

**Reply to the Bills Committee on
Legal Practitioners (Amendment) Bill 2021**

**List of follow-up actions arising from the discussion
at the meeting on 9 August 2021**

The Administration was requested by members at the meeting on 9 August 2021 to provide the following information:

- (a) the number of legal officers (breakdown into barristers and non-barristers), not limited to those in the Department of Justice, who have not less than 10 years of advocacy experience and may be qualified to be considered for appointment as Senior Counsel by the Chief Justice; and
- (b) the wastage rate of legal officers (breakdown into barristers and non-barristers) in the past five years (especially those with not less than 10 years of advocacy experience).

DoJ's reply:

Under the existing regime, legal officers admitted as barristers are already eligible for appointment as Senior Counsel (SC) just as those in private practice. What the proposed amendment seeks to address is the unequal treatment, in terms of eligibility for appointment as SC, between legal officers undertaking advocacy duties relating to the government departments by reason of an artificial barrier when in fact, as explained in paragraph 3(a) of the Legislative Council Brief, there is no practical distinction between the role and duties of legal officers who are barristers and those who are not.

The Proposal is long awaited to address the need for fairness, which will be in the public interest, in recognising worthy candidates for appointment as SC solely based on merits alone. All advocates serving in the public sector who, in the opinion of the Chief Justice, satisfy the substantive eligibility requirements set out in the Legal Practitioners Ordinance (Cap. 159) (LPO) deserve to be accorded the same status of SC just as barristers in private practice. There is no pre-set target nor limit on the number of legal officers who may accordingly benefit from the Proposal.

The Proposal which will permit the Chief Justice, in the exercise of his discretion in the public interest, to consider the application for appointment for SC from any legal officer (including a person deemed as such) purely on the basis of the merits of the individual regardless of whether that person is a barrister or not. Since for both practical and management purposes, the Government does not post legal officers or assign their duties depending on whether the person is a solicitor or barrister, we are not in a position, nor it is appropriate, to supply a forecast of any sort of the size of “beneficiaries” when in fact those who consider themselves eligible may submit an application at the annual exercise (the next exercise is expected to start this October).

For the benefit of the Bills Committee, we wish to reiterate that natural staff wastage is commonplace in any organisation, and the Government is no exception. According to the statistics from the Civil Service Bureau, in 2020-2021, the wastage in the civil service accounts for was around 4.8% of the strength. Retirement was the primary reason for departure of civil servants, and other reasons include resignation, completion of agreement and death. In the past few years, the annual numbers of departing DoJ civil servants (including retirement and resignation, around 60 representing around 5% of the strength) were about the same, being comparable to the wastage rate of civil service at large. This is normal personnel turnover and importantly, DoJ's operation remains unaffected. The natural wastage rate therefore should not be a relevant consideration given the primary objective of the Proposal.

Department of Justice
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