

For information
on 19 October 2009

Legislative Council Panel on Public Service

**Review of Post-service Outside Work
for Directorate Civil Servants**

PURPOSE

This paper informs Members on the outcome of the consultation on the recommendations of the Committee on Review of Post-service Outside Work for Directorate Civil Servants (“Review Committee”).

BACKGROUND

2. The Review Committee submitted its report to the Administration on 10 July 2009. As reported in the Panel paper (ref: LC Paper No. CB (1) 2236/08-09 (01)) which was discussed by Members on 13 July 2009, the Review Committee made a total of 23 recommendations, covering four different aspects of the control regime, namely (a) underlying principles; (b) policy objective; (c) design and operation of the control regime; and (d) public monitoring. For easy reference, a summary of these recommendations is at **Annex**.

CONSULTATION

3. Following the publication of the Review Committee’s report, the Administration conducted a two-month consultation with all the serving directorate civil servants, the staff sides of the four central staff consultative councils and the departmental/grade management on the recommendations therein. The Advisory Committee on Post-service Employment of Civil Servants (“Advisory Committee”) and the Public Service Commission were also invited to tender their views. The Administration received over 90 submissions. A summary of the views expressed is set out below.

General comments

4. Some respondents maintain that a person's right to work and choice of occupation are fundamental human rights and that civil servants are entitled to the same basic human rights as the community they serve. Therefore, any restrictions imposed on senior civil servants' right to work after leaving the Government should accord with the law and be the minimum necessary to achieve the legitimate objectives behind the restrictions. They are doubtful as to whether some of the Review Committee's recommendations can stand up to the 'proportionality test'.

5. Many respondents note that the current post-service outside work control regime for directorate civil servants is already among the most draconian in the world. They cannot see the justifications for imposing further restrictions to limit the freedom of work by directorate civil servants after leaving the service. Some of them maintain that imposing additional restrictions cannot address those cases that have attracted public concern in the past. They consider that the solution should be more vigorous vetting during the application stage and tightened monitoring after approval of an application.

6. Some respondents consider that civil service pension, although paid after retirement, is a deferred remuneration for past services rendered by civil servants while in service; and that it is not a form of compensation for "buying out" a retired civil servant's right to engage in paid employment. Therefore, retired directorate civil servants' right to work cannot and should not be diminished because of their receipt of a pension.

7. Some respondents note that civil servants are already subject to the provisions in the Prevention of Bribery Ordinance (Cap 201) and the Official Secrets Ordinance (Cap 521). They consider that any additional post-service control should take account of this and should be limited to the extent necessary to achieve legitimate and reasonable objectives.

8. Some respondents are concerned that the proposed tightened restrictions would impact more severely on civil servants on agreement terms than those on pensionable terms, owing to the former's shorter leave entitlement, smaller accumulated leave balance, greater possibility of leaving the Government

before retirement age, and lack of pension benefits on departure from the Government. Some other respondents note that directorate civil servants in some professional disciplines may simply like to continue their professional work, which would not compromise government or public interests. In addition, some professions already have codes of conduct which provide adequate safeguards against conflict of interest. Therefore, the post-service employment control of directorate civil servants in such professions does not seem necessary.

9. Some respondents maintain that there should not be a one-size-fits-all control regime. They consider that controls and restrictions should not be imposed across the board without differentiating between different posts and job nature in the civil service.

10. Some respondents contend that the controls imposed on directorate civil servants should not be more stringent than those imposed on political appointees.

Underlying principles

11. On the Review Committee's recommendation that the protection of the public interest should take precedence over protection of an individual's right to work, the majority of respondents consider the two should be of equal importance. They note that a fine balance must be struck whenever there is a conflict between the protection of an individual's fundamental rights and the protection of a legitimate public interest. And the Administration should, at the very start, set out how protection of the public interest and protection of civil servants' right can be accommodated at the same time; and the control regime should also be able to respond to the actual circumstances of each case. Some respondents maintain that, since the right to work is a fundamental human right, it should not, as a matter of principle, be subordinate to the protection of public interest. And only where there are compelling reasons in a particular case should the protection of an individual's fundamental right be interfered with. There should also be corresponding measures to ensure that a former directorate civil servant's ability to provide for himself and his family is not affected.

