

立法會

Legislative Council

LC Paper No. CB(4)991/18-19

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Paper for the House Committee meeting on 14 June 2019

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

Purpose

This paper reports on the deliberations of the Bills Committee on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 ("the Bills Committee").

Background

2. At present, the statutory retirement ages of Judges and Judicial Officers ("JJOs")¹, as provided respectively in the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the High Court Ordinance (Cap. 4), the District Court Ordinance (Cap. 336) and the Pension Benefits (Judicial Officers) Ordinance (Cap. 401), are as follows:

- | | |
|--|-----------------|
| (a) The Chief Justice ("CJ") and permanent
Judges of the Court of Final Appeal
("CFA") | 65 ² |
|--|-----------------|

¹ "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.

² See section 14(11) of Cap. 484.

(b) Judges of the Court of Appeal ("CA") and Court of First Instance ("CFI") of the High Court	65 ³
(c) Judges of the District Court	65 ⁴
(d) Registrars/Senior Deputy Registrars/ Deputy Registrars of the High Court	65 ⁵
(e) Other Judicial Officers ("JOs") ⁶	60 ⁷

3. Set up under the Judicial Officers Recommendation Commission Ordinance (Cap. 92), the Judicial Officers Recommendation Commission ("JORC") makes recommendations to the Chief Executive on judicial appointments. According to the policy of JORC which has been applied consistently in all cases, 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 or the appointment of members of the legal profession who are well suited and available for appointment. Extension of service may be approved up to the age of 65, 70 or 71, depending on the judicial office 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 ("the Judicial Committee"), retirement is the main source of wastage among JJOs and the retirement situation may pose challenges to

³ See section 11A of Cap. 4.

⁴ See section 11A of Cap. 336.

⁵ See section 6(1)(b) of Cap. 401.

⁶ Such as Members of the Lands Tribunal, Magistrates, Presiding Officers of the Labour Tribunal, Coroners and Adjudicators of the Small Claims Tribunal who are appointed on pensionable terms, see sections 2 and 6(1) of Cap. 401 on the meaning of "officer" and section 2 of the Public Service Commission Ordinance (Cap. 93) on the meaning of "judicial office" and Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92).

⁷ See section 6(1)(c) of Cap. 401.

judicial manpower. The anticipated retirement would 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 commenced a review of the statutory retirement ages for JJOs in 2014 and engaged a consultant to carry out a questionnaire survey on this matter 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")⁸ 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), CA and CFI of the High Court from 65 to 70 and Members of the Lands Tribunal, Magistrates and other JOs at the magistrate level from 60 to 65;
- (b) introducing a new statutory discretionary early retirement age of 60 for Judges of CFA as well as CA and CFI of the High Court;
- (c) introducing a statutory early retirement age of 60 for Members of the Lands Tribunal, Magistrates and other JOs at the magistrate level; and
- (d) providing for discretionary extension of term of office for Judges of the District Court.

A summary table setting out the existing and recommended statutory retirement ages, discretionary extension years, early retirement ages and maximum retirement ages is in **Appendix I**.

7. 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 the

⁸ Please see the Legislative Council Brief [File Ref: AW-275-010-010-005] for the details of the Judiciary's Proposals.

efficient and effective operation of the Judiciary. At its meeting on 18 July 2018, the Administration consulted the Panel on Administration of Justice and Legal Services on the Judiciary's Proposals, which were generally supported by members.

8. 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.

The Bill

9. The Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 ("the Bill") has been introduced into the Legislative Council ("LegCo") at the Council meeting of 20 March 2019.

10. The Bill seeks to amend Cap. 4, Cap. 336, Cap. 401 and Cap. 484 to provide for the extension of retirement ages, extension of terms of office and related arrangements for certain JJOs, to introduce a discretionary early retirement age for certain judges and an early retirement age for certain JOs, and to provide for transitional and related matters ("retirement age (extension) arrangements"). The main provisions of the Bill are set out in **Appendix II**.

The Bills Committee

11. At the House Committee meeting on 22 March 2019, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix III**. Under the chairmanship of Dr Hon Priscilla LEUNG Mei-fun, the Bills Committee has held three meetings with the Administration and the Judiciary Administration.

Deliberations of the Bills Committee

12. The Bills Committee generally supports the Bill. Members agree that, as retirement is a main source of JJOs' wastage, extending their statutory retirement ages would help alleviate the shortage of judicial manpower.

