

立法會

Legislative Council

LC Paper No. CB(4)761/20-21
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by the Administration)

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Panel on Public Service

**Minutes of meeting held on
Monday, 18 January 2021, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present: Hon KWOK Wai-keung, JP (Chairman)
Hon POON Siu-ping, BBS, MH (Deputy Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Steven HO Chun-yin, BBS
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Dr Hon CHIANG Lai-wan, SBS, JP
Hon SHIU Ka-fai, JP
Dr Hon Pierre CHAN
Hon CHAN Chun-ying, JP
Hon LUK Chung-hung, JP
Hon Tony TSE Wai-chuen, BBS, JP

Public Officers : **Agenda items III and IV**
Attending

Mr Patrick NIP, JP
Secretary for the Civil Service

Mrs Ingrid YEUNG, JP
Permanent Secretary for the Civil Service

Mrs Angelina CHEUNG, JP
Deputy Secretary for the Civil Service 1

Clerk in attendance: Ms Wendy JAN
Chief Council Secretary (4)1

Staff in attendance : Ms Maggie CHUNG
Senior Council Secretary (4)1

Ms Carol WONG
Council Secretary (4)1

Mr Griffin FUNG
Legislative Assistant (4)9

Ms Karin TSOI
Clerical Assistant (4)1

I. Information papers issued since the regular meeting on 16 November 2020

Members noted that no information paper had been issued since the last regular meeting of the Panel on Public Service ("the Panel") on 16 November 2020.

II. Date of next meeting and items for discussion
[LC Paper Nos. CB(4)364/20-21(01) and (02)]

2. The Chairman informed members that the Administration proposed to discuss the following items at the next regular meeting of the Panel in February 2021:

- (a) Efforts in attracting young people to join the government; and
- (b) Update on establishing the Civil Service College.

3. Mr Tony TSE opined that the Administration should accord priority to discuss some other items in the Panel's "List of outstanding items for discussion", such as "Enactment of legislation to prohibit acts of insulting public officers" and "Commendation schemes for civil servants and performance management of the civil service".

4. In response to Mr Tony TSE's question regarding the urgency to discuss the proposed item as mentioned in paragraph 2(a) above, Secretary for the Civil Service ("SCS") advised that the Administration aimed to gauge views from the Panel on the initiatives in promoting job opportunities for the youth and attracting young people to join the Government. Mr SHIU Ka-fai considered that this item should be discussed as soon as possible in view of the worsening unemployment situation due to the Coronavirus Disease 2019 ("COVID-19") pandemic. Members subsequently agreed to discuss the two proposed items as mentioned in paragraphs 2(a) and 2(b) above at the next regular meeting in February 2021.

5. The Chairman also sought members' views as to whether the Panel should hold the next regular meeting in person or by videoconferencing. He further advised members that the venue reserved for the meeting originally scheduled for 8 February 2021 could only be used to hold meetings by videoconferencing. If the Panel decided to hold the next regular meeting in person, it would then be rescheduled to 17 February 2021. In the light of members' response, the Chairman decided that the next regular meeting be held in person on 17 February 2021.

(Post-meeting note: In view of the situation of the COVID-19 epidemic, the Chairman subsequently directed that the meeting scheduled for 17 February 2021 be conducted by videoconferencing and started at 11:00 am. The notice of meeting was issued vide LC Paper No. CB(4)446/20-21 on 28 January 2021.)

III. Proposal on oath-taking by civil servants [LC Paper Nos. CB(4)364/20-21(03) and (04)]

6. At the invitation of the Chairman, SCS briefed members on the implementation plan of requiring all civil servants to declare by taking an oath or signing a declaration that they would uphold the Basic Law ("BL"), bear allegiance to the Hong Kong Special Administrative Region ("HKSAR"), be dedicated to their duties and be responsible to the HKSAR Government ("the implementation plan"), details of which were set out in the Administration's paper (LC Paper No. CB(4)364/20-21(03)).

7. The Deputy Chairman, Mr SHIU Ka-fai and Mr LEUNG Che-cheung expressed their support for the implementation plan. The Deputy Chairman and Mr SHIU pointed out that it was civil servants' basic duties and obligation to uphold BL, bear allegiance to HKSAR and be responsible to the HKSAR Government. Mr LEUNG and Mr LUK Chung-hung remarked that the oath-taking/declaration requirement served the purpose of reminding civil servants of their responsibilities and obligation to be loyal to the Chief Executive and the HKSAR Government.

