

立法會

Legislative Council

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Panel on Public Service

Meeting on 19 April 2021

Updated background brief on the implementation of the requirement for civil servants to take oath or sign declaration

Purpose

This paper provides background information on the implementation of the requirement for civil servants to take oath or sign declaration ("the Requirement") and gives a brief account of the past discussions of the Panel on Public Service ("the Panel") on the matter.

Background

2. According to the Administration, 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 ("CE"). It supports CE 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. Civil servants have the constitutional role to give of their best in serving CE and the Government of the day.

3. Article 99 of the Basic Law ("BL") states that public servants must be dedicated to their duties and be responsible to the HKSAR Government. In addition, according to the Civil Service Code ("the Code") which sets out the core values and standards of conduct of the civil service, civil servants are required to, among others, serve CE 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 support and implement policies and take actions, once decided by the Government of the day, fully and faithfully irrespective of their personal views. Civil servants shall not allow their own political beliefs to determine or influence the discharge of their duties and responsibilities.

4. Concurrently, "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region" ("the National Security Law") was passed by the Standing Committee of the National People's Congress on 30 June 2020 and took effect upon gazettal at 11 p.m. on the same day. According to Article 6 of the National Security Law, "[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".¹

Oath-taking/declaration requirement for civil servants

5. The Civil Service Bureau issued a circular to all bureaux/departments ("B/Ds") in October 2020 and another circular in January 2021, respectively requiring all civil servants joining the HKSAR Government on or after 1 July 2020 as well as all civil servants who joined the HKSAR Government before 1 July 2020 to declare that they will uphold BL, bear allegiance to HKSAR, be dedicated to their duties and be responsible to the HKSAR Government. Civil servants should sign and return their declaration within four weeks after B/Ds issue the circular concerned. Civil servants appointed to senior positions such as Heads of Department should be additionally required to take an oath.²

Discussions at the Panel

6. Major views and concerns expressed by Panel members in previous meetings and the Administration's responses are summarized below.

Purpose of introducing the Requirement

7. The Panel passed a motion at the policy briefing–cum-meeting on 4 November 2019 urging CE to issue an executive order under BL Article 48(4) to require all civil servants to swear to uphold BL and swear allegiance to HKSAR. The wording of the motion is in **Appendix I**.

¹ Under the Oaths and Declarations Ordinance (Cap. 11), designated officers, including the Chief Executive, principal officials, judicial officers, etc., should take the oath after their appointment, but this requirement does not apply to civil servants.

² Source: <https://www.info.gov.hk/gia/general/202010/12/P2020101200492.htm> and <https://www.info.gov.hk/gia/general/202101/15/P2021011500405.htm>

8. Some members considered that it was civil servants' basic duties and obligation to uphold BL, bear allegiance to HKSAR and be responsible to the HKSAR Government. The Requirement served the purpose of reminding civil servants of their responsibilities and obligation to be loyal to CE and the HKSAR Government. Other members, on the other hand, opined that it was unnecessary to introduce the Requirement as civil servants had been upholding BL and were allegiant to HKSAR and the HKSAR Government. They considered that as the Code and the civil service disciplinary mechanism were already in place to regulate civil servants' conduct, the Requirement was an additional restrictive condition imposed on civil servants.

9. The Administration stressed that it had consistently been the duty of civil servants to uphold BL and be allegiant to HKSAR and the HKSAR Government under the framework of BL and the Code. The introduction of the Requirement served the purpose to manifest and demonstrate civil servants' established responsibilities under BL and the Code and enhance their awareness of the responsibilities and requirements entailed by their official positions, thereby further safeguarding and promoting the civil service core values, and ensuring the effective governance of the HKSAR Government.

Implementation of the Requirement

Behaviour which might constitute a breach of the oath/declaration

10. Some members expressed concern about whether civil servants were required to be allegiant to the HKSAR Government at any time (e.g. whether they were allowed to participate in political processions/rallies in non-office hours), and whether they were allowed to have their political beliefs or express their views on Government's policies in media interviews. There was also concern as to whether the Requirement would affect civil service unions' negotiations with the Administration over salary and benefit issues.

11. The Administration explained that civil servants' freedom of speech, of assembly, of demonstration, and so forth was enshrined in BL. Except certain groups of officers, for example directorate officers, there was no objection to individual civil servants participating in peaceful and lawful public order events in their personal capacity. That said, civil servants should ensure that their expressing of views in the public and their behaviour would not give rise to any conflict of interest with their official positions or duties, and would not be perceived as compromising the important principle

of maintaining impartiality and political neutrality in the discharge of their duties. In addition, 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 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.

