

**研究擬議主要官員問責制及相關事宜
小組委員會**

**向在主要官員問責制下獲任命為主要官員的
在職公務員支付退休金的擬議安排**

目的

本文件旨在分析政府當局就上述事項提交立法會的文件第2(p)段所載，向在主要官員問責制下獲任命為主要官員的在職公務員支付退休金的擬議安排的法律方面的事宜。

背景

2. 目前，就公職服務而批予及支付退休金的事宜受《退休金條例》(第89章)及《退休金利益條例》(第99章)規管。
3. 香港法例第89章適用於在1987年7月1日之前按常額及可享退休金條款受聘的公職人員，但不包括那些選擇將他們根據香港法例第89章可供計算退休金的服務期計為香港法例第99章所指可供計算退休金的服務期的人員。
4. 香港法例第99章適用於在1987年7月1日或之後按常額及可享退休金條款受聘的公職人員和在職人員。該條例把“在職人員”界定為根據香港法例第89章具有資格領取退休金，但選擇將他根據香港法例第89章可享有退休金的所有服務期計為香港法例第99章所指可供計算退休金的服務期的人員。
5. 香港法例第89章和第99章與支付退休金有關的條文摘錄分別載於附件A及B，方便議員參考。

已屆退休年齡的在職公務員

6. 政府當局建議，獲任命為主要官員的在職公務員如在其所屬的退休金計劃下已屆最早退休年齡，將可准予退休。他們會獲發放一筆過的退休金，而他們的每月退休金不會暫停發放。
7. 為確定上述安排在法律上是否沒有問題，必須確定有關公務員是否屬於香港法例第89章或第99章適用範圍內的人員，以及研究香港法例第89章和第99章中與已屆退休年齡的公務員有關的條文。就本文件而言，屬於香港法例第89章和第99章適用範圍內的公務員分別稱

為“第89章的公職人員”及“第99章的公職人員”。第89章的有關係文為第6、8及11條，第99章的有關係文則為第7、10、11、24及26條。

A. 第89章的公職人員在退休時的退休金發放

8. 根據香港法例第89章，公職人員只在其自公職服務退休時，才會獲批予退休金或酬金。第89章所訂的正常退休年齡為55歲，但如獲得行政長官批准，公職人員可在45歲時退休。

9. 根據第89章，批予某人員的退休金須按月支付。然而，若某人員行使其選擇權，把任何一部分退休金折算為一整筆款項亦即該條例所提述的“酬金”，他可獲發放該筆酬金。行使此選擇權而在退休時獲發放一整筆款項的人員，將可按月領取一筆經扣減的退休金。

10. 第89章的公職人員一旦退休，政府會向他們支付一整筆款項及每月退休金。第89章第11條訂明，如根據該條例獲批予退休金的公職人員再度受聘擔任公職，有關的退休金可在該人員的同意下，於其擔任公職期間暫停支付。據政府當局所述，在主要官員問責制下獲任命的主要官員都是受聘出任公職(請參閱政制事務局在2002年4月17日發出的文件第39段)。因此，當第89章的公職人員在成為主要官員之前退休，若他行使選擇權把部分退休金折算為一整筆款項，便可獲發放該一整筆款項。當他再度受聘擔任公職成為主要官員，可根據第89章第11條在其同意下暫停向他支付每月退休金。

B. 第99章的公職人員在退休時的退休金發放

11. 根據香港法例第99章，在職人員在完成不少於10年的符合領取退休金利益資格的服務期後，如在年屆其60歲退休年齡之時或之後退休，或在其年屆55歲之時或之後自願提早退休，可獲批予退休金。在1987年7月1日或之後受聘的人員，可在年屆60歲正常退休年齡時獲批予退休金。

12. 根據第99章，退休金是按月支付的。然而，若從政府退休的人員行使其選擇權，把任何一部分退休金折算為一整筆款項亦即該條例所提述的“經折算的退休酬金”，他可獲發放該筆經折算的退休酬金。行使此選擇權而在退休時獲發放一整筆款項的人員，將可按月領取一筆經扣減的退休金。

13. 根據第99章第24(6)(a)(iii)條，經折算的退休酬金須於有關的經扣減的退休金根據該條例首次須予支付時支付。該條文的涵義若連同第11(1)(a)及11(1)(b)(i)條一併理解，可解釋為經折算的退休酬金須在有關人員退休或自願提早退休時支付。在支付經扣減的退休金方面，第99章第7條訂明按月支付退休金受該條例第26條所規限。根據第26條，如退休人員再度受聘擔任公職，有關的退休金可在該人員再度受聘之後的服務期間暫停支付。

14. 因此，若行使該條例第26(1)條所賦予的酌情權，第99章的公職人員在退休後再度受聘擔任公職成為主要官員時，他們的每月退休金將會暫停發放。

C. 政府規管向再度受聘擔任公職的退休人員支付每月退休金的現行做法

15. 據公務員事務局在2000年1月12日發給立法會公務員及資助機構員工事務委員會的文件(立法會CB(2)1758/01-02(02)號文件)所載，政府的現行做法是，倘正在領取退休金的退休人員再度受聘擔任政府職位，他們的每月退休金將按退休金法例暫停發放。

16. 現時政府當局建議在退休公職人員擔任主要官員的服務期間，他們根據香港法例第89章和第99章所享有的每月退休金不會暫停發放，似乎偏離政府的一貫做法。在此方面或可要求政府當局解釋：

