

LCQ16: Public servants to take oath or make declaration

Following is a question by the Hon Kwok Wai-keung and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (January 6):

Question:

Article 6 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law) stipulates that, "(a) resident of the Region 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", and Article 35 stipulates that a public servant who has taken the aforementioned oath or made the aforementioned declaration shall, upon conviction of an offence endangering national security by a court, be removed from his or her office, and be disqualified from standing for elections or holding any of the aforementioned posts. However, the interpretations of "public servant" and "public officer" in the existing legislation are not consistent. For example, the Interpretation and General Clauses Ordinance (Cap. 1) provides that "public servant" has the same meaning as "public officer", and both mean any person holding an office of emolument under the Government, whereas in the Prevention of Bribery Ordinance (Cap. 201), "public servant" means not only any person holding an office of emolument under the Government, but also any employee of a specified public body, etc. In this connection, will the Government inform this Council:

(1) whether it will standardise the interpretations of "public officer" and "public servant" in various pieces of legislation;

(2) as the Government has indicated earlier on that it is conducting a study on what categories of officers are holding offices which fall within the "public office" referred to in Article 6 of the National Security Law, whether the study has been completed; if so, of the outcome, and the deadlines for the officers concerned to take the oath or make the declaration; and

(3) whether it has studied if the existing legislation can align with the implementation of the requirements on public servants under Article 35 of the National Security Law; if it has studied and the outcome is in the affirmative, of the details; if the outcome is in the negative, whether the Government will amend the relevant legislation?

Reply:

President,

My consolidated reply to the various parts of the Hon Kwok Wai-keung's question is as follows:

The existing laws of Hong Kong each have their own legislative objective, applicability and target regulatees. It is therefore necessary to consider a host of factors in determining whether it is appropriate to standardise the interpretations of the relevant terms across various legislation.

The Government is actively studying the subject matter, and will announce the implementation details of the relevant provisions of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region at an appropriate juncture.