

**For discussion on
30 October 2023**

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Streamlined Mechanism for Retiring Civil Servants in the Public Interest on Grounds of Persistent Sub-standard Performance

Purpose

This paper briefs Members on the streamlined mechanism for retiring civil servants in the public interest on grounds of persistent sub-standard performance under Section 12 of the Public Service (Administration) Order (“PS(A)O”) (“streamlined mechanism”), as well as the Civil Service Bureau (“CSB”)’s follow-up work after the promulgation of the streamlined mechanism.

Management of Civil Servants with Persistent Sub-standard Performance

2. The Government attaches great importance to the performance management of civil servants and has a well-established system to manage civil servants’ performance. All government employees shall serve the public with dedication, while their respective Heads of Department/Grade (“HoDs/HoGs”) have the responsibility to ensure that the staff under their purview have met the performance standards. Civil servants displaying excellent and outstanding performance will be considered for promotion, and those with exemplary performance should be given due recognition and be rewarded. For sub-standard performers, counselling and supervision will be provided to help improve their performance to the required standard. Actions will be taken under Section 12 of PS(A)O (“Section 12 action”) to retire civil servants in the public interest on the grounds that their performance remains poor or persistently sub-standard despite assistance provided by departments by means of administrative measures such as posting, guidance, counselling and training.

Mechanism for Retiring Civil Servants with Persistent Sub-standard Performance

3. Generally speaking, the departmental management will first give advice and counselling (i.e. management actions) to civil servants with persistent

sub-standard performance. Under the previous mechanism¹, if the management actions did not yield the desired results, the department would issue a notification for putting the civil servant concerned under an observation period and forewarn him that Section 12 action might be invoked if his performance remained unsatisfactory within the specified observation period. After the observation period, the officer's supervisor would complete his Observation Appraisal. If the Observation Appraisal revealed that the civil servant concerned failed to meet the required standard during the observation period, the department would establish an independent panel² to advise the HoD on the case. If the HoD agreed to proceed with Section 12 action, CSB had to be informed of the decision. Subject to the availability of sufficient evidence, CSB would take forward Section 12 action, including issuing a Letter-of-Intent ("LOI")³ to the officer.

The streamlined mechanism

4. The Chief Executive's 2022 Policy Address required departments to strengthen supervision of and provide assistance to civil servants whose performance is not up to the expected standard. Should they fail to improve their performance after a reasonable period of time despite enhanced management efforts, their appointment should be terminated in a timely manner. CSB soon afterwards reviewed and streamlined the mechanism for retiring civil servants with persistent sub-standard performance, consulted the Public Service Commission ("PSC") and collected views from the staff side in July and August this year respectively. A circular was subsequently issued to all civil servants on 4 September 2023 to promulgate the streamlined mechanism.

5. When working out the streamlined mechanism, the Government is guided by two principles: (i) the need to ensure that each case is handled in a fair and just

¹ The mechanism for handling civil servants with persistent sub-standard performance under Section 12 of PS(A)O was last modified in 2005. The major measures included lowering of the threshold for taking Section 12 action (i.e. the duration of sub-standard performance triggering the mechanism was shortened from 12 to six months), and waiving the requirement for departments to seek advice from an independent panel on whether Section 12 action should be taken forward at various stages of the case (i.e. upon issuing a notification under Section 12 of PS(A)O to the civil servant, before and after the observation period (during which the civil servant concerned is given the final opportunity for making improvement)) while specifying that the independent panel must be consulted at the end of the observation period.

² The independent panel comprises a directorate civil servant in the department and one or more civil servant(s) who have good knowledge of the work of the grade but without direct supervisory responsibility over the civil servant concerned.

³ LOI gives a detailed account of the civil servant's sub-standard performance and relevant documented records, states why Section 12 action is recommended and advises him of his rights to submit representations for consideration by the relevant authority before any decision is made.

manner, and (ii) the need to ensure efficiency and effectiveness of the mechanism. The threshold of the streamlined mechanism is the same as that of the previous one, i.e. the Government can initiate the mechanism for retiring a civil servant in public interest **when efforts to help him improve have not achieved the desired results, and when the unsatisfactory performance (defined as an overall rating of “5” or “6” on a six-level rating scale⁴) has made up a total of not less than six months.**

6. The key points of the streamlined mechanism include:

(a) Cut down multiple and unnecessary representations

7. Under the previous mechanism, representations were invited as many as four times (i.e. two to the department and two to CSB) before we could retire a civil servant under Section 12 of PS(A)O. Under the streamlined mechanism, the civil servant concerned can submit representations under two major steps, i.e. when the department issues a LOI to the civil servant informing him of its intention to take Section 12 action against him (before CSB examines the case and seeks PSC’s advice), and after CSB has obtained PSC’s advice but before CSB seeks a decision from the approving authority. Even though fewer representations are submitted under the streamlined mechanism, the civil servant will still be fully informed of the justification of the management for taking Section 12 action against him, and will also be given a reasonable opportunity to make representations before a final decision is made. It is worth noting that the civil service performance management system requires that, upon the completion of an appraisal report, the supervisor should let the appraisee read it, conduct an interview to listen to the appraisee’s views on his performance and the assessment given to him and record the appraisee’s views in the appraisal report. The appraisal report will then be submitted to HoG. In other words, every civil servant has ample opportunities to express his views on any appraisals, including the appraisal based on which the management decides to put the civil servant with persistent sub-standard performance under observation, as well as the Observation Appraisal written by his supervisor after the end of the observation period. These views will be taken into consideration by HoG.

