

# 立法會

## *Legislative Council*

LC Paper No. CB(1)2273/11-12

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### **Report of the Panel on Public Service for submission to the Legislative Council**

#### **Purpose**

This report gives an account of the work of the Panel on Public Service ("the Panel") during the 2011-2012 legislative session. It will be tabled at the Council meeting on 11 July 2012 in accordance with Rule 77(14) of the Rules of Procedure.

#### **The Panel**

2. The Panel was formed by a resolution passed by the Legislative Council ("LegCo") on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining government policies and issues of public concern relating to civil service and government-funded public bodies, and other public service matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 12 members, with Hon Mrs Regina IP and Dr Hon PAN Pey-chyou elected as Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

#### **Major Work**

##### Appointment and employment

##### *Civil service establishment, strength, retirement and age profile*

4. The Administration provided an updated overview of the civil service establishment, strength, retirement, resignation and age profile.

Members noted that in the coming decade, a relatively large proportion of the directorate civil servants would come from the age group of 50-59 and they would be retiring within the next decade. In view of the fact that almost 35 000 civil servants, i.e. over 20% of all civil servants, would be retiring in the five-year period ending 2020-2021, members expressed grave concern that there was a serious succession problem in the civil service.

5. The Administration advised that Civil Service Bureau ("CSB") had been monitoring succession plans of various grades and ranks closely. It did not consider there was a succession problem as there had been only a few cases over the past several years in which the posts vacated by retirees could not be filled by promotion. Drawing from the experience in some 1 000 recruitment exercises conducted since 2007, the Administration advised that no difficulties had been encountered in recruiting civil servants.

6. Members also expressed concern about the effective transfer of knowledge and skills from retiring civil servants to their successors. The Administration advised that it had put in place succession plans and provided suitable training as well as development opportunities for civil servants at all levels to broaden their exposure and to prepare them for higher responsibilities.

#### *Employment of non-permanent residents of Hong Kong*

7. The announcement on 23 April 2012 by the Chief Executive-elect's Office ("CEEEO") of the appointment of Miss Ran CHEN, a non-permanent resident of the Hong Kong Special Administrative Region, as the Project Officer of CEEEO had sparked off controversy and wide public concern. At its meeting on 27 April 2012, the House Committee considered a letter from Hon WONG Yuk-man querying if the appointment was in breach of Article 99 of the Basic Law, which stipulated that public servants serving in all government departments must be permanent residents of Hong Kong except where otherwise provided for in Article 101. After deliberations, the House Committee agreed that the relevant policy matter be referred, under rule 20(i) of the House Rules, to the Panel for consideration.

8. On the reason for CSB's giving approval to appoint Miss CHEN without conducting an open recruitment exercise to identify a suitable candidate to fill the Project Officer post, the Administration explained that the opening was for less than three months and work had to start immediately. Besides, the appointee had to be conversant with the policy manifesto of Chief Executive-elect ("CE-elect") and its underlying rationale since the duties involved included policy studies and speech drafting. CEEEO

considered Miss Chen was a qualified candidate for the post because she had worked for the CE-elect in his Election Campaign Office for more than six months.

9. The Administration also stated that the appointment of Miss CHEN, a non-permanent resident of Hong Kong, was not in breach of Article 99 of the Basic Law since Article 101 provided that the Government, when required, may recruit qualified candidates from outside Hong Kong to fill professional and technical posts in government departments. The post filled by Ms CHEN was a "professional and technical post" as the post-holder had to be conversant with the CE-elect's policy manifesto and its underlying rationale. Members were not convinced that the skills and knowledge required of the post were really "professional and technical" in nature. They expressed grave concern that the Administration's interpretation of the expression "professional and technical posts" in Article 101 of the Basic Law might open up a floodgate for employment of non-permanent residents of Hong Kong by the Administration.

