

For discussion on
10 July 2020

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Progress of the Study on the Proposal on Oath-taking by Civil Servants and Political Neutrality of Civil Servants

Purpose

This paper aims to brief members on the policies and systems established by the Government concerning requirements for civil servants such as those regarding their political neutrality, and report on the progress of the study on the requirement of oath-taking by civil servants.

Political Neutrality of Civil Servants

2. The civil service is the backbone of the Government of the Hong Kong Special Administrative Region (HKSAR Government). It is responsible to the Chief Executive. It supports the Chief Executive and the Government of the day in formulating, explaining and implementing policies; conducting administrative affairs; delivering public services; and undertaking law enforcement and regulatory functions. Article 99 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law) stipulates that public servants must be dedicated to their duties and be responsible to the HKSAR Government. Civil servants, being a key component of the public service, have the constitutional role to give of their best in serving the Chief Executive and the Government of the day.

3. Apart from the requirement set out in the Basic Law regarding the constitutional role of civil servants, the Civil Service Code (the Code) was promulgated by the Civil Service Bureau in 2009. The Code sets out the core values and standards of conduct which civil servants are required to uphold. The Code also covers civil servants' roles and responsibilities in relation to politically appointed officials and their working relationship with politically appointed

officials. The Government requires civil servants to comply with the Code. Also, the Code constitutes part of the employment contract between the Government and civil servants.

4. Under the Code, civil servants must be committed to the rule of law, dedicated to their duties, impartial and politically neutral. According to paragraph 3.2 of the Code, commitment to the rule of law means that civil servants shall exercise executive powers in compliance with the Basic Law and the Laws of Hong Kong. According to paragraph 3.6 of the Code, impartiality means that civil servants shall carry out their duties and responsibilities in accordance with the policies and decisions of the Government of the day and in a way that is fair, just and equitable, and they shall act according to the merits of the case. According to paragraph 3.7 of the Code, political neutrality means that civil servants shall serve the Chief Executive and the Government of the day with total loyalty and to the best of their ability, no matter what their own political beliefs are; and they shall not allow their own political beliefs to determine or influence the discharge of their duties and responsibilities. Besides, paragraph 5.7 of the Code stipulates that civil servants shall support and implement policies and take actions, once decided by the Government of the day, fully and faithfully irrespective of their personal views. They shall ensure that their involvement in, or contribution to, any public debate or discussion on public matters is in accordance with the policies and decisions of the Government of the day and is appropriate to the official positions they hold. Hence, civil servants, when expressing their views in public, shall ensure that their views will not give rise to any actual, perceived or potential conflict of interest with their official positions or duties or be perceived as compromising the important principle of maintaining impartiality and political neutrality in the discharge of their duties.

Oath-taking by Civil Servants

5. At its meeting on 4 November 2019, the Panel on Public Service of the Legislative Council passed a motion urging the Chief Executive to issue an executive order under Article 48(4) of the Basic Law to require all civil servants to swear to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR).

6. It has consistently been the duty of civil servants to uphold the Basic Law and be allegiant to the HKSAR and the HKSAR Government under the

framework of the Basic Law and the Code. Specifically, Article 60 of the Basic Law stipulates that “[t]he head of the Government of the Hong Kong Special Administrative Region shall be the Chief Executive of the Region”. Article 48 stipulates that “[t]he Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions... (7) To appoint or remove holders of public office in accordance with legal procedures...”. As stated in paragraphs 2 to 4 above, Article 99 of the Basic Law provides that public servants must be dedicated to their duties and be responsible to the HKSAR Government, and the Code clearly requires that civil servants shall serve the Chief Executive and the Government of the day with total loyalty. Obviously, it has all along been the duty of civil servants to uphold the Basic Law and be loyal to the HKSAR, and most importantly to the HKSAR Government in particular.

7. Introducing a requirement on civil servants to take oath or make a declaration to uphold the Basic Law and pledge allegiance to the HKSAR and the HKSAR Government genuinely manifests the established responsibilities of civil servants under the Basic Law and the Code. It also enables civil servants to have clearer awareness of the responsibilities and requirements entailed by their official positions, thereby further safeguarding and promoting the core values that must be upheld by civil servants, and ensuring in turn the effective governance of the HKSAR Government.

Proposed way forward for implementation

8. Based on the principles set out above, we put forward the following proposal relating to the study on oath-taking by civil servants:

- (a) New appointees to the civil service: All civil servants joining the HKSAR Government on or after 1 July 2020 are required to confirm in writing to uphold the Basic Law and pledge allegiance to the HKSAR.
- (b) Serving civil servants: We are of the view that serving civil servants should also comply with the relevant requirement of taking an oath or making a declaration. This manifests and demonstrates the established responsibilities of civil servants. On the specific implementation arrangements, we suggest that the following categories of civil servants be first arranged to take an oath or

confirm in writing to uphold the Basic Law and pledge allegiance to the HKSAR:

- (i) all civil servants to be recommended for promotion to a higher rank or confirmation to a rank, or recommended for in-service transfer to another grade;
 - (ii) civil servants who play a crucial role in the Government's decision-making process or of a higher rank (such as directorate officers) and civil servants who are responsible for discharging more sensitive duties (such as disciplined services staff, Administrative Officers, Information Officers, legal officers, etc.).
- (c) On the form of implementation, it should be by means of taking an oath for some civil servants, such as directorate officers of higher ranking.

9. In considering and implementing the above proposal, we have to consider the appropriate follow-up action and relevant mechanism to handle cases of non-compliance with the requirement or cases involving breach of the oath/declaration by civil servants.

10. Concurrently, on 30 June 2020, the Standing Committee of the National People's Congress (NPCSC) passed "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region" (the National Security Law) and listed the legislation in Annex III to the Basic Law after consulting the NPCSC's Committee for the Basic Law of the Hong Kong Special Administrative Region and the HKSAR Government as required under Article 18 of the Basic Law. The National Security Law took effect upon gazettal at 11 p.m. on 30 June. Article 6 of the National Security Law stipulates that "[a] resident of the [HKSAR] who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China in accordance with the law". The aforesaid proposal on oath-taking by civil servants accords with the relevant provisions of the National Security Law.

11. We will consult the civil service unions on the above proposal concerning serving civil servants according to the established mechanism. We will also continue to work with the Department of Justice to examine the legal issues involved, and map out the way forward and implementation details.

Civil Service Bureau
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