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**Panel on Public Service**

**Meeting on 17 July 2018**

**Updated background brief  
on the policy on post-service outside work by  
directorates civil servants**

**Purpose**

This paper sets out the development of the control regime on post-service outside work by directorates civil servants ("the control regime") in recent years, and gives a brief account of the major views and concerns on the matter expressed by members when the subject was discussed at previous meetings of the Panel on Public Service ("the Panel").

**Background**

2. The Government exercises control over the taking up of post-service outside work by civil servants in accordance with two guiding principles, namely protection of public interest and protection of an individual's right to work. The particular public interest to be protected is public trust in the Government, good governance, and integrity and impartiality of the Civil Service. Protection of public interest will only take precedence over protection of an individual's right to work where there is compelling reason justifying so doing in a particular case. Due to the seniority and influence on policy formulation and decision-making of directorates civil servants, the degree of control exercised over post-service outside work to them is more stringent.

3. Under the existing control regime, the prescribed restriction periods take the forms of a final leave period, a minimum sanitization period and a control period. During these periods, directorates civil servants must obtain permission

from the Secretary for the Civil Service ("SCS") before they can take up any work save for unpaid work with specified non-commercial organizations.<sup>1</sup>

4. The Advisory Committee on Post-service Employment of Civil Servants ("ACPE"), formerly known as the Advisory Committee on Post-retirement Employment, was established in October 1987. It is an independent advisory committee appointed by the Chief Executive ("CE") to give advices on: (i) the principles and the criteria to be adopted in formulating policy and arrangements to control post-service employment; and (ii) all applications for post-service outside work from directorate officers.

5. In view of the grave public concern over the appointment of Mr LEUNG Chin-man, a former Director of Housing, as a director of a private company, CE appointed the Committee on Review of Post-Service Outside Work for Directorate Civil Servants ("RC") in September 2008 to review the policy and arrangements governing post-service outside work for directorate civil servants, and RC's Report was submitted to CE on 10 July 2009. The Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man ("SC") was also formed under the Legislative Council by resolution passed on 10 December 2008, and its report was tabled at the Council meeting on 8 December 2010. Based on the recommendations made by RC and SC,<sup>2</sup> the Administration obtained further advice from ACPE, the Public Service Commission, departmental and grade management, the constituent staff unions of the central staff consultative councils, all serving directorate civil servants and outside counsel, and eventually rolled out the improvement measures relating to the control regime with effect from 1 September 2011.<sup>3</sup> Directorate civil servants are now subject to either the abovementioned new control regime or the old control regime. A brief description of the key elements of the old and new control regimes is set out in **Appendix I**.

6. ACPE submits annual reports to the Legislative Council. According to the latest annual report tabled at the Legislative Council on 6 June 2018, the Civil Service Bureau ("CSB") considered 74 post-service outside work applications

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<sup>1</sup> The specified non-commercial organizations are:

- (a) charitable, academic or other non-profit making organizations not primarily engaged in commercial operations;
- (b) non-commercial regional or international organizations; or
- (c) the Central Authorities of the People's Republic of China.

<sup>2</sup> For details, please see Appendices I to II of <https://www.legco.gov.hk/yr16-17/english/panels/ps/papers/ps20170717cb4-1384-2-e.pdf>

<sup>3</sup> Arrangements under the new control regime apply to directorate civil servants on pensionable/new permanent terms who ceased active service on or after 1 September 2011, and directorate civil servants who entered into new or renewal agreements on or after 1 September 2011.

from 51 directorate civil servants in 2017. After taking into account the assessment of the relevant parties within the Government and the advice of ACPE, SCS approved 69 applications with work restrictions and rejected five applications. Among the 69 approved applications, 42 (about 61%) were related to work with non-commercial organizations and the remaining 27 were related to work with commercial organizations.

### **Discussion by the Panel**

7. The major views and concerns expressed by members on the new control regime and the Administration's responses are summarized in the ensuing paragraphs.

#### Control period and sanitization period

8. Members were of the view that the incident of Mr LEUNG Chin-man had revealed the inadequacy of the control arrangements in preventing directorate civil servants from taking up any work outside the Government which might constitute a real or potential conflict of interest with their former government duties or cause negative public perception. Some members were disappointed that the Administration did not accept their advice to impose a lifetime ban on particular types of post-service employment, particularly where former directorate civil servants who had had dealings in land, property or award of franchise matters when in government service were concerned. Some members, on the other hand, held a different view that imposition of onerous restrictions on post-service work of directorate civil servants might undermine the attractiveness of the civil service jobs and the ability to retain talents. They also considered it necessary for the Administration to ensure that the improvement measures of the control regime could withstand legal challenges at court.

