

立法會

Legislative Council

LC Paper No. CB(4)1310/20-21
(These minutes have been seen
by the Administration)

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Panel on Public Service

**Minutes of meeting held on
Monday, 19 April 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 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
- Member absent** : Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Public officers attending** : **Agenda item III**

Mr Patrick NIP, JP
Secretary for the Civil Service

Mrs Ingrid YEUNG, JP
Permanent Secretary for the Civil Service

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Miss Ann CHAN
Deputy Secretary for the Civil Service 2

: **Agenda item IV**

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

Mr Gary POON, JP
Deputy Secretary for the Civil Service 3

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

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

Mr Griffin FUNG
Legislative Assistant (4)9

Ms Karin TSOI
Clerical Assistant (4)1

I. Information paper issued since the last regular meeting on 15 March 2021
[LC Paper No. CB(4)747/20-21(01)]

Members noted that a letter dated 7 April 2021 from Mrs Regina IP requesting information on the employment of non-ethnic Chinese in the civil service had been issued since the regular meeting of the Panel on Public Service ("the Panel") on 15 March 2021.

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II. Date of next meeting and items for discussion

[LC Paper Nos. CB(4)773/20-21(01) and (02)]

2. Members agreed that the next regular meeting of the Panel would be held on 17 May 2021 to discuss the following items proposed by the Administration:

- (a) An overview of the civil service establishment, strength, retirement, resignation, age profile and gender profile; and
- (b) Targeted measures for protection of government employees under the epidemic.

III. Mainland and local education allowance for civil servants

[LC Paper No. CB(4)773/20-21(03)]

3. The Chairman drew Members' attention to Rule 83(A) of the Rules of Procedure concerning the requirement of disclosing personal pecuniary interest relating to the financial proposal under discussion.

4. At the invitation of the Chairman, Secretary for the Civil Service ("SCS") briefed members on the Administration's proposal to expand the scope of Local Education Allowance ("LEA") to cover primary and secondary education in the Mainland, and rename it as "Mainland and Local Education Allowance" ("MLEA").

Proposed scope and ceiling rates of MLEA

5. Mr CHAN Chun-ying declared that he was a member of the Standing Commission on Civil Service Salaries and Conditions of Service, and had expressed support for the proposal, which could encourage youth integration into the overall national development, in the course of deliberation at the meeting of the Standing Commission. Mr CHAN pointed out that as the provision of LEA to new recruits to the civil service had ceased for nearly 21 years, the number of civil servants entitled to receive the allowance would only be declining. Coupled with the freezing of the ceiling rates of LEA, the total expenditure on the allowance would also decrease year by year accordingly. He sought statistics in this regard and asked whether the Administration would consider further expanding the scope of the proposal to cover tertiary education in the Mainland. Dr CHIANG Lai-wan held the same view and strongly urged the Administration to consider expanding the scope of the proposed MLEA to

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include universities in the Mainland until the children reached the age of 19 (i.e. the maximum age limit for claiming LEA).

6. SCS explained that the proposal was drawn up based on the existing arrangements for LEA, which did not cover tertiary education in Hong Kong. It was thus not advisable to make any changes that would deviate from the original scope and policy intent of the LEA scheme. That said, he had taken note of members' views on the scope of the proposal. He further explained that the Education Bureau ("EDB") launched the Mainland University Study Subsidy Scheme in 2014 to provide financial support to Hong Kong students pursuing undergraduate studies in designated Mainland institutions. For the 2020-2021 academic year, applicants who passed a means test would receive either a full-rate subsidy of HK\$16,800 or a half-rate subsidy of HK\$8,400 per annum under the Scheme depending on their needs. A non-means-tested subsidy at a flat rate of HK\$5,600 per annum would also be offered to eligible students. Permanent Secretary for the Civil Service ("PSCS") affirmed the downward trend, which ranged from 0.5% to 6.5% per year, in the overall expenditure on LEA in the past decade.