13. The major issues and concerns members of the Bills Committee raised during the scrutiny of the Bill are summarized in the ensuing paragraphs. The Bills Committee has also invited members of the public for their written views on the Bill. A list of organization/individual which have submitted written views to the Bills Committee are in **Appendix IV**.

Statutory retirement ages of Judges and Judicial Officers

14. The Bills Committee notes that, under the Bill, the two-tier retirement age system will be retained, i.e. Judges at the CFI level and above will have a higher statutory retirement age (at 70) while JJOs below the CFI level will have a lower statutory retirement age (at 65). Some members consider that extending the statutory retirement ages of JJOs below the CFI level to 70 as well may help attract more talents in the private legal practices to join the Judiciary and retain experienced JJOs.

15. In response, the Judiciary Administration has explained that in light of the small pool of suitable candidates for appointment as Judges at the CFI level and above and the persistent difficulties in recruiting CFI Judges, extending the statutory retirement ages for Judges at the CFI level and above from 65 to 70 will help retain experienced senior judges and attract experienced and quality private legal practitioners to join the Bench. On the other hand, for JJOs below the CFI level, no persistent recruitment difficulties have been observed. The Judiciary considers that the setting of the retirement age for JJOs below the CFI level at 65 would avoid creating promotion blockages for junior JJOs and attract new blood. In this connection, it is considered appropriate to retain the two-tier retirement age system.

16. The Legal Adviser to the Bills Committee has enquired whether the normal retirement age for the Registrar of CFA appointed under section 42 of Cap. 484 is provided in the Bill under section 6(1)(b) (i.e. age 65) or the amended section 6(1)(c) (i.e. age 60 or 65) of Cap. 401. In reply, the Judiciary Administration explains that the judicial office of the Registrar of CFA is pegged to the rank of Senior Deputy Registrar, High Court. There is no separate rank of Registrar of CFA as such and, therefore, the normal retirement age for the Registrar of CFA will remain at 65 according to the amended section 6(1)(b) of Cap. 401.

17. The Bills Committee has requested the Judiciary Administration to provide figures on JJOs' retirement situation for appraisal of its impact on judicial manpower. In response, the Judiciary Administration advises that six JJOs has reached their statutory retirement ages in 2018-2019, and

32 JJOs will reach their statutory retirement ages in the coming three years (i.e. 1 April 2019 to 31 March 2022). The detailed breakdown of the numbers of JJOs who retired upon reaching the statutory normal retirement ages and who were approved to extend their services beyond the statutory normal retirement ages over the past five years are tabulated in **Appendix V**.

Early retirement age and discretionary early retirement

18. The Bills Committee notes that under the proposed new section 11B of Cap. 401, once a JJO delivers to the Judiciary Administrator the notice for opting for the retirement age (extension) arrangements, it will be irrevocable. Members are concerned whether this is too rigid. In response, the Judiciary Administration has explained that whilst the option is irrevocable, when the Bill is enacted, there will be discretionary and statutory early retirement arrangements to cater for the specific needs of individual JJOs who opt for the arrangement. In particular, CJ will be provided with the discretionary power to approve early retirement for Judges at the CFI and above levels between the ages of 60 and 65 on exceptional grounds. For Magistrates and other JOs at the magistrate level, a new statutory early retirement age of 60 will be introduced.

19. The Legal Adviser to the Bills Committee has sought clarification regarding the new discretionary early retirement for CJ, the permanent Judges of CFA and the High Court Judges introduced in the Bill by the proposed new section 12A of Cap. 401. He enquires, in case an application for discretionary early retirement is refused by CJ (or the Chief Executive, in case of CJ's application), whether such refusal may be reviewed by CJ himself (or the Chief Executive, as the case may be) upon a request made by the applicant for a review.

20. The Judiciary Administration advises that it is not the Judiciary's intention to introduce a mechanism for CJ (or the Chief Executive, as the case may be) to review any refusal of applications for discretionary early retirement. This is in line with the arrangements for other similar powers of CJ under Cap. 401. If an applicant is aggrieved by the outcome of application, he or she may consider making an application for judicial review of the decision of CJ (or the Chief Executive, as the case may be).