- (a) 為何建議對該等人員採取不同的安排；
- (b) 會否擴大此項安排的適用範圍，以至包括所有再度受聘擔任公職的退休公職人員；及
- (c) 若(b)項的答案為“否”，受聘擔任主要官員與受聘擔任其他公職的退休公職人員在待遇上有此差別是否合法。

未屆退休年齡的在職公務員

17. 政府當局建議，在獲任命為主要官員時未屆最早退休年齡的在職公務員如參加了新退休金計劃，將可獲准辭職，以及按照行政長官根據香港法例第99章第11(2)條作出的指示，即時獲發放一筆過的退休金。該等人員的每月退休金將暫停發放，直至他們已屆最早退休年齡為止。然而，他們一旦辭去主要官員職務並不再出任公職，即使未屆最早退休年齡，暫停發放退休金的規定對他們亦不再適用。

18. 為確定上述安排在法律上是否沒有問題，必須參考香港法例第99章第7、11及24條。由於香港法例第89章並無就公職人員辭職時向其支付退休金的事宜作出規定，故該條例不適用於此方面的分析。

19. 第99章第11(1)(j)條訂明，當某人員完成不少於10年的符合領取退休金利益資格的服務期後，在公務員事務局局長批准之下辭職，可獲批予退休金。第11(2)條訂明，除非行政長官另有指示，否則批予該人員的退休金是延付退休金。“延付退休金”是指已批予某人員但延至該人員年屆55歲時始支付的退休金。若某人員根據第99章第24條行使選擇權，他可獲發放經折算的退休酬金。第24(6)(a)條規定，經折算的退休酬金須支付予在年屆55歲時具有資格領取延付退休金的人員。如行政長官已根據第11(2)條就退休金作出指示，經折算的退休酬金須在該退休金假若是延付退休金時本會首次須予支付時支付。這意味即

使行政長官已按照第99章第11(2)條作出指示，憑藉第24(6)(a)(ii)條支付的經折算的退休酬金亦只有在有關人員年屆55歲時才能支付。

20. 如擬在獲任命為主要官員但未到55歲的人員辭去政府職務後，隨即向他們支付經折算的退休酬金，第99章第24(6)(b)條應可提供適當的法律權限。根據該條文，行政長官可就個別情況，指示某筆經折算的退休酬金須於指示所指明的日期支付，而該日期為較該筆經折算的退休酬金若非有此指示即須根據第24(6)(a)條支付的日期為早者，亦即在有關人員年屆55歲之前。

21. 至於按月支付的經扣減的退休金，看來若行政長官準備根據第99章第11(2)條作出指示，每月退休金將可按該項指示所指明於有關人員年屆55歲前的任何時間支付。因此，指示在有關人員未到55歲而辭去主要官員職務並不再出任公職後，向他們支付每月退休金，似乎是在第99章第11(2)條所訂行政長官的權力範圍內。

結論

22. 從上述分析可得出以下結論：

- (a) 若行政長官根據香港法例第99章第11(2)條行使權力，在出任主要官員職位前已根據該條例第11(1)(j)條辭職的人員，可於一個較他們年屆55歲之日為早的日期開始領取每月退休金。
- (b) 行政長官應援用香港法例第99章第24(6)(b)條所賦予的權力，才能在上文(a)段所指的人員年屆55歲之前向他們支付一筆過的退休金。
- (c) 第89章的公職人員如在出任主要官員職位前從政府退休，將有權在退休時領取一筆過的退休金。根據香港法例第89章第11條，發放予該等人員的每月退休金可在該等人員的同意下暫停支付。政府的現行做法是在此情況下暫停支付每月退休金。
- (d) 第99章的公職人員如在出任主要官員職位前從政府退休，將有權在退休時領取一筆過的退休金。根據該條例第26(1)條，有關的每月退休金可在他們受聘為主要官員之後的服務期間暫停支付。這是政府現時採取的做法。
- (e) 政府當局建議受聘為主要官員的退休公職人員所享有的每月退休金不會暫停發放，似乎偏離政府的一貫做法，對受聘擔任主要官員與受聘擔任其他公職的退休公職人員未能一視同仁。

連附件

立法會秘書處

法律事務部

2002年5月13日

6. 可批予退休金的情況

(1) 在符合第(2)款的規定下，除非根據本條例或根據本條例所訂規例另有規定，否則不得根據本條例向擔任設定職位的任何人員批予退休金、酬金或其他津貼，但如該人員於以下任何一種情況自公職服務退休，則屬例外——（由 1987 年第 36 號第 36 條修訂）