7. The Deputy Chairman expressed support for the Administration's proposal. He asked whether the Administration would give due consideration to some civil servants' suggestion of extending the eligibility for MLEA to cover civil servants who were appointed on or after 1 June 2000. The Chairman echoed similar view and asked why the proposed education allowance was not introduced as a new measure to benefit the aforesaid civil servants as well.

8. SCS responded that the Administration had consulted the staff sides of the four Central Consultative Councils as well as the three advisory bodies on civil service salaries and conditions of service on the proposal and they were generally in support of the proposal. SCS further explained that the proposal sought to provide civil servants who were eligible for LEA with another option when considering their children's place of study, on the premise that it would not bring about any changes to the package of fringe benefits for civil servants who were offered appointment on or after 1 June 2000. In fact, LEA had no longer been included in the package of fringe benefits available to these officers following the Administration's review of the terms and conditions of their employment.

9. The Chairman enquired about the rationale for incorporating the proposed education allowance into the scope of LEA instead of Overseas Education Allowance, which covered both accommodation and travelling expenses of the children of eligible civil servants. SCS responded that as

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the Mainland was not an overseas place to Hong Kong, the Administration considered it more appropriate to expand the scope of LEA to include primary and secondary education in the Mainland and rename it as MLEA. In line with the existing arrangement for LEA, MLEA would also cover both tuition and boarding fees.

10. The Chairman and the Deputy Chairman sought clarification about the adjustment mechanism for the ceiling rates of LEA. SCS explained that following a comprehensive review conducted on the fringe benefit type of allowances for the civil service, the Finance Committee of the Legislative Council approved in 2006 the freezing of the ceiling rates of LEA with no further adjustment until the complete phasing out of the allowance, and such arrangement had been adopted since then.

Statistics relating to applications of allowance

11. Noting from paragraph 3 of the Administration's paper that there were around 66 000 civil servants eligible for LEA as at 31 December 2020, Mr CHAN Chun-ying enquired about the actual number of applications for LEA received in 2020. SCS advised that among those 66 000 eligible civil servants, about 8 600 (i.e. 13%) of them were receiving LEA.

12. The Deputy Chairman noted that the additional expenditure on MLEA was estimated at about \$15 million in the 2021-2022 financial year on the assumption that about 200 applications would be received in each of the academic years from 2020-2021 to 2021-2022. He asked whether the Administration would increase the funding amount if favourable response to the proposed allowance was received from the staff sides. SCS responded that depending on the actual number of applications received, the Administration would seek additional provision for the implementation of the MLEA scheme where necessary. In response to the Deputy Chairman's further enquiry about the number of civil servants with children who had chosen to study in the Mainland, SCS responded that while the Administration had no relevant statistics, it was envisaged that the Greater Bay Area development would attract more and more Hong Kong students to study in the Mainland, particularly the Guangdong Province.

13. Mr Tony TSE declared that he was a member of the Standing Committee on Disciplined Services Salaries and Conditions of Service, and expressed support for the Administration's proposal. He considered it necessary for the Administration to properly maintain statistics on the number of civil servants' children studying in the Mainland, which could facilitate the provision of appropriate assistance by the Administration.

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14. SCS assured members that relevant statistics would be compiled after the roll out of the MLEA scheme. He cited other related statistics for members' reference. The number of Secondary Six leavers of local curriculum schools in Hong Kong of the 2019-2020 school year who pursued full-time studies in the Mainland in the following school year was about 1 880. In the 2020-2021 school year, the number of Hong Kong students enrolled in the Mainland schools under the Scheme of Classes for Hong Kong Students in Shenzhen was about 3 600.

Schools covered under the proposal and the support to Hong Kong students studying in the Mainland

15. Mr CHAN Chun-ying and Dr CHIANG Lai-wan sought elaboration on the coverage of the "Approved Schools Lists" for LEA and the schools recognized by the Ministry of Education or relevant authority in the Mainland under the proposed MLEA scheme as referred to in paragraph 9 of the Administration's paper.