21. In response to the Legal Adviser to the Bills Committee's further enquiry whether the applicant may submit another application under the new section 12A of Cap. 401 before he or she attains the age of 65 years if the first one is refused, the Judiciary Administration advises that in any

case, if there are material changes in circumstances, the refused applicant may consider submitting another application for discretionary early retirement before he or she reaches the age of 65.

Discretionary extension arrangements

22. The Bills Committee notes that the existing discretionary extension arrangements beyond the statutory normal retirement ages for JJOs at all levels of court will be maintained, while a new arrangement of discretionary extension of term of office will be provided for District Judges. As the maximum retirement ages for Judges of CFA, CA and CFI under the discretionary extension arrangements may be up to 76, 75 and 75 respectively, and those of JJOs below the CFI level may be up to 70, some members are concerned about JJOs on extended term of office becoming incapable of carrying out their duties for health reasons.

23. Some members have suggested that a mechanism should be put in place so that during the extended term of office of a JJO, the Judiciary Administration and the JJO concerned may mutually review on a regular basis whether the extended term of office should continue.

24. The Judiciary Administration has explained that according to the existing provisions, subject to approval, the term of office of CJ and a permanent Judge of CFA may be extended for not more than two periods of three years after reaching the normal retirement age and, for the High Court Judges and the relevant JOs such as Magistrates, their terms may be extended for a specified period or periods not exceeding five years in aggregate. In practice, the duration of each extended term for JJOs at the High Court and below levels is normally one, two or three years.

25. The Judiciary Administration advises that, before a discretionary extension of term of office is granted, the JJOs concerned will be required to pass a medical examination to ascertain that they are medically fit for continued employment. On the other hand, if the medical condition of a JJO deteriorates substantively which may affect performance of judicial duties, whether he/she is on extended term of office or has not yet reached the statutory retirement age, the case may be handled by convening a medical board. If the JJO is confirmed to be unfit for performing his/her judicial duties, he/she may retire on medical grounds without waiting for reaching the normal retirement age or the end of the prevailing term.

26. Some members also consider that the present discretionary extension arrangement has not taken the workload of JJOs on extended

term of office into account. They suggest that consideration should be given to relieving JJOs working on extended term from administrative work so that they can focus on judicial duties. They also suggest that consideration be given to allowing such JJOs more flexibility in their workload and working hours, and their remuneration may also be adjusted accordingly.

27. The Judiciary Administration has responded that in general, JJOs mainly perform judicial duties and only a small number of them are performing administrative duties, such as Court Leaders. In considering whether to invite a relevant JJO to take up any administrative duties, the relevant Court Leaders will take into account all relevant factors including JJO's workload, expertise and experience. Furthermore, the Judiciary Administration advises that besides possibly continuing their services through discretionary extension arrangements, retired JJOs may also consider serving as deputy JJOs who only work on a temporary basis.

Transitional arrangements

28. The Bills Committee is interested in knowing more about the details of the transitional arrangements under the proposed new sections 11B of Cap. 4, 6A of Cap. 401 and 14A of Cap. 484 for the smooth implementation of the Bill.

29. The Judiciary Administration explains that serving JJOs can choose whether to opt for the new retirement age (extension) arrangements. Broadly speaking, a serving JJO can exercise the option of joining the new retirement arrangements during an option period of two years, or until his or her existing statutory normal retirement age or expiry of extension of term of office, whichever is the earliest.

Judges and Judicial Officers on pensionable or agreement terms of appointment

30. The Legal Adviser to the Bills Committee has sought clarification on whether the retirement age (extension) arrangements for JJOs engaged on terms of appointment that do not attract pension benefits under Cap. 401 would be identical to the arrangements for JJOs appointed on pensionable terms under the Bill.

31. The Judiciary Administration has replied that all serving Judges will be invited to opt for the new retirement arrangements, regardless of whether they have pensionable service. Judges will be subject to the new

retirement arrangements if they so opt or if they join the Judiciary after the Bill takes effect. For Judges on agreement terms who have opted for the new arrangements, their agreements will be extended up to their new normal statutory retirement ages and, if and when they change to pensionable terms, their option (whether new or existing arrangements) will be preserved.

32. The Judiciary Administration has also explained that only serving JOs who have pensionable service when the Bill takes effect will be invited to opt. Although JOs on agreement terms will not be invited to opt, the Judiciary will generally use the new statutory retirement ages as the age ceiling when offering to them possible renewal of agreements. If and when they transfer to pensionable terms after commencement of the Bill, they will automatically be subject to the new retirement arrangements under Cap. 401.