- (a) 如該人員是法官或區域法院法官——（由 1998 年第 25 號第 2 條修訂）
 - (i) 於年屆 55 歲之時或之後退休；或
 - (ii) 獲行政長官批准而於年屆 45 歲之時或之後退休；（由 1970 年第 34 號第 3 條代替。由 1976 年第 2 號第 3 條修訂；由 1987 年第 36 號第 36 條修訂）
- (aa) 如該人員並非法官或區域法院法官，且一如第 8 條所規定於年屆正常退休年齡之時或之後退休，或獲行政長官批准於年屆 45 歲之時或之後退休；（由 1970 年第 34 號第 3 條增補。由 1976 年第 2 號第 3 條修訂；由 1987 年第 36 號第 36 條修訂；由 1998 年第 25 號第 2 條修訂）
- (b) 如該人員轉任其他公職——
 - (i) 於其年屆某一年齡之時或之後退休，而該年齡乃根據適用於其最後受僱的服務的法律或規例准許其享有退休金而退休者；或
 - (ii) 於任何其他情況下退休，而該等情況乃根據適用於其最後受僱的服務的法律或規例准許其享有退休金或酬金而退休者，但對於以經已結婚或即將結婚為理由而退休的女性人員，第(ii)節不得適用；（由 1987 年第 36 號第 36 條代替）
- (c) 其職位被取消；
- (d) 遭迫令退休，而該迫令退休是為利便改善其所屬部門的組織，藉以提高工作效率或更符合經濟效益者；
- (e) 行政長官信納有關的醫學證據，而該醫學證據是表明該人員因精神欠妥或身體衰弱而無能力執行其職務，且該種欠妥或衰弱相當可能屬永久性者；（由 1987 年第 36 號第 36 條修訂）
- (f) （由 1987 年第 36 號第 36 條廢除）
- (g) 於本條的上述各段並無述及的情況下退休，而該等情況是該人員根據《1911 至 1947 年退休金（領地總督及其他）法令》*（1947 c. 12 U.K.）具有資格享有退休金者；
- (h) 於按照任何補償計劃退休；（由 1987 年第 36 號第 36 條增補）

6. Circumstances in which pension may be granted

(1) Subject to subsection (2), unless otherwise provided under this Ordinance or regulations made thereunder no pension, gratuity or other allowance shall be granted under this Ordinance to any officer holding an established office except on his retirement from the public service in one of the following cases— (*Amended 36 of 1987 s. 36*)

- (a) in the case of a judge or a district judge—
 - (i) on or after attaining the age of 55 years; or
 - (ii) on or after attaining the age of 45 years when such retirement is with the approval of the Chief Executive; (*Replaced 34 of 1970 s. 3. Amended 2 of 1976 s. 3; 36 of 1987 s. 36*)
- (aa) in the case of an officer other than a judge or a district judge, on or after attaining the normal age of retirement, as provided in section 8, or the age of 45 years when such retirement is with the approval of the Chief Executive; (*Added 34 of 1970 s. 3. Amended 2 of 1976 s. 3; 36 of 1987 s. 36*)
- (b) in the case of transfer to other public service—
 - (i) on his retirement on or after attaining the age at which he is permitted by the law or regulations of the service in which he is last employed to retire on pension; or
 - (ii) on his retirement in any other circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity, but subparagraph (ii) shall not apply in the case of a female officer who retires for the reason that she has or is about to be married; (*Replaced 36 of 1987 s. 36*)
- (c) on the abolition of his office;
- (d) on compulsory retirement for the purpose of facilitating improvement in the organization of the department to which he belongs, by which greater efficiency or economy may be effected;
- (e) on medical evidence to the satisfaction of the Chief Executive that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent; (*Amended 36 of 1987 s. 36*)
- (f) (*Repealed 36 of 1987 s. 36*)
- (g) on retirement in circumstances, not mentioned in the preceding paragraphs of this section, rendering him eligible for a pension under the Pensions (Governors of Dominions, &c.) Acts 1911 to 1947 (1947 c. 12 U.K.);
- (h) on retirement in accordance with any compensation scheme; (*Added 36 of 1987 s. 36*)

* “《1911 至 1947 年退休金（領地總督及其他）法令》”乃“Pensions (Governors of Dominions, & c.) Acts 1911 to 1947”之譯名。

- (i) 在符合第(2)款的規定下，為了公眾利益而退休；（由 1987 年第 36 號第 36 條增補）
- (j) 在符合第(2)款的規定下，於政府行使紀律懲處權而被迫令退休；（由 1987 年第 36 號第 36 條增補）

但可按照本條例條文將酬金批予以經已結婚或即將結婚為理由而退休的女性人員，即使根據本條該女性人員並不具有獲批予退休金、酬金或其他津貼的資格。

(2) 除行政長官另有指示外，批予第(1)(i)或(j)款所適用人員的退休金、酬金或其他津貼，在該人員年屆 55 歲之前不得支付。（由 1987 年第 36 號第 36 條增補）

(3) 退休金須按月支付；如收受人提出要求，則可隔較長的期間支付。（由 1993 年第 4 號第 5 條增補）

（由 1999 年第 63 號第 3 條修訂）

- (i) subject to subsection (2), on retirement in the public interest; (*Added 36 of 1987 s. 36*)
- (j) subject to subsection (2), on compulsory retirement in exercise of disciplinary powers of punishment by the Government: (*Added 36 of 1987 s. 36*)

Provided that a gratuity may be granted to a female officer, in accordance with the provisions of this Ordinance, who retires for the reason that she has married or is about to marry, notwithstanding that she is not otherwise eligible under this section for the grant of any pension, gratuity or other allowance.

(2) Unless otherwise directed by the Chief Executive, pension, gratuity or other allowance granted to an officer to whom subsection (1)(i) or (j) applies shall not be payable until the officer attains the age of 55 years. (*Added 36 of 1987 s. 36*)

(3) A pension shall be paid in monthly instalments, or less frequently if so requested by the recipient. (*Added 4 of 1993 s. 5*)

(*Amended 63 of 1999 s. 3*)

8. 迫令退休

(1) 除法官或區域法院法官外，擔任設定職位人員的正常退休年齡為年屆 55 歲： (由 1998 年第 25 號第 2 條修訂)

