

**立法會**  
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**Panel on Administration of Justice and Legal Services**

**Meeting on 18 July 2018**

**Background brief on the review on the statutory retirement ages of  
judges and judicial officers**

**Purpose**

This paper provides background information on the review on the statutory retirement ages of judges and judicial officers ("JJOs"). It also summarizes the major views and concerns expressed by Legislative Council Members, in particular the Panel on Administration of Justice and Legal Services ("the Panel"), on the above and related subjects in recent years.

**Background**

Statutory retirement ages of judges and judicial officers

2. In accordance with subsection (1) of section 6 of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401), the normal retirement age of:
  - (a) the Chief Justice ("CJ") or a permanent judge of the Court of Final Appeal ("CFA") is when he attains the age of 65 years unless he is appointed under section 14(2)(b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) in which case his age at the expiration of his term of three years shall be regarded as the normal retirement age;
  - (aa) a judge of the High Court or a District Judge is the retiring age specified in section 11A of the High Court Ordinance (Cap. 4) or section 11A of the District Court Ordinance (Cap. 336), as the case may be;

- (b) the Registrar of the High Court or a Senior Deputy Registrar or Deputy Registrar of the High Court is when he attains the age of 65 years; or
- (c) an officer not referred to in paragraph (a) or (b) is when he attains the age of 60 years.

#### Extension of service

3. According to the policy of the Judicial Officers Recommendation Commission, which was made in September 1998 and has been applied consistently in all cases since then, extension of the term of judicial office beyond the statutory normal retirement age should not be automatic. It should be regarded as exceptional and would not normally be approved unless the Judiciary has operational needs, including the need for continuity; and the extension would not hinder the advancement of junior officers who are suitable for elevation. Extension of service may be approved up to the age of 70 or 71, depending on the level of court and subject to consideration on a case-by-case basis.

#### Retirement situation

4. As of 31 March 2017, 158 judicial posts were filled substantively against the establishment of 200. This represents a net decrease of four in the strength of JJOs as compared with 31 March 2016, arising mainly from retirement. The establishment and strength of JJOs as at 31 March 2017 are tabulated in **Appendix I**. The anticipated retirement will be three (or 1.9% of current strength) in 2017-2018, increasing to 19 (or 12% of current strength) in 2018-2019, and going down to ten (or 6.3% of current strength) in 2019-2020.

5. According to the Report on Judicial Remuneration Review 2017 published by the Standing Committee on Judicial Salaries and Conditions of Service, retirement is the main source of wastage among JJOs and the retirement situation may pose challenges to judicial manpower in the coming years.

#### **Major views and concerns of Legislative Council Members**

6. Major views and concerns expressed by Legislative Council Members on issues relating to the statutory retirement ages of JJOs are summarized in the ensuing paragraphs.

## Extension of the retirement ages of judges and judicial officers

### *Discussion at the Council meeting*

7. At the Council meeting of 13 June 2012, a Member raised a question about the retirement ages of JJOs. Noting from a report that the retirement age of the judges of the British Supreme Court and the Federal Courts in Canada and Australia was set at 70, he asked whether the Judiciary would review and set the retirement age of JJOs on par with that of such common law jurisdictions. In response, the Administration explained that notwithstanding the more senior retirement age for judges in some overseas jurisdictions, CJ was of the view that the then arrangement of the age of 65 as the normal retirement age for judges in Hong Kong had worked well and remained appropriate for the time being, having regard to the circumstances in Hong Kong.

### *Discussion at the Panel on Administration of Justice and Legal Services meetings*

8. Over the years, when considering the judicial service pay adjustments or manpower situation of the Judiciary, members of the Panel often raised concerns about the retirement ages of JJOs.

9. At the Panel meeting on 30 October 2012, some members considered that as many judges approaching the retirement age were still going strong, they asked whether consideration would be given to extending the retirement age of judges so as to improve judicial manpower situation. They also enquired whether the Judiciary had any succession plan to groom and retain talents in anticipation that more JJOs were due to retire in the coming two years. The Administration advised that following the two comprehensive reviews of the judicial manpower conducted by the Judiciary in 2008 and 2011 respectively, the judicial establishment at various levels of court was substantially enhanced with a net addition of seven JJOs and two new judicial posts in the Lands Tribunal. With the successful completion of open recruitment exercises for JJOs, many posts had been filled substantively.

10. At the Panel meeting on 24 November 2014, some members asked whether consideration would be given to extending the retirement age of JJOs as in the case of civil servants. In reply, the Administration responded that according to the Judiciary, a number of internal reviews were being conducted relating to, among others, the retirement ages for JJOs.

