

香港警察  
處長辦公室



HONG KONG POLICE  
OFFICE OF THE COMMISSIONER

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20 April 2009

The Honourable Ronald Arculli,  
Chairman,  
Committee on Review of Post-Service  
Outside Work for Directorate Civil Servants,  
10/F West Wing, Central Government Offices,  
11 Ice House Street,  
Central

Dear

*Chairman,*

**Review of Post-Service Outside Work for Directorate Civil Servants**

I refer to your letter dated 20<sup>th</sup> February 2009 and the consultation document attached thereto, inviting comments and views from Heads of Grades/Departments. The contents of the consultation document have been studied and an internal consultation conducted. The comments below as well as those made in response to the nine salient issues at the **Annex** reflect the views of the Force Management. It is noted that you have separately consulted individual serving directorate officers and the relevant Staff Associations.

The broad principles underlying the current post-service outside work control regime for former directorate civil servants, namely, the protection of the public interest and the protection of an individual's right are supported. The purpose of the review, however, should not solely be to placate public criticism, but should seek to develop a system which, whilst safeguarding against genuine conflicts of interest, is fair to all parties involved and is legal and practical and timely in its implementation and administration.

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In addition to the comments made in respect of the nine salient issues raised in the consultation document which are set out in the attached **Annex**, the following matters are also considered to be of fundamental importance.

### **Legality**

Any scheme to restrict the right to work must be lawful and appropriate. It should be fair, reasonable and proportionate. Blanket restrictions for all staff irrespective of individual circumstances do not appear to be justified.

### **Public Interest**

Public interest should not override important individual rights which are acknowledged and upheld by the Basic Law. Any attempts to do so will weaken the confidence and trust in the commitment of the Administration to uphold key principles.

### **Right to Work**

The right to work and freedom of choice of occupation is a right enshrined in Article 33 and 39 of the Basic Law and the two international covenants and labour convention applicable to the HKSAR. The current policy on post-service employment of directorate officers restricts the right to work, and appears to presume that constraints must be placed on retired directorate officers in order to avoid possible risks of public embarrassment. A more equitable approach might be that there is a right to work that can only be infringed where there are clear justifications.

### **The Existing Regime**

It is noted from Chapter 4 of the consultation document that similar control mechanisms have been adopted in several other overseas jurisdictions and that the existing regime in Hong Kong is already the most restrictive. Hong Kong is also exceptional in applying greater restrictions on permanent civil servants than on appointees to political office.

Concern was raised during the review conducted in 2005 that any tightening of restrictions contravened the assurances given in 1984 that 'terms of employment will not be changed to the detriment of serving officers'. It is felt that the Review Committee should take cognizance of this concern.

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### **Benefit of the Community**

Apart from the principles relating to the general restrictions on post-service employment, the very small number of cases in which there has been public complaint over the years, does not support the need for more stringent restrictions to be adopted. Indeed, the evidence provides ground for concern that the restrictions are deterring retired officers from continuing to put their experience and talents to work to the benefit of the community.

### **Age of Retirement**

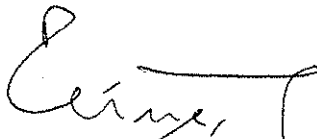
All police officers (except those of D3 rank or above on the New Pension Scheme and New Permanent Terms, who may retire at 57) must retire at 55. This is an age when many still have children undergoing full-time education, or further education, and still have outstanding mortgages. For many of these officers, post-service employment is a necessity and this situation needs to be taken into account when considering restrictions to be imposed on directorate officers seeking post-service employment. There are also significant differences in the level of remuneration and retirement benefits between a police directorate officer below D3 retiring at the age of 55, when compared to a D8 officer in a civilian grade who retires at the age of 60. All these factors also need to be taken into consideration.

### **Processing of Applications**

It is considered worthy to mention here the need for timeliness of the application process. Officers applying for approval to take up post-service/retirement employment are required to submit their applications to their Heads of Grade/Department at least one month before the proposed employment commences. This application must be reviewed and commented on departmentally before being passed to the Secretary for the Civil Service. Experience has shown that, within the existing procedure, the outcome of the application may not be available until two months after the submission of the applications to the Secretary for the Civil Service. The processing time from first submission can, therefore, be more than two months. Retiring/retired officers need a degree of certainty in respect of their dealings with their potential employers. An opportunity for employment may be lost due to the lapse of time in the processing procedure, and it is therefore proposed that a performance pledge be put in place to clearly specifying the maximum processing time.

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I trust that comments made above and in the attached **Annex** will be useful to the Committee during its deliberations on this important issue.