16. PSCS explained that the "Approved Schools Lists" for LEA basically covered all local registered primary and secondary schools, including government schools, aided schools, Direct Subsidy Scheme schools and private schools. As regards the Mainland schools to be covered under the MLEA scheme, they would include primary and secondary schools recognized by the Department of Education of Guangdong Province, and international schools for children of foreign personnel under the purview of other relevant Mainland authorities.

17. Mr Tony TSE asked whether there were any specific articulation arrangements for Hong Kong children receiving education on the Mainland to facilitate their smooth transition to the Hong Kong education system if they wished to return to Hong Kong to pursue their studies. Mr LUK Chung-hung expressed similar concern and enquired about the supportive policies on providing school curriculum specifically for Hong Kong children studying in the Mainland.

18. PSCS advised that under the Scheme of Classes for Hong Kong Students in Shenzhen jointly implemented by EDB and the Shenzhen Municipal Education Bureau in 2008, there were at present 11 schools in Shenzhen, including two Schools for Hong Kong Children, offering Hong Kong curriculum to Hong Kong students. Eligible Hong Kong students could participate in the Secondary School Places Allocation System. As for the secondary school graduates in the Mainland, they could apply for admission to the universities in Hong Kong via non-Joint University Programmes Admissions System with their results of the National College

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Entrance Examination (i.e. Gaokao). PSCS added that with the development of the Greater Bay Area, the Administration would continue to encourage Hong Kong school sponsoring bodies to establish schools offering Hong Kong curriculum or Hong Kong and International curricula to the children accompanying their Hong Kong parents working in the Mainland.

19. Mr Tony TSE requested the Civil Service Bureau to convey to EDB his concern over the mutual recognition and articulation of academic qualifications between Hong Kong and the Mainland. Mr LUK Chung-hung suggested that the Administration should conduct a thorough study on the demand for schooling in the Mainland by children of Hong Kong residents to facilitate the provision of appropriate support services for them.

Conclusion

20. The Chairman concluded that members supported in principle the Administration's submission of the proposal to the Finance Committee, and advised the Administration to address members' concerns over the scope of the proposal in its funding paper to the Finance Committee.

IV. Update on implementation of the requirement for civil servants to take oath or sign declaration

[LC Paper Nos. CB(4)773/20-21(04) and (05)]

21. At the invitation of the Chairman, SCS briefed members on the latest position regarding oath-taking or signing of declaration by civil servants to 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, details of which were set out in the Administration's paper (LC Paper No. CB(4)773/20-21(04)).

Handling of cases where civil servants had refused to take the oath/sign the declaration

22. Members noted that 129 serving civil servants had neglected or refused to duly sign and return the declaration as at 1 April 2021 and the Administration had already requested them to provide explanations as appropriate. Mr Tony TSE and Mr CHAN Chun-ying enquired about the reply deadline, the estimated processing time of these cases and when the Administration would officially dismiss these civil servants or require them to retire from the civil service. Mr SHIU Ka-fai questioned the need for the Administration to request these civil servants to provide explanations.

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The Deputy Chairman asked about the timeframe for the Administration to seek advice from the Public Service Commission on the handling of cases of the civil servants whose posts fell within the purview of the Commission.

23. SCS advised that the civil servants concerned had to provide explanations within seven days upon request by the Administration. For those who failed to provide a reasonable explanation, their negligence or refusal to duly sign and return the declaration by the stipulated deadline cast serious doubts on their willingness to take up the basic duties of civil servants and their suitability to remain in the civil service. The Administration would, based on the facts and circumstances of each case, consider taking actions under section 12 of the Public Service (Administration) Order ("PS(A)O") to require them to retire from the civil service in the public interest. Where actions under section 12 were being considered, the Administration would notify the officers in writing and invite them to make representations, if any, within 14 days. The Administration would also seek advice from the Public Service Commission for cases of civil servants whose posts fell within the purview of the Commission. In the course of the above process, the civil servants concerned would be interdicted if the Administration considered that it was contrary to the public interest for them to continue to exercise the powers and functions of their office. He assured members that these cases would be handled in a timely and fair manner.

