

立法會

Legislative Council

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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 from October 2005 to June 2006. It will be tabled at the meeting of the Legislative Council (LegCo) on 12 July 2006 in accordance with Rule 77(14) of the Rules of Procedure of LegCo.

The Panel

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

3. For the 2005-06 session, the Panel comprises 10 members. Hon TAM Yiu-chung and Hon LI Fung-ying were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major Work

4. The Panel closely monitored the policy issues pertaining to the management of the civil service, including containing the size of the civil service, employment of non-civil service contract (NCSC) staff, development of an improved civil service pay adjustment mechanism, review of civil service allowances, revised policy governing post-retirement employment of former directorate civil servants, and policy on earth burial at Gallant Garden. The Panel also examined new policy initiatives regarding the implementation of a five-day week in the Government, and other issues including mechanism for handling staff complaints in the civil service, civil servants' right to take part in

trade union activities, and some directorate staffing proposals.

Containing the size of the civil service

5. The Panel noted that the Chief Executive (CE) had reiterated in his 2005-06 Policy Address the target set by the Government in 2003 to reduce the civil service establishment to around 160 000 by the end of 2006-07. Through the launching of the Second Voluntary Retirement (VR II) Scheme in 2003, imposition of a general civil service recruitment freeze since 1 April 2003, natural wastage and continuous efforts by bureaux and departments to streamline and re-engineer their operations and mode of service delivery, the total civil service establishment had been reduced to around 162 800 in March 2006. The Administration anticipated that the establishment would be further reduced to around 161 900 by 31 March 2007, which represented a reduction of about 36 000 posts (about 18%) in seven years from the peak of 198 000 posts in early 2000. The Panel was assured that no forced redundancy would need to be implemented in order to achieve the target set for 2006-07.

6. Noting that the actual number of civil servants already stood at a low level of around 157 000 in February 2006, the Panel was concerned whether the gap between the establishment and strength of the civil service was partly caused by the stringent control in recruitment under the general recruitment freeze. Members were particularly concerned that the general recruitment freeze and the current mechanism for application for exemption might delay the filling of civil service posts vacated through natural wastage and have an adverse impact on the manpower positions of bureaux and departments, especially the disciplined services departments. Given the early achievement of a budget surplus, the Panel urged the Administration to stop further reducing the civil service establishment, and to review the manpower positions of bureaux and departments and identify possible options for addressing their needs so as to maintain the quality of government services and reduce the pressure faced by civil servants after the significant reduction in manpower in the past few years. In this connection, the Panel supported the option proposed by the Administration to allow a limited number of grades (some 20 or so of the 229 grades) included in the VR II Scheme, which were facing manpower shortage problem, to resume open recruitment before the five-year recruitment freeze imposed on these VR grades expired in March 2008.

Employment of non-civil service contract staff

7. The Panel reiterated its concern that in order to achieve the target for reducing the civil service establishment, some bureaux and departments had been meeting their operational needs through employing NCSC staff. The Panel stressed the importance of maintaining a stable civil service devoted to the provision of the necessary government services on a long-term basis, and the

need to properly manage the NCSC Staff Scheme to prevent abuse. In this connection, members noted that while the NCSC Staff Scheme was introduced in 1999 to provide flexibility for Heads of Department (HoDs) to employ staff on fixed term contracts of up to three years to meet their operational needs under specific circumstances, 40% (6 363) of the total 15 687 NCSC staff had continuous service of three years or more as at 31 December 2005. The Panel requested the Administration to ensure that HoDs had observed the principle that the appointment of NCSC staff would not be used to replace civil service appointments.