10. The Project Officer post filled by Ms CHEN was one of the three posts which did not exist in the paper on the establishment of CEEO submitted by the Administration to the Panel on Constitutional Affairs ("CA Panel") for its meeting on 16 January 2012. As it was reported by the media that the three posts had been created by splitting a Special Assistant post, members queried the propriety of the arrangement. The Administration explained that no discussion could be held with the CE-elect on the manpower arrangement of CEEO prior to the submission of the paper to the CA Panel in January 2012 as the election for the fourth-term Chief Executive ("CE") was not held until 25 March 2012. Subsequently, to meet CE-elect's manpower requirement, CSB approved the creation of three non-civil service posts for CEEO until 30 June 2012. The three posts were additional and they would not be offset by deletion of the Special Assistant post, which would remain vacant until its expiry on 30 June 2012. Some members considered that the explanation given by the Administration was no more than glossing over its mistake.

#### *Employment of non-civil service contract staff*

11. The Panel has been closely following up the non-civil service contract ("NCSC") staff scheme, which was introduced in 1999. In 2006, CSB conducted a special review in collaboration with bureaux or departments ("B/Ds") on the employment situation of NCSC staff. The review identified some 4 000 NCSC positions which would gradually be replaced by civil service posts as the work involved should more

appropriately be performed by civil servants. As at 30 June 2011, about 3 660 positions had been phased out. Since the 2006 review, B/Ds had identified another 1 100 NCSC positions which involved work that should more appropriately be carried out by civil servants. As at November 2011, about 695 of the 1 100 NCSC positions had been replaced by civil service posts.

12. The Administration provided the updated position report on the employment of NCSC staff to the Panel during the session. The Panel noted that as at 30 June 2011, a total of 14 918 full-time NCSC staff were employed by B/Ds, and that about 4 562 of them had been employed for more than five years. Panel members were particularly concerned about the employment situation of NCSC staff in certain departments (such as the Leisure and Cultural Services Department, the Hongkong Post, the Education Bureau, Fire Services Department and Government Flying Service), which employed a few hundred to over 1 000 NCSC staff or had a relatively high ratio of NCSC staff in the department.

13. Panel members in general considered the progress in replacing NCSC positions by civil service posts too slow. The Administration advised that while B/Ds could give notice to terminate the employment contracts of serving NCSC staff, it would not be in the interest of the NCSC staff for their employment contracts to be shortened or curtailed just for the sake of hastening the pace of replacement.

14. On recruitment to fill the replacement civil service posts, some members urged the Administration to consider according priority to employing NCSC staff with relevant working experience, and granting incremental credits to NCSC staff in recognition of their years of service in the Government. In response, the Administration advised that its recruitment policy was to select the most suitable persons for the specified civil service vacancies through an open, fair and competitive process. Since relevant working experience was one of the factors to be taken into account in the recruitment, NCSC staff who met the basic entry requirements of specific civil service ranks should generally enjoy a competitive edge over other applicants. NCSC staff were different from civil servants, and their terms of employment and conditions of service should not be compared with those of civil servants.

#### *Use of agency workers*

15. The Administration refers to the manpower supplied by employment agencies under service contracts and work under direct supervision of the

procuring B/D as "agency workers". Further to the issue of a set of guidelines in April 2010 on the proper use of agency workers, covering three areas, namely the scope of using agency workers, approval authority and wage requirement, CSB issued a set of supplementary guidelines in April 2011 on the renewal or re-letting of service contracts for the supply of agency workers, and on the wage requirement to be following by employment agencies providing agency workers to B/Ds following the coming into effect of the Minimum Wage Ordinance in May 2011.

16. The Administration provided an updated position report on the use of agency workers to the Panel during the session. A member considered that the presence of four types of staff in B/Ds, namely civil servants, NCSC staff, agency workers and staff of contractors of outsourced services, was divisive and affected the morale of all staff. While welcoming the trend of a reduced use of agency workers in the past two years, in terms of both the number of B/Ds involved (55 in 2010 vs 45 in 2011) and the total number of agency workers (2 260 in 2010 vs 1 687 in 2011), members urged the Administration to explore whether there was room for further reduction.

17. The Administration advised that B/Ds were allowed to use agency workers only to meet urgent or unforeseen service needs or unexpected surge in service demands for the short-term, as evidenced by the fact that among the 1 687 agency workers working in B/Ds as at 30 September 2011, over 70% were sourced from service contracts lasting nine months or less. In reply to a member's enquiry, the Administration advised that as a minimum, employment agencies were required to pay agency workers either the wages calculated at the prevailing statutory minimum wage rate or the relevant average monthly wages as published in the Census & Statistics Quarterly Report of Wage and Payroll Statistics for December 2010, whichever was the higher.