8. Mr SHIU Ka-fai and Mr LUK Chung-hung added that some overseas jurisdictions also required their civil servants to bear allegiance to the jurisdictions. Mr LUK stressed that the oath-taking/declaration requirement was not an additional condition imposed on civil servants. It was stated in the Civil Service Code ("the Code") that civil servants should 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 were. The Chairman echoed that apart from the Code, Article 6 of "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region" ("the National Security Law") also provided the legal basis for the oath-taking/declaration requirement.

Behaviour which might constitute a breach of the oath/declaration and the consequences of breaching the oath/declaration

9. Mr SHIU Ka-fai said that some civil servants were unsure about what words and actions would constitute a breach of the oath/declaration. For example, they were unsure whether their expression of views as a member of the public on Government's policies or participation in demonstrations to demand for a pay rise might constitute a breach of the oath/declaration. Mr LUK Chung-hung opined that the Administration should clearly state that the oath-taking/declaration requirement would not affect civil service unions' negotiations with the Administration over salary and benefit issues. The Chairman relayed the concern of some civil servants as to whether accepting interviews from "anti-China media" would constitute a breach of the oath/declaration.

10. SCS stressed that civil servants' freedom of speech, of assembly, of demonstration, and so forth was enshrined in BL. There was no objection to individual civil servants participating in peaceful and lawful public order events in their personal capacity, as long as that did not give rise to any conflict of interest with their official duties, and would not be perceived as compromising the principle of maintaining impartiality and

political neutrality when discharging their duties. That said, civil servants must be aware of the requirements and responsibilities entailed by their official positions. They should not express views without having regard to the appropriateness of the media or channel through which the views were expressed. As regards civil service unions registered under the Trade Unions Ordinance (Cap. 332), the oath-taking/declaration requirement would not affect their communication with the Administration over issues relating to civil servants' rights and benefits in accordance with the aegis of the provisions of the Ordinance and the constitutions of the respective unions.

11. Mr CHAN Chun-ying was of the view that the public might cast doubt on the solidarity of the civil service if civil servants made comments against the Government's policies or decisions in their personal capacity. SCS replied that civil servants, when expressing personal views, must also be well aware of the requirements and responsibilities brought on them by their official positions. In case of any breach of the relevant rules, the Administration would look into the facts and circumstances of each individual case to determine whether any disciplinary action should be taken in accordance with the established mechanism. The Chairman called on the Administration to enhance the communication mechanism with civil servants in order to have a better grasp of their views on improving government policies and operation.

12. The Chairman and the Deputy Chairman asked whether the Administration would consider listing out some examples of behaviour that would constitute a breach of the oath/declaration. Mr SHIU Ka-fai suggested that the Administration should make more short videos and organize seminars in this regard for civil servants to allay their concerns.

13. SCS advised that while it was not feasible to list exhaustively all types of improper conduct which constituted a breach of the oath/declaration, the Administration had issued a circular to civil servants to promulgate the oath-taking/declaration requirement as well as elaborate the content of the oath/declaration and the behaviour that would constitute a breach of the oath/declaration. It was incumbent on civil servants to comply with the law and support and act in accord with the HKSAR Government in the governance and administration of Hong Kong. As stipulated in the circular, any serious violation of the law with a view to undermining the HKSAR Government in the governance and administration of Hong Kong would amount to a breach of the oath/declaration.

14. SCS further explained that a person who committed any of the following improper conduct could not be genuinely upholding BL or bearing allegiance to HKSAR:

- (a) advocating or supporting "Hong Kong independence";
- (b) refusing to recognize the sovereignty of the People's Republic of China over Hong Kong and the exercise of the sovereignty;
- (c) soliciting intervention by foreign or external forces in HKSAR's affairs; or
- (d) carrying out other activities endangering national security.

15. Mr Tony TSE enquired whether guidelines would be drawn up to facilitate the handling of misconduct cases that involved a breach of the oath/declaration. SCS advised that the Administration had an established mechanism to handle misconduct cases. If a civil servant committed a misconduct which also constituted a breach of the oath/declaration, the case would still be dealt with according to the civil service rules and regulation. In determining the punishment arising from the misconduct involved, the Administration would take into account the circumstances, nature and gravity of the case, etc., and would certainly also take into consideration the fact that the misconduct was committed by the civil servant even though he/she had taken the oath or signed the declaration and had a clear understanding of the duties and expectations brought by the official position on him/her.