但——

(a) 行政長官可批准任何此等人員在年屆該年齡之後繼續服務；

(b) 於 1957 年 4 月 1 日時是擔任設定職位的女性人員，可選擇年屆 50 歲之時退休，但須於其年屆 49 歲之時或之前以書面將此項選擇通知行政長官，而此項選擇是不得撤銷者。 (由 1970 年第 34 號第 4 條代替。由 1976 年第 2 號第 5 條修訂；由 1987 年第 36 號第 36 條修訂；由 1999 年第 63 號第 3 條修訂)

(2)-(3) (由 1987 年第 36 號第 36 條廢除)

11. 再度受聘時暫停支付退休金等

如根據本條例已獲批予退休金的人再度受聘擔任公職，或受聘於補助機構服務，而該服務乃行政長官藉憲報公告決定為就本條而言屬公職服務者，則有關的退休金可在該人的同意下，於其擔任公職或在補助機構服務期間(視屬何情況而定)，暫停支付。

(由 1993 年第 4 號第 8 條代替。由 1999 年第 63 號第 3 條修訂)

8. Compulsory retirement

(1) The normal age of retirement of an officer, other than a judge or a district judge, holding an established office shall be on attaining the age of 55 years:

Provided that—

(a) the Chief Executive may approve any such officer's continued service after attaining such age;

(b) a female who held an established office on 1 April 1957 may elect to retire on attaining the age of 50 years by giving to the Chief Executive notice in writing of such election on or before attaining the age of 49 years and such election shall be irrevocable. (Replaced 34 of 1970 s. 4. Amended 2 of 1976 s. 5; 36 of 1987 s. 36; 63 of 1999 s. 3)

(2)-(3) (Repealed 36 of 1987 s. 36)

11. Suspension of pension on reappointment, etc.

If a person to whom a pension has been granted under this Ordinance is reappointed to the public service, or appointed to service in a subvented organization which is for the purposes of this section determined to be public service by the Chief Executive by notice in the Gazette, payment of the pension may, with the person's consent, be suspended during the period of his service in the public service or the organization, as the case may be.

(Replaced 4 of 1993 s. 8. Amended 63 of 1999 s. 3)

23. 酬金及經扣減的退休金

(1) 除第(7)款另有規定外，根據本條例獲批予退休金的任何人員，如已按照下文規定行使其選擇權，而在此情況而非在任何其他情況下，該人員須獲付予另一項退休金以代替根據本條例批予的退休金，是項退休金可按人員所作的選擇而分別為根據本條例所批退休金的百分之七十五、八十、八十五、九十或九十五，並且須連同是項退休金獲付予一筆相等於如上述般從退休金每年扣減的款額 14 倍的酬金。(1954 年 A44 號政府公告；1962 年 A34 號政府公告；1983 年第 249 號法律公告)

(2) 第(1)款提述的選擇權，最遲須於緊接該人員退休日期之前的一日行使；如已行使選擇權，則最遲可於緊接該人員退休日期之前的一日將之撤銷；

但行政長官如覺得在所有情況下容許人員在上述日期和根據本條例實際付予該人員退休金的日期之間，隨時行使選擇權或撤銷先前作出的選擇，均屬於公平者，可如此地行事。(1999 年第 63 號第 3 條)

(3) 除第(2)款條文另有規定外，如人員已行使選擇權，則就關乎根據本條例批予該人員的任何退休金而言，其決定是不得撤銷的。(1976 年第 17 號法律公告)

(4) 如未行使選擇權的人員在最終退休後去世，但在去世前未根據本條例獲付予退休金，則行政長官可按照第(1)款批予該人員酬金及經扣減的退休金，猶如該人員已於去世之前行使選擇權收取酬金和按百分之七十五的比率收取批予他的退休金一樣。(1960 年 A90 號政府公告；1962 年 A34 號政府公告；1999 年第 63 號第 3 條)

(5) 凡人員行使選擇權，其所作出選擇的日期，就其致予庫務署署長的書面通知而言，須當作為接獲該書面通知的日期。(1976 年第 226 號法律公告)

(6) 就再度受僱的人員或領取退休金者而言，須按其就先前受僱的服務是否有行使選擇權而將他當作是是否有就其再度受僱的服務行使選擇權，即使他先前受僱的服務並無選擇權可供行使者，亦無例外。(1976 年第 17 號法律公告)

(7) 凡人員按照補償計劃退休或離職，經扣減的退休金和代替退休金扣減額的酬金，均須為按照適用於該人員的補償計劃所規定者。

(1987 年第 36 號第 49 條)

23. Gratuity and reduced pension

(1) Subject to paragraph (7), an officer to whom a pension is granted under the Ordinance shall, if he has exercised his option as hereinafter provided, but not otherwise, be paid in lieu of such pension a pension at the rate of 75, 80, 85, 90 or 95 per cent of such pension, respectively, as he shall have exercised his option, together with a gratuity equal to 14 times the amount of the annual reduction so made in the pension. (G.N.A. 44 of 1954; G.N.A. 34 of 1962; L.N. 249 of 1983)

(2) The option referred to in paragraph (1) shall be exercisable, and if it has been exercised may be revoked, not later than the day immediately preceding the date of such officer's retirement:

Provided that the Chief Executive may, if it appears to him equitable in all the circumstances so to do, allow him to exercise the option or revoke an option previously exercised at any time between that date and the actual date of award of pension under the Ordinance. (63 of 1999 s. 3)

(3) Subject to the provisions of paragraph (2), if an officer has exercised the option his decision shall be irrevocable so far as concerns any pension to be granted to him under the Ordinance. (L.N. 17 of 1976)

