

For discussion
on 18 January 2021

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Proposal on Oath-taking by Civil Servants

Purpose

The Government has carried out a study on the requirement for serving civil servants to declare by taking an oath or signing a declaration that they will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law), bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR), and be responsible to the HKSAR Government. Having considered the views of the Panel and the staff side of the civil service, a concrete implementation plan has been drawn up and the relevant arrangements will soon be effected. This paper aims to report the situation to the Panel.

Background

2. At the meeting of the Legislative Council Panel on Public Service held on 10 July 2020, we presented the paper "Progress of the Study on the Proposal on Oath-taking by Civil Servants and Political Neutrality of Civil Servants", setting out our proposal of introducing a requirement for civil servants to take an oath or sign a declaration to uphold the Basic Law, bear allegiance to the HKSAR and be responsible to the HKSAR Government. Members advised on various aspects of the proposal, including the justification for introducing the requirement, the content of the oath / declaration, the implementation details of the proposal such as the scope of coverage, what constitutes a breach of the oath / declaration, what consequences should entail for refusing to comply with the requirement, and the mechanism for following up on any suspected breach of the oath / declaration. There was also the view that all Government employees, including those on non-civil service contract terms, should be required to comply with the requirement. The following motion was passed at the Panel meeting:

“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 organisations.”

3. Subsequently, we consulted major staff unions on this proposal between July and September 2020.

Requirement for New Appointees to the Civil Service

4. On 30 June 2020, the Standing Committee of the National People’s Congress (NPCSC) passed “The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” (the National Security Law) and listed the legislation in Annex III to the Basic Law after consulting the NPCSC’s Committee for the Basic Law of the Hong Kong Special Administrative Region and the HKSAR Government as required under Article 18 of the Basic Law. The National Security Law took effect upon gazettal at 11 p.m. on 30 June. Article 6 of the National Security Law stipulates that “[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”.

5. The Civil Service Bureau (CSB) issued a circular to all departments on 12 October 2020 (the Circular), requiring that, as one of the conditions for appointment, all civil servants joining the HKSAR Government on or after 1 July 2020 should take an oath or make a declaration. For civil servants appointed directly to senior positions such as Heads of Department, arrangements will be made for them to take an oath. The content of the oath / declaration is as follows:

I declare that, being appointed as a civil servant of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China, I will uphold the Basic Law of the Hong Kong Special

Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, be dedicated to my duties and be responsible to the Government of the Hong Kong Special Administrative Region.

6. Under the National Security Law, civil servants should, upon their assumption of office, take an oath or sign a declaration to uphold the Basic Law and swear allegiance to the HKSAR. Also, according to the Basic Law and the Civil Service Code (the Code), it has consistently been the duty and responsibility of civil servants to uphold the Basic Law, bear allegiance to the HKSAR and be responsible to the HKSAR Government. This has all along been what the Government and the society expect from and require of them. Appointees to civil service posts should in no uncertain terms acknowledge and accept these duties.

7. In case a prospective appointee neglects or refuses to take the oath or make the declaration, Heads of Department / Heads of Grade should treat the prospective appointee as failing to meet the conditions for appointment and the conditional offer shall lapse accordingly. Officers who have assumed duty on or after 1 July 2020 but before the date of the Circular are also required to sign the declaration. If an officer who has already assumed duty on the date of the Circular neglects or refuses to make the declaration, he / she will be regarded as refusing to accept the duties of a civil servant, and hence no longer suitable to discharge the duties of a civil servant. The appointment authority will terminate the service of the officer concerned.

8. All civil servants assuming office on or after 1 July 2020 have signed the declaration. No civil servant has his / her service terminated for refusal to make the declaration.

Proposal for Serving Civil Servants

9. As regards the arrangements for civil servants who joined the HKSAR Government before 1 July 2020 to take the oath or make the declaration, the CSB has carried out consultation in accordance with the established mechanism, gathered views and studied the matter. Having considered the views collected during the past months, we will soon promulgate the arrangements for

implementing the requirement of taking the oath or signing the declaration for civil servants appointed to the civil service before 1 July 2020 as set out in the following paragraphs.

Requiring All Serving Civil Servants to Take the Oath or Sign the Declaration in One Go

10. Civil servants assuming office on or after 1 July 2020 are covered by Article 6 of the National Security Law. Although civil servants who joined the Government before 1 July 2020 had already assumed office when the National Security Law came into effect, it has consistently been the basic duties of civil servants to uphold the Basic Law, bear allegiance to the HKSAR and be responsible to the HKSAR Government under the Basic Law and the Code. Officers holding civil service posts should in no uncertain terms acknowledge, accept and discharge these duties. The requirement of taking the oath or making the declaration by civil servants is an open acknowledgement of the acceptance and a genuine manifestation of the responsibilities of and expectations on civil servants under the Basic Law and the Code. It also enables civil servants to have clearer awareness of the duties, responsibilities and requirements entailed by their official positions, thereby further safeguarding, strengthening and promoting the core values that must be upheld by civil servants, and ensuring in turn the effective governance of the HKSAR Government. We are of the view that this should be considered a basic requirement for all civil servants. Thus we will introduce the requirement of taking the oath or signing the declaration for all serving civil servants who were appointed to the civil service before 1 July 2020.