8. The Panel welcomed the Administration's initiative to conduct a special review of the NCSC staff situation on a department-by-department basis to better understand individual departments' overall manpower situation. Members requested the Administration to review whether there was an abuse of the NCSC Staff Scheme by ascertaining whether the NCSC posts were created for any of the intended purposes. In taking forward the review, priority should be given to the 10 124 NCSC posts in the eight bureaux/departments which had employed 5% or more of the total number of NCSC staff and the posts filled by the 2 318 NCSC staff who had been continuously employed for five years or more (as at 31 December 2005). The Administration should also review whether the NCSC Staff Scheme had any adverse impact on bureaux and departments, e.g. whether it had given rise to any imbalances in manpower situation, any succession problems, and any adverse impact on quality of service.

9. The Panel also urged that the Administration should consider, after the review, whether some of the NCSC posts, in particular those created to meet service needs on a long-term basis or those filled by NCSC staff continuously for five years or more, should be converted to civil service posts. Given that civil service establishment had been reduced to around 162 800 in March 2006, members were of the view that the Administration might consider increasing the establishment to cope with operational need. The Panel was advised that with a clearer picture on the overall manpower situation upon the completion of the review around the end of 2006, the Administration would assess whether the target level of civil service establishment of around 160 000 would need to be adjusted upward slightly and if so, the Administration would submit proposals to the top level of the Government for consideration, and any modifications to the target level would only be made with the approval of CE. The Administration would report the outcome of the review to the Panel in due course.

Civil service pay and allowances

Development of an improved civil service pay adjustment mechanism

10. The Panel continued to monitor the progress of the development of an improved civil service pay adjustment mechanism. Noting the strong objections

of the Police Force Council (PFC) Staff Side to the appointment of the Watson Wyatt Hong Kong Limited (Watson Wyatt) by the Government as the Phase Two Consultant for the Pay Level Survey (PLS) for the civil service, the Panel discussed with the Administration and representatives of the PFC Staff Side on the issue. Members shared the concern of the PFC Staff Side that Watson Wyatt's previous involvement in a similar survey commissioned by the Hong Kong General Chamber of Commerce in 2002-03, with the findings that civil service pay was 17% to 229% higher than private sector pay, had seriously undermined the impartiality of Watson Wyatt and confidence of the staff side and the public on the credibility of the findings of the upcoming PLS. In this connection, the Panel passed a motion urging the Administration to replace Watson Wyatt as the Phase Two Consultant for PLS. In its written response to the motion, the Administration advised that there was no valid reason to overturn the decision to appoint Watson Wyatt as the Phase Two Consultant, which was taken after a proper, open and fair selection process.

11. The Panel noted that by June 2006, the Phase Two Consultant for PLS had substantially completed the job inspection process and had drawn up a preliminary list of private sector organizations to be invited to participate in PLS. The Panel was advised that the Consultant would report the survey findings to the Administration by the end of 2006. The Administration would then consult the staff side on the proposed application of the survey findings with a view to arriving at a decision by mid-2007. The Panel expressed concern about the slow progress of the survey, which would affect the implementation of civil service pay adjustments. The Panel also urged the Administration to maintain close communication with the staff side so as to ensure that staff feedback would be taken into account throughout the process of the survey.

Review of civil service allowances

12. On the review of fringe benefit type of civil service allowances, the Panel was briefed on the final change proposals. The more significant components of the final change proposals included: adjusting the ceiling rates for Overseas Education Allowance and Local Education Allowance to the 1997 level for new claimants and freezing the current ceiling rates for existing claimants, with no further rate adjustment; and abolishing the provision of Air-conditioning Allowance and Hotel Subsistence Allowance.