9. The Administration responded that compared to other overseas jurisdictions, the control regime was more stringent. When formulating improvement measures for the control regime, due regard had been given to the relevant policy and legal considerations as well as the need to uphold the integrity of the civil service. According to the legal advice sought from private counsels, under the principle of proportionality (i.e. whether it was no more than necessary to achieve the objective), the control period had to be reasonable and commensurate with the duration of the service of the directorate civil servants to meet the set policy objective. Members' proposal on a lifetime ban would be vulnerable to legal challenges if implemented.

10. At the Panel meeting on 17 July 2017, members enquired whether there were any guidelines to prevent former directorate civil servants from taking advantage of their relationship with their former colleagues in the Administration. There was also suggestion that the Administration should collate statistics on retired directorate civil servants who worked for companies with which they used to have a working relationship after the lapse of their control period.

11. The Administration advised that specific work restrictions might be imposed in SCS's approval for post-service outside work application as appropriate. On the other hand, retired directorate civil servants should be well aware of the standards of conduct expected of them when they contacted their former colleagues in the Government after they had taken up post-service outside work. As the control regime had served the purposes of protection of the public interests and protection of an individual's right to work, the Administration considered it unnecessary to collect employment information from former directorate civil servants after their control period.

#### Taking up of unpaid work with specified non-commercial organizations

12. Noting that directorate civil servants were only required to notify the Administration of their taking up unpaid work with specified non-commercial organizations, while some non-commercial organizations might be involved in the bidding of government contracts, a member raised concern at the Panel meeting on 18 June 2012 that the assistance rendered by former civil servants to such organizations might put the latter in a more advantageous position than others in the bidding of such contracts. The Administration replied that former directorate civil servants were prohibited under the Official Secrets Ordinance (Cap. 521) from disclosing without authorization documents, information or knowledge received in confidence in the course of duties or by virtue of their official position. A civil servant who had disclosed specified information without authority was liable to criminal sanction.

13. A member further pointed out that as certain non-commercial organizations might be profit-making in nature under the Inland Revenue Ordinance (Cap. 112), the Official Secrets Ordinance could not deal with the issue of conflict of interest. The Administration clarified that a "specified non-commercial organization" should be "not primarily engaged in commercial operations". Charitable bodies registered under the Inland Revenue Ordinance would not automatically be recognized as "specified non-commercial organizations". As such, those profit-making non-commercial organizations might not qualify as specified non-commercial organizations. Besides, the factors taken into consideration in determining whether an application would give rise to conflict of interest were much wider in scope than those covered by the Official Secrets Ordinance. Upon receipt of a notification of taking up unpaid work by a

former directorate civil servant, CSB would scrutinize the case and, if necessary, request the civil servant concerned to provide additional information or to seek approval before taking up the work. CSB might also request the applicant not to commence the outside work pending submission and approval.

Taking up of non-civil service contract positions by retired directorate civil servants

14. Quoting a case in which a former directorate staff of the Civil Aviation Department was engaged by the department as a contract staff to work on a tender exercise for the new Air Traffic Management System and was subsequently employed by the successful contractor of the System upon the completion of his contract, a member suggested at the Panel meeting on 17 July 2017 that post-contract work restrictions should also be imposed on former directorate civil servants who were employed on contract terms.

15. The Administration stressed that each application for post-service outside work by directorate civil servants would be thoroughly assessed against different considerations, such as whether the duties and responsibilities of the applicants during a specified period of time (three years or more) immediately before cessation of active duty in the civil service involved the prospective employers or the applied-for outside works; whether the applicants, in the above-mentioned specified period of time, had been involved in the formulation of any policies or decisions, the effects of which directly or indirectly benefited or could directly or indirectly benefit the prospective employers; whether the prospective employers might gain an unfair advantage over competitors concerned because of the applicants' access to information during the above-mentioned specified period of time; and whether the applicants' taking up of the applied-for work would give rise to conflict of interest, "deferred reward" or other impropriety, or relevant public suspicion. Former civil servants employed by Bureaux/Departments ("B/Ds") as contract staff were usually engaged to perform tasks that required specific civil service expertise or experience, and concerned B/Ds could, on top of the control regime, impose conditions on post-contract employment control where considered appropriate.

