

## 1. 引言

1.1 根據《基本法》第九十九條，公務人員必須"盡忠職守，對香港特別行政區政府負責"。此外，根據 2009 年頒布的《公務員守則》，所有公務員亦須"對在任的行政長官及政府完全忠誠，並須竭盡所能地履行職務"。由 2020 年 10 月起，公務員須根據《香港國安法》宣誓擁護《基本法》、效忠香港，並對政府負責；拒絕宣誓者會被要求離開公務員隊伍。最近於 2021 年 3 月，全國人民代表大會通過關於完善香港選舉制度的決定，重申"愛國者治港"的重要性。鑒於公務員屬於"治港人士"一員，有意見關注到政府聘任新入職公務員時，是否已充分考慮忠誠因素。政府於 2005 年曾表示，操守審查制度不涉及對應徵者進行"任何形式的政治審查"，而近期則拒絕透露進一步詳情。

1.2 應李慧琼議員的委託，資料研究組已就選定地方的公務員聘任審查程序進行研究，聚焦於各地如何審核應徵者是否對政府/國家忠誠。研究涵蓋的 6 個地方，遍及北美洲(即美國及加拿大)、歐洲(即英國及德國)，以及亞太區(即澳洲及日本)。根據在公共領域關乎此課題的有限資料，所蒐集的相關文件現收納於一個資料套，當中主要觀察結果概述於下文和附表。

## 2. 選定地方聘任公務員的忠誠核查

2.1 環顧所有選定地方，均明確規定公務員須維護憲制秩序、盡忠職守，為在任的政府服務。然而，在公務員聘任審查程序方面，尤其是忠誠核查的規定，卻頗為空泛和模糊。儘管如此，研究仍發現各地的忠誠核查有若干共通之處。就一般聘任程序而言，半數選定地方(即美國、德國及日本)除規定擬聘任的應徵者須宣誓外，還要求他們申報過往的政治活動。若相關職位可接觸敏感資料，所有選定地方皆作保安審查，並考慮應徵者是否忠誠。即使當中 5 個地方(即美國、加拿大、英國、澳洲及日本)已設立外部覆核機制，但審查所涉及的私隱及政治化問題，仍不時引起關注。

2.2 具體而言，在美國，公務員須宣誓擁護憲法。此外，應徵者須接受背景調查，以確保他們未曾"明知而故意作出或參與任何旨在以武力推翻美國政府的行為或活動"。然而，"加入某個組織"本身並不構成喪失資格的理由。若相關職位可接觸機密資料，應徵者須經過更嚴格的國家安全審查，審查共分 3 個級別。應徵者如在效忠國家、受外國勢力影響及崇尚外國方面受到質疑，或會喪失資格。

2.3 在**加拿大**，所有獲聘任的公務員均須宣誓，而保安審查的規定亦涵蓋大部分政府職位。然而，在保安審查的 3 個級別之中，只有最高兩級審查所涵蓋的職位，才需要評估應徵者"對加拿大的忠誠度"，即根據其"個人理念"、"性格特點"、從屬團體及人脈關係，審核他們曾否或會否可能參與"對加拿大安全構成威脅"的活動。

2.4 在**英國**，聘任公務員一般無需進行忠誠審查，但敏感職位的應徵者須接受 3 個級別的保安審查。審查機制包括有關個人背景的詳細問卷、對應徵者家庭狀況進行調查，以至與應徵者進行深入面試。持"極端理念"的應徵者或會喪失資格。

2.5 在**德國**，新入職公務員必須宣誓支持憲法。應徵者若曾經加入"極端"或"反憲法"組織，喪失資格的機會較大。這情況在 1989 年東西德統一之前的西德尤為普遍。即使到了今天，德國仍有兩個州份沿用上述做法，以致社會間或有意見關注到，左翼組織成員僅因其政治立場而不獲聘用。

2.6 在**澳洲**，保安審查只適用於若干敏感職位，審查共分 4 個安全級別。審查指引規定，應徵者須接受"忠誠度"評估(即其是否"對澳洲及澳洲政府的民主進程有承擔")。具體而言，"與澳洲民主制度相違背的強烈政治觀點"、網上不良行為，甚至擁有外國護照，都可能令應徵者的忠誠度受到質疑。

2.7 在**日本**，公務員均須宣誓。此外，若應徵者曾經加入"鼓吹以武力推翻日本憲法或其後成立的政府"的組織，不獲參加公務員考試的資格。至於涉及國家機密的職位(多數隸屬防衛省)，應徵者須接受進一步保安審查。

表 —— 選定地方聘任公務員的忠誠核査<sup>(1)</sup>

|                      | 香港                          | 美國                 | 加拿大 | 英國               | 德國 | 澳洲 | 日本 |
|----------------------|-----------------------------|--------------------|-----|------------------|----|----|----|
| <b>A. 對公務員的要求</b>    |                             |                    |     |                  |    |    |    |
| 1.                   | 堅決擁護憲法                      | ✓                  | ✓   | ✓                | ✓  | ✓  | ✓  |
| 2.                   | 對在任政府忠誠                     |                    |     |                  |    |    |    |
|                      | - 不論本身政治立場為何，履行服務政府的職責      | ✓                  | ✓   | ✓                | ✓  | ✓  | ✓  |
|                      | - 以政治領袖的決定為先，而非按自己判斷的公眾利益行事 | ✓                  | ✓   | ✓ <sup>(2)</sup> | ✗  | ✗  | ✓  |
| <b>B. 聘任公務員的忠誠核査</b> |                             |                    |     |                  |    |    |    |
| <b>I. 一般聘任程序</b>     |                             |                    |     |                  |    |    |    |
| 3.                   | 宣誓要求                        | ✓                  | ✓   | ✓                | ✗  | ✓  | ✗  |
| 4.                   | 審核有否參與反憲法活動                 | ✗                  | ✓   | ✗                | ✗  | ✓  | ✗  |
| <b>II. 保安審查</b>      |                             |                    |     |                  |    |    |    |
| 5.                   | 保安審查級別                      | 不適用 <sup>(3)</sup> | 3   | 3                | 3  | 3  | 4  |
| 6.                   | 評估有關忠誠關注事項的因素               |                    |     |                  |    |    |    |
|                      | - 個人行為                      | 不適用                | ✓   | ✓                | ✓  | ✓  | ✓  |
|                      | - 組織聯繫                      | 不適用                | ✓   | ✓                | ✓  | ✓  | ✓  |
|                      | - 人脈關係                      | 不適用                | ✓   | ✓                | ✓  | ✓  | ✓  |
|                      | - 海外財務利益                    | 不適用                | ✓   | ✗                | ✗  | ✓  | ✓  |
|                      | - 外國護照                      | 不適用                | ✓   | ✗                | ✗  | ✗  | ✓  |
|                      | - 曾經表達的意見                   | 不適用                | ✓   | ✓                | ✗  | ✓  | ✗  |
| 7.                   | 外部覆核機制                      | 不適用                | ✓   | ✓                | ✓  | ✗  | ✓  |

註：(1) 根據在公共領域關乎此課題的有限資料。

(2) 當政府的政策危及人民生命、健康及安全時，此規定不適用。

(3) 沒有相關資料。

## Loyalty checks for appointment of civil servants in selected places

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