12. On members' suggestion that the Administration should draw up relevant guidelines and list out the behaviour that would constitute a breach of the oath/declaration, the Administration advised that improper conduct which constituted breach of the oath/declaration might take many different forms and could not be set out exhaustively. The Administration would elaborate on the content of the oath/declaration and what constituted a breach of the oath/declaration and planned to produce a short video to introduce the content of the oath/declaration to civil servants in a clear and easily-understandable way.

Handling mechanism for cases of non-compliance and the consequences of breaching the oath/declaration

13. Enquiries were raised regarding the handling mechanism for misconduct cases which involved a breach of the oath/declaration, cases where civil servants refused to take the oath/sign the declaration as well as the consequences for refusal to take the oath/sign the declaration. There were suggestions that the Administration should adopt a stringent disciplinary mechanism for handling cases of non-compliance and breaching the oath/declaration and clearly articulate the consequences/punishment.

14. The Administration advised that it 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 the expectations brought by the official position on him/her.

15. Regarding the consequences for refusal to take the oath/sign the declaration, the Administration advised that in case a prospective appointee neglected or refused to duly sign and return the declaration, he/she would be treated as failing to meet the conditions for appointment and the conditional offer should lapse accordingly. Where a civil servant who was on probationary or agreement terms neglected or refused to take the oath or to duly sign and return the declaration, his/her probationary/agreement terms service would be terminated immediately. As for serving civil servants, 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. The civil servant concerned would be given an opportunity to make representations in the process.

16. In response to members' enquiry about the appeal mechanism, the Administration advised that for a civil servant whose service was terminated due to his/her refusal to sign and return the declaration, if the civil servant concerned 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.

Validity period of the oath/declaration

17. Some members 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.

18. The Administration 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 Requirement

19. Members requested the Administration to set out clearly the handling of the Requirement for civil servants who held foreign passports, as well as the "public officers" who would be subject to the Requirement.

20. The Administration advised that according to BL Article 99, public servants serving in all government departments of HKSAR must be permanent residents of 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. As regards the oath-taking arrangements for public officers, the Administration would announce the implementation details at an appropriate juncture.

21. Some members raised questions as to whether the Requirement would cover non-civil service contract staff, agency workers and interns of B/Ds. They opined that persons whose remuneration were paid for by public money, including staff employed by Government-funded bodies should be obligated to swear allegiance to HKSAR and adhere to the principle of political neutrality.

22. The Administration advised that the Civil Service Regulations, the Code and other relevant regulations/guidelines were only applicable to civil servants. That said, all staff who were directly employed by the Government would have the duty and responsibility to uphold BL and bear allegiance to HKSAR in principle. The Administration would study the oath-taking/declaration arrangement for government contract staff in due course. Being independent of the Government, subvented organizations had the autonomy to formulate their own policies on human resources management. As to whether the Requirement would be extended to Government-funded bodies, it would be studied and considered by B/Ds or organizations concerned.

23. At the Panel meetings on 4 November 2019 and 10 July 2020, the Panel passed two motions respectively urging the Administration to, among others, formulate clear guidelines to specify that staff of subvented organizations must not stage demonstrations or political rallies at the workplace, nor take part in such activities or make any political remarks in their capacity as staff members of the subvented organizations, and extend the application of the Requirement by phases to include public officers of other subvented organizations. The wording of the two motions are in **Appendices II** and **III** respectively.

Relevant questions raised at Council meetings

24. At the Council meetings of 27 November 2019, 2 December 2020 and 6 January 2021, Hon Mrs Regina IP and Hon KWOK Wai-keung raised questions on the issue respectively. The hyperlinks to the questions and the Administration's responses are in **Appendix IV**.

Latest position

25. The Administration will update members on the progress of implementing the Requirement at the Panel meeting on 19 April 2021.