13. The Panel noted that a majority of civil service staff bodies considered the final change proposals acceptable. Members were however concerned about the views expressed by the staff bodies of the Police Force that the change proposals represented a unilateral variation of the terms of employment of civil servants and were therefore unlawful. The Panel exchanged views with the Administration on the legal implications of the final change proposals. According to the legal advice from the Department of Justice (DoJ), based on the

legal principles established by the Court of Final Appeal's judgment in the pay adjustment ordinances case in 2005, Article 100 of the Basic Law did not seek to prohibit or inhibit changes to pay, allowances, benefits or conditions of service of public officers appointed before 1 July 1997, except to the extent that such changes made them less favourable than those entitlements before that date. In other words, changes which were permissible before July 1997 by statute or under the unilateral variation clause embodied in the terms of appointment of civil servants might be implemented subject to the "no less favourable than before" test. In brief, DoJ advised that the final change proposals were lawful, and might be effected under the unilateral variation clause embodied in the terms of appointment of civil servants (which existed prior to July 1997) without the enactment of legislation. DoJ also advised that the unilateral variation clause permitted the Government to abolish an outmoded allowance or benefit (or implement a variation to the adjustment mechanism of an allowance or benefit) which was not a significant part of an eligible officer's total emoluments. Given some members' view that whether an allowance represented a significant part of an eligible officer's total emoluments should be determined according to the circumstances of the officer, the Administration was urged to examine the legality of the change proposals carefully in consultation with DoJ. The Panel was assured that the Administration had taken forward the review in a prudent manner and examined in great detail issues relating to the legality of the change proposals, and that the final change proposals were lawful, fair and reasonable.

Implementation of five-day week in the Government

14. Following the CE's announcement on 12 January 2006 the formation of a Working Group to examine the proposal and implementation details of introducing a five-day week in the Government with effect from 1 July 2006, the Panel was briefed in May 2006 on the phased implementation approach. In phase one, i.e. starting from 1 July 2006, two main areas of work (involving about 59 000 officers) in the Government would migrate to a five-day week, i.e. the work with little or no direct public interface, and selected services with a direct public interface. The Panel was assured that the Administration would maintain the level of service available to the public by fully compensating the opening hours lost on Saturdays (i.e. three hours in most cases) by extending the opening hours on weekdays. Subject to further examination by bureaux and departments, and consultation with staff and major stakeholders in the private sector, the Administration estimated that some more services might be provided on the five-day week basis in the second phase on 1 January 2007 and the last phase on 1 July 2007. Examples of such services included search and registration services of lands/companies records, shroffs at public housing property management units for rent payment, etc.

15. The Panel was advised that the Administration had consulted the staff sides of the central consultative councils (staff sides) on the phased implementation approach and the proposal to maintain the existing leave administration arrangements. The staff sides supported the initiative in principle and appealed to the management to extend the five-day week to as many staff as possible. Bureaux and departments had consulted staff through the appropriate departmental consultative channels, and civil servants in general welcomed the initiative.

16. Members generally indicated their support for the phased implementation approach. They were assured that the Administration, in taking forward the proposal, would adhere to four basic principles: no additional staffing resources; no reduction in the conditioned hours of service of individual staff; no reduction in emergency services; and continued provision of some essential counter services on Saturdays. In addition to these four principles, members stressed that no additional government expenditure and no reduction in government services should be involved. Given that most members of the public would only be available to approach government departments on Saturdays, the Administration should consider minimizing the impact of the non-provision of certain services on Saturdays on the public, in particular counter services relating to licensing, labour relations and conciliations, and social welfare. The Administration should also provide alternative channels for access to the services on Saturdays and formulate contingency plans to cater for unforeseeable circumstances.

17. The Panel urged the Administration to closely monitor the implementation of five-day week and review the arrangement (e.g. three months after the implementation of phase one on 1 July 2006), in particular, its impact on service quality; its impact on the public; its impact on civil servants, including their ability to cope with longer working hours during weekdays and how far they had benefited from the arrangement; and the need for fine-tuning the new arrangement, or restoring the previous arrangement for five and a half day week. The Administration undertook to closely monitor the implementation of a five-day week, with a view to fine-tuning the new arrangement.

Policy governing post-retirement employment of former directorate civil servants

18. In the last two sessions, the Panel examined the policy governing post-retirement employment of civil servants and queried the effectiveness of the current mechanism in ensuring that former civil servants did not enter into any business or took up any employment which might constitute a conflict of interest with their previous service in the Government. Stressing that a due process for handling the applications for post-retirement employment was needed to maintain the impartiality of the mechanism and to safeguard public interests, the Panel urged the Administration to review the existing mechanism as early as

possible to restore public confidence.

