department had held a total of 67 training/briefing sessions to familiarise staff concerned with the service-wide legal assistance scheme. Training/briefing materials were also distributed and induction training for new recruits and refresher training for serving officers have also been strengthened.

**Response to the motion passed at the meeting of 16 March 2011**

The Administration has carefully considered the views expressed by Panel Members and staff representatives at the Panel meeting on 16 March 2011. Having taken into account the considerations set out above, we remain of the view that there is no strong justification to continue the PSS. Concerned staff in FEHD may continue to apply for legal assistance under the service-wide legal assistance scheme when they are involved in criminal proceedings arising from the discharge of their duties.

Thank you for your attention.

Yours sincerely,



( Ms Ivy LAW )  
for Secretary for the Civil Service

c.c. Director of Food and Environmental Hygiene