Re-appointment of retired Judges and non-permanent Judges

33. The Bills Committee has enquired whether the retired Judges or non-permanent Judges can apply to join the Bench as permanent Judges after commencement of the Bill if they have not yet reached the new statutory retirement ages.

34. In response, the Judiciary Administration has advised that up to the present moment, no retired Judge or non-permanent Judge has ever been re-appointed as permanent Judge. Notwithstanding, judicial appointments including those of permanent Judges are made by the Chief Executive on the recommendation of JORC which advises or makes recommendations to the Chief Executive regarding the filling of vacancies in judicial offices.

Manpower shortage in the Judiciary

35. At the Bills Committee's request, the Judiciary Administration has provided a detailed breakdown of the establishment and strength of JJOs at various levels of courts as at 31 March 2019 as tabulated in **Appendix VI**. Members express grave concern about the shortage of JJOs as there are 62 vacancies out of a total of 218 posts. In particular, they consider it unacceptable that only two out of the 15 vacancies in the High Court Masters' Office ("HCMO") and none in the District Court Masters' Office ("DCMO") have been filled.

36. The Judiciary Administration has explained that the judicial vacancies in HCMO are now mostly taken up by District Judges who are deployed to sit as temporary Deputy Registrars under the cross-posting policy. For judicial vacancies in DCMO and at the Labour Tribunal, Small Claims Tribunal and Coroner's Court, they are mostly carried out by Principal Magistrates or Permanent Magistrates deployed under the cross-posting policy. The cross-posting policy provides greater flexibility in the deployment of JJOs to sit in various offices/court/tribunal to meet operational needs.

37. The Judiciary Administration also informs members that the Judiciary has been and will continue to conduct open recruitment exercises at different levels of court, namely, CFI Judges, District Judges and Permanent Magistrates, on a regular basis with a view to filling existing and anticipated judicial vacancies at these levels of court.

Other measures to address the judicial manpower shortage problem

38. Having regard to establishment and strength of JJOs as at 31 March 2019 in Appendix VI, the Bills Committee considers that the retirement age (extension) arrangements can only partly address the judicial manpower shortage, and urges the Judiciary Administration and the Administration to take other measures to address the problem.

Enhancing the remuneration and conditions of service

39. Some members suggest enhancing the remuneration and conditions of service for JJOs to attract new blood as well as to retain existing talents. The Administration has responded that the mechanism for judicial remuneration review comprises an annual salary review and a Benchmark Study on the Earnings of Legal Practitioners in Hong Kong ("Benchmark Study") conducted on a regular basis⁹ which seeks to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time.

40. The Administration has further explained that following the Benchmark Study conducted in 2015, the Judicial Committee recommended an upward pay adjustment of 6% for Judges at the CFI level

⁹ The Judicial Committee has decided that a Benchmark Study should in principle be conducted every five years, with its frequency subject to periodic review. The most recent Benchmark Study was conducted in 2015. The next Benchmark Study will be conducted in 2020, subject to review nearer the time.

and above and an upward adjustment of 4% for JJOs below the CFI level. In 2016, the Judicial Committee considered and supported a package of proposals to enhance some of the conditions of service (i.e. housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and transport services for leave travel) for JJOs. The pay adjustment and enhancement proposals have subsequently been implemented in September 2016 and April 2017 respectively.

Recruitment and retention of Judicial Officers

41. The Bills Committee notes from the establishment and strength of JJOs at various levels of courts as at 31 March 2019 in Appendix VI that there are 40 vacancies out of 108 JO posts at the Magistrates' Courts and equivalent levels, and considers that the Judiciary has not paid due efforts to recruit JOs below the CFI level.

42. The Chairman points out that, according to section 7(1)(g) of Cap. 401, a JO other than a Judge of the High Court or District Court may be forced to retire for the purpose of facilitating improvement in the organization of the Judiciary, by which greater efficiency or economy may be affected. This is in stark contrast to the security of tenure enjoyed by Judges. Members consider that the situation is worsened by the inadequate opportunities for JOs at the Magistrates' Courts levels to be promoted to senior judicial posts such as District Judges or Judges at the CFI level and above. Without a prospective career path, the Judiciary may not attract new blood, or groom and retain existing JOs. Members urge the Administration and the Judiciary Administration should do more in attracting new JOs.