24. The Deputy Chairman further asked whether the explanations provided by the civil servants concerned were reasonable. He also sought information on their posts and ranks. SCS advised that the "reasons" given by these officers included personal disagreement with the content of the oath/declaration, possible conflicts with their nationalities, and concerns on possible adverse impact on their freedom of speech. However, the Administration considered the above-mentioned "reasons" unjustifiable and unfounded. As the relevant procedures were underway, it would be inappropriate for the Administration to disclose further information at this juncture. The Administration would expedite the process and it would take a few months to complete the necessary procedures and terminate their service under section 12 of PS(A)O.

25. In reply to the Deputy Chairman's question on whether all the civil servants concerned were currently under interdiction, PSCS said that the overwhelming majority of them were being interdicted, with a few on unpaid leave.

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26. Mr Steven HO was dissatisfied that civil servants who neglected or refused to take the oath/sign the declaration were still eligible to receive retirement benefits, and asked about the amount of pension payable to the 129 civil servants. He opined that as these civil servants had refused to acknowledge their responsibilities as civil servants, the Administration should, apart from requiring them to retire from the civil service in the public interest, impose stringent punishment on them, say forfeiting their pensions.

27. SCS advised that the Administration was not able to estimate the amount of pension/Civil Service Provident Fund ("CSPF") payable to the 129 civil servants as the circumstances of each case varied. He stressed that regardless of whether the civil servants who neglected or refused to take the oath/sign the declaration were appointed on pensionable terms or under the CSPF Scheme, the amount of pensions/CSPF benefits payable was directly proportional to the length of their service as civil servants and the level of emoluments before their leaving of the service.

28. Mr LEUNG Che-cheung considered that the Administration's handling of cases where civil servants had refused to take the oath/sign the declaration was lenient. He pointed out that under the amended Legislative Council Ordinance (Cap. 542) and amended District Councils Ordinance (Cap. 547), immediately after proceedings were brought by the Secretary for Justice against a Legislative Council Member or a District Council member on the grounds of breach of an oath or failure to fulfil the legal requirements and conditions on upholding BL and bearing allegiance to HKSAR, the member's functions and duties would be suspended, and he/she could not enjoy corresponding entitlements during suspension. Mr LEUNG pointed out that civil servants were public officers. If they neglected or refused to take the oath/sign the declaration, they should be treated in the same way as Legislative Council Members or District Council members were treated.

29. SCS pointed out that according to Article 35 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, if a person who was convicted of an offence endangering national security by a court was a Legislative Council Member, a government official, a public servant, a member of the Executive Council, a judge or a judicial officer, or a member of the District Councils, who had taken an oath/made a declaration to uphold BL and swear allegiance to HKSAR, he/she should be removed from his/her office upon conviction. The above also applied to civil servants. As regards the day-to-day management of the civil service, the Administration was required to follow the PS(A)O, the Public Service (Disciplinary) Regulation, the relevant disciplined services legislation (for middle and junior ranking civil servants in the disciplined services grades) and the Civil Service Regulations.

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The Administration had sought advice from the Department of Justice on the proper approach of handling cases of civil servants who had neglected or refused to take the oath/sign the declaration.

30. Mr LEUNG Che-cheung called on the Administration to enhance the transparency of the civil service disciplinary mechanism and the punishment that might be imposed on civil servants found guilty of misconduct or convicted of criminal offence after formal disciplinary proceedings.

31. SCS replied that there was an established mechanism in place to handle disciplinary cases. For civil servants who were found guilty of misconduct or convicted of criminal offence, Bureaux/Departments ("B/Ds") concerned would conduct preliminary investigation or study the records of court proceedings as appropriate, and refer the cases to the Secretariat on Civil Service Discipline if there were sufficient grounds to initiate formal disciplinary action. In determining the punishment where the alleged misconduct could be established, the Administration would take into account the circumstances, nature and gravity of the case, etc. and whether the civil servant concerned had taken the oath/signed the declaration.

