

For discussion
on 20 September 2021

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Update on Implementation of the Requirement for Civil Servants and Government Staff Appointed on Non-Civil Service Terms to 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 Government¹. The relevant declaration requirement was subsequently extended in May 2021 to all government staff appointed on non-civil service terms ("non-civil service government staff") on or after 1 July 2020. This paper briefs Members on the latest position regarding the signing of declaration by civil servants and non-civil service government staff.

Background

2. "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region" ("National Security Law") was promulgated for implementation in Hong Kong 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". Public office as

¹ Civil servants appointed to senior positions (such as Heads of Department) are required to take an oath.

mentioned above includes offices held by civil servants and non-civil service government staff.

3. It has consistently been the duty of public servants to be dedicated to their duties and be responsible to the HKSAR Government under Article 99 of the Basic Law. With responsibilities akin to those of civil servants, non-civil service government staff are also public servants. Therefore, both of them should in no uncertain terms acknowledge and accept the duties of public servants under the Basic Law.

4. The requirement for civil servants and non-civil service government staff 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 is an open acknowledgement of the acceptance and a genuine manifestation of the responsibilities of and expectations on them, which will further safeguard and promote the core values that should be upheld by all government employees, and ensure the effective governance of the HKSAR Government. This requirement accords with Article 6 of the National Security Law.

5. The content of the declaration required to be signed by non-civil service government staff is consistent with the one signed by civil servants, which is as follows:

“I declare that, as an employee of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China appointed on non-civil service terms, 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.”

Update on Signing of Declaration by Civil Servants

6. 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 (around 11 000 in total) have signed the declaration. As for civil servants who joined the HKSAR Government before 1 July 2020 (about 170 000 in total), the great majority of them have signed the declaration. All civil servants appointed to senior positions have also taken an oath or will be arranged to do so. At present, all prospective appointees who have received conditional offers of appointment by relevant departments/bureaux/grades shall sign a declaration as one of the conditions for appointment. If the declaration is not duly signed before the deadline, the prospective appointee will be treated as not willing to accept the conditions for appointment, and the conditional offer of appointment will lapse accordingly.

7. A total of 129 civil servants have neglected or refused to duly sign and return the declaration, amongst which about 80% (105 persons) were appointed on permanent terms and the remaining some 20% (24 persons) were appointed on probationary terms; 113 were civilian grade officers while the remaining 16 were disciplined services officers.

8. For those civil servants who have neglected or refused to duly sign the declaration without reasonable explanation, as the Government has lost confidence in these officers continuing to discharge duties as civil servants, the Government has, based on the facts of each case, taken follow-up actions, including requiring the civil servants concerned to retire from the service in the public interest under section 12 of the Public Service (Administration) Order (“PS(A)O”), or terminating the service of the probationers concerned in accordance with the relevant provisions of the Civil Service Regulations (“CSRs”). As at end August 2021, among those 129 civil servants who neglected or refused to duly sign and return the declaration, the great majority of them have already left the Government for various reasons, including termination of probationary service in accordance with the CSRs, retirement in the public interest under section 12 of the PS(A)O, resignation, or dismissal due to misconduct. It is expected that the service of the remaining officers will be terminated shortly.

Update on Signing of Declaration by Non-Civil Service Government Staff

9. Since the introduction of the requirement for newly-recruited non-civil service government staff to sign the declaration, the signing of

declaration is one of the conditions for employment for all prospective non-civil service government appointees who have received conditional offers of appointment by the HKSAR Government on or after 22 May 2021, regardless of the duration of their employment and whether their employment is full-time or part-time². They must sign the declaration before they could be employed.

10. As for full-time and part-time non-civil service government staff who were employed between 1 July 2020 and 21 May 2021 and are still serving in the Government, they must duly sign and return the declaration to their departments before the end of June 2021. According to the reports submitted by departments to CSB, more than 18 000 serving full-time non-civil service government staff have duly signed and returned the declaration as at end August 2021. A total of 149 full-time non-civil service government staff have neglected or refused to duly sign and return the declaration, amongst which about 80% (119 persons) are Non-Civil Service Contract staff, about 10% (13 persons) are Post-retirement Service Contract staff, and the remaining some 10% (17 persons) are government staff appointed on other types of non-civil service terms.