16. Citing the case where a group of civil servants had formed a union which participated in anti-government activities, Mr LEUNG Che-cheung and Ms Elizabeth QUAT asked whether the Administration would accept the signed declaration from these civil servants. Ms QUAT also asked whether the Administration would take actions against them for their failure to observe the provisions of the Code.

17. Referring to cases arising from the opposition to the proposed legislative amendments to the Fugitive Offenders Ordinance (Cap. 503), SCS advised that while the Administration would not comment on individual cases, members could be assured that the Administration had been following up seriously and expeditiously as far as possible on cases where the conduct and behaviour of civil servants might have breached

the Code or where they had been arrested for participating in unlawful activities, in accordance with the civil service disciplinary mechanism.

Mechanism to deal with refusal to take the oath/sign the declaration

18. In addressing the concerns raised by Ms Elizabeth QUAT and Mr Tony TSE on the mechanism and procedures for handling cases where civil servants refused to take the oath/sign the declaration, SCS advised that the Administration had sought legal advice from the Department of Justice in this regard. The Administration would, with regard to the specific circumstances of each case, decide whether to initiate action in accordance with the mechanisms under the Public Service (Administration) Order or the relevant disciplined services legislation as appropriate to terminate the service of the civil servant concerned. The civil servant concerned would be given an opportunity to make representations in the process.

19. Ms Elizabeth QUAT was worried that it might take a long time for the Administration to process the representations received. Mr Tony TSE asked about the timeframe for submitting representations and the estimated handling time of such cases. SCS assured members that the Administration would handle cases of neglect, refusal or failure to return the duly signed declaration in a timely manner.

20. Regarding Mr Tony TSE's further question as to whether the service of the civil servant concerned would be temporarily suspended in the course of processing the representations, SCS advised that the Administration would make the decision on a case by case basis, but refusal to take the oath/sign the declaration would have implications on the promotion or further appointment of the civil servant concerned, pending completion of the process to terminate his/her service.

21. In response to the Deputy Chairman's enquiries about the appeal mechanism and how the deadline for civil servants to return their signed declarations was set, SCS advised that, for a civil servant whose service was terminated due to his/her refusal to sign and return the declaration, if the officer was aggrieved by the Administration's decision, he/she could request a review of his/her case by the Administration, and seek a judicial review by the court. As regards the deadline for returning the duly signed declarations, following the Civil Service Bureau ("CSB")'s promulgation of the circular on the oath-taking/declaration requirement on 15 January 2021, bureaux/departments ("B/Ds") had issued letters (with the declaration form) to all civil servants under their purview. Taking into account the administrative procedures and the number of civil

servants (i.e. around 180 000 serving civil servants) involved, the Administration set the deadline for civil servants to return their signed declarations within four weeks after they had been required to do so by their respective B/Ds.

Validity period of the oath/declaration

22. The Deputy Chairman, Mr LEUNG Che-cheung and Mr CHAN Chun-ying enquired about the validity period of the oath/declaration. The Deputy Chairman and Mr LEUNG asked how the Administration would deal with a situation under which a retired civil servant who had taken the oath or signed the declaration while in service publicly criticized the Government after he/she had left the civil service.

23. SCS advised that the oath/declaration would no longer be applicable to those civil servants who had left the civil service as they would no longer have the capacity and duties as civil servants. However, if a retired civil servant had committed a misconduct which involved a breach of the oath/declaration while he/she was in service, the Administration would handle the case according to the established mechanism.

Applicability of the oath-taking/declaration requirement

Public officers

24. Mr CHAN Chun-ying and Ms Elizabeth QUAT sought details of the oath-taking arrangements for public officers and the scope of public officers referred to in the National Security Law. SCS replied that as stipulated in Article 6 of the National Security Law, a resident of HKSAR who stood for election or assumed public office should confirm in writing or take an oath to uphold BL and swear allegiance to HKSAR in accordance with the law. The Administration was studying the subject matter and would announce the implementation details and arrangements at an appropriate juncture.

Civil servants with non-Chinese nationalities or holding foreign passports

25. Ms Elizabeth QUAT expressed concern about the possible conflicts for civil servants with non-Chinese nationalities or holding foreign passports to take the oath or sign the declaration to swear allegiance to HKSAR.