Taking up of post-service outside work by directorate civil servants who left the civil service on non-retirement grounds

16. In response to members' enquiry on how the Administration exercised effective control over the taking up of post-service outside work by directorate civil servants who left the civil service on non-retirement grounds, the Administration said that the applications would be considered with the same criteria as those applicable to retired directorate civil servants. Although there was no pre-determined minimum sanitization period, the Administration would

decide on an application-specific basis whether a sanitization period should be imposed, and if so the length of it, having regard to concerns over conflict of interest and public perception. The factors for consideration on the length of the sanitization period had also been set out in the relevant circular issued by CSB.

#### Declaration of conflict of interests

17. Members considered it essential to make it clear to applicants for post-retirement employment that they had to disclose to the best of their knowledge all previous dealings that might constitute conflict of interests, and it was necessary to ensure that any failure to provide a full and honest account of the relevant information in the application form would lead to serious consequences.

18. The Administration advised that the applicants had to provide an evaluation on whether the application would constitute any real or potential conflicts with his previous government duties against the policy objectives and assessment criteria of the control regime. The applicant was also required to provide detailed information disclosing his material past contractual, legal, official and other contacts/dealings with the prospective employer during last three/six years (three years for applicants at D1 to D3, six years for applicants at D4 or above) of government service. Furthermore, B/Ds in which an applicant had worked during the last three/six years of his government service would be called upon to assist in vetting the applications. Withdrawal/suspension of post-service work approval for a specific period could be invoked as a sanction for failure to provide adequate and accurate information for the application, and provision of false information would lead to criminal liabilities. Starting from 1 September 2011, Heads of Departments/Grades were required to conduct exit interviews to remind retiring directorate civil servants of the need to comply with the control regime, the importance of avoiding conflict of interests, and the requirement to provide sufficient and accurate information when applying for permission to undertake post-service employment.

#### Review of the control regime

19. Taking into account that the public had grave concern on the transparency of the control regime, in particular the vetting criteria and procedures, members asked whether the control regime would be further reviewed.

20. The Administration emphasized that ACPE would table its annual report which covered the applications that it processed in the previous year at the Legislative Council. Detailed information on every approved and taken-up outside work application, including the applicant's name, his/her last civil service post, date of cessation of active duty, name of the employer, job position, main

duties, work restrictions, commencement date of work, ACPE's advice and the Administration's decisions were included in a public register which was uploaded onto CSB's website for public inspection. The Administration would also directly inform the prospective employers concerned of the work restrictions and other conditions imposed by the authority on the approved work, require the applicants to seek prior approval from the authority regarding any material change to his/her work, and obtain regular updates from applicants who had taken up approved post-service outside work for monitoring purpose. Since the control regime had been functioning effectively, the Administration had no plan at this stage to conduct further review on it.

21. In response to members' question on whether there were appeal channels for those applicants whose applications for post-service outside work were rejected, the Administration advised that any applicant whose application had been rejected could request a review of his application by providing CSB with new information. If the application was rejected again, the applicant might lodge an appeal with CE or seek a judicial review.

#### Political appointed officials and senior staff of public bodies

22. Some members urged the Administration to tighten up the control over the post-office employment of politically appointed officials. Given the different appointment system of the politically appoint officials, the Panel had referred their concerns to the Panel on Constitutional Affairs for follow-up discussion. As regards the control of senior staff of public bodies, the Administration advised that every public body had its own control regime, and these bodies were operating under the purview of corresponding policy bureau.

#### **Relevant questions raised at Council meeting**

23. Council question on post-service outside work of directorate civil servants was raised on 18 May 2016.

#### **Latest development**

24. The Administration will provide an updated overview of the subject for members' information in the Panel meeting on 17 July 2018.

