## 立法會 Legislative Council

LC Paper No. CB(4)706/18-19(01)

Ref : CB4/BC/1/18

# Bills Committee on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019

#### **Background brief**

#### **Purpose**

This paper provides background information to facilitate members' consideration of the Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 ("the Bill"). 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 review on the statutory retirement ages of Judges and Judicial Officers ("JJOs") <sup>1</sup> and related subjects in recent years.

#### **Background**

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

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According to the Legislative Council Brief (File Ref: AW-275-010-010-005) issued on 27 February 2019, "Judges" refer to officers in the grades of Chief Justice, Court of Final Appeal; Judge, Court of Final Appeal; Judge of the High Court; and Judge of the District Court. "Judicial Officers" refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate. Special Magistrates are not included in the review as they would be gradually phased out.

- 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.
- 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 65, 70 or 71, depending on the level of court and subject to consideration on a case-by-case basis.
- 4. According to the Report on Judicial Remuneration Review 2018 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. The anticipated retirement will be eight (or 4.9% of current strength) in 2018-2019, increasing to 14 (or 8.5% of current strength) in 2019-2020 and slightly dropping to 12 (or 7.3% of current strength) in 2020-2021.
- 5. The Judiciary conducted a review of the statutory retirement ages for JJOs in 2014 and engaged a consultant to carry out a questionnaire survey on this matter conducted from March to May 2016 to gauge the views of all serving JJOs at that period and other stakeholder groups.

- 6. Having regard to the outcome of the review and the consultant's recommendations, the Judiciary made a number of proposals in relation to the existing statutory retirement ages for JJOs ("the Judiciary's Proposals")<sup>2</sup> to the Administration in December 2017, including the following changes:
  - (a) extending the statutory retirement age for Judges of CFA (excluding non-permanent CFA Judges), the Court of Appeal and the Court of First Instance ("CFI") from 65 to 70 and other Judicial Officers from 60 to 65;
  - (b) introducing a new statutory discretionary early retirement age of 60 for Judges of CFA, the Court of Appeal and CFI; and
  - (c) introducing a discretionary extension of term of office for the District Court Judges.

The Administration supported the Judiciary's Proposals as it considered that the proposals would enable the Judiciary to sustain their manpower across different levels of court, which was crucial to efficient and effective operation of the Judiciary. The Administration consulted the Panel on the Judiciary's Proposals at its meeting on 18 July 2018.

7. Implementation of the changes in statutory retirement ages of JJOs requires legislative amendments. The Administration hopes to complete the legislative process within the 2018-2019 session as far as possible.

#### Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019

8. The Bill was published in the Gazette on 1 March 2019 and received its First Reading at the Council meeting of 20 March 2019. The Bill seeks to implement the Judiciary's Proposals regarding the extension of the statutory retirement ages and related arrangements for JJOs by amending Cap. 484, Cap. 4, Cap. 336 and Cap. 401 <sup>3</sup> respectively. The key provisions the Bill are summarized in the following paragraphs.

Part 2 of the Bill amends Cap. 4, Part 3 amends Cap. 336, Part 4 amends Cap. 401 and Part 5 amends Cap. 484.

Please see the Legislative Council Brief (File Ref: AW-275-010-010-005) for the details of the Judiciary's Proposals.

## Extension of the statutory retirement ages for certain Judges and Judicial Officers

- 9. Clauses 3 and 4 of the Bill seek to amend Cap. 4 to extend the statutory retirement age of the High Court Judges from 65 to 70. Clause 20 seeks to amend Cap. 484 to extend the statutory retirement age of CJ and the Permanent Judges of CFA from 65 to 70. Clause 10 seeks to amend Cap. 401 to extend the statutory retirement age of magistrates and other Judicial Officers from 60 to 65.
- 10. Clause 12 of the Bill seeks to amend Cap. 401 to, among others, extend the statutory early retirement age for CJ, Permanent Judges of CFA and the High Court Judges who would be subject to the new retirement age arrangement from 60 to 65 and specify all other JJOs' statutory early retirement age at 60.

#### New early retirement age for certain Judges and Judicial Officers

11. In addition to the statutory early retirement ages, clause 18 of the Bill seeks to add new sections 12A and 12B to Cap. 401 to provide for a new discretionary early retirement age of 60 for CJ, the Permanent Judges of CFA and the High Court Judges who are subject to the new retirement age arrangements. Applications to retire at the new discretionary early retirement age of 60 would need to be made to CJ (or the Chief Executive if it is CJ's application) who may approve such applications in exceptional circumstances. Under the new section 12B of Cap. 401, CJ must delegate the power to approve such applications if CJ considers that there is a conflict of interest in the exercise of such power.

#### Discretionary extension of term of office for the Judges of the District Court

12. Clause 6 of the Bill seeks to amend Cap. 336 to provide that for the Judges of the District Court who are subject to the new retirement age arrangements, their terms of office may be extended for a specified period or periods not exceeding five years in aggregate by the Chief Executive with the recommendation of the Judicial Officers Recommendation Commission.