### Pay and conditions of service

#### *2012-2013 Civil Service Pay Adjustment*

18. CE in Council decided on 12 June 2012 that, with retrospective effect from 1 April 2012, civil service pay should be increased by 5.26% for civil servants in the directorate and upper salary band, and 5.8% for civil servants in the middle and lower salary bands. At the meeting on 18 June 2012, some members expressed concern that NCSC staff employed by individual B/Ds and staff of subvented bodies might not receive the same pay increases.

19. The Administration advised members that 95% of NCSC staff received a pay increase last year, and the pay adjustment rates for them were broadly similar to those applicable to civil servants. As the costs of pay increase for NCSC staff accounted for only a fraction of 1% of the annual departmental provisions, there had not been a single case in the past few years in which B/Ds were unable to increase the pay for NCSC staff owing to financial constraints. The Administration also advised that it had, through the relevant controlling officers, reminded the subvented bodies concerned that the additional subventions from the Government were meant to allow room for pay adjustment for their staff. Some members considered that the Administration should take the further step to penalize those subvented bodies which did not use all of the additional subventions for pay adjustment for their staff.

*Paid paternity leave to government employees*

20. The CE announced in the 2011-2012 Policy Address that the Administration would conduct a study into the provision of paid paternity leave for employees to promote child-bearing and family-friendly practices. At the meeting on 19 December 2011, the Administration briefed members on the broad framework and the key components of the proposal to provide paid paternity leave to government employees, while views were being sought from government employees and civil service bodies through established channels during an one-month consultation.

21. While members generally welcomed the initiative, they called for its early implementation<sup>1</sup> as well as expressed views and concerns about its implementation. As one of the eligibility criteria was 40 weeks' continuous service immediately before the expected or actual date of childbirth, some members expressed concern that NCSC staff might not qualify for the leave if the duration of their service was calculated on discrete contract basis and each contract was of duration less than 40 weeks. The Administration undertook to take into account the NCSC staff's total employment period working under consecutive contracts in assessing their eligibility for the leave. Some members also opined that as paternity leave was of much shorter duration than maternity leave, reference to the maternity leave arrangements might be unnecessary and a shorter qualifying employment period should be prescribed. A member disagreed with the proposed arrangement that paternity leave would not be granted in respect of miscarriage. The Administration advised that sick leave would be granted to female government employees in case of miscarriage or abortion. Members noted

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<sup>1</sup> Originally scheduled for implementation in mid-2012, the initiative was implemented on 1 April 2012.

that the provision of paternity leave to childbirth out of wedlock was a controversial issue and raised concern about whether restricting the provision of paternity leave to childbirth within marriage would constitute a discrimination against infants born outside marriage. Some members also expressed concern that employees of contractors and service providers to the Government would not be eligible for paternity leave and they urged the Administration to speed up the legislation on the provision of paternity leave to cover all employees in Hong Kong.

### *Conditioned hours of work*

22. The Panel received a briefing by the Administration on the policy governing the conditioned hours of work of the civil service, and met with deputations from civil service trade unions to listen to their views on the matter. The Administration advised that while all civil servants were paid on a monthly basis, specific conditioned hours of work were laid down for different civil service grades. The Administration had taken into account the stipulated conditioned hours of work when determining the salaries and conditions of service of different civil service grades. Any proposal to reduce the conditioned hours of work of a particular civil service grade would be considered against three prerequisites i.e. cost-neutrality, no additional manpower, and maintaining the same level of service to the public; and other relevant factors.

23. Members supported deputations' views on the introduction of uniform conditioned hours of work, preferably at 44 hours gross per week, across the board for all civil servants. They considered that the results of the reviews on the conditioned hours of work conducted years ago were outdated and no longer reflected the prevailing manpower situation of the civil service. The Administration should increase its manpower to cope with the greater demand for quality public services such that civil servants could have a better balance between work and leisure through reducing their working hours and the full implementation of the five-day week initiative. To avoid unhealthy and unnecessary comparison of the conditioned hours of work amongst different civil service grades, the Administration to migrate those 25 000 civil servants, who were currently subject to 45 hours net per week, to the gross conditioned hours system without any corresponding downward adjustment of their salaries.