  
( Yam Tat-wing )  
Acting Commissioner of Police

Encl.

c.c. External  
Secretary for Security  
Secretary for Civil Service

Internal  
SDG Circulation  
MFCs

**Issue 1: Should protecting the public interest and protecting an individual's right continue to be recognized as the two underlying principles of the control regime ?**

The consultation document suggests that there is a conflict between 'public interest' and 'protection of individual's right'. This gives the impression that civil servants who seek to enjoy their rights are seeking to act in conflict with the public interest. Another view is that it may be in the public interest for civil servants to be in a position to positively contribute their knowledge and skills in a variety of fields following their retirement. The two principles are not necessarily mutually exclusive. A fair balance has to be reached.

**Issue 2: Is the current policy objective appropriate ? What is the view on including the following specific references in the policy objective –**

**(a) avoidance of suspicion or perception of 'deferred reward' for past favour done during government service ?**

An allegation of post-service employment being offered as a 'deferred reward' is a matter for anti-corruption legislation (Prevention of Bribery Ordinance) and agencies (ICAC) to deal with. Civil Service Regulations and Circulars, and the laws of HKSAR already have adequate measures to deal with conflict of interest or corruption after the event or during commission of improper acts.

The statistics contained in the report suggest that post-service employment where there is real or potential conflict of interest is not a serious problem. Only a small percentage of retired directorate officers seek post-service employment. Only a small proportion of these seek paid employment in commercial entities. Most applications are approved. This same situation is reflected in the profile of applications received and processed in respect of retired directorate police officers.

**(b) gainful use of limited human resources and attractiveness of the civil service as a career ?**

The right to work should be taken as a presumption. Similarly, the need to maintain the attractiveness of the civil service as a career needs to be taken into consideration when developing a control scheme.

The document implies that the more senior the officer, the more stringent the control he or she may be subject to. On the other hand, the control regime applied to appointed public officials appears to be less restrictive than that applied to permanent civil servants. The fact that former civil servants may be sought out to move on to employment in the commercial, subvented or academic fields should be seen as a reflection of the quality of the public service rather than something to be avoided or discouraged.

**Issue 3: Is the current length of 'period of restriction' for post-service work appropriate? What is the view on –**

**(a) a lifetime ban on any paid employment or paid employment with commercial organizations for retired civil servants in receipt of monthly pension payments?**

The 'period of restriction' under the current control regime, in police context, are :-

- Directorate civil servants who wish to take up post-service outside work (paid or unpaid) during their final leave period and/or within a specified sanitization period and/or control period are required to seek prior permission from the Secretary for the Civil Service.
- Control period (counting from the SOS date) – 2 years for officers below D8 and equivalent (Deputy Commissioner to Chief Superintendent), i.e. 65 officers, and 3 years for officers at D8 or equivalent (the Commissioner of Police), i.e. 1 officer.
- Directorate civil servants are normally not allowed to take up any outside work during the specified sanitization period other than unpaid work with specified non-commercial organizations under blanket permission.
- Sanitization period (counting from the date of ceasing active service) – 12 months for officers at D4 or above (Commissioner and Deputy Commissioner), i.e. 3 officers, and 6 months for officers below D4 (Senior Assistant Commissioner to Chief Superintendent), i.e. 63 officers.

The above 'period of restriction' is considered as adequate and further restrictions may be unreasonable. There are now several police directorate officers serving on agreement terms, who will not receive pensions. For this category of officer, any

restriction beyond their final leave period needs to be fully justified. Similar to a gratuity paid to an agreement officer, a pension is a financial benefit paid on completion of, and in recognition of, satisfactory service. Depending on individual circumstances a pension may not be sufficient to meet a retired officer's financial needs. A lifetime ban for pensionable officers appears to be unreasonable and should not be considered further by the Review Committee.

**(b) the length of 'period of restriction' for former directorate civil servants engaged in specified fields of work while in government service ?**

Given the highly varied nature of work of different directorate officers, it appears to be inappropriate and unnecessary to apply any general scheme. Conditions should be tailored to particular individuals, given the work they have actually performed. As a general rule, there should be less need to impose conditions on more junior directorate officers and there should be minimal periods of restriction in respect of activities, which clearly present no conflict of interest (or which may actually be in the public interest).

**(c) the length of 'periods of restriction' for post-service outside work in the same field as that pursued by a former directorate civil servant before leaving government service ?**

Given the very nature of the work of police officers, it is not uncommon to see retired directorate police officers working in security management or consultancy or related business or working as lecturers in public administration and/or criminology courses in universities. Restrictions for post-service outside work in the same field before leaving government service will definitely affect police officers (as well as many "professional grade" staff). Restrictions should be limited to specific instances of known conflicts of interest rather than applied in a universal manner.