19. In the current session, the Panel monitored the Administration's review of the policy on post-service employment of former directorate civil servants. Members welcomed the revised arrangements put forward by the Administration to improve the existing control regime to better guard against conflict of interest and negative public perception. The areas of improvements included: imposing more stringent control on the applications for post-service employment by lengthening the minimum sanitization period for directorate officers at D4 level or above to 12 months and applying a set of 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).

20. Members however raised some suggestions for further improving the existing control regime. Given that more and more directorate officers were employed on agreement terms or NCSC terms, members considered that there was a need to specify minimum sanitization periods for these officers, in particular those who had been employed for a period of time (i.e. not just a few months), and/or involved in the formulation of policy and/or had access to sensitive information. The Panel was advised by the Administration 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. The Administration considered it more appropriate to determine the need for and length of sanitization period or other restrictions on agreement officers' applications on a case-by-case basis.

21. For the purpose of enhancing transparency, members considered that the information on outside work taken up by all directorate officers irrespective of their rank (i.e. including directorate officers below D4 level) should be made available for public inspection. The Panel noted the Administration's view that there was a case to subject directorate officers at D4 level or above to a more stringent requirement on disclosure of information given their higher level of responsibilities and greater access to sensitive information, as well as the public's generally greater concern about the taking up of outside work by these officers. The Administration believed that the proposed disclosure requirement represented a reasonable balance between the need to protect the officers' privacy and to enhance transparency of the control regime. Where there was a need, the effectiveness of the disclosure requirement could be reviewed after its implementation.

Policy on earth burial at Gallant Garden

22. In examining the Administration's policy on earth burial at Gallant Garden, the Panel noted that some civil servants had requested the Administration to reconsider granting permanent earth burial at Gallant Garden to civil servants died on duty. In this connection, the Panel was advised that according to the legal advice of DoJ, to allow permanent earth burial at Gallant Garden for civil servants who died on duty but not the same in public cemeteries for non-civil servants who also died whilst on duty was likely to constitute discrimination under the law. Pursuant to the decision of the Chief Executive in Council on 12 September 2000, permanent earth burial at Gallant Garden should be given, upon request from family members of the deceased, to those civil servants who died whilst performing exceptional acts of bravery in their final duties. Some members of the Panel requested the Administration to re-examine the issue of whether permanent earth burial at Gallant Garden (or at other burial grounds designated for the purpose) should be granted to civil servants died on duty so as to commemorate their contribution, taking into account the views of the staff sides and the controversy over the current definition of "exceptional act of bravery".

Mechanism for handling staff complaints

23. Given the public concern about a case quoted in the investigation report published by the Office of The Ombudsman on 6 April 2006 on its investigation into the medical fee waiver system, the Panel examined the effectiveness of the existing mechanism for handling staff complaints within the civil service. According to the investigation report, a Medical Social Worker, who had spotted a mistake in the approval given by her colleague for full waiver in a case and reported it to her supervisor, was subsequently warned by her supervisor not to disclose the case to outside parties "with threat of disciplinary action, against causing embarrassment to the Administration".

24. The Panel noted that under Civil Service Regulation (CSR) 410(1), an officer who committed any breach of government regulations or any other official instructions, whether oral or written, or who by his actions brought the Government Service into disrepute was liable to dismissal or lesser punishments depending on the gravity of the case. However, under the general guidelines issued by CSB, a civil servant would not be penalized for a complaint made in good faith. In other words, there was no question of holding a civil servant making a complaint in good faith liable for disciplinary action under CSR 410. The Panel stressed the need for the Administration to ensure that this guideline was observed by all departmental management. The Panel also requested the Administration to report, in due course, whether any improvement measures would be introduced to enhance the effectiveness of the existing mechanism for

handling staff complaints in the light of the outcome of its examination of the case quoted in The Ombudsman's report.