12. While agreeing that protection of the public interest should take precedence over an individual's right, a respondent considers that it is also in the wider public interest to put human resources to good use by upholding former

directorate civil servants' right to pursue post-service outside work.

Policy Objective

13. On the Review Committee's recommendation to expand the policy objectives to include avoiding suspicion or perception of deferred award, many respondents are concerned that the terms "perception", "suspicion" and "deferred reward" are vague, subjective and lack clarity. Some maintain that the Administration would be adopting too low a threshold if it were to tighten the restrictions on directorate civil servants' post-service livelihood in order to pre-empt a possibility that some post-service employment by former civil servants may raise suspicion or perception of conflict of interest in someone's mind. Some respondents propose that the policy objective should state explicitly the mischief to be addressed, along the lines of the objective stated in the Canadian control regime. Others propose that if the Review Committee's proposed policy objective were adopted, clear criteria and safeguards should be laid down to avoid unjustifiable suspicion or perception of "deferred reward" which is groundless or without any rational basis.

14. Respondents generally do not support the Review Committee's recommendation not to make a specific reference to maintaining the attractiveness of the civil service as a career in the policy objective. They consider that an unduly stringent control regime would not only impair the recruitment of high calibre persons to serve as civil servants, but would also affect the morale and integrity of the civil service.

Periods of Restriction

Sanitisation period

15. Respondents support the Review Committee's majority recommendation of not imposing a lifetime total ban on post-service work by directorate civil servants. They also consider the lifetime "employer-specific" ban recommended by some Review Committee members to be discriminative in nature.

16. Respondents support the Review Committee's recommendation that no change should be made to the minimum sanitisation period, as it is the longest

amongst all the overseas control regimes studied. Some respondents maintain that the adoption of a blanket sanitisation period across the board is not fair to those former directorate civil servants whose post-service employment would not give rise to any conflict of interest or negative public perception. One respondent questions the necessity of imposing a sanitisation period on an ex-civil servant for taking up certain types of outside work, such as teaching or writing articles, which a serving civil servant would have been permitted to undertake upon application. The Administration is requested to re-consider the length of the sanitisation period in order to bring it in line with the more common and reasonable international practices.

Control period

17. Some respondents support the Review Committee's recommendation to introduce a three-tier control period for directorate civil servants at different levels. Most respondents do not support the recommendation to lengthen the control period for the following reasons –

- (a) the rationale for lengthening the control period by one year for directorate civil servants at Directorate Pay Scale (DPS) D4 to D7 and two years for those at DPS D8 is not clear;
- (b) the existing length of periods of restriction in the Hong Kong control regime is already among the longest compared to the seven overseas jurisdictions studied;
- (c) those past cases that have given rise to public concern has nothing to do with the length of the control period;
- (d) fine-tuning of the assessment/approval procedures would be more effective than lengthening the control period;
- (e) a longer control period may deter persons of high calibre from joining the civil service, dampen serving civil servants' aspiration to progress to the directorate level, and risk a drain of talents from the civil service; and
- (f) the control period imposed on directorate civil servants should not be longer than that imposed on political appointees who are subject to greater risk of conflict of interest. The lengthening of the control periods of directorate civil servants would further widen the gap

between the two control regimes.

Internal Assessment Process

18. On the Review Committee's recommendation that an applicant should disclose his material past dealings with the prospective employer and its parent or related companies during his last three/six years of government service and any other information which he considers relevant to the assessment of the application, some respondents maintain that the word "material" is open to interpretation and may give rise to unnecessary dispute, the term "related companies" is too broad and vague since a company can be "related" to other parties or businesses in various forms and dealings and it would be very difficult for the applicant to be aware of all such connections and dealings. In addition, it may be against natural justice to put a burden of unspecified breadth and weight on an applicant to provide any other information which he considers relevant. Some respondents advise there may be genuine difficulties for an applicant, who has already left the service, to provide very detailed information concerning his last (up to) six years of government service.

19. Some respondents also maintain that "material" past dealings should exclude the simple signing of contract/agreement or cases where the applicant had no involvement in the tender assessment/negotiation process.

20. On the recommendation that an applicant should be required to provide any other information which he considers relevant to the assessment of his application, some respondents are against leaving it to the applicant to judge whether any other information is relevant. An objective test would be more appropriate, and the Administration should give clear guidelines on the information to be provided by an applicant.