11. At the Panel meeting on 18 May 2015, some members expressed support for extending the retirement ages of JJOs. There was also a view that the lack of judicial support and the existing statutory retirement age of the Court of First Instance ("CFI") judges had discouraged outside law talents to become CFI judges. In this regard, some members enquired when the review on retirement ages of JJOs would be completed. The Administration replied that such review would take a longer time given the complexity of the issues involved.

12. At its meeting on 23 November 2015, the Panel noted that the vacancy rate of judicial posts still stood at 11.9% as of November 2014 despite the numerous rounds of recruitment exercises conducted by the Judiciary. In this regard, some members urged the Judiciary to expedite its review on the retirement ages of JJOs so as to better attract quality candidates and experienced private practitioners to join the bench. Responding to members' enquiry about the progress of the review on retirement ages of JJOs, the Administration said that the Judiciary had recently engaged an outside consultant to review the retirement ages of JJOs at different levels of courts. The Judiciary planned to apprise the Administration of the results of the review once the results became available.

13. At the Panel meetings on 23 January and 30 October 2017, some members urged the Judiciary to expedite the review on retirement ages of JJOs. There was also a view to increase the current retirement age of JJOs from 65 to 70; and from the current retirement age for judges of CFA to 75. The Administration informed members that the consultant, as mentioned in paragraph 12, would submit its recommendations on the statutory retirement ages for JJOs to the Administration before the end of 2017. The Administration would keep a close watch on the conclusions of the review.

#### Other measures to address manpower shortage in the Judiciary

14. When discussing the judicial service pay adjustments at the Panel meetings on 23 January and 30 October 2017, as well as examining the Estimates of Expenditure 2017-2018 and 2018-2019 at the special Finance Committee meetings, some Members expressed concerns about the number of JJOs who would retire in the coming years and their respective levels, and how the Administration would address the shortage problem of JJOs in the Judiciary. There were also views that the manpower shortage problem in the Judiciary had given rise to long court waiting times and delays in delivery of judgments. At the work plan meeting of the Panel on 31 October 2017, the Chairman requested the Judiciary to report its measures to attract new blood

as JJOs and to groom and retain existing talents when the Panel discussed the issue on the statutory retirement ages of JJOs.

15. According to the Judiciary in April 2018, a new round of recruitment exercises for JJOs at different levels of court was planned to be launched starting from mid-2018. The Judiciary hoped that the enhanced remuneration packages for JJOs, which had taken effect from 1 April 2017, would also help attract legal talents to join the bench. In addition, subject to the acceptance by the Administration of the Judiciary's proposals on the review on the statutory retiring ages of JJOs at all levels of courts and the necessary legislative amendments, the Judiciary hoped that the proposals would facilitate the retention of judicial manpower.

### **Latest development**

16. At the Ceremonial Opening of the Legal Year 2018, CJ mentioned that having considered the review on the extension of retirement ages of JJOs conducted by a consultant, the Judiciary had submitted to the Administration the proposal that:

- (a) the retirement age for magistrates be increased from 60 to 65;
- (b) notwithstanding the retirement age for judges of the District Court remaining at 65, there be allowance for an extension of the term of service beyond this age, which was not available at present; and
- (c) for judges above the rank of District Court, the relevant retirement age be extended from 65 to 70.

The Administration has considered the relevant proposal and will consult members on the statutory retirement ages of JJOs at the Panel meeting to be held on 18 July 2018.

### **Relevant papers**

17. A list of relevant papers is in **Appendix II**.

## Establishment and strength of judges and judicial officers

Level of court	As at 31 March 2017*		Net change in strength over 31 March 2016
	Establishment	Strength	
Court of Final Appeal <sup>1</sup>	4 (4)	4 (4)	0
High Court <sup>2</sup>	59 (59)	44 (41)	+3
District Court <sup>3</sup>	41 (41)	41 (37)	+4
Magistrates' Courts and Specialized Tribunals/Court <sup>3</sup>	96 (96)	69 (80)	-11
<b>Total</b>	<b>200 (200)</b>	<b>158 (162)</b>	<b>-4</b>

\* Figures in brackets denote position as at 31 March 2016.

*Source: Paragraph 3.7 in Annex to the Legislative Council Brief on 2017-2018 judicial service pay adjustment (File Ref: CSO/ADM CR 6/3221/02)*

<sup>1</sup> The figures exclude one Permanent Judge post created for Non-Permanent Judge of the Court of Final Appeal. In practice, a Non-Permanent Judge is invited to sit in the Court of Final Appeal as required in accordance with the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

<sup>2</sup> For Senior Deputy Registrar and Deputy Registrar vacancies in the Masters' Office of the High Court, the functions are now mostly carried out by District Judges who are appointed as temporary Deputy Registrars under the cross-posting policy.