(4) If an officer who has not exercised the option dies after he has finally retired but before a pension has been awarded under the Ordinance, it shall be lawful for the Chief Executive to grant a gratuity and a reduced pension as provided in paragraph (1), as if the officer before his death had exercised his option to receive a gratuity and 75 per cent of the pension granted to him. (G.N.A. 90 of 1960; G.N.A. 34 of 1962; 63 of 1999 s. 3)

(5) The date of the exercise of the option by an officer shall be deemed to be the date of the receipt of his written notification addressed to the Director of Accounting Services. (L.N. 226 of 1976)

(6) A re-employed officer or pensioner shall be deemed to have exercised, or not to have exercised, in respect of his service subsequent to re-employment, the said option, according as he exercised, or did not exercise, such option in respect of his previous service even if, in respect of such previous service, the option was not available to him. (L.N. 17 of 1976)

(7) Where an officer retires or leaves the service in accordance with any compensation scheme, the reduced pension and the gratuity in lieu of the reduction in the pension shall be in accordance with the compensation scheme applicable to the officer.

(36 of 1987 s. 49)

7. 支付退休金的時間

除第 26 條另有規定外，批予任何人員的退休金須按月分期支付，如收受人提出要求，則可隔較長的期間支付，此外——（由 1993 年第 4 號第 17 條修訂）

- (a) 如該人員為第 11(1)(e)、(f) 或 (j) 條所適用者——
- (i) 凡該人員為在職人員，該退休金須延至他年屆 55 歲時始支付；或
 - (ii) 凡該人員為附表人員，並於 1987 年 7 月 1 日或之後受聘或再度受聘任職政府，則該退休金須延至他年屆 60 歲當日始支付，或延至他年屆根據第 10(3) 條發出並適用於批予該退休金時該人員所隸屬的職級或職系的公告所訂明的年齡時始支付，該兩個日期須以較早者為準；或
 - (iii) 凡該人員是在 1987 年 7 月 1 日或之後受聘，且並非附表人員，該退休金須延至他年屆 60 歲時始支付，或如屬行政長官有所指示的情況，則該退休金須延至指示所指明的一個較根據本段而定的日期為早的日期始支付；（由 1999 年第 63 號第 3 條修訂）
- (b) 凡該退休金是根據補償計劃而批予的，該退休金須按補償計劃所訂明而在該人員根據第 11(1)(i) 條退休時始支付；及
- (c) 如屬任何其他情況，則該退休金須在該人員退休後盡早支付。
(由 1988 年第 61 號第 2 條代替)

7. Time for payment of pension

Subject to section 26, payment of a pension granted to an officer shall be paid in monthly instalments, or less frequently if so requested by the recipient, and shall— (Amended 4 of 1993 s. 17)

- (a) in case he is an officer to whom section 11(1)(e), (f) or (j) applies—
- (i) where he is a serving officer, be deferred until he attains the age of 55 years; or
 - (ii) where he is a Scheduled officer who is or was appointed or re-appointed to service under the Government on or after 1 July 1987, be deferred until the day on which he attains the age of 60 years or the age prescribed by a notice under section 10(3) which is applicable to the rank or grade held by him at the time when the pension is or was granted, whichever of those days is the earlier; or
 - (iii) where he is an officer appointed on or after 1 July 1987, other than a Scheduled officer, be deferred until he attains the age of 60 years, or in any such case where the Chief Executive so directs, be deferred until such day, being a day which is earlier than would otherwise be the case under this paragraph, as is specified in the direction; (Amended 63 of 1999 s. 3)
- (b) where the pension is granted under a compensation scheme, be made upon the retirement of the officer under section 11(1)(i) as prescribed in the compensation scheme; and
- (c) in any other case, be made as soon as possible after the retirement of the officer.

(Replaced 61 of 1988 s. 2)

10. 退休年齡

(1) 除第(2)、(3)及(4)款另有規定外，在1987年7月1日或之後受聘或再度受聘任職政府的人員，不論是否由其他公職轉任，其正常退休年齡均為他年屆60歲時。

(2) 除非是第(3)款適用的附表人員，否則任何在職人員的退休年齡，均為他年屆60歲時：

但該在職人員——

- (a) 可按照第11(1)(b)(i)條在早於60歲時自願退休；及
- (b) 須於根據(a)段退休前，按公務員事務局局長所指明的通知期，向公務員事務局局長發出退休通知書。(由1997年第362號法律公告修訂)

(3) 任何附表人員，如為在職人員或為1987年7月1日或之後受聘或再度受聘任職政府者，其退休年齡為他年屆60歲時；或如該附表人員所屬職級或職系或所屬職級或職系的類別為附表所指明者，而就該職級或職系或該類別的職級或職系而言，一個少於60歲(但不少於55歲)的年齡已由——

(a) 行政長官(如附表人員屬首長級人員)；或 (由1999年第63號第3條修訂)

(b) 有關的部門首長(如附表人員屬高級人員或員佐級人員)，

為施行本款而在憲報刊登公告予以指明，而該公告並未有撤回，則該附表人員的退休年齡即為該如此指明的年齡：(由1988年第61號第3條修訂)

但任何附表人員——

- (i) 可按第11(1)(b)(ii)或(iii)條的規定早於根據本款訂明的退休年齡自願退休；及
- (ii) 須於根據第(i)段退休前，按公務員事務局局長或有關的部門首長(視屬何情況而定)所指明的通知期，向公務員事務局局長(如該附表人員為部門首長)或向有關的部門首長(如該附表人員並非部門首長)發出退休通知書。(由1997年第362號法律公告修訂)

(4) 行政長官可批准本條所適用的人員在年屆其退休年齡後繼續服務。(由1999年第63號第3條修訂)

(5) 於1987年7月10日在憲報第206號法律公告、第207號法律公告、第208號法律公告、第209號法律公告、第210號法律公告及第211號法律公告所分別刊登的6項命令，每一項均須視作為施行第(3)款而刊登的公告。(由1988年第61號第4條增補)

10. Retirement age

(1) Subject to subsections (2), (3) and (4), the normal retirement age of an officer who is appointed or re-appointed to service under the Government on or after 1 July 1987, whether on transfer from other public service or otherwise, shall be when he attains the age of 60 years.