32. The Chairman and Mr CHAN Chun-ying asked whether civil servants who resigned or were compulsorily retired due to their negligence or refusal to sign and return the declaration could work in the Government again in future. They called on the Administration to forbid these civil servants from working in the Government in future and clearly disseminate such message to the public.

33. SCS advised that appointments to the civil service were based on the principle of open and fair competition. It was the basic duties and obligation of government staff to uphold BL, bear allegiance to HKSAR, be dedicated to their duties and be responsible to the HKSAR Government. All appointees to the civil service should in no uncertain terms acknowledge and accept these duties. In assessing the suitability of the applicants who were former civil servants during civil service recruitment exercises, the recruitment board would also scrutinize their staff reports and personal records where available.

34. As regards the Chairman's suggestion of requesting Government-funded bodies not to employ former civil servants who resigned or were compulsorily retired due to their negligence or refusal to sign and return the declaration, SCS stressed that Government-funded bodies had the autonomy to formulate their own policies on human resources management.

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Monitoring mechanism and the consequences of breaching the oath/declaration

35. The Chairman and Mr LUK Chung-hung expressed concern that civil servants who took an anti-government stance might not genuinely uphold BL and bear allegiance to HKSAR. They asked whether the Administration would consider formulating measures or establishing mechanism to monitor that serving civil servants who took the oath/signed the declaration would genuinely uphold BL and bear allegiance to HKSAR. Mr Jeffrey LAM enquired about the Administration's handling of cases where civil servants had breached the oath/declaration after the probation period. Mr LEUNG Che-cheung asked how the Administration could ensure that civil servants who had right of abode in foreign countries would sincerely uphold BL and bear allegiance to HKSAR.

36. SCS stressed that 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, and the above applied to all civil servants of the HKSAR Government regardless of their nationalities or the passports they were holding. While it was not feasible to list exhaustively all types of improper conduct which constituted a breach of the oath or declaration, any person who: (a) advocated or supported "Hong Kong independence"; (b) refused to recognize the sovereignty of the People's Republic of China over Hong Kong and the exercise of the sovereignty; (c) solicited intervention by foreign or external forces in HKSAR's affairs; or (d) carried out other activities endangering national security could not be genuinely upholding BL or bearing allegiance to HKSAR. The case of a civil servant who was involved in any misconduct which also breached the oath/declaration would be dealt with according to the established civil service disciplinary mechanism.

Applicability of the oath-taking/declaration requirement

37. In response to the question raised by Dr CHIANG Lai-wan regarding the oath-taking/declaration arrangements for members of the Judiciary, SCS replied that while civil servants served in the Judiciary were required to take the oath/sign the declaration upon the promulgation of the oath-taking/declaration requirement in October 2020 and January 2021 respectively, judges and judicial officers of the Judiciary must swear allegiance to HKSAR in accordance with law when assuming office according to BL Article 104.

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38. Noting that the Administration was studying the arrangements of extending the declaration requirement to staff appointed on non-civil service terms, Mr CHAN Chun-ying and Mr Tony TSE enquired about the coverage and the timeline respectively.

39. SCS advised that government staff appointed on non-civil service terms, including part-time/full time non-civil service contract staff and post-retirement service contract staff, would be required to sign the declaration, and the Administration was studying the terms of appointment for staff on different non-civil service terms in order to finalize the arrangements. The Administration planned to implement and announce the details in May 2021.

40. Mr Tony TSE called on the Administration to issue relevant guidelines to Government-funded bodies as to whether they should implement the oath-taking/declaration arrangements and how they could implement such arrangements. The Deputy Chairman asked whether the oath-taking/declaration arrangements would be extended to staff whose remuneration were paid for by public money. SCS advised that such issues would be studied and considered by the B/Ds which oversaw the Government-funded bodies concerned.