**Issue 4: Should the past contacts/dealings of a former directorate civil servant with the prospective employer's parent and/or other related companies during his last few years of government service be disclosed and assessed for the purpose of conflict of interest, irrespective of whether the former directorate civil servant, in his applied-for post-service work, will be involved in the business of these entities ?**

This situation seems more applicable to professional grade staff involved in construction, procurement, engineering etc fields. It does not generally arise within the police officer grade.

**Issue 5: Is the current imposition of work restrictions on approved taken-up outside work appropriate ? Can the imposition of work restrictions address and mitigate public concern over potential or perceived conflict of interest ?**

The current restrictions appear to be adequate. There may, however, be individual applications which may require specially tailored conditions to be imposed.

**Issue 6: Should there be any change to the composition of and/or institutional support for the Advisory Committee on Post-Service Employment of Civil Servants ?**

The current time frame for submission of applications for permission to take up outside appointment after retirement is stipulated in Civil Service Bureau Circular No. 10/2005, paragraph 17. Application forms are required to be sent to the Heads of Grade/Department at least one month before the proposed business or employment commences. Experience has shown, that together with departmental comments, the processing procedure can take at least two months before the outcome of the application is known. Some individual cases have taken longer. Consideration should be given to streamlining this procedure. This may require increasing the staffing capacity within Civil Service Bureau or for the Advisory Committee to have dedicated staff, if this is justified by the workload.

The Advisory Committee should be capable of discharging its functions promptly, so that the rights of applicants are not prejudiced. The processing of applications should not itself be an obstacle causing loss of an opportunity for employment. Employers normally anticipate a one to two month time-lapse between offering employment and the new recruit arriving for duty. This processing time should not be overlooked by the Review Committee and it is proposed that a performance pledge be put in place to clearly specify the maximum processing time.



**Issue 7: Should there be any change to the pension suspension arrangement for post-service employment in specified subvented organizations by retired civil servants ?**

Given changes to the terms of employment, some twenty to thirty years in the future no civil servants will be serving on pensionable terms. In the interim the justification for suspending pensions for civil servant taking up employment in certain subvented organizations now appears to be inequitable when similar suspension does not appear to apply to persons taking up political appointments.

Under the current arrangements a retired directorate grade police officer taking up a managerial position in a subvented organization will have his pension suspended, whilst another retired directorate grade police officer taking up a political appointment will retain his pension. This is clearly inequitable, and it is the Administration itself which has (recently) created this situation.

The suspension arrangement is not confined to retired directorate grade officers but also all retired civil servants, regardless rank and position. Even a retired Police Constable seeking to work as a security guard in one of the subvented universities, will have his pension suspended (and therefore will not seek out such a position). This can be contrasted with the recent recruitment by the MTRC of retired law enforcement officers to enforce its bye-laws, a move which is promoted as being beneficial and in the public interest.

Consideration should be given to critically examine this arrangement and to review the current pension suspension regime.

**Issue 8: Are the sanctions provided under the current control regime adequate ?**

The sanctions provided under the current control regime are :-

- Pension suspension under the pension legislation for civil servants on pensionable terms;
- Initiating civil action to seek an injunction or sue for damages (under contract law);
- Withdrawal of approval;
- Suspension of approval for a specified period;

- Reporting of an incident to the relevant professional body where it concerns professional negligence/misconduct or may involve a possible breach of the code of conduct of the relevant profession;
- Issue a public statement of criticism;
- Placing a warning/reprimand in a register for public inspection;
- Issue of a reprimand letter which may be copied to the outside employer; and/or
- Issue of a warning letter which may be copied to the outside employer.

These sanctions are considered to be adequate.

**Issue 9: Is the current public disclosure arrangement appropriate ? What is the view on –**

- (a) disclosing the post-service outside work taken up by former junior directorate civil servants as well ?**
- (b) disclosing the advice of Advisory Committee on Post-Service Employment of Civil Servants on each of the post-service appointments taken up by former directorate civil servants ?**

The current public disclosure arrangement requires a case record on each post-service outside work approved and taken up by a former directorate civil servant at D4 or above to be placed on a register for public inspection upon request. The case record is kept on the register until the expiry of the periods of restriction applicable to the said former directorate civil servant, or after he has notified CSB of the cessation of the outside work.

It is noted that the HKSAR's disclosure arrangements are already much wider than other jurisdictions, with the UK only requiring disclosure at Permanent Secretary level. There appear to be no strong grounds for broadening the current disclosure arrangements, or extending it to more junior directorate staff.