(2) The retirement age of a serving officer, other than a Scheduled officer to whom subsection (3) applies, shall be when he attains the age of 60 years:

Provided that such serving officer—

- (a) may retire voluntarily as provided in section 11(1)(b)(i) earlier than the age of 60 years; and
- (b) shall, prior to his retirement under paragraph (a), give to the Secretary for the Civil Service written notice of retirement of such duration as is specified by the Secretary for the Civil Service.

(3) The retirement age of a Scheduled officer, who is either a serving officer or an officer appointed or re-appointed to service under the Government on or after 1 July 1987, shall be when he attains the age of 60 years or in case he holds a rank or grade, or a class of rank or grade, specified in the Schedule and in relation to which an age, being an age less than 60 years but not less than 55 years, is specified by—

- (a) in the case of a Scheduled officer of a directorate rank, the Chief Executive; or (*Amended 63 of 1999 s. 3*)
- (b) in the case of a Scheduled officer of a senior rank or rank and file grade, the Head of the Department concerned,

in a notice published for the purposes of this subsection in the Gazette and not withdrawn, the age so specified: (*Amended 61 of 1988 s. 3*)

Provided that a Scheduled officer—

- (i) may retire voluntarily as provided in section 11(1)(b)(ii) or (iii) earlier than the retirement age prescribed under this subsection; and
- (ii) shall, prior to his retirement under paragraph (i), give to the Secretary for the Civil Service (in the case of a Head of Department) or to the Head of Department concerned (in the case of any Scheduled officer other than a Head of Department) written notice of retirement of such duration as is specified by the Secretary for the Civil Service or the Head of Department, as the case may be.

(4) The Chief Executive may approve the continued service of an officer, to whom this section applies, after he attains his retirement age. (*Amended 63 of 1999 s. 3*)

(5) Each of the 6 orders published in the Gazette on 10 July 1987 in Legal Notices Nos. 206, 207, 208, 209, 210 and 211, respectively, shall be regarded as being a notice published for the purposes of subsection (3). (*Added 61 of 1988 s. 4*)

11. 可就正常服務批予退休金的情況

- (1) 除非本條例另有規定，否則不得批予任何人員退休金，但就該人員以文職身分任職於政府的服務期及就下列情況而批予者，則不在此限——
- (a) 除第 27(2) 條另有規定外，當該人員在年屆其退休年齡之時或之後退休，並且是在完成不少於 10 年的符合領取退休金利益資格的服務期後退休；
- (b) 除第 27(2) 條另有規定外，當該人員在完成不少於 10 年的符合領取退休金利益資格的服務期後在以下時間自願提早退休——（由 1993 年第 4 號第 18 條修訂）
- (i) 如屬第 10(2) 條適用的在職人員，為他年屆 55 歲之時或之後；
- (ii) 如屬第 10(3) 條適用的首長級或高級的附表人員，為他年屆 55 歲之時或之後；
- (iii) 如屬第 10(3) 條適用的員佐級的附表人員，為他年屆 50 歲之時或之後；
- (c) 如該人員轉任其他公職——
- (i) 當他年屆某一年齡之時或之後退休，而該年齡為適用於他最後受僱的服務的法律或規例准許他享有退休金而退休者；或
- (ii) 當他在任何其他情況下退休，而該等情況為適用於他最後受僱的服務的法律或規例准許他享有退休金或酬金而退休者，
- 但對於以經已結婚或即將結婚為理由而退休的女性人員，第 (ii) 節並不適用；
- (d) 當該人員在其職位被取消時退休，並且是在完成不少於 2 年的符合領取退休金利益資格的服務期後退休；
- (e) 在符合第 (2) 款的規定下，當該人員為了公眾利益而退休，不論他是否已完成不少於 10 年的符合領取退休金利益資格的服務期；
- (f) 在符合第 (2) 款的規定下，並除第 29(1)(a) 條另有規定外，當該人員因政府行使紀律懲處權而遭迫令退休，不論他是否已完成不少於 10 年的符合領取退休金利益資格的服務期；
- (g) 當該人員遭迫令退休而退休，而該迫令退休是為便利改善其在職部門的組織，藉以提高工作效率或更符合經濟效益者，並且是在完成不少於 2 年的符合領取退休金利益資格的服務期後退休；