11. In the paper submitted to the Panel in July 2020, we suggested arranging for civil servants to take the oath or make the declaration by phases. Having considered the views collected during consultation, including that the content of the oath / declaration only reflects the basic duties of all civil servants with no additional requirement introduced, and the administrative issues and the divisive effect on staff that may arise from a phased implementation, etc., we will require all civil servants to comply with the requirement of taking the oath or signing the declaration in one go.

12. As regards the form of implementation, by adopting the same arrangements for civil servants who assumed office on or after 1 July 2020, we will require all serving civil servants to sign the declaration; whereas for civil

servants appointed to senior positions such as Heads of Department, they will be additionally required to take an oath, the content of which would be the same as the declaration.

Consequences of Refusal to Take the Oath or Sign the Declaration

13. Taking the oath or signing the declaration is a simple, direct and solemn form of manifestation of the acknowledgement, acceptance and commitment to discharge the consistent and indubitable duties and responsibilities of civil servants. Negligence or refusal to take the oath or to duly sign and return the declaration by a civil servant casts serious doubts on his / her willingness to take up these basic duties as well as his / her sense of duty and commitment to serve as a civil servant. Furthermore, it will have an adverse impact on the entire civil service as well as good governance. In view of the resulting loss of confidence in the officer, the suitability of the officer concerned to remain in the civil service to continue discharging his / her official duties is questionable. Hence, the Government will, 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 (PS(A)O) or the relevant disciplined services legislation as appropriate to terminate the service of the officer. The officer concerned will be given an opportunity to make representations in the process. Where a civil servant who is on probationary or agreement terms neglects or refuses to take the oath or to duly sign and return the declaration, his / her probationary / agreement terms service shall be terminated immediately.

Consequences of Breaching the Oath / Declaration

14. The Basic Law is the constitutional document of the HKSAR. It was enacted by the National People's Congress, prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the People's Republic of China (PRC) regarding Hong Kong, including "One Country, Two Systems", "Hong Kong People Administering Hong Kong" and a high degree of autonomy. To uphold the Basic Law and bear allegiance to the HKSAR, one has to recognise that the HKSAR is an inalienable part of the PRC, support the implementation of "One Country, Two Systems" in the HKSAR, and support and act in accord with the HKSAR Government in the administration of Hong Kong, including supporting the implementation of the National Security Law so as to act in accord with the HKSAR Government in discharging its

constitutional duty of safeguarding national security.

15. To be dedicated to their duties and be responsible to the HKSAR Government means that civil servants must work towards the policy objectives of the HKSAR Government when discharging their duties, and not be influenced or even dominated by other factors. In practical terms, civil servants shall be committed to the rule of law, uphold probity and integrity, be politically neutral, and fulfill their duties and obligations responsibly.

16. Improper conduct which constitutes a breach of the oath / declaration may take many different forms, and cannot be set out exhaustively. Nevertheless, we will elaborate on the content of the oath / declaration and what constitutes a breach of the oath / declaration upon introduction of the oath-taking / declaration requirement for serving civil servants. We also plan to roll out a short video to introduce the content of the oath / declaration to civil servants in a clear and easy-to-understand way.

17. The Government has an established mechanism to handle disciplinary matters of civil servants. If a civil servant commits a misconduct, the Government will, having regard to the specific circumstances of the case, take appropriate disciplinary action(s) in accordance with the established mechanism against the officer for the misconduct committed. If the misconduct also involves a breach of the oath / declaration, the case will still be dealt with according to the civil service rules and regulation. In determining the punishment arising from the misconduct involved in accordance with the PS(A)O or the relevant disciplined services legislation, the Government will take into account the circumstances, nature and gravity of the case, etc., and will certainly also take into consideration the fact that the misconduct is committed by the civil servant even though the officer has taken an oath or signed a declaration to acknowledge the expectations and responsibilities brought by the official position on him / her.

18. As regards the concerns on whether the oath-taking / declaration requirement would affect the rights of civil servants and civil service unions in pursuing their claims for matters related to remuneration, benefits and conditions of service, etc., we would like to point out that the main objectives of civil service unions registered under the Trade Unions Ordinance are to promote understanding and co-operation between the Government as the employer and civil servants as

the employees, and to liaise and discuss with the Government on matters affecting the well-being of civil servants. The requirement of taking an oath or signing a declaration would not have any impact on civil service unions' communication with the Government in accordance with the aegis of the provisions of the Trade Unions Ordinance and their constitutions.

19. We would also like to emphasise that bearing allegiance to the HKSAR and being responsible to the HKSAR Government do not mean that civil servants are not allowed to put across different views in the course of their work. In fact, the Government has all along treasured the views of civil servants, diverse as they are, put across in good faith with the objective of bettering government policies and operation. The requirement to take the oath or sign the declaration would not affect civil servants in discharging their responsibility of providing advice and views in the course of their duties.

20. In accordance with the established mechanism, the CSB issued an advance copy of a circular to the staff side of the four Central Staff Consultative Councils on 24 December last year and already received their feedback. We will soon issue the circular to all civil servants on the oath-taking / declaration requirement for implementing the relevant arrangements.

Civil Service Bureau
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