Relevant papers

26. A list of relevant papers is set out in Appendix IV.

Council Business Division 4
Legislative Council Secretariat
12 April 2021

公務員及資助機構員工事務委員會

**在2019年11月4日的政策簡報會及會議上
就議程項目III"公務員事務局局長
就行政長官2019年施政報告作出簡報"通過的議案**

本會促請行政長官，根據《基本法》第四十八條第(四)項，發布行政命令，要求所有公務員，包括新入職公務員，宣誓擁護《基本法》及效忠中華人民共和國香港特別行政區。

動議人：葉劉淑儀議員
和議人：李慧琼議員

(Translation)

Panel on Public Service

Motion passed under agenda item III "Briefing by the Secretary for the Civil Service on the Chief Executive's 2019 Policy Address" at the Policy briefing-cum-meeting on 4 November 2019

This Panel urges the Chief Executive to issue an executive order under Article 48(4) of the Basic Law to require all civil servants, including new appointees, to swear to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

Moved by: Hon Mrs Regina IP LAU Suk-ye
Seconded by: Hon Starry LEE Wai-king

公務員及資助機構員工事務委員會

**在2019年11月4日的政策簡報會及會議上
就議程項目III"公務員事務局局長
就行政長官2019年施政報告作出簡報"通過的議案**

近月有公務員及資助機構員工在工作場所張貼政治標語及示威，明顯違反《公務員守則》的「政治中立」原則，並對使用服務的市民造成不安。就此，本事務委員會促請：

公務員事務局設立、加強及清晰作出指引，明確所有公務員及資助機構員工不得在工作處所及範圍內作出政治性的示威或集會，亦不得以其公務員或資助機構員工的身份出席任何政治性的示威或集會或發表相關政治言論。

動議人：蔣麗芸議員
和議人：葛珮帆議員

(Translation)

Panel on Public Service

**Motion passed under agenda item III
"Briefing by the Secretary for the Civil Service
on the Chief Executive's 2019 Policy Address"
at the Policy briefing-cum-meeting on 4 November 2019**

In recent months, some staff members of the civil service and subvented organizations have posted political slogans and staged demonstrations at their workplaces in apparent violation of the principle of "political neutrality" of the Civil Service Code and causing anxiety to members of the public using their services. In this connection, this Panel urges:

the Civil Service Bureau to enhance their guidelines or formulate clear guidelines to specify that staff members of the civil service and subvented organizations must not stage any demonstrations or political rallies at or within the area of their workplaces, or take part in any demonstrations or political rallies or make any political remarks in their capacity as staff members of the civil service and subvented organizations.

Moved by: Dr Hon CHIANG Lai-wan
Seconded by: Hon Elizabeth QUAT

公務員及資助機構員工事務委員會

**在2020年7月10日的會議上就
議程項目II"就公務員宣誓建議的研究進展及公務員政治中立"
通過的議案**

效忠特區政府及擁護《基本法》是每一位"公職人員"的基本責任和應有之義。本委員會支持政府當局提出就公務員宣誓的建議，並促請政府逐步擴展宣誓或簽署確認文件的適用範圍至包括所有現職的公務員，以及其他政府資助機構等公職人員。

動議人：蔣麗芸議員
和議人：邵家輝議員

(Translation)

Panel on Public Service

Motion passed under agenda item II "Progress of the study on the proposal on oath-taking by civil servants and political neutrality of civil servants" at the meeting on 10 July 2020

Given that it is the duty and obligation of each and every "Public Officer" to uphold the Basic Law and pledge allegiance to the Government of the Hong Kong Special Administrative Region, this Panel supports the proposal put forward by the Government on oath-taking by civil servants and urges the Government to extend by phases the application of the arrangement of such oath-taking or giving the relevant written confirmation to include all serving civil servants and public officers of other subvented organizations.

Moved by: Dr Hon CHIANG Lai-wan
Seconded by: Hon SHIU Ka-fai, JP

**Implementation of the requirement for civil servants to take oath
or sign declaration**

List of relevant papers

Meeting	Date of meeting	Paper
Panel on Public Service	4 November 2019 (Item III)	Agenda Administration's response to the motion passed at the meeting Follow-up paper Minutes
	10 July 2020 (Item II)	Agenda Administration's response to the motion passed at the meeting Follow-up paper Minutes
	28 December 2020 (Informal meeting for policy briefing by videoconferencing)	Administration's paper

Meeting	Date of meeting	Paper
	18 January 2021 (Item III)	Agenda Administration's paper Background brief prepared by the Legislative Council Secretariat
Council meeting	27 November 2019	Official Record of Proceedings Pages 7 - 17 (Oral question raised by Hon Mrs Regina IP)
	2 December 2020	Question raised by Hon Kwok Wai-keung on "Civil servants to take oath or sign declaration"
	6 January 2021	Question raised by Hon Kwok Wai-keung on "Public servants to take oath or make declaration"