11. Circumstances in which pension may be granted for normal service

- (1) Unless otherwise provided in this Ordinance, no pension shall be granted to an officer except in respect of his service in a civil capacity under the Government and except—
- (a) subject to section 27(2), upon his retirement on or after attaining his retirement age, and after completion of qualifying service of not less than 10 years;
- (b) subject to section 27(2), upon his voluntary early retirement after completion of qualifying service of not less than 10 years—
(Amended 4 of 1993 s. 18)
- (i) in the case of a serving officer to whom section 10(2) applies, on or after his attaining the age of 55 years;
- (ii) in the case of a Scheduled officer of a directorate rank or senior rank to whom section 10(3) applies, on or after his attaining the age of 55 years;
- (iii) in the case of a Scheduled officer of the rank and file grade to whom section 10(3) applies, on or after his attaining the age of 50 years;
- (c) in the case of transfer to other public service—
- (i) upon his retirement on or after attaining the age at which he is permitted by the law or regulations of the service in which he was last employed to retire on pension; or
- (ii) upon his retirement in any other circumstances in which he is permitted by the law or regulations of the service in which he was last employed to retire on pension or gratuity, but subparagraph (ii) shall not apply in the case of a female officer who retires for the reason that she has or is about to be married;
- (d) upon his retirement on the abolition of his office, and after completion of qualifying service of not less than 2 years;
- (e) subject to subsection (2), upon his retirement in the public interest, whether or not he has completed qualifying service of not less than 10 years;
- (f) subject to subsection (2) and section 29(1)(a), upon his compulsory retirement in exercise of disciplinary powers of punishment by the Government, whether or not he has completed qualifying service of not less than 10 years;
- (g) upon his compulsory retirement for the purpose of facilitating improvement in the organization of the department in which he is serving, by which greater efficiency or economy may be effected, and after completion of qualifying service of not less than 2 years;

- (h) 當有醫學證據令行政長官信納該人員是因精神欠妥或身體衰弱而無能力執行其職責，且該種欠妥或衰弱相當可能屬永久性者，而該人員是在完成不少於 5 年的符合領取退休金利益資格的服務期後因該醫學證據而退休的；（由 1999 年第 63 號第 3 條修訂）
- (i) 當該人員按照任何補償計劃而退休，不論他是否已完成不少於 10 年的符合領取退休金利益資格的服務期；
- (j) 在符合第 (2) 款的規定下，並除第 27(2) 條另有規定外，當該人員完成不少於 10 年的符合領取退休金利益資格的服務期後，在公務員事務局局長批准之下辭職；或（由 1997 年第 362 號法律公告修訂）
- (k) 除第 27(2) 條另有規定外，當該人員達到第 21 條所指明的最高退休金額時退休。（由 1993 年第 4 號第 18 條修訂）

(2) 除非行政長官另有指示，否則批予第 (1)(e)、(f) 或 (j) 款適用人員的退休金是延付退休金。（由 1999 年第 63 號第 3 條修訂）

(3) 根據第 (1)(a) 或 (b) 款退休，或根據第 (1)(j) 款辭職，須在人員將其意圖通知公務員事務局局長後，按公務員事務局局長所指明者而服務一段期間後方可退休或辭職。（由 1997 年第 362 號法律公告修訂）

- (h) upon his retirement on medical evidence that satisfies the Chief Executive that the officer is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent, and after completion of qualifying service of not less than 5 years; (*Amended 63 of 1999 s. 3*)
- (i) upon his retirement in accordance with any compensation scheme, whether or not he has completed qualifying service of not less than 10 years;
- (j) subject to subsection (2) and section 27(2), upon his resignation from the service, with the approval of the Secretary for the Civil Service, after completion of qualifying service of not less than 10 years; or
- (k) subject to section 27(2), upon his retirement on attaining the maximum pension specified in section 21. (*Amended 4 of 1993 s. 18*)

(2) Unless otherwise directed by the Chief Executive, a pension granted to an officer to whom subsection (1)(e), (f) or (j) applies shall be a deferred pension. (*Amended 63 of 1999 s. 3*)

(3) Retirement under subsection (1)(a) or (b), or resignation under subsection (1)(j), shall take place after the officer has served such period of service, as may be specified by the Secretary for the Civil Service, after the officer has notified the Secretary for the Civil Service of his intention to retire or resign.

24. 經折算的退休酬金與經扣減的退休金

(1) 除第(5)及(7)款另有規定外，任何根據本條例須獲批予任何退休金(根據第14條批予的退休金和根據第15條批予的額外退休金除外)的人員，如已按照本條第(2)及(3)款行使其選擇權，則須支付該人員一項經扣減的退休金，以代替任何該項退休金或該等退休金的總額，是項經扣減的退休金可按照所行使的選擇權而為該項退休金的50%、55%、60%、65%、70%、75%、80%、85%、90%或95%，或為該等退休金的總額的某個相類的百分率，並且須連同是項經扣減的退休金支付該人員一筆經折算的退休酬金，其款額相等於如上述般從每年退休金或從每年退休金的總額扣減的款額的14倍。

(2) 第(1)款所提述的選擇權，最遲須於緊接該人員退休日期之前的一日行使；如已行使該選擇權，則最遲可於緊接該人員退休日期之前的一日將之撤銷；如是延付退休金，則最遲須於緊接該人員年屆根據第7(a)條須予支付延付退休金的年齡當日之前的一日，行使該選擇權或可將該選擇權撤銷；

但行政長官如覺得容許某人員在任何個案中，在上述日期和退休金或退休金總額須首次支付的實際日期之間的任何時間，行使該選擇權或撤銷前已行使的一項選擇權，有鑑於所有情況是公平的，則行政長官可如此行事。(由1999年第63號第3條修訂)

