

For discussion
on 19 April 2021

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Update on Implementation of the Requirement for Civil Servants to Take Oath or Sign Declaration

Purpose

The Civil Service Bureau (CSB) introduced, in October 2020 and January 2021 respectively, the arrangements for requiring new appointees to the civil service and serving civil servants to take an oath or sign a declaration to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law), bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR), be dedicated to their duties and be responsible to the HKSAR Government. This paper aims to brief the Panel on the latest position regarding oath-taking or signing of declaration by civil servants.

Background

2. It has consistently been the duty of civil servants to uphold the Basic Law, bear allegiance to the HKSAR, be dedicated to their duties and be responsible to the HKSAR Government under the Basic Law and the Civil Service Code. This has all along been what the Government and society expect from and require of them. These expectations and responsibilities have already been in existence whether before or after a civil servant takes the oath or signs the declaration. All civil servants should in no uncertain terms acknowledge and accept these duties.

3. The requirement for civil servants to take an oath or sign a declaration that they will uphold the Basic Law, bear allegiance to the HKSAR, be dedicated to their duties and be responsible to the HKSAR Government is an open acknowledgement of the acceptance and a genuine manifestation of the responsibilities of and expectations on civil servants. It also enables civil servants to have clearer awareness of the duties, responsibilities and requirements entailed by their official positions, thereby further safeguarding and promoting the core values that should

be upheld by civil servants, and ensuring the effective governance of the HKSAR Government.

4. “The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” (National Security Law) was enacted and promulgated in Hong Kong on 30 June 2020 and took effect upon gazettal at 11 p.m. on 30 June 2020. 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”.

Requirement for New Appointees to the Civil Service

5. The CSB issued a circular to all bureaux/departments in October 2020, requiring all civil servants joining the HKSAR Government on or after 1 July 2020 to sign a declaration as one of the conditions for appointment. For civil servants appointed directly to senior positions such as Heads of Department (HoDs), they should also 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. In case a prospective appointee neglects or refuses to take the oath or duly sign and return the declaration, the HoD/Head of Grade should treat the prospective appointee as failing to meet the conditions for appointment and the conditional offer shall lapse accordingly.

Requirement for Serving Civil Servants

7. The CSB issued another circular to all bureaux/departments in January 2021, requiring all civil servants who joined the HKSAR Government before 1 July 2020 to sign a declaration that they will uphold the Basic Law, bear allegiance to

the HKSAR, be dedicated to their duties and be responsible to the HKSAR Government. Civil servants appointed to senior positions such as HoDs should also take an oath. The content of the oath / declaration is basically the same as that stated in paragraph 5 above.

8. The CSB held an oath-taking ceremony for civil servants on 18 December 2020. Permanent Secretaries, HoDs and directorate civil servants at the rank of D6 or above took an oath which was witnessed by the Chief Executive. They also signed the declaration. The CSB will arrange for all newly appointed Permanent Secretaries, HoDs and directorate civil servants at the rank of D6 or above to take the oath in the future.

Signing of Declaration by Civil Servants

New Appointees to the Civil Service

9. Since the introduction of the requirement for new appointees to the civil service to sign a declaration, all civil servants joining the HKSAR Government on or after 1 July 2020 have signed the declaration. As at end of March 2021, a total of about 6 500 civil servants have joined the HKSAR Government during the relevant period and they have all signed the declaration.

Serving Civil Servants

10. As for civil servants who joined the HKSAR Government before 1 July 2020, all bureaux/departments received the declarations duly signed by the relevant officers by the end of February 2021. According to the reports submitted by bureaux/departments to the CSB, the great majority of civil servants, 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, amongst which about 80% (105 persons) are appointed on permanent terms and about 20% (24 persons) on probationary terms. Besides, 113 are civilian grade officers while the other 16 are disciplined services officers. As at 1 April 2021, 25 of these officers have left or will leave the service due to resignation¹, and one officer has been dismissed due to his/her own misconduct.

¹ The officers concerned have generally served the minimum resignation notice as required by the terms of their employment contract.

Handling of Officers who Refused to Take the Oath or Sign the Declaration

11. For a civil servant who neglects or refuses to take the oath or duly sign and return the declaration, the respective bureau/department will first request the officer to give an explanation. For any officer who fails to provide a reasonable explanation, his/her negligence or refusal to take the oath or to duly sign and return the declaration casts serious doubts by the management on his/her willingness to take up the basic duties of civil servants and his/her suitability to remain in the civil service to continue discharging his/her official duties.

12. For the aforementioned 129 serving civil servants who neglected or refused to duly sign and return the declaration, their respective bureaux/departments have issued letters to request their explanations, and have received replies from some of them.