11. For non-civil service government staff employed by departments, most of them are employed for meeting time-limited or seasonal service needs; or for positions involving service needs that are subject to market fluctuations or requiring response to changing operational and service needs. Therefore, in order to maintain flexibility of the positions concerned, the contract duration of non-civil service government staff is usually one year or less, and departments may consider renewing the contract of the staff with regard to operational needs. Since the contract duration of non-civil service government staff is relatively short, quite a number of employment contracts signed before 1 July 2020 have been completed. If further employment is offered upon the expiry of their contracts, the employing departments would require the staff to sign the declaration or confirm his/her previously signed declaration when he/she signs a new contract.

² “Full-time” employment means employment under a “continuous contract” as defined by the Employment Ordinance (“EO”) (Cap. 57). According to the EO (Cap. 57), an employee is regarded as being employed under a continuous contract if he or she works continuously for the same employer for four weeks or more, with at least 18 hours in each week. On the other hand, “part-time” employment refers to those employment not fulfilling the criteria of “continuous contract” as defined by the EO (Cap. 57).

12. To cope with service needs flexibly, some departments may choose to employ part-time non-civil service government staff. The modes of employment for these part-time staff are more diversified. For example, their salaries may be calculated based on hourly rate or daily rate, or the staff would only be required to go to work when service needs arise. As such, the turnover of part-time staff is relatively high. This notwithstanding, departments would still ensure all part-time staff who are called upon for duty have signed the declaration in accordance with the requirement. As at end August 2021, more than 8 000 serving part-time non-civil service government staff have duly signed and returned the declaration, and around 380 part-time staff neglected or refused to duly sign and return the declaration.

Handling of Non-Civil Service Government Staff who Refused to Sign the Declaration

13. For a non-civil service government staff who neglects or refuses to duly sign and return the declaration, the respective department would first request the staff to provide an explanation. If the relevant staff fails to provide a reasonable explanation, his/her negligence or refusal to duly sign and return the declaration casts serious doubts by the management on his/her willingness to take up the basic duties of government staff and his/her suitability to remain in office to continue discharging his/her duties.

14. For the non-civil service government staff who neglected or refused to duly sign and return the declaration as mentioned in paragraphs 10 and 12 above, their respective departments have issued letters to request their explanations. After examining the explanations (if provided) of the staff concerned, the employing departments have already taken actions based on the facts of each case. If the relevant non-civil service government staff fails to provide a reasonable explanation, his/her service will be terminated in accordance with the relevant terms of his/her employment contract.

15. Among the 149 full-time non-civil service government staff who neglected or refused to duly sign and return the declaration, around half of them have already left the Government due to resignation or expiry of contracts, whereas the service of the remaining some 70 full-time non-civil service government staff who failed to provide reasonable explanation for

their neglect or refusal to duly sign and return the declaration, has already been terminated by their respective departments in accordance with the relevant terms of their employment contracts. Regarding the some 380 part-time non-civil service government staff who neglected or refused to duly sign and return the declaration, all of them have already left the Government due to resignation, expiry of contracts or termination of contracts.

Mechanism for Handling Misconduct that Constitutes a Breach of Declaration

16. The misconduct cases of civil servants and non-civil service government staff are handled respectively in accordance with the PS(A)O, the relevant disciplined services legislation and the existing mechanisms for handling disciplinary matters of non-civil service government staff. Where the misconduct of a government employee also constitutes a breach of the declaration, the Government will take appropriate disciplinary action(s) in accordance with the established mechanism against him/her for the misconduct committed. Moreover, in determining the punishment for the misconduct involved, the Government will, apart from taking into account the circumstances, nature and gravity of the case, etc., certainly also take into consideration the fact that the misconduct is committed by the civil servant or non-civil service government staff even though he/she has signed a declaration to acknowledge the expectations and responsibilities brought by the official position on him/her.

Views Sought

17. Members are invited to note the updates on the implementation of the requirement for civil servants and non-civil service government staff to sign declaration as set out in paragraphs 2 to 16 above.

Civil Service Bureau
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