43. The Judiciary Administration has explained that the 40 JO vacancies include vacancies at the Magistrates' Courts, DCMO, Specialized Court and other Tribunals. It should be noted that for vacancies at DCMO, they are mostly taken up by Principal Magistrates or Permanent Magistrates under the cross-posting policy. In addition, 11 Permanent Magistrate vacancies out of these 40 JO vacancies have been reserved to cope with the long-term phasing out of the Special Magistrate Grade pursuant to the conclusion of a recent review of the Grade. Therefore, the number of JO vacancies in Appendix VI that could be filled should be less than the actual number of vacancies.

44. In response to members' queries on why the six serving Special Magistrates of the Judiciary are not included in the present legislative

amendment exercise, the Judiciary Administration has explained that pursuant to the conclusion of a recent review of the Special Magistrate Grade, it has been decided that Grade should be phased out in the long term. The Judiciary will encourage the serving Special Magistrates to apply to join as Permanent Magistrates via open recruitment, whose statutory retirement age will be extended to 65 under the Bill.

45. The Judiciary Administration has also explained that section 7(1)(g) of Cap. 401 has been in the Ordinance for historical reasons and no change of substance to section 7(1)(g) has been proposed in the present legislative amendment exercise. The Judiciary Administration confirms that no JO has been forced to retire under section 7(1)(g) of Cap. 401 so far and, if and where necessary, the provision may be reviewed in the future.

46. As regards the career prospect for JOs at the Magistrates' Courts levels, the Judiciary Administration has explained that appointments of Judges at higher levels of court, i.e. CFI Judges and District Judges, are conducted through open recruitment exercises. In each open recruitment exercise, eligible candidates, including serving JOs and external candidates may apply for these posts on an equal basis. Eligible candidates will be appointed as Judges if they are found suitable on the basis of their judicial and professional qualities and are recommended by JORC which is set up under Cap. 92 to make recommendations to the Chief Executive on judicial appointments.

47. Some members consider it difficult to understand why the shortage of JO persists given there being a large number of law graduates every year. They have enquired whether the Judiciary Administration has collected views systematically from private practitioners on the factors that they will perceive as attractions for joining the Bench.

48. The Administration advises that when conducting the Benchmark Study, the consultant would interview randomly selected barristers and solicitors on their perceptions on judicial service and remuneration, such as the deciding factors that will affect JJOs for considering judicial appointment. Similar studies will be continued in the future.

49. In view of the persistent recruitment difficulties encountered by the Judiciary, some members suggest reviewing the judicial recruitment process. They express concern that if the threshold for being a JJO is set too tight or outdated, certain suitable talents may not be able to join the Bench in this regard. The Administration and the Judiciary Administration

note the views of members. The Judiciary Administration notes that only suitable qualified persons would be appointed to the Bench.

Prohibition against Judges' return to private practice

50. Some members suggest exploring the feasibility of relaxing or lifting the prohibition against Judges' return to private practice as barristers or solicitors, because such prohibition might discourage some legal practitioners from joining the Bench. The Bills Committee has requested the Judiciary Administration to provide a list of provisions in Hong Kong legislation which impose such prohibition on Judges.

51. In response, the Judiciary Administration has explained that to maintain judicial independence and command public confidence in the Judiciary, Judges at the District Court and above are prohibited from returning to private practice after leaving the Judiciary. However, they have security of tenure. For CJ and Judges of CFA, such prohibition is stipulated in section 13 of Cap. 484. While similar prohibition is not stipulated in Cap. 4 or Cap. 336, Judges of the High Court and the District Court are required to give an undertaking not to practise as barristers or solicitors in Hong Kong after they have left the Judiciary unless the Chief Executive permits. As regards other JOs such as Magistrates, they are not prohibited from returning to private practice after leaving the Judiciary.

52. The Judiciary Administration stresses that as the above established practice seeks to underpin judicial independence and public confidence in the Judiciary, the Judiciary does not agree that there should be any relaxation of the above prohibition.