<sup>4</sup> Under the proposed new section 13A of Cap. 484 and the amended section 11A of Cap. 4, for Judges of CFA and the High Court who have not opted for the new retirement age arrangements, their statutory retirement age would remain at 65.

Under amended section 6 of Cap. 401, for the Magistrates or other Judicial Officers who have not opted for the new retirement age arrangements, their statutory retirement age would be 60.

# <u>Transitional arrangements for certain Judges of the Court of Final Appeal and the High Court</u>

13. Clauses 5, 11 and 22 of the Bill seek to amend Cap. 484, Cap. 4 and Cap. 401 to provide for transitional arrangements for CJ, the Permanent Judges of CFA and the High Court Judges who are currently on extended terms of office beyond the existing statutory retirement age and would opt for the new retirement age arrangements.<sup>6</sup>

#### Judges and Judicial Officers subject to the new retirement age arrangements

14. Under the proposed new section 5A of Cap. 401, as added by clause 9 of the Bill, JJOs who are subject to the new retirement age arrangements would be the serving JJOs who have opted for the new retirement age arrangements and JJOs who join the Judiciary on or after the commencement of the Bill after it is published in the Gazette as an Ordinance.

#### Implementation details and procedural matters

15. The new sections 11A, 11B and 11C to Cap. 401, as added by clause 17 of the Bill, seek to provide for the implementation details including the categories of JJOs who are entitled to opt for the new retirement age arrangements and the procedures for exercising the option.

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

16. 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

extended in accordance with the existing provisions concerned.

#### Discussion at the Council meeting

17. 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

Under the respective provisions as amended by the Bill, the relevant Judges' terms of office will first be extended to the date immediately before the new retirement age (i.e. the date before 70). After that, their terms may be further extended pursuant to the relevant provisions in Cap. 484 and Cap. 4 as if their terms of office had not been

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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

- 18. 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.
- 19. 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 the successful completion of open recruitment exercises for JJOs, many posts had been filled substantively.
- 20. 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 said that according to the Judiciary, a number of internal reviews were being conducted relating to, among others, the retirement ages for JJOs.
- 21. 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 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.

- 22. 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 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.
- 23. 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 21, 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.
- 24. At the Panel meeting on 18 July 2018, the Administration briefed members on the Judiciary's Proposals, including the extension of the retirement ages of certain JJOs, which was generally supported by members. In view of the Judiciary's Proposals to retain a two-tier retirement age system, some members enquired whether the problem of manpower shortage for Judges at or above the CFI level was more acute than that for JJOs below the CFI level. There was also a view that as many JJOs at the lower levels of court approaching their retirement ages were still going strong, a uniform retirement ages of 70 and maximum retirement age of 75 should be adopted for all JJOs.
- 25. The Judiciary Administration explained that in light of the persistent recruitment difficulties at the CFI level, there was a need to extend the statutory retirement ages for Judges at the CFI level and above from 65 to 70 which would enable the retention of experienced senior judges and attract experienced and quality private practitioners to join the Bench. On the other hand, the retirement age for JJOs below the CFI level being set at 65 would avoid creating promotion blockages for junior JJOs as well as facilitate the injection of new blood. In this connection, a two-tier retirement age system was considered more suitable to the circumstances of the Judiciary in Hong Kong and should accordingly be retained.

26. Furthermore, some members expressed concern about the transitional arrangements for the smooth implementation of the Judiciary's Proposals. The Administration explained that the Judiciary had recommended that serving JJOs could choose whether to opt for the new retirement age arrangement or the existing retirement age arrangement. A serving JJO could choose to join the new retirement age arrangement during an option period of two years, or until the date of his/her reaching the normal retirement age or expiry of extension of term of office, whichever was the earlier.

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

- 27. When discussing the judicial service pay adjustments at the Panel meetings on 23 January, 30 October 2017 and 29 October 2018, 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.
- 28. According to the Administration in December 2018, the Judiciary had been taking every possible measure to address issues arising from the tight manpower situation, including a new round of recruitment exercise for CFI Judges and District Judges in progress at that time. In addition, having regard to the difficulty in the recruitment of suitable JJOs, the terms and conditions of service for JJOs had been enhanced in 2017. A review of the statutory retirement age for JJOs had also been completed and the relevant legislative exercise to give effect to revisions to the statutory retirement ages for JJOs at all levels of courts was also underway.