26. SCS advised that according to BL Article 99, public servants serving in all government departments of HKSAR must be permanent residents of the HKSAR, except where otherwise provided for in BL Article 101. There was no stipulated requirement in BL about the nationality of a civil servant or the passport that he/she held. As civil servants of the HKSAR Government, regardless of their nationalities or the passports they held, it had consistently been the duty and responsibility of civil servants to uphold BL, bear allegiance to HKSAR, be dedicated to their duties and be responsible to the HKSAR Government.

Non-civil service contract staff

27. In response to Ms Elizabeth QUAT's question as to whether non-civil service contract staff were required to take the oath or make the declaration to swear to uphold BL and pledge allegiance to HKSAR, SCS replied in the positive and said that the Administration would extend the oath-taking/declaration arrangement to cover non-civil service contract staff in the next phase.

Views from the staff side

28. The Deputy Chairman enquired about the feedback of the staff side of the four Central Staff Consultative Councils on the implementation of the oath-taking/declaration requirement. SCS advised that the staff side of the four Central Staff Consultative Councils were supportive to the implementation plan and had provided views on the content of the oath/declaration, the behaviour that might constitute a breach of the oath/declaration, the mechanism for handling cases of non-compliance with the requirement, etc. The Administration would maintain communication with the staff side of the four Central Staff Consultative Councils in this regard.

IV. Update on extension of the service of civil servants
[LC Paper Nos. CB(4)364/20-21(05) and (06)]

29. At the invitation of the Chairman, SCS briefed members on the progress of implementing various measures for extending the service of civil servants as set out in the Administration's paper (LC Paper No. CB(4)364/20-21(05)).

The option for serving civil servants who joined the Government between 1 June 2000 and 31 May 2015 to choose to retire at the age of 65 (for civilian grades) or 60 (for disciplined services grades, regardless of ranks) ("the Option")

30. Noting from Annex C to the Administration's paper that the percentages of eligible civil servants on the Directorate/Directorate (Legal) Pay Scale, pay scales related to disciplined services grades and Model Scale 1 ("MOD 1") Pay Scale who had taken the Option were 52%, 89% and 98% respectively, Mr Tony TSE pointed out that civil servants on various pay scales had different responses to the Option. Mr Jeffery LAM asked whether the response rates were within the expectation of the Administration.

31. SCS advised that the Administration had not set any target on the overall number of eligible civil servants who had taken the Option but the responses of eligible civil servants to the Option were within the Administration's expectation. He further explained that it was understandable for civil servants of disciplined services grades to take the Option to extend their retirement age since their original retirement age was only 55. As for civil servants on the MOD 1 Pay Scale, their response rate was high since they were junior staff who wished to stay in the workforce for a longer period of time.

32. Mr Tony TSE was concerned whether there would be promotion blockage as about 47 000 civil servants had taken the Option. Mr TSE further urged the Administration to ensure equal promotion opportunities for all civil servants, in particular for those who were within five years from their retirement. As the number of civil servants who had reached the maximum pay points of their rank would increase as a result of the Option, Mr TSE also raised concern about the possible lack of motivation for improvement among these civil servants. Mr Jeffery LAM was worried about the possible succession problem in the leadership of civil service as only 52% of the eligible civil servants on the Directorate/Directorate (Legal) Pay Scale had taken the Option.

33. SCS advised that as most of the eligible civil servants would only reach their original retirement age about 15 to 25 years later, B/Ds should have sufficient time to make succession planning systematically. He further advised that the Administration would keep in view the overall manpower situation, staff morale and succession planning of various grades after the implementation of the Option.

34. The Deputy Chairman asked why the Administration had set the implementation date of the Option six months after the end of the option period on 15 March 2021. Permanent Secretary for the Civil Service ("PSCS") advised that this would allow the Administration sufficient time to make the necessary preparatory arrangement for effecting the Option.

35. Ms Elizabeth QUAT was concerned that disciplined services departments, especially the Hong Kong Police Force ("HKPF"), had been facing severe recruitment difficulties since the social incidents which started in June 2019. The Chairman pointed out that the Correctional Services Department was also facing great recruitment difficulties. They urged the Administration to, as soon as possible, extend the Option to disciplined services officers who joined the Government before 1 June 2000, with a view to retaining experienced officers to meet the manpower needs of disciplined services departments.