21. On the recommendation that all applications from directorate civil servants at DPS D4 to D8 (or equivalent) should be assessed with reference to the applicants' last six years of active government service, while some respondents agree to adopt a uniform benchmark for applicants of the same rank, there is concern about the staff resource implication on carrying out the assessment work. Some respondents opine that if the recommendation were adopted, the management should consider not posting D4 to D8 civil servants to more than

one post during their last six years of service.

External Assessment Process

22. Respondents generally support the recommendation to retain the advisory role of the Advisory Committee. While most respondents are not against the recommendation to expand the membership of the Advisory Committee, they consider there should be some parameters to ensure a balanced composition. Some respondents question the necessity and effectiveness of expanding the membership of the Advisory Committee. They consider it more important to identify individuals who are prepared to exercise due care and weigh the pros and cons fairly and sensibly. A few respondents are concerned that inclusion of individuals with political affiliations on the membership of the Advisory Committee may politicise its work.

23. On the recommendation to invite outside expert(s) in the field(s) relevant to a post-service outside work application to give advice as necessary, some respondents are not clear under what circumstances would an expert be appointed and what issues would an expert be asked to advise on. Should this recommendation be accepted, they suggest there should be appropriate measures/safeguards to ensure that there is fair and careful selection of outside expert(s), that the expert(s) should keep confidential all the information made available, and that there should also be procedural guidelines on the disclosure of the advice from the expert(s) and an opportunity to comment on the advice rendered by the applicant concerned.

24. One respondent suggests that the parties concerned should be allowed to comment on the guidelines on the mode of operation of the Advisory Committee in draft form before they are finalised.

25. Most respondents are not in favour of the recommendation that the secretariat of the Advisory Committee should be independent of the Civil Service Bureau (“CSB”), on the ground that the key to reassuring the public about the independence of the Advisory Committee rests with its members and the views they give. Since the secretariat only provides operational support, it does not matter that the secretariat is part of CSB. They are also concerned about the resource implications associated with the establishment of an independent secretariat.

Enforcement of Work Restrictions Imposed

26. Respondents generally accept the recommendation on the Administration informing the prospective employer and relevant bureaux/departments of the work restrictions imposed on an applicant; and requiring the applicant of an approved post-service application to provide the decision authority with a copy of the signed employment agreement or appointment letter, subject to the compliance of the Personal Data (Privacy) Ordinance. Some respondents are concerned with the recommendation that an applicant who has taken up an approved post-service outside work should be required to inform the decision authority of any material changes made later, on the ground that the word “material” is open to interpretation. One respondent maintains that it should suffice for the applicant of an approved post-service application to provide the relevant parts of the signed employment agreement or appointment letter in order not to discourage prospective employers from hiring former civil servants.

Review/Appeal Channels

27. Respondents support the recommendation on setting out clearly the review and appeal channels when notifying an applicant of the decision on his application. One respondent suggests that review of the decision on an application should be conducted in a timely manner.

Performance Pledge on Processing Time

28. Respondents support the drawing up of a performance pledge on the processing time of post-service applications by the Administration. Some suggest that the time should be no more than one to three months. One respondent proposes that the Administration should consult with the individual departmental management to come up with a realistic performance pledge.

Integrity of the Civil Service

29. Some respondents support the recommendation on placing greater emphasis on the importance of avoiding conflicts of interest by directorate civil servants in the Government’s future integrity management initiatives. Other

respondents maintain that there are already adequate rules and regulations governing serving officers' conduct in relation to actual or perceived conflict of interest, and statutory criminal provisions under the Prevention of Bribery Ordinance and other Ordinances guarding against serious offences such as corruption, misconduct in public office, etc.

Exit Interview

30. Most respondents do not consider an exit interview necessary and value-adding. They consider the provision of clear guidelines on the taking up of post-service outside work to each departing directorate civil servant would suffice. One respondent suggests the provision of the guidelines to a departing civil servant during the exit interview. Another respondent considers that an exit interview should be conducted as and when a directorate civil servant submits an application for post-service employment.

Pension Suspension for Taking up Employment with Specified Subvented Organisations

31. Most respondents support the Review Committee's recommendation on the discontinuation of the pension suspension arrangement, on the ground that pensions are part of the remuneration for past services rendered by civil servants while in service and should not be taken away on the basis of the identity of their post-service employers. They also consider discontinuation of the arrangement would remove the existing anomaly whereby retired civil servants in receipt of pensions and taking up employment with public-funded bodies not on the specified list would not have to be subject to pension suspension. A few respondents suggest that the discontinuation of the pension suspension arrangement should also cover post-service employment with the Government by a retired civil servant in receipt of civil service pension benefits.