(At 12:42 pm, the Chairman decided to extend the meeting for 15 minutes beyond the appointed end-time to allow sufficient time for discussion.)

Morale of and resignation situation in the civil service

41. Mr SHIU Ka-fai asked whether civil service morale had improved upon the implementation of the oath-taking/declaration arrangements. Mr Tony TSE enquired whether the number of resignees in the civil service had increased.

42. SCS said that through the implementation of the oath-taking/declaration arrangements, civil servants could have a clearer awareness of the basic duties set out in the oath/declaration and be more faithful to such basic duties. He further said that civil servants might resign from the service due to various reasons, such as health issues or family reasons, and the number of resignees in the civil service in 2020-2021 (1 519 as at February 2021) was largely the same as in the previous year (1 571).

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Civil servants with non-Chinese nationalities or holding foreign passports

43. Noting that some civil servants with non-Chinese nationalities or holding foreign passports might have reservation on taking the oath/signing the declaration, Mr SHIU Ka-fai considered that it might be more suitable for these civil servants to work in the private sector. Dr CHIANG Lai-wan enquired about the number of civil servants with non-Chinese nationalities, holding HKSAR passports or/and foreign passports and holding Home Return Permits.

44. SCS stressed again that as civil servants of the HKSAR Government, regardless of their nationalities or the passports they hold, 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. Regarding the number of civil servants holding foreign passports, as there was no stipulated requirement in BL about the nationality of a civil servant or the passport that he/she held, the Administration did not collect relevant information from civil servants. SCS said that to his understanding, no civil servants who were non-ethnic Chinese had refused to take the oath/sign the declaration.

45. At the request of Dr CHIANG Lai-wan, SCS undertook to provide the number of non-ethnic Chinese in the civil service.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(4)1015/20-21(01) on 21 May 2021.)

Handling of cases of civil servants who were arrested by the Police for involvement in unlawful public activities

46. In response to Mr LUK Chung-hung's question regarding the handling of cases of civil servants who were arrested by the Police for involvement in unlawful public activities since 2019, SCS said that serving civil servants arrested by the Police for suspected involvement in unlawful anti-government activities would be interdicted when the Police investigation was going on, or if they were charged by the Police. If a civil servant had been convicted of criminal offence by the Court or there was evidence that he/she had committed misconduct upon investigation, the Administration would institute disciplinary actions in accordance with the established civil service disciplinary mechanism. In the case of civil servants appointed on probationary terms, their service would be terminated if they were charged by the Police for suspected involvement in such unlawful activities.

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47. At the request of Mr LUK Chung-hung, SCS undertook to provide the number of civil servants who had been arrested, charged, and/or convicted for participation in unlawful activities arising from the opposition to the proposed legislative amendments to the Fugitive Offenders Ordinance since June 2019, the follow-up actions and the progress of these cases, and information on whether the salary of civil servants who were interdicted had been withheld.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(4)1015/20-21(01) on 21 May 2021.)

Other concerns

48. With a view to strengthening civil servants' understanding of the Constitution of the People's Republic of China, BL and the development of the Mainland, Mr Jeffrey LAM asked whether the Administration would consider providing compulsory national studies training programmes to new recruits to the civil service within their three-year probation period and providing civil servants with exchange programmes in the Mainland to meet their job-specific needs.

49. SCS advised that enhancing civil servants' understanding on the Constitution of the People's Republic of China, BL, national security, national affairs and the constitutional order of HKSAR was a key priority of civil service training. All new recruits were required to receive BL foundation training within three years after their joining the service. In addition, the Administration would provide civil servants at various levels with national studies training to keep them abreast of the national development. Staff exchange programmes in municipalities in the Greater Bay Area would also be organized for civil servants to gain firsthand experience about the country's latest development.

V. Any other business

50. There being no other business, the meeting ended at 12:51 pm.