<sup>3</sup> For judicial offices in the Masters' Office of the District Court and at the Labour Tribunal, Small Claims Tribunal and the Coroner's Court, the functions are carried out by Principal Magistrates or Magistrates under the cross-posting policy. The cross-posting policy provides greater flexibility in the posting of judicial officers between various courts to serve operational needs.

**Background brief on the review on  
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**List of relevant papers**

<b>Date of meeting</b>	<b>Meeting</b>	<b>Minutes/Paper</b>	<b>LC Paper No.</b>
20.10.2011	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2011-2012 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 <a href="http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj1020-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj1020-csoadmcr6322102-e.pdf</a>
		Minutes of meeting	CB(2)1356/11-12 <a href="http://www.legco.gov.hk/yr11-12/english/panels/ajls/minutes/aj20111020.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ajls/minutes/aj20111020.pdf</a>
13.6.2012	Council meeting	Council question raised by Hon Abraham SHEK Lai-him on retirement age of judges and judicial officers	<a href="http://www.info.gov.hk/gia/general/201206/13/P201206130333.htm">http://www.info.gov.hk/gia/general/201206/13/P201206130333.htm</a>
30.10.2012	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2012-2013 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 <a href="http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030-csoadmcr6322102-e.pdf</a>
		Minutes of meeting	CB(4)220/12-13 <a href="http://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20121030.pdf">http://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20121030.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
26.11.2013	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2013-2014 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126-csoadmcr6322102-e.pdf</a>
		Administration's follow-up paper	CB(4)223/13-14(01) <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126cb4-223-1-e.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126cb4-223-1-e.pdf</a>
		Minutes of meeting	CB(4)511/13-14 <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20131126.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20131126.pdf</a>
24.11.2014	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2014-2015 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124-csoadmcr6322102-e.pdf</a>
		Administration's follow-up paper	CB(4)992/14-15(01) <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124cb4-992-1-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124cb4-992-1-e.pdf</a>
		Minutes of meeting	CB(4)355/14-15 <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20141124.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20141124.pdf</a>



Date of meeting	Meeting	Minutes/Paper	LC Paper No.
18.5.2015	Panel on Administration of Justice and Legal Services	Judiciary Administration's paper on judicial manpower and other support for the Judiciary	CB(4)964/14-15(03) <a href="https://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150518cb4-964-3-e.pdf">https://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150518cb4-964-3-e.pdf</a>
		Minutes of meeting	CB(4)1310/14-15 <a href="https://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150518.pdf">https://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150518.pdf</a>
23.11.2015	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2015-2016 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 <a href="http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123-csoadmcr6322102-e.pdf</a>
		Administration's follow-up paper	CB(4)385/15-16(01) <a href="http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123cb4-385-1-e.pdf">http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123cb4-385-1-e.pdf</a>
		Minutes of meeting	CB(4)422/15-16 <a href="http://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20151123.pdf">http://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20151123.pdf</a>
23.1.2017	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2016-2017 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 <a href="http://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170123-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170123-csoadmcr6322102-e.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(4)1189/16-17 <a href="http://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170123.pdf">http://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170123.pdf</a>
24.4.2017	Panel on Administration of Justice and Legal Services	Judiciary Administration's paper on judicial manpower position	CB(4)817/16-17(07) <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170424cb4-817-7-e.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170424cb4-817-7-e.pdf</a>
		Judiciary Administration's paper on proposed creation of judicial posts and a supernumerary directorate post in the Judiciary	CB(4)817/16-17(08) <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170424cb4-817-8-e.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170424cb4-817-8-e.pdf</a>
		Minutes of meeting	CB(4)75/17-18 <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170424.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170424.pdf</a>
30.10.2017	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2017-2018 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171030-csoadmcr6322102-e.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171030-csoadmcr6322102-e.pdf</a>
		Minutes of meeting	CB(4)562/17-18 <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171030.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171030.pdf</a>

<b>Date of meeting</b>	<b>Meeting</b>	<b>Minutes/Paper</b>	<b>LC Paper No.</b>
16.4.2018	Finance Committee (Special meeting)	Replies to initial written questions raised by Finance Committee members in examining the Estimates of Expenditure 2018-2019 (Session No.: 2) (Reply Serial Nos. JA018 and JA031)	<a href="https://www.legco.gov.hk/yr17-18/english/fc/fc/wq/ja-e.pdf">https://www.legco.gov.hk/yr17-18/english/fc/fc/wq/ja-e.pdf</a>

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