Civil servants' right to take part in trade union activities

25. In examining civil servants' right to take part in trade union activities, the Panel noted that the present drafting of CSR 610(1) and (2) might imply that civil servants participating in a strike were absent from duty without reasonable excuse. Members were concerned that such provisions infringed civil servants' right to strike provided under the Basic Law. They also considered it unfair for the Administration to deduct salary of the civil servants concerned.

26. The Panel was advised by the Administration that the right and freedom of Hong Kong residents to strike was protected under Article 27 of the Basic Law. Civil servants, as Hong Kong residents, could exercise their right to strike and the Government did not impose any restriction on its employees to exercise this right under the law. Nevertheless, civil servants who took part in a strike were not excused from their obligations pursuant to their employment agreement. It was the Administration's policy to deduct, in accordance with the "no work, no pay" principle, salary from officers who had absented themselves from duty without approval. According to the advice of DoJ, the provisions in CSR 610, which empowered the Administration to deduct salary for a civil servant's absence from duty in connection with his participation in industrial action, did not contravene the Basic Law or the Trade Union Ordinance (Cap. 332). The Panel however considered it necessary for the Administration to review the text of CSR 610 in the light of comments made by members, including some members' view that the principle of "no work, no pay" should be reflected in the CSR. The Administration undertook to consult the staff sides on the technical amendments to CSR 610.

27. The Panel also expressed concern about the non-application of the Employment Ordinance (EO) (Cap. 57) to the Government. The Panel requested the Administration to consider application of EO to the Government, taking into account members' views that employees of the Government and those of private companies should be subject to the same statutory employment protection under EO, and that since some relevant ordinances, such as Employees' Compensation Ordinance (Cap. 282), Disability Discrimination Ordinance (Cap. 487), and the Family Status Discrimination Ordinance (Cap. 527) were applicable to the Government, it was unjustified that EO was not applicable to the Government.

Consultation on directorate staffing proposals

Re-organization of the CE's Office

28. Following the CE's announcement in his Policy Address delivered on 12 October 2005 that reorganization of his Office was urgently needed to enable him to discharge his duties properly to achieve effective and strong governance, the Panel held a joint meeting with the Panel on Constitutional Affairs (CA Panel) in November 2005 for discussing the Administration's proposal to create two directorate posts: a permanent post of Administrative Officer Staff Grade A (AOSGA) (D6) designated as Permanent Secretary, CE's Office (PS/CE's Office); and a permanent post/non-civil service position at the rank of D4, designated as Information Coordinator (IC) under the CE's Office. The two Panels examined the need for these two additional posts at an annual staff cost of over \$5 million, having regard to the fact that the CE's Office was already provided with senior staffing support performing similar duties.

29. The two Panels were advised by the Administration that there would be no overlapping of duties between the PS/CE's Office and the current Director of CE's Office (D/CE's Office) in relation to policy formulation and implementation as the former would be responsible for coordination within the civil service structure while the latter would be responsible for liaison with Principal Officials. The proposed reorganization would allow D/CE's Office to devote more time to liaison with political groups, LegCo, district personalities and key opinion-formers in various sectors of the community. The liaison work would facilitate the CE's Office in gauging aspiration and views of LegCo and the public on major government policies. Moreover, the creation of an IC post would help strengthen the communication and PR-related work of the CE's Office and ensure that PR strategies for major government policies and programmes would be effectively formulated and implemented in a timely and coordinated manner.

30. Regarding the need for the Administration to enhance the communication between the CE's Office and LegCo Members, the two Panels were assured by the Administration that the D/CE's Office would be willing to meet with LegCo Members more frequently and/or on regular basis and would explore appropriate means to facilitate the exchange of views with LegCo Members, both through formal and informal meetings.