Coverage of Public Register

32. Divergent views are received on the recommendation to extend the public disclosure arrangement to cover post-service work of junior directorate civil servants at DPS D1 to D3 (or equivalent). Some respondents suggest that the proposed extension should be applied on a case-by-case basis taking into account the nature of an approved post-service employment and the previous

government duties of the applicant concerned, and that such disclosure should cease three years after the departure of the applicant from the civil service. Some respondents consider there are no strong justifications for the proposed extension. Some other respondents maintain that that the proposed extension would not improve the effectiveness of the control regime.

Advisory Committee's Advice

33. Respondents endorse the recommendation to disclose the advice of the Advisory Committee on each approved application for post-service outside work. Some respondents suggest that the Advisory Committee's rationale for its advice should also be made available to enhance transparency of the process; and that the Administration should provide an explanation should it decide not to accept the advice of the Advisory Committee.

WAY FORWARD

34. The Administration is considering the views received and seeking legal advice on a number of issues. It will formulate its stance for the consideration and decision of the Chief Executive in Council in due course.

Civil Service Bureau
October 2009

Report on Review of Post-Service Outside Work for Directorate Civil Servants

Summary of Recommendations

Underlying Principles

Recommendation 1: Protection of the public interest and protection of an individual's right should continue to be the two principles underlying the Control Regime, with protection of the public interest taking precedence over protection of an individual's right.

Policy Objective

Recommendation 2: The policy objective should be expanded to make specific references to (a) avoiding suspicion or perception of 'deferred reward'; and (b) making good use of limited human resources. There is no need to make a specific reference in the policy objective to maintaining the attractiveness of the civil service as a career.

Design and Operation of the Control Regime

I. Specific Improvement Measures

(a) Periods of Restriction

Recommendation 3: A *lifetime total ban* on paid post-service outside work should not be imposed. A *lifetime specific ban* on particular types of post-service employment should also not be imposed (with the Honourable Albert Ho registering a different view). The

Honourable Albert Ho considers that the possibility of a lifetime ‘employer-specific’ ban on a former directorate civil servant who has had dealings in land, property or award of franchise matters when in government service should be further explored.

Recommendation 4: No change should be made to the minimum sanitisation period.

Recommendation 5: The length of the control period should not be determined by specified fields of work during government service.

Recommendation 6: The length of the control period should not be determined by post-service outside work in the same field as a directorate civil servant’s past government duties.

Recommendation 7: The length of the control period should be as follows (with the Honourable Audrey Eu and the Honourable Albert Ho registering a different view) –

- (a) two years for Directorate Pay Scale (DPS) D1 to D3 (or equivalent) civil servants (i.e. no change to the length of the existing period);
- (b) three years for DPS D4 to D7 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and
- (c) five years for DPS D8 (or equivalent) civil servants (i.e. lengthening the existing period by two years).

The Honourable Audrey Eu and the Honourable Albert Ho recommend that the length of the control period should be –

- (a) three years for DPS D1 to D3 (or equivalent) civil servants (i.e. lengthening the existing period by one year); and

- (b) five years for DPS D4 to D8 (or equivalent) civil servants (i.e. lengthening the existing period by three years for DPS D4 to D7 (or equivalent) civil servants and by two years for DPS D8 (or equivalent) civil servants).

(b) Internal Assessment Process

Recommendation 8: The provision of information by an applicant in the application form should be improved as follows –

- (a) irrespective of whether or not an applicant will be involved in the business of the parent or related companies of the prospective employer, he should be required to disclose his material past contractual, legal, official and other contacts/dealings (if any) with these entities during his last three years of government service if he is at DPS D1 to D3 (or equivalent), and during his last six years of government service if he is a DPS D4 or above (or equivalent) civil servant;
- (b) an applicant should be required to provide any other information which he considers relevant to the assessment of his application; and
- (c) the policy objective and the assessment criteria should be stated upfront on the application form so as to remind an applicant of the factors that would be taken into account in the assessment process. This should help him to decide what other relevant information to provide as required under (b) above.