#### Latest development

29. At the House Committee meeting on 22 March 2019, Members agreed to form a Bills Committee to study the Bill.

## **Relevant papers**

30. A list of relevant papers is in the **Appendix**.

Council Business Division 4
<u>Legislative Council Secretariat</u>
2 April 2019

## **Appendix**

### Bills Committee on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019

## List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
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 http://www.legco.gov.hk/ yr11-12/english/panels/ajl s/papers/aj1020-csoadmcr 6322102-e.pdf
		Minutes of meeting	CB(2)1356/11-12 http://www.legco.gov.hk/ yr11-12/english/panels/ajl s/minutes/aj20111020.pdf
13.6.2012	Council meeting	Council question raised by Hon Abraham SHEK Lai-him on retirement age of judges and judicial officers	http://www.info.gov.hk/gi a/general/201206/13/P20 1206130333.htm
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 http://www.legco.gov.hk/ yr12-13/english/panels/ajl s/papers/aj1030-csoadmcr 6322102-e.pdf
		Minutes of meeting	CB(4)220/12-13 http://www.legco.gov.hk/ yr12-13/english/panels/ajl s/minutes/aj20121030.pdf

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 http://www.legco.gov.hk/ yr13-14/english/panels/ajl s/papers/aj1126-csoadmcr 6322102-e.pdf
		Administration's follow-up paper	CB(4)223/13-14(01) http://www.legco.gov.hk/ yr13-14/english/panels/ajl s/papers/aj1126cb4-223-1 -e.pdf
		Minutes of meeting	CB(4)511/13-14 http://www.legco.gov.hk/ yr13-14/english/panels/ajl s/minutes/aj20131126.pdf
Adm of Ju	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 http://www.legco.gov.hk/ yr14-15/english/panels/ajl s/papers/ajls20141124-cs oadmcr6322102-e.pdf
		Administration's follow-up paper	CB(4)992/14-15(01) http://www.legco.gov.hk/ yr14-15/english/panels/ajl s/papers/ajls20141124cb4 -992-1-e.pdf
		Minutes of meeting	CB(4)355/14-15 <a href="http://www.legco.gov.hk/">http://www.legco.gov.hk/</a> <a href="http://www.legco.gov.hk/">yr14-15/english/panels/ajl</a> <a href="mailto:s/minutes/ajls20141124.p">s/minutes/ajls20141124.p</a> <a href="http://df">df</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) https://www.legco.gov.hk /yr14-15/english/panels/aj ls/papers/ajls20150518cb 4-964-3-e.pdf
		Minutes of meeting	CB(4)1310/14-15 https://www.legco.gov.hk /yr14-15/english/panels/aj ls/minutes/ajls20150518. pdf
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 http://www.legco.gov.hk/ yr15-16/english/panels/ajl s/papers/ajls20151123-cs oadmcr6322102-e.pdf
		Administration's follow-up paper	CB(4)385/15-16(01) http://www.legco.gov.hk/ yr15-16/english/panels/ajl s/papers/ajls20151123cb4 -385-1-e.pdf
		Minutes of meeting	CB(4)422/15-16 http://www.legco.gov.hk/ yr15-16/english/panels/ajl s/minutes/ajls20151123.p df
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 http://www.legco.gov.hk/ yr16-17/english/panels/ajl s/papers/ajls20170123-cs oadmcr6322102-e.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(4)1189/16-17 http://www.legco.gov.hk/ yr16-17/english/panels/ajl s/minutes/ajls20170123.p df
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) https://www.legco.gov.hk /yr16-17/english/panels/aj ls/papers/ajls20170424cb 4-817-7-e.pdf
		Judiciary Administration's paper on proposed creation of judicial posts and a supernumerary directorate post in the Judiciary	CB(4)817/16-17(08) https://www.legco.gov.hk /yr16-17/english/panels/aj ls/papers/ajls20170424cb 4-817-8-e.pdf
		Minutes of meeting	CB(4)75/17-18 https://www.legco.gov.hk /yr16-17/english/panels/aj ls/minutes/ajls20170424. pdf
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 https://www.legco.gov.hk /yr17-18/english/panels/aj ls/papers/ajls20171030-cs oadmcr6322102-e.pdf
		Minutes of meeting	CB(4)562/17-18 https://www.legco.gov.hk /yr17-18/english/panels/aj ls/minutes/ajls20171030. pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
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)	https://www.legco.gov.hk /yr17-18/english/fc/fc/w q/ja-e.pdf
18.7.2018	Panel on Administration of Justice and Legal Services	Administration's paper on review on the statutory retirement ages for Judges and Judicial Officers	CB(4)1384/17-18(01) https://www.legco.gov.hk /yr17-18/english/panels/aj ls/papers/ajls20180718cb 4-1384-1-e.pdf
		Minutes of meeting	CB(4)446/18-19 https://www.legco.gov.hk /yr17-18/english/panels/aj ls/minutes/ajls20180718. pdf
29.10.2018	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2018-2019 judicial service pay adjustment	File Ref: AW-275-010-015-001 https://www.legco.gov.hk /yr18-19/english/panels/aj ls/papers/ajls20181029-a w275010015001-e.pdf
		Minutes of meeting	CB(4)589/18-19 https://www.legco.gov.hk /yr18-19/english/panels/aj ls/minutes/ajls20181029. pdf

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