13. According to section 12 of the Public Service (Administration) Order (PS(A)O), the Government may require the officer concerned to retire from the service if it is of the opinion that the termination of the officer's service is desirable in the public interest. For those who neglect or refuse to take the oath or duly sign and return the declaration without reasonable explanation, the Government will, based on the facts of each case, consider taking actions under section 12 of the PS(A)O to require the officers concerned to retire from the service in the public interest, because the Government has lost confidence in these officers continuing to discharge duties as civil servants.

14. Under the established procedures, for cases where retirement in the public interest under section 12 of the PS(A)O is being considered by the Government, the CSB will notify the officer concerned in writing and invite him/her to make representations within 14 days. The Government will consider the representations, if any, made by the officer concerned. If the post of the officer concerned falls within the purview of the Public Service Commission (the Commission), the CSB will submit the case to the Commission for advice. The Government will then make a final decision and notify the officer concerned. If the officer concerned is aggrieved by the decision, he/she may make representations to the Chief Executive pursuant to section 20 of the PS(A)O.

15. In the course of the above process, if the Government considers that it is contrary to the public interest for the officer concerned to continue to exercise the powers and functions of his/her office, the officer concerned will be interdicted.

16. While retirement in the public interest under section 12 of the PS(A)O is not a disciplinary punishment, the service of the officers concerned will accordingly be terminated by the Government. Regardless of whether the officers are appointed on pensionable terms or under the Civil Service Provident Fund (CSPF) Scheme, the amount of pensions or CSPF benefits payable is directly proportional to the length of their service as civil servants and the level of emoluments before their leaving of the service. Accordingly, the amount of retirement benefits which an officer retired in the public interest may obtain will definitely be lower than the amount which the officer could have obtained upon retirement at normal retirement age².

17. If the civil servants concerned are at the same time involved in any misconduct committed by themselves, the Government will, based on the circumstances of individual cases, consider taking appropriate disciplinary actions against these officers in accordance with the civil service disciplinary mechanism.

18. For the aforementioned 129 serving civil servants who refused to sign the declaration, 24 of them are appointed on probationary terms. As at 1 April 2021, except for seven officers who have left/will leave the service due to resignation³, the Government will terminate the service of the probationers concerned in accordance with the Civil Service Regulations.

Looking ahead

19. Taking the oath or signing the declaration enables civil servants to make an open acknowledgement of the acceptance of the responsibilities of and expectations on them under the Basic Law and the Civil Service Code. We trust that, through such process, civil servants can have clearer awareness of the basic duties set out in the oath/the declaration and be more faithful to such basic duties. The CSB will continue to strengthen the core values of civil servants through effective measures of civil service management and training. If a civil servant who has taken the oath or signed the declaration commits a misconduct, and the misconduct involved shows

² Specifically, for officers appointed on pensionable terms, a deferred pension will be payable to them on attaining the prescribed retirement age. In the case of officers who are eligible for the CSPF Scheme, the mandatory contributions made by the Government and the officers are fully and immediately vested with the officers as provided under the Mandatory Provident Fund Schemes Ordinance. If they have completed at least 10 years of continuous service, the officers would also be eligible for the payment of the accrued benefits attributable to Government's voluntary contributions (except any benefits attributable to the Special Disciplined Services Contributions) in accordance with the terms of the Scheme.

³ The officers concerned have generally served the minimum resignation notice as required by the terms of their employment contract.

that the officer concerned has breached the oath/the declaration, the Government will take appropriate disciplinary action(s) in accordance with the established mechanism against the officer for the misconduct committed. Moreover, in determining the punishment arising from the misconduct involved, the Government will, apart from taking into account the circumstances, nature and gravity of the case, etc., 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.

Requirement for Staff Appointed on Non-Civil Service Terms to Sign a Declaration

20. Apart from civil servants, government staff also include officers appointed on non-civil service terms, such as Non-Civil Service Contract staff and Post-retirement Service Contract staff. For staff appointed on non-civil service terms, their responsibilities are akin to that of civil servants. They should be considered as public officers under Article 6 of the National Security Law and be required to sign a declaration to uphold the Basic Law, bear allegiance to the HKSAR, be dedicated to their duties and be responsible to the HKSAR Government.

21. For staff appointed on non-civil service terms, some are employed on a part-time basis, and some are temporary or short-term staff. At present, the CSB is studying the different terms of appointment for staff on various non-civil service terms with a view to finalising the specific arrangements for extending the relevant declaration requirement to these government staff. We plan to implement and announce the relevant arrangements in May this year.

Civil Service Bureau
April 2021