## **Relevant Papers**

25. A list of relevant papers is in **Appendix II** for members' reference.

Council Business Division 4  
Legislative Council Secretariat  
10 July 2018



**Key Elements of the Old and New Control Regimes Governing Post-service Employment of Directorate Civil Servants**

Old control regime	New control regime
<b>1. Coverage</b>	
<p>1. Directorate civil servants who were on pensionable/new permanent terms and ceased active service from 1 January 2006 to 31 August 2011.</p> <p>2. Directorate civil servants who were on agreement terms and entered into new or renewal agreements from 1 January 2006 to 31 August 2011.</p>	<p>1. Directorate civil servants who are on pensionable/new permanent terms and cease active service on or after 1 September 2011.</p> <p>2. Directorate civil servants who are on agreement terms and enter into new or renewal agreements on or after 1 September 2011.</p>
<b>2. Sanitization period (counting from cessation of active service during which outside work is normally not permitted)</b>	
<p>1. Minimum sanitization period for directorate civil servants retired or retiring on pensionable or new permanent terms –</p> <p align="center">Directorate Pay Scale Point 4 ("D4") or above (or equivalent) – 12 months;</p> <p align="center">Others – 6 months.</p> <p>2. No minimum sanitization period is specified for directorate civil servants leaving the Civil Service on grounds other than retirement (e.g. agreement officers and resignees). Each case will be considered on its own merits.</p>	<p>Same as the old control regime.</p>

<b>Old control regime</b>	<b>New control regime</b>
<p>3. The minimum sanitization period is normally shortened or waived for notionally remunerated work and may be shortened for remunerated work taken up with the following organizations (the specified organizations) –</p> <p>(a) charitable, academic or other non-profit making organizations not primarily engaged in commercial operations;</p> <p>(b) non-commercial regional or international organizations; or</p> <p>(c) the Central Authorities of the People's Republic of China,</p> <p>where the work would not give rise to conflict of interest and is unlikely to cause negative public perception.</p> <p>4. For all other outside work (in particular work of a commercial nature), the minimum sanitization period would only be shortened where there are special considerations, and provided that the work would not give rise to conflict of interest or negative public perception.</p> <p>5. Having regard to the circumstances of a particular case, a longer sanitization period may be imposed if so required to more fully forestall conflict of interest or negative public perception.</p>	

Old control regime	New control regime
<b>3. Final leave period</b>	
<ol style="list-style-type: none"> <li>1. The taking up of outside work during the final leave period is subject to the rules governing sanitization.</li> <li>2. Directorate civil servants are not permitted to take up any full-time paid work or any work of a commercial nature (including self-employment) during the final leave period, unless there are special considerations. Directorate civil servants on final leave may, upon approval, take up part-time or notionally paid work with specified non-commercial organizations, subject to there being no problem of dual identity.</li> </ol>	<p>Same as the old control regime.</p>
<b>4. Control period (counting from formal departure from the Government during which prior permission is required for taking up outside work)</b>	
<ol style="list-style-type: none"> <li>1. Directorate civil servants retired on pensionable or new permanent terms –  D8 or equivalent – 3 years;  Others – 2 years.</li> <li>2. Directorate civil servants who left the service on grounds other than retirement after six or more years of continuous service –  D8 or equivalent – 3 years;  Others – 2 years.</li> </ol>	<p>Same as the old control regime.</p>

Old control regime	New control regime
<p>3. Directorate civil servants who left the service on grounds other than retirement after less than six years of continuous service –</p> <p>D8 or equivalent – 1.5 years;</p> <p>Others – 1 year.</p>	
<b>5. Assessment criteria</b>	
<p>1. The key factors of consideration are as set out in the policy objective.</p> <p>2. The specific considerations of an application include –</p> <p>(a) whether the applicant was involved in the formulation of any policies or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her own business or his/her prospective employer;</p> <p>(b) whether the applicant or his/her prospective employer might gain an unfair advantage over its competitors because of the applicant's access to sensitive information while in government service;</p> <p>(c) whether the applicant was involved in any contractual or legal dealings to which the prospective employer was a party;</p>	<p>1. The key factors of consideration are as set out in the policy objective.</p> <p>2. The specific considerations of an application include –</p> <p>(a) the duties and responsibilities of the applicant during his/her last six years (for a D4 to D8 (or equivalent) civil servant) or three years (for a D1 to D3 (or equivalent) civil servant) of government service. Where necessary, a longer period of service history will be considered;</p> <p>(b) - (f) same as items 2(a)-(e) under the old control regime;</p>

Old control regime	New control regime
<p>(d) whether the proposed work would have any connection with the assignments and/or projects and/or regulatory/enforcement duties in which the applicant had been involved while in government service;</p> <p>(e) whether the applicant's taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety; and</p> <p>(f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the Civil Service.</p> <p>3. The application will normally be assessed with reference to the applicant's last three years of active government service. Where the applicant is a D4 to D8 (or equivalent) civil servant or if the work handled is of particular sensitivity, duties prior to the three-year period may also be taken into account.</p>	<p>(g) whether a fair-minded and informed observer, having considered the relevant facts, would conclude that the applied-for work might give rise to reasonable apprehension of deferred reward or benefit; and</p> <p>(h) whether any aspects of the applied-for work would cause well-founded negative public perception embarrassing the Government and undermining the image of the Civil Service.</p>