(3) 第(1)款所提述的選擇權——

(a) 以書面致予庫務署署長；及

(b) 述明按照該款的規定所作的經扣減的退休金在每年退休金或每年退休金的總額中所佔的比率，

而行使選擇權的日期須當作為庫務署署長接獲該選擇的日期。

(4) 除第(2)款關於撤銷選擇權的條文另有規定外，選擇權一經根據該款行使，即不可撤銷。

(5) 任何人員，如在退休後死亡，但在死亡前未有根據第(1)款行使一項選擇權，則須當作已行使該項選擇權而選擇將其退休金或各等退休金的總額扣減50%，而經折算的退休酬金和經扣減的退休金須按照第(1)款予以支付。

(6) (a) 除(c)段及第(7)款另有規定外，經折算的退休酬金須於以下時間支付——

(i) 如有關的退休金為延付退休金，則於該退休金根據第7條首次須予支付時；

24. Commuted pension gratuity and reduced pension

(1) Subject to subsections (5) and (7), an officer to whom any pension is to be granted under this Ordinance, other than a pension under section 14 and an additional pension under section 15, shall, if he has exercised his option in accordance with subsections (2) and (3) of this section, be paid, in lieu of any such pension or aggregate of the pensions, a reduced pension at the rate of 50, 55, 60, 65, 70, 75, 80, 85, 90 or 95% of the pension, or a similar percentage of the aggregate of the pensions, according to the option exercised, together with a commuted pension gratuity equal to 14 times the amount of the reduction so made in the annual pension or aggregate annual pensions.

(2) The option referred to in subsection (1) shall be exercised, and if it has been exercised may be revoked, not later than the day immediately preceding the date of such officer's retirement or, in the case of a deferred pension, not later than the date immediately preceding the date on which such officer attains the age when the deferred pension is payable under section 7(a):

Provided that the Chief Executive may, if it appears to him equitable in all the circumstances so to do, allow an officer in any particular case to exercise the option, or revoke an option previously exercised, at any time between that date and the actual date when the pension or aggregate pensions is payable for the first time. (Amended 63 of 1999 s. 3)

(3) The option referred to in subsection (1) shall—

(a) be in writing addressed to the Director of Accounting Services; and

(b) state the rate of the reduced pension, in accordance with that subsection, in the annual pension or aggregate of the annual pension,

and the date of the exercise of the option shall be deemed to be the date on which the Director of Accounting Services receives the option.

(4) Subject to the provisions of subsection (2) as regards the revocation of an option, an option exercised under that subsection shall be irrevocable.

(5) An officer who dies before exercising an option under subsection (1) but after he has retired shall be deemed to have exercised the option to reduce his pension or aggregate pensions by 50% and the commuted pension gratuity and reduced pension shall be paid in accordance with subsection (1).

(6) (a) Subject to paragraph (c) and subsection (7), a commuted pension gratuity shall be payable—

(i) in case the relevant pension is a deferred pension, when that pension is payable under section 7 for the first time;

- (ii) 如行政長官已根據第 11(2) 條就有關的退休金作出指示，則於該退休金假若是延付退休金時本會首次須予支付時；
 - (iii) 如屬任何其他情況，則於有關的經扣減的退休金根據本條例首次須予支付時。
- (b) 行政長官可就個別情況，指示某筆經折算的退休酬金須於指示所指明的日期支付，而該日期為較該筆經折算的退休酬金若非有此指示即須根據 (a) 段支付的日期為早者。
- (c) 凡行政長官根據本款作出指示，則指示所關乎的經折算的退休酬金，須於指示所指明的日期支付。 (由 1988 年第 61 號第 5 條代替。由 1999 年第 63 號第 3 條修訂)
- (7) 凡任何人員按照任何補償計劃退休，經扣減的退休金和經折算的退休酬金，須按照適用於該人員的補償計劃計算及支付。

- (ii) in case a direction is given by the Chief Executive under section 11(2) in relation to the relevant pension, when that pension would be payable for the first time if it were a deferred pension;
 - (iii) in any other case, when the relevant reduced pension is payable under this Ordinance for the first time.
- (b) The Chief Executive may, as regards a particular case, direct that a commuted pension gratuity shall be payable on a day specified in the direction, being a day which is earlier than the day on which the gratuity would otherwise fall to be paid under paragraph (a).
- (c) Where the Chief Executive gives a direction under this subsection, the commuted pension gratuity to which the direction relates shall be payable on the day specified in the direction. (Replaced 61 of 1988 s. 5. Amended 63 of 1999 s. 3)
- (7) Where an officer retires in accordance with any compensation scheme, the reduced pension and the commuted pension gratuity shall be computed, and shall be payable, in accordance with the compensation scheme applicable to the officer.

26. 再度受聘任職時暫停支付退休金

(1) 如具有資格領取退休金或已獲批予退休金的人員，再度受聘擔任公職，或受聘於補助機構服務，而該項服務屬行政長官藉憲報公告決定就本條而言屬公職服務者，則有關的退休金可在該人員再度受聘或受聘(視屬何情況而定)之後的服務期間，暫停支付。(由 1999 年第 63 號第 3 條修訂)

(2) 根據第 (1) 款暫停支付的退休金，須自該人員再度受聘或受聘之後的服務終止之日起支付。

26. Suspension of pension on re-appointment to the service

(1) If an officer who is eligible for a pension or to whom a pension has been granted is re-appointed to the public service, or appointed to service in any subvented organization which is determined to be public service for the purposes of this section by the Chief Executive by notice in the Gazette, the payment of the pension may be suspended during the period of his service after his re-appointment or appointment, as the case may be. (*Amended 63 of 1999 s. 3*)

(2) A pension that is suspended under subsection (1) shall be payable with effect from the date on which the service of the officer after his re-appointment or appointment ceases.