24. The Administration stated that it had no plan to introduce uniform conditioned hours of work in the civil service and considered it more appropriate that the conditioned hours of work of different civil service grades should be determined in relation to the work nature and operational

requirements of the respective grades. Since the stipulated conditioned hours of work had been taken into account when the Administration determined the respective pay of different civil service grades, the salaries and conditions of service of the concerned grades might need to be reviewed in the event of a change in their conditioned hours of work.

*Medical and dental benefits for civil service eligible persons*

25. At the meeting on 19 March 2012, the Panel received a briefing by the Administration on the updated position of the provision of medical and dental benefits to civil service eligible persons ("CSEPs"), which included serving and retired civil servants and their eligible dependants. The Panel noted that the Administration had implemented a direct payment arrangement with Hospital Authority ("HA") for selected drugs, medical items and treatment, under which HA would provide the required items to CSEPs first and Department of Health ("DH") would settle the payment with HA direct. A working group was formed in 2011 to examine the feasibility of further extending the coverage of the direct payment arrangement to all drugs provided by HA to CSEPs and to work out the detailed logistics. The Panel also noted that with the opening of eight new general dental surgeries between July 2011 and February 2012 and eight more by phases from March 2012 onwards, the service capacity would increase by 9.2%. With two new orthodontic dental surgeries scheduled to commence operation in the last quarter of 2012, the service capacity would increase by 15%. In addition, the Administration was working in collaboration with HA to set up a dedicated specialist out-patient clinic at the Prince of Wales Hospital to serve CSEPs.

26. While they welcomed the improvement measures outlined above, some members were however disappointed to note that the Administration maintained its position not to include Chinese medicine in the scope of civil service medical benefits. The Administration explained that the civil service medical benefits referred to in the Civil Service Regulations and the letters of appointment for civil servants were those provided by HA and DH. As the services provided by Chinese medicine clinics under HA were not part of the standard services of HA, it did not fall within the scope of the civil service medical benefits. Unless there were changes to the existing arrangements, the Administration had to abide by the contractual obligations to offer medical and dental benefits to CSEPs through HA and DH. While members remained unconvinced by the Administration's explanation, the Administration undertook to continue to keep in view the development of Chinese medicine in the public healthcare system in consultation with the Food and Health Bureau and HA.

## Management of civil service

### *Civil service disciplinary mechanism*

27. The Administration gave an overview of the civil service disciplinary mechanism and provided updated figures on punishments on civil servants convicted of misconduct or criminal offences. Members enquired how the time taken to conduct disciplinary proceedings and the acquittal rate had changed since the ban on legal representation for the defaulters was lifted. The Administration undertook to provide the relevant statistics on the time taken to conduct disciplinary proceedings but advised that it might be difficult to attribute the acquittal of a defaulter to the fact that he was legally represented.

28. Some members commented that it was unfair that civil servants were subject to stringent regulation on acceptance of advantages but CE was not subject to any such regulation. Given that the then incumbent (i.e. third-term) CE had been criticized for having inappropriately accepted hospitality offered by tycoons and a former Chief Secretary for the Administration had been arrested in March 2012 for suspected corruption, and both of them were former civil servants, a member doubted the effectiveness of the CSB's effort in imparting a sense of probity in the civil service.

### *Control regime for post-service outside work for directorate civil servants*

29. Following the publication of report of the Committee on Review of Post-service Outside Work for Directorate Civil Servants in July 2009 and the report of the LegCo Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man in December 2010, the Administration consulted the Advisory Committee on Post-service Employment of Civil Servants, the Public Service Commission, departmental and grade management, the constituent staff unions of the central staff consultative councils, and all serving directorate civil servants on the recommendations of the two committees. After considering the views obtained as well as seeking legal advice, CE in Council endorsed on 28 June 2011 a revised control regime on post-service outside work by directorate civil servants. At a special meeting of the Panel of the last session on 1 August 2011, the Administration briefed members on the improvement measures under the revised control regime. The revised control regime, which came into effect on 1 September 2011, applies to directorate civil servants on pensionable or new permanent terms ceasing

active service on or after that date, or those on agreement terms entering into new or renewal agreements on or after that date.