Composition of the Judicial Officers Recommendation Commission

53. The Bills Committee notes that JORC is playing an instrumental role in making recommendations on judicial appointments and discretionary extension of the terms of office of JJOs. Some members consider that JORC's workload will increase with more cases of discretionary extension of terms of office of JJOs. They consider that, as JORC's deliberations and decision-making are kept confidential but its decision would have far-reaching consequences, consideration should be

given to enhancing the JORC's representativeness and its composition¹⁰. Suggestions raised by members include increasing its membership by 50% and appointing LegCo Members to it.

54. Both the Administration and the Judiciary Administration have explained that, under the regulation of Cap. 92, JORC has been operating effectively and the current composition has provided an appropriate balance among the Judiciary, the legal sector and the public. Furthermore, while a LegCo Member shall not be appointed to be a member of JORC under section 4 of Cap. 92, LegCo has the power and function under Article 73(7) of the Basic Law to endorse the appointment and removal of the Judges of CFA and the Chief Judge of the High Court.

Other legal and drafting issues

55. The Bills Committee has examined the Bill clause by clause and has noted the legal and drafting issues raised by the Legal Adviser to the Bills Committee¹¹ and the Administration/Judiciary Administration's responses on the issues.¹²

Amendments to the Bill

56. The Bills Committee and the Administration will not propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

57. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 26 June 2019.

¹⁰ Under section 3 of Cap. 92, JORC should consist of CJ, who shall be the Chairman; the Secretary for Justice; and seven members appointed by the Chief Executive of whom two should be judges; one should be a barrister and one should be a solicitor; and three persons who were not, in the opinion of the Chief Executive, connected in any way with the practice of law.

¹¹ English version and Chinese version issued vide LC Paper No. CB(4)706/18-19(03) on 2 and 4 April 2019 respectively.

¹² Issued vide LC Paper No. CB(4)757/18-19(01) on 12 April 2019.

Advice sought

58. Members are invited to note the Bills Committee's deliberations set out above.

Council Business Division 4
Legislative Council Secretariat
13 June 2019

Appendix I

A summary table setting out the existing and recommended statutory retirement ages, discretionary extension years, early retirement ages and maximum retirement ages

Court level	Statutory retirement age		Discretionary extension year		Early retirement age			Maximum retirement age	
	E	R	E	R	E	R		E	R
						D	S		
Court of Final Appeal	65	70	6(3+3)	6(3+3)	60	60*	65	71	76
Court of Appeal	65	70	5	5	60	60*	65	70	75
Court of First Instance	65	70	5	5	60	60*	65	70	75
High Court — Registrar/ Senior Deputy Registrars/ Deputy Registrars	65	65	5	5	60	60		70	70
District Court — District Judges	65	65	Nil	5	60	60		65	70
District Court — Members of the Lands Tribunal	60	65	5	5	Nil	60		65	70
Magistrates' Courts	60	65	5	5	Nil	60		65	70

Remarks

E : Existing

R : Recommended

D : Discretionary

S : Statutory

Note 1 : Figures in shade denote changes to the existing arrangements.

Note 2 : Asterisked figures denote discretionary retirement between the ages of 60 and 65 to be approved by the Chief Justice.

Source: Paragraph 5 of the Legislative Council Brief [File Ref.: AW-275-010-010-005]

Appendix II

Main provisions of the Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019

According to the Administration, the main provisions of the Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 ("the Bill") are set out as follows:

1. Clauses 3, 4, 10, 20 and 21 amend the High Court Ordinance (Cap. 4), the Pensions Benefits (Judicial Officers) Ordinance (Cap. 401) and the Hong Kong Court of Final Appeal Ordinance (Cap. 484) to extend the retirement age for Judges of the Court of Final Appeal and the High Court from 65 to 70 and that for Members of the Lands Tribunal, Magistrates and other Judicial Officers at the magistrate level (other than special magistrates) from 60 to 65;
2. Clauses 5, 11 and 22 amend Cap. 4, Cap. 401 and Cap. 484 to provide for the transitional arrangements for Judges of the High Court, Judicial Officers as well as Judges of the Court of Final Appeal currently on extended terms beyond the existing statutory retirement age who opt for the new retirement arrangements. Their term will first be extended to the date immediately before the new retirement age. After that, their terms may be further extended pursuant to the relevant provisions in the respective Ordinances as if their terms of office had not been extended previously;
3. Clause 6 amends the District Court Ordinance (Cap. 336) to provide that for District Judges who are subject to the new arrangements, their terms of office may be extended for a specified period or periods not exceeding five years in aggregate;
4. Clause 9 adds a new section 5A to Cap. 401 to provide, amongst others, that Judges and Judicial Officers ("JJOs") are subject to the new retirement arrangements if they join the Judiciary after the Bill commences or if they are the relevant serving JJOs and have opted for the new arrangements, etc.;