Recommendation 9: All applications from DPS D4 to D8 (or equivalent) directorate civil servants should be assessed with reference to the applicants' last six years of active government service.

(c) External Assessment Process

Recommendation 10: The Advisory Committee should retain its advisory role (with the Honourable Audrey Eu registering a different view). The Honourable Audrey Eu considers that the Control Regime, including the power to approve or reject post-service outside work applications, should be placed in a body independent of the Administration.

Recommendation 11: The membership of the Advisory Committee should be expanded to nine members (including the chairman) with a broadened composition. Possible categories of candidates for appointment on an *ad personam* basis include (but not restricted to) academics, representatives from civil service groups, former directorate civil servants, personalities from professional fields and/or the business sector, as well as former or serving members of the Executive Council, the Legislative Council and the District Councils.

Recommendation 12: The Advisory Committee should be given the power to invite outside expert(s) in the field(s) relevant to a post-service outside work application to give advice if necessary.

Recommendation 13: The Advisory Committee should draw up guidelines on its mode of operation, which should provide for the holding of meetings when appropriate or upon request by its chairman or any of its members. In addition, these guidelines should be made known to the public and applicants.

Recommendation 14: The secretariat of the Advisory Committee should be independent of the Civil Service Bureau. Depending on workload, it may be a dedicated secretariat, or it may be an existing independent

secretariat for advisory bodies on civil service-related matters with an expanded ambit.

(d) Enforcement of Work Restrictions Imposed

Recommendation 15: The imposition and enforcement of work restrictions should be strengthened as follows –

- (a) the current arrangement of imposing standard work restrictions and, where necessary, additional application-specific work restrictions should continue;
- (b) the decision authority should directly inform the prospective employer of the work restrictions imposed on an applicant and of the requirement for the latter to notify and to seek prior approval from the decision authority if there is any material change to the work;
- (c) if the enforcement of work restrictions imposed on an applicant may involve certain bureaux/departments, the decision authority should also inform them of the imposed work restrictions; and
- (d) an applicant who has taken up an approved post-service outside work should be required, as part of the approval conditions, to provide the decision authority with a copy of the signed employment agreement or appointment letter within 30 days of signature or issue as well as any material changes made later.

(e) Review/Appeal Channels

Recommendation 16: The decision authority should set out the review and appeal channels when notifying an applicant of the decision on his application. The decision authority should, as a standard practice, seek the advice of the

Advisory Committee again if an applicant seeks a review of the decision.

(f) Performance Pledge on Processing Time

Recommendation 17: The Administration should make a practicable performance pledge on the processing time, having regard to the recommended enhancement to the internal and external assessment processes.

II. Other Improvement Measures

(a) Integrity of the Civil Service

Recommendation 18: The integrity enhancement initiatives should give greater emphasis on the importance of avoiding possible conflicts of interest by directorate civil servants, in particular the public concern over perception or suspicion of ‘deferred reward’, both during active government service and in the pursuit of post-service outside work.

(b) ‘Exit Interview’

Recommendation 19: The Administration should conduct an ‘exit interview’ with every departing directorate civil servant, and devise guidelines on the matters to be covered.

(c) Pension Suspension for Taking up Employment with Specified Subvented Organisations

Recommendation 20: The suspension of monthly pension payments to retired pensionable civil servants (directorate and non-directorate) working on a full-time and paid basis in the 16 specified subvented organisations should be discontinued (with the Honourable Audrey Eu and the Honourable Albert Ho registering a different view). These two members

recognise the anomalies under the existing arrangement but consider that such recommendation should not be made in the absence of a general review on the employment of former civil servants in all other quasi-government agencies or publicly funded organisations.

Public Monitoring

I. Coverage of Public Register

Recommendation 21: The public disclosure arrangement should be extended to cover junior directorate civil servants at DPS D1 to D3 (or equivalent) as well.

II. Advisory Committee's Advice

Recommendation 22: The Advisory Committee's advice on every approved and taken up post-service outside work should be disclosed on the public register.

III. Advisory Committee's Annual Report

Recommendation 23: More information should be included in the Advisory Committee's annual report, including but not limited to the categorisation of employers of approved and taken up post-service outside work, the cases on the public register on which the Advisory Committee's advice and the final decision of the authority differs, and the guidelines on the mode of operation of the Advisory Committee.