Staffing proposal to provide support to the expanded Commission on Strategic Development

31. The Panel also examined the Administration's proposal to strengthen the Secretariat of the Commission on Strategic Development (the Commission) to provide the necessary support to the expanded Commission by creating one permanent directorate post of AOSGC (D2), designated as Assistant Secretary to

the Commission. As the Commission was mainly an advisory body which was being supported by two directorate officers, some members queried the need for an additional permanent post at D2 level especially when the functions of the Commission might change after the expiry of the current term of office of the CE and Commission members on 30 June 2007. The Panel was advised by the Administration that given the important role of the Commission in enhancing the transparency and public participation in policy formulation for the future development of Hong Kong, the Commission would exist on a long-term basis and permanent staffing support to its Secretariat should therefore be required. The Panel was assured that the Administration would review the staffing requirements for the Commission Secretariat in due course and report any changes to LegCo.

Flexibility for filling directorate posts in the private offices of the Secretaries of Department

32. The Panel, together with the CA Panel, examined the Administration's proposal to provide flexibility for filling existing directorate civil service posts in the private offices of the Chief Secretary for Administration (CS), Financial Secretary (FS) and Secretary for Justice (SJ) under the Accountability System. The two Panels noted that under the Accountability System introduced on 1 July 2002, the supporting staff posts for Directors of Bureau (DoBs) could be filled by civil servants on posting or by way of direct appointment of non-civil servants if the DoBs considered it more appropriate to do so. The Administration considered that similar flexibility should apply to the filling of the five private office directorate posts for CS, FS and SJ in line with the prevailing policy.

33. While noting that the proposed flexibility arrangements would not incur any additional cost, some members were concerned about the impact of creation of additional NCSC positions at directorate-equivalent level on the directorate establishment of the civil service, and promotion prospects and morale of civil servants. The two Panels were advised by the Administration that the directorate posts covered by the proposal were part of the civil service establishment as they could be filled either by civil servants on posting or direct appointment of officers on NCSC terms. Except for the post of the Press Secretary to CS which was currently filled by an officer appointed on NCSC terms, the other four directorate posts concerned were filled by civil servants and no immediate changes to the current arrangement were expected. As the proposal only involved a small number of posts as compared to the total establishment of the civil service, the Administration did not expect that it would have any impact on the promotion prospects and morale of civil servants.

Other issues

34. In the current session, the Panel examined other issues including the enhanced training and national studies programme for civil servants.

35. The Panel held a total of 11 meetings from October 2005 to June 2006, including one held jointly with the CA Panel, to examine the issues mentioned in paragraphs 5 to 34 above.

Council Business Division 1
Legislative Council Secretariat
7 July 2006

**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 matters.
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.

立法會
公務員及資助機構員工事務委員會
Legislative Council
Panel on Public Service

2005 至 2006 年度會期委員名單
Membership list for 2005 - 2006 session

主席 Chairman	譚耀宗議員, GBS, JP	Hon TAM Yiu-chung, GBS, JP
副主席 Deputy Chairman	李鳳英議員, BBS, JP	Hon LI Fung-ying, BBS, JP
委員 Members	李卓人議員 涂謹申議員 張文光議員 陳智思議員, GBS, JP 梁劉柔芬議員, SBS, JP 楊孝華議員, SBS, JP 王國興議員, MH 鄭志堅議員 (合共： 10 位委員) (Total： 10 members)	Hon LEE Cheuk-yan Hon James TO Kun-sun Hon CHEUNG Man-kwong Hon Bernard CHAN, GBS, JP Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP Hon Howard YOUNG, SBS, JP Hon WONG Kwok-hing, MH Hon KWONG Chi-kin
秘書 Clerk	陳美卿小姐	Miss Salumi CHAN
法律顧問 Legal Adviser	鄭潔儀小姐	Miss Kitty CHENG
日期 Date	2005 年 10 月 13 日 13 October 2005	