5. Clause 17 adds the new sections 11A, 11B and 11C to Cap. 401. Section 11A sets out the relevant categories of JJOs who may opt. Section 11B specifies the respective opting period¹ for different types of JJOs. Section 11C provides that the detailed new retirement arrangements (called "retirement age (extension) arrangements" in the Bill) would be set out in a Circular to be issued by the Chief Justice; and
6. Clause 18 adds the new sections 12A and 12B to Cap. 401 to introduce the new statutory discretionary early retirement age of 60 for Judges of the Court of Final Appeal and the High Court; and for the Chief Justice to delegate the power to approve JJOs' applications for discretionary early retirement if the Chief Justice considers that there is any actual or apparent conflict of interest. Clauses 12 and 13 amend sections 7 and 8 of Cap. 401 to provide for pension payments for JJOs upon their discretionary early retirement.

Source: Paragraph 42 of the Legislative Council Brief [File Ref.: AW-275-010-010-005]

¹ According to the Administration, "opting period" means that a relevant serving JJO can exercise the option of joining the new retirement arrangements during an option period of two years, or until JJO's existing statutory retirement age/expiry of extension of service, whichever is the earliest.

Appendix III

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

Membership list

Chairman Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Members Hon Dennis KWOK Wing-hang
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon CHEUNG Kwok-kwan, JP

(Total : 5 members)

Clerk Mr Lemuel WOO

Legal Adviser Mr YICK Wing-kin

Appendix IV

List of organizations/individuals that have submitted views to the Bills Committee on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019

1. DAB
2. Mr Michael YUNG Ming-chau, Sha Tin District Council member

Appendix V

Detailed breakdown of the numbers of Judges and Judicial Officers who retired upon reaching the statutory normal retirement ages and who were approved to extend their services beyond the statutory normal retirement ages over the past five years

The detailed breakdown of the number of Judges and Judicial Officers ("JJOs") who retired upon reaching the statutory normal retirement age or retired upon completion of extended term of office over the past five years from 2014-2015 to 2018-2019 is as follows:

Rank	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
Judge of the Court of Final Appeal					(1)
Judge of the High Court	3 + (1)		(1)		1 + (1)
District Judge	1	1		1	
Registrar/Senior Deputy Registrar/ Deputy Registrar of the High Court					1
Member, Lands Tribunal					
Judicial officers at Magisterial Level	1	4	3 + (1)	1 + (1)	2
Total	6	5	5	3	6

Note: Figures in bracket indicate the number of Judges and Judicial Officers who retired upon completion of extended term of office.

2. The detailed breakdown of the number of JJOs whose extension of term of office beyond statutory normal retirement age commenced over the past five years from 2014-2015 to 2018-2019 is as follows:

Rank	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
Judge of the Court of Final Appeal	1*	1			
Judge of the High Court	2*	3		4	5
District Judge					
Registrar/Senior Deputy Registrar/ Deputy Registrar of the High Court					
Member, Lands Tribunal			1		
Judicial Officers at Magisterial Level	1	1	1	2	3
Total	4	5	2	6	8

Note: * JJOs whose extension of term of office commenced before 2014-2015.

Appendix VI

Breakdown of the establishment and strength of Judges and Judicial Officers at various levels of courts (as at 31 March 2019)

Level of Court	Establishment	Strength
Court of Final Appeal	4*	4
Court of Appeal, High Court	14 } 48	13 } 40
Court of First Instance, High Court	34 }	27 }
High Court Masters' Office	15 } 58	2 } 44
District Court (including the Family Court and Lands Tribunal)	43 }	42 }
<i>Judges</i>	41	40
<i>Members, Lands Tribunal</i>	2	2
District Court Masters' Office	9 } 108	0 } 68
Magistrates' Courts/ Specialized Court/Other Tribunals	99 }	68 }
<i>Permanent Magistrates and above</i>	88	62
<i>Special Magistrates</i>	11	6
Total	218*	156

Note: * Excluding one permanent judge post created for a non-permanent Judge of the Court of Final Appeal.