

# 立法會

## *Legislative Council*

LC Paper No. CB(4)1529/20-21(02)

Ref: CB4/PL/PS

### **Panel on Public Service**

### **Meeting on 20 September 2021**

### **Updated background brief on the implementation of the requirement for civil servants and government staff appointed on non-civil service terms to take oath or sign declaration**

#### **Purpose**

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

#### **Background**

2. Article 99 of the Basic Law ("BL") states that public servants must be dedicated to their duties and be responsible to the Government of the Hong Kong Special Administrative Region ("the HKSAR"). In addition, according to the Civil Service Code ("the Code"), civil servants are required to, among others, serve the Chief Executive ("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.

3. 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".<sup>1</sup>*

#### Oath-taking/declaration requirement for civil servants and government staff appointed on non-civil service terms

4. The Civil Service Bureau ("CSB") issued circulars on 12 October 2020 and 15 January 2021 respectively requiring new appointees to the civil service (those who joined the Government on or after 1 July 2020) and serving civil servants to sign a declaration that they will uphold BL, bear allegiance to HKSAR, be dedicated to their duties and be responsible to the HKSAR Government. Civil servants appointed to senior positions such as Heads of Department were also required to take an oath.<sup>2</sup> According to the Administration, as at end of March 2021, all new appointees to the civil service (about 6 500 staff) have signed the declaration. As regards serving civil servants, the great majority of them, around 170 000 in total, have duly signed and returned the declaration. As at 1 April 2021, a total of 129 civil servants have neglected or refused to duly sign and return the declaration.

5. On 21 May 2021, CSB issued a circular requiring government staff appointed on non-civil service terms on or after 1 July 2020 to sign the declaration.<sup>3</sup>

#### **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 oath-taking/declaration 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

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<sup>1</sup> 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.

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

<sup>3</sup> Source: <https://www.csb.gov.hk/english/admin/ncsdeclaration/2785.html>

swear allegiance to HKSAR. The wording of the motion is in **Appendix I**.

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 oath-taking/declaration requirement served the purpose of reminding civil servants of their responsibilities and obligation. Other members, on the other hand, opined that it was unnecessary to introduce the oath-taking/declaration 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 oath-taking/declaration 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. The introduction of the oath-taking/declaration 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 oath-taking/declaration 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 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 oath-taking/declaration 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 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.

12. On members' suggestion that the Administration should 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 could not be set out exhaustively. That said, 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 Administration would elaborate on the content of the oath/declaration and what constituted a breach of the oath/declaration to civil servants.

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

13. Noting that 129 serving civil servants had neglected or refused to duly sign and return the declaration as at 1 April 2021, members enquired about the handling procedures and processing time of these cases.

14. The Administration advised that for those civil servants who failed to provide a reasonable explanation, the Administration would, based on the facts and circumstances of each case, consider taking actions under section 12 of the Public Service (Administration) Order 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.

15. Some members considered that the Administration's handling of cases where civil servants had refused to take the oath/sign the declaration was lenient. There were suggestions that apart from requiring them to retire from the civil service in the public interest, the Administration should impose stringent punishment on them, say immediately suspending their duties, forfeiting their pensions and forbidding them from working in the Government in future.

16. The Administration pointed out that advice was sought from the Department of Justice on the approach of handling cases of civil servants who neglected or refused to take the oath/sign the declaration. According to Article 35 of the National Security Law, if a civil servant who had taken an oath/made a declaration to uphold BL and swear allegiance to HKSAR was convicted of an offence endangering national security by a court, he/she should be removed from his/her office upon conviction. The amount of pensions/Civil Service Provident Fund benefits payable to the civil servants who neglected or refused to take the oath/sign the declaration was directly proportional to the length of their service as civil servants and the level of emoluments before their leaving of the service. As regards appointments to the civil service, the recruitment board would scrutinize the staff reports and personal records of the applicants who were former civil servants where available.

17. 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.

18. A member suggested that the Administration should enhance the transparency of the civil service disciplinary mechanism. The Administration advised that an established mechanism was in place to handle disciplinary cases. For civil servants who were found guilty of misconduct or convicted of criminal offence, Bureaux/Departments 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 arising from the misconduct involved, 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 or signed the declaration.

### *Validity period of the oath/declaration*

19. 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. 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 oath-taking/declaration requirement*

20. Some members raised questions about the declaration arrangements for non-civil service contract staff, agency workers and interns of Bureaux/Departments and persons whose remuneration were paid for by public money, including staff employed by Government-funded bodies. The Administration advised at the meeting of the Panel on 21 June 2021 that it was collating the declarations collected from government staff appointed on non-civil service terms. As regards the oath-taking/declaration arrangement for employees of government-funded bodies, the Government was studying the implementation of the relevant requirements and would announce the detailed arrangements in due course.

21. 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 oath-taking/declaration 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**

22. 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**

23. The Administration will update members on the progress of implementing the requirement for civil servants and government staff appointed on non-civil service terms to sign declaration at the Panel meeting on 20 September 2021.

### **Relevant papers**

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

Council Business Division 4  
Legislative Council Secretariat  
13 September 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  
and government staff appointed on non-civil service terms  
to take oath or sign declaration**

**List of relevant papers**

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

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