30. The Administration gave members an updated overview of the post-service outside work by directorate civil servants under the revised control regime. Noting that directorate civil servants were only required to notify the Administration of their taking up unpaid work with specified non-commercial organizations, some members were concerned that the assistance rendered by those former civil servants to such organizations might put the latter in a more advantageous position than others in the bidding of government service contracts. The Administration advised that upon receipt of a notification, it would scrutinize the case closely and, if necessary, request the civil servant concerned to provide additional information or even to seek approval before taking up the work. Also, charitable bodies registered under the Inland Revenue Ordinance (Cap. 112) would not automatically be recognized as "specified non-commercial organizations" as the latter referred to those non-commercial organizations "not primarily engaged in commercial operations". Besides, a civil servant who had disclosed specified information without authority was liable to criminal sanction under the Official Secrets Ordinance (Cap. 521).

#### *Morale of civil servants*

31. Following weeks of media reports since 20 February 2012 on the acceptance of hospitality by the third-term CE offered by tycoons, which sparked off a public outcry, the Panel held a special meeting on 14 April 2012, to receive the views of deputations from civil service trade unions on the impact of the incidents on the morale of civil servants. Deputations expressed the view that CE's acceptance of hospitality offered by tycoons not only had given rise to public query that transfer of benefits might have been involved but had also dealt a blow to the image of probity and prestige of the civil service. They said that should civil servants engage in activities similar to those of CE, they would have been subject to disciplinary proceedings and even criminal sanctions for accepting advantages. The incidents revealed a double standard that while they were subject to stringent regulation on acceptance of advantage, CE was not subject to any such regulation. Some deputations considered that while the incidents had aroused concerns and disappointment among civil servants, their morale had not been seriously affected as members of the public had not lost confidence in the integrity of the civil service as a whole.

32. Members considered that CE, politically appointed officials and civil servants should be subject to the same stringent control regime on acceptance

of hospitality and advantages. In particular, section 3 of the Prevention of Bribery Ordinance (Cap. 201), which prohibited the solicitation or acceptance of advantage by any prescribed officer without permission, should be extended to cover CE.

33. The Administration stated that it had all along attached great importance to the probity and integrity of civil servants. It adopted a multi-pronged approach to govern the conduct of civil servants. According to the assessment of the Administration, the morale of civil servants had not been affected by CE's acceptance of hospitality. In any case, the Administration was keenly aware that there was no room for complacency in its efforts to uphold an honest and clean Civil Service.

#### Other issues

34. The Panel received briefings from the Administration on CSB's policy initiatives in 2012, an updated overview of the provision of leadership and management training for civil servants, as well as the mechanism and regulations on preventing unauthorized disclosures of confidential information by civil servants. The Panel also discussed the Civil Service Outstanding Service Award Scheme 2012 and other commendation schemes for civil servants.

#### **Meetings held**

35. From October 2011 to June 2012, the Panel held a total of 11 meetings.

Council Business Division 1  
Legislative Council Secretariat  
29 June 2012

**Legislative Council**

**Panel on Public Service**

**Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to the civil service and Government-funded public bodies, and other public service organizations.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council  
Panel on Public Service**

**Membership list for 2011 – 2012 session**

<b>Chairman</b>	Hon Mrs Regina IP LAU Suk-ye, GBS, JP
<b>Deputy Chairman</b>	Dr Hon PAN Pey-chyou
<b>Members</b>	Hon LEE Cheuk-yan Dr Hon Margaret NG Hon CHEUNG Man-kwong Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Hon TAM Yiu-chung, GBS, JP Hon LI Fung-ying, SBS, JP Dr Hon LEUNG Ka-lau Hon WONG Sing-chi Hon IP Wai-ming, MH Hon LEUNG Kwok-hung  (Total : 12 members)
<b>Clerk</b>	Mr Arthur LEUNG
<b>Legal Adviser</b>	Mr YICK Wing-kin
<b>Date</b>	13 October 2011