(b) Waive the requirement for establishing an independent panel

8. When HoD/HoG considers whether to take Section 12 action against a civil servant with persistent sub-standard performance, the civil servant concerned

⁴ At present, most grades adopt a six-level rating scale for assessing the overall performance of civil servants, in which an overall rating of:

- “4” refers to a performance at the lowest acceptable standard;
- “5” refers to an “unsatisfactory” level of performance; and
- “6” refers to a “poor” performance.

has already gone through repeated counselling and training, or even postings, but has yet to attain the minimum standard of performance expected of him during the observation period where he is given a final opportunity to improve his performance. Therefore, establishing an independent panel to assess the case will not serve any meaningful purpose other than resulting in red tape that unnecessarily lengthens the processing time of the case. Given that other measures are still in place under the streamlined mechanism to ensure that cases are handled in a fair manner and that various bodies independent of the department to which the civil servant concerned belongs (such as CSB, PSC and the approving authority) will play a gatekeeping role, it is not necessary to establish an independent panel.

(c) Simplify the procedures for observation period

9. The overall rating which a civil servant obtains for his performance during the observation period is the determining factor of whether a sufficient basis can be established for any Section 12 action to be taken afterwards. To avoid unnecessary extensions of the observation period, the streamlined mechanism has restricted the management to extending the observation period once for specific circumstances only (i.e. when a civil servant obtained an overall rating of “5” or “6” in the previous Special/Annual Appraisal, and his overall rating has improved to “4” in the subsequent Observation Appraisal).

10. If the civil servant concerned obtains a better rating during the observation period, HoD/HoG may decide to withhold Section 12 action. The civil servant’s performance will continue to be monitored for three years. During these three years, if the civil servant obtains an overall rating of “5” or “6” for any period making up a total of not less than six months⁵, HoD/HoG may continue to launch Section 12 action (i.e. issuing a LOI to the civil servant concerned) without having to go through the steps of notification or observation again.

11. In any event, if a civil servant still fails to reach the requisite level of performance despite repeated counselling and training, or even postings, resulting in his being put under observation by the management as a final opportunity for him to improve his performance, the management should not keep on extending the duration of this final opportunity or deferring its final decision. Instead, it should strike a balance between giving the civil servant concerned an opportunity for improvement and maintaining the quality of the civil service as a whole. Similarly, the management should not keep on extending the observation period if the civil servant concerned does show improvement during that period, as a

⁵ The duration of sub-standard performance in the previous Special/Annual Appraisal is also taken into account.

three-year monitoring period will suffice to address the situation where the civil servant's performance deteriorates again to an "unsatisfactory" or a "poor" level.

(d) Make it mandatory to stop/defer increment for the civil servant concerned

12. Under the previous mechanism, the decision on granting increment or otherwise for civil servants with persistent sub-standard performance was subject to the outcome of the review by HoD/HoG in accordance with the standard under the Civil Service Regulation ("CSR") 451⁶. The streamlined mechanism stipulates that the supervisors or the management should stop or defer the grant of an increment to any civil servant in accordance with the prevailing procedures and practices if he obtains an overall rating of "4" (and shows signs of further deterioration)", "5" or "6" in his appraisal, at least until HoD/HoG has decided after the observation period to withhold further action leading to Section 12 action and conveyed this to the civil servant concerned.

Follow-up Work

13. As mentioned in the Chief Executive's 2023 Policy Address, the streamlined mechanism for retiring civil servants on grounds of persistent sub-standard performance became effective in September this year. We will oversee and encourage departments to make good use of the streamlined mechanism, in order to terminate the appointment of civil servants with persistent sub-standard performance in a timely manner.

14. The support and co-operation of all departments are key to strengthening the management of civil servants with persistent sub-standard performance. At the end of September this year, we organised a briefing session to introduce to the HoDs the key points of the streamlined mechanism, and called on them to take timely action against civil servants whose performance persistently fails to meet the required standard of their ranks. The Secretary for the Civil Service ("SCS") personally wrote to all HoDs in October this year, highlighting the significance of enhancing performance management and maintaining the professionalism and efficiency of the civil service. SCS also asked civil servants at all levels to adopt honest reporting with zero tolerance towards staff with poor performance, and encouraged departments to handle civil servants with persistent sub-standard performance by making good use of the streamlined mechanism. Briefing sessions on the streamlined mechanism will soon be organised for departmental secretaries and civil servants handling personnel matters to explain the substance of the streamlined mechanism, and elaborate in detail the points-to-note regarding

⁶ As stipulated in CSR 451(1), a civil servant may be granted an increment only if his performance at work (including conduct, diligence and efficiency) has been satisfactory during the appraisal period.

the relevant steps thereunder as well as the assistance provided by CSB. We will provide the management side with a management kit for handling cases under Section 12 of PS(A)O, covering areas such as major steps of handling cases and frequently asked questions.

15. We will oversee the departments to make good use of the streamlined mechanism and step up efforts to monitor their handling of cases. We have reminded HoD/HoGs to pay personal attention to potential and on-going cases of Section 12 action, regardless of the rank of the civil servants concerned, and ensure that reasonable progress is made under the streamlined procedures, so as to ensure timely termination of the service of persistent sub-standard performers. We have also requested the supervisors/management of departments, once the observation period of a case starts, to submit to their HoD/HoG at a regular interval, say monthly, a short Management Report outlining the counselling or coaching provided for the civil servant concerned to facilitate monitoring by HoD/HoG. To allow us to better monitor potential and on-going cases of Section 12 action, HoD/HoGs are required to file quarterly returns with CSB. CSB will take a pro-active role in checking with departments the progress of cases which remain outstanding for a prolonged period of time.

Advice Sought

16. Members are invited to note the content of this paper.

Civil Service Bureau
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