36. SCS replied that, in view of the acute manpower shortage problem faced by HKPF, the Administration had been exploring the feasibility of making special arrangement to extend the service of disciplined services officers in HKPF who joined the Government before 1 June 2000, having regard to a host of factors, such as its overall manpower needs, recruitment situation, vacancy position and the impact of the special arrangement on the disciplined services officers in HKPF who joined the Government on or after 1 June 2000. The Administration would report the progress to the Panel in due course.

Flexible measures for extending the service of civil servants

37. The Deputy Chairman noted that the Administration had taken a number of flexible measures to extend the service of civil servants, namely the Post-retirement Service Contract ("PRSC") Scheme, the final extension of service of serving civil servants beyond retirement age ("Final Extension of Service") and further employment of serving civil servants beyond retirement age for a longer duration ("FE"). He enquired about examples of other arrangements that B/Ds might make to extend the service of their civil service staff as mentioned in paragraph 15 of the Administration's paper.

38. SCS advised that apart from the aforesaid flexible measures, individual B/Ds could, after seeking the endorsement of the relevant policy bureaux, request other arrangements to extend the service of their civil service staff having regard to their specific manpower needs. Upon receipt of the request, CSB would assess the operational needs of the B/D concerned and the justifications provided, and consider whether there was

a genuine need to make the special arrangement. The special arrangement for HKPF as mentioned in paragraph 36 above was one of the examples.

39. Mr CHAN Chun-ying asked whether guidelines would be provided to B/Ds on selecting suitable measures to extend the service of their civil service staff, and whether CSB would coordinate the use of these measures so as to tie in with the overall long-term manpower plan of the Administration. SCS replied that B/Ds could deploy the measures that suited their operational needs. CSB would tender advice to them on the use of such measures having regard to their recruitment and promotion situations, as well as their succession planning and other manpower considerations.

PRSC Scheme

40. Noting from paragraph 7 of the Administration's paper that over 90% of PRSC staff had undertaken ad hoc or time-limited tasks, Mr CHAN Chun-ying sought information on the grade which had the largest number of PRSC staff, and the tasks being undertaken by the remaining 10% of PRSC staff.

41. PSCS advised that an example where PRSC staff had undertaken ad hoc or time-limited tasks was the employment of a large number of PRSC clerical officers by the Immigration Department to participate in the Territory-wide Identity Card Replacement Exercise. As regards the tasks being undertaken by the remaining 10% of PRSC staff, PSCS advised that most of them were employed to meet service needs which were seasonal in nature, for example, seasonal lifeguards and temporary filtration plant room operators in the Leisure and Cultural Services Department, or to take up job positions the working hours of which were less than the conditioned hours of civil servants but required specific civil service experience/expertise, for example, airworthiness officers and engineering support officers in the Government Flying Service.

Final Extension of Service and FE

42. In response to Mr Tony TSE's enquiry about the reasons for rejecting applications for Final Extension of Service and FE, PSCS advised that there were three approval criteria when considering an application for Final Extension of Service, namely satisfactory conduct and performance, physical fitness and no undue promotion blockage. She also explained the adjusted FE mechanism as set out in paragraph 10 of the Administration's paper and pointed out that selection boards would

be convened to consider FE applications to ensure fairness of the FE selection exercises.

43. Noting from the Administration that some 2 000 applications for Final Extension of Service were unsuccessful due to failure in meeting the three aforesaid approval criteria, the Deputy Chairman enquired whether the unsuccessful applicants would be informed of the reasons. He also asked for a breakdown of the number of these unsuccessful applications by the three criteria. PSCS advised that CSB did not collect such information from B/Ds, but unsuccessful applicants could contact relevant B/Ds regarding the reasons of rejection.

44. At the request of Mr Tony TSE, SCS undertook to provide a breakdown by civilian and disciplined services grades of the number of applications under Final Extension of Service and FE.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(4)498/20-21(01) on 9 February 2021.)

Other concern

45. In view of the COVID-19 epidemic, Mr Jeffery LAM suggested that the Administration should exercise flexibility in extending the service of civil servants with a view to addressing the manpower needs of B/Ds during the epidemic. He also urged the Administration to engage more retired civil servants to participate in anti-epidemic work so as to ease the pressure on serving civil servants. SCS replied that the Administration had engaged a large number of civil servants from various B/Ds as well as retired civil servants to participate in anti-epidemic work, and it would continue to exercise flexibility in implementing the various established measures to extend the service of civil servants.

V. Any other business

46. There being no other business, the meeting ended at 12:33 pm.