Old control regime	New control regime
<b>6. Standard work restrictions</b>	
<p>1. Standard work restrictions will be imposed on all approved cases of outside work. The applicants should not –</p> <ul style="list-style-type: none"> <li>(a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;</li> <li>(b) undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with – <ul style="list-style-type: none"> <li>(i) the formulation of any policy or decisions;</li> <li>(ii) sensitive information;</li> <li>(iii) contractual or legal dealings;</li> <li>(iv) assignments or projects; and/or</li> <li>(v) enforcement or regulatory duties</li> </ul> </li> </ul> <p>in which they were involved or to which they had access during their last three years of government service; or</p> <ul style="list-style-type: none"> <li>(c) engage in any activities which will cause embarrassment to the Government or bring disgrace to the Civil Service.</li> </ul>	<p>1. Standard work restrictions will be imposed on all approved cases of outside work. The applicants will not –</p> <ul style="list-style-type: none"> <li>(a) directly or indirectly be involved in the bidding for any government land, property, projects, contracts or franchises;</li> <li>(b) directly or indirectly undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with the formulation of any policy or decisions, sensitive information, contractual or legal dealings, assignments or projects, and enforcement or regulatory duties in which they had been involved or to which they had access during their last three years of service; and</li> <li>(c) directly or indirectly engage in any activities which will cause embarrassment to the Government or bring disgrace to the Civil Service.</li> </ul>

Old control regime	New control regime
<b>7. <i>Blanket approval</i></b>	
<p>1. Blanket permission is given for unremunerated work with the specified organizations throughout the entire period from cessation of active service to the expiry of control period.</p>	<p>Same as the old control regime.</p>
<b>8. <i>Transparency</i></b>	
<p>1. For approved outside work taken up by directorate civil servants at D4 or above (or equivalent), the basic information (limited to the name of the applicant, his/her last civil service post title, date of cessation of active service, restrictions/sanitization imposed on the approved work, commencement date of the approved work, and where applicable, identity of outside employer, the applicant's position in the outside organization and a brief description of his/her main duties in the outside organization) will be included in a register for public inspection on request. An entry will be kept until the expiry of the applicant's control period or after he/she has notified the Civil Service Bureau ("CSB") of the cessation of the outside work, whichever happens earlier.</p> <p>2. For approved outside work taken up by directorate civil servants below D4 (or equivalent), where there is public concern about the propriety of the work, the basic information may be disclosed on a case-by-case basis.</p>	<p>1. For approved outside work taken up by directorate civil servants, the basic information (limited to the name of the applicant, his/her last civil service post title, date of cessation of active service, restrictions/sanitization imposed on the approved work, commencement date of the approved work, and where applicable, identity of outside employer, the applicant's position in the outside organization and a brief description of his/her main duties in the outside organization) as well as the advice of the Advisory Committee on Post-service Employment of Civil Servants will be included in a register maintained by CSB for public inspection. The register is posted on CSB's website.</p> <p>2. Same as item 3 under the old control regime.</p>

Old control regime	New control regime
3. As regards unpaid outside work performed under the blanket permission for all directorate civil servants, the relevant information may be disclosed on a case-by-case basis where there is public concern.	

(Source: Annex A to the 28<sup>th</sup> Report on the work of the Advisory Committee on Post-service Employment of Civil Servants)



## Appendix II

### Policy on post-service outside work by directorate civil servants

#### List of relevant papers

Meeting	Date of meeting	Paper
Panel on Public Service	18 June 2012	<a href="#">Administration's paper</a> <a href="#">Updated background brief prepared by the Legislative Council Secretariat</a> <a href="#">Minutes</a>
	17 July 2017	<a href="#">Administration's paper</a> <a href="#">Updated background brief prepared by the Legislative Council Secretariat</a> <a href="#">Minutes</a> <a href="#">Administration's follow-up response to issues raised at the Panel meeting</a>
Council Meeting	18 May 2016	<a href="#">Council question raised by Hon Frederick FUNG on the taking up of post-service outside work by directorate civil servants</a>