

24 June 2002

All Members of the Legislative Council

Dear Honourable Members,

**2002 Civil Service Pay Adjustment
Public Officers Pay Adjustment Bill**

We introduced the Public Officers Pay Adjustment Bill, which seeks to implement this year's pay reduction for civil servants and relevant public officers, into the Legislative Council on 5 June 2002. A Bills Committee has been formed to scrutinize the Bill. Since the announcement of the Administration's decision on the pay reduction, a lot of comments have been made in various quarters on the legislative approach adopted for this year's adjustment exercise. In response to these comments, I have set out the Administration's views in an article published in a number of newspapers today. A copy of the article is attached for your perusal.

It is our intention to obtain the Legislative Council's approval of the Bill within the current legislative session so that the pay reduction can be implemented with effect from 1 October 2002. Accordingly, pending deliberations in the House Committee, we have earlier today given notice of our intention to resume the second reading debate on the Bill at the Legislative Council meeting to be held on 10 July 2002. I appeal for your support to the Bill so that a justified pay reduction made in strict accordance with the established pay adjustment mechanism can be implemented in a timely manner and with certainty.

Yours sincerely,

(Joseph W P Wong)
Secretary for the Civil Service

Encl.

Pay Reduction by Legislation is Reasonable and Fair

On 5 June, the Administration introduced the Public Officers Pay Adjustment Bill (the Bill) for implementing the decision to reduce civil service pay this year into the Legislative Council, with the intention to seek enactment of the Bill within the current legislative session. Our decision to implement this year's civil service pay reduction by legislation has given rise to some controversy in the community. Some civil service unions and some members of the public are opposed to the legislative approach on the ground that the interests of civil servants would be undermined. I would like to address these concerns in this article.

Decision on pay reduction follows the existing mechanism

First, I must reiterate that this year's civil service pay adjustment exercise has been conducted in full accordance with the existing pay adjustment mechanism. Although we have embarked on a comprehensive review of the civil service pay policy and system, the Government has committed, and the staff sides have hitherto urged the Government, to follow the established mechanism in handling this year's civil service pay adjustment before any reforms are implemented. In determining this year's pay adjustment, the Administration has, as in the past, given careful consideration to all relevant factors under the existing mechanism, including the private sector net pay trend indicators, the state of the economy, budgetary considerations, changes in the cost of living, the staff sides' pay claims and civil service morale. As these factors are capable of having a positive and negative effect on the size of the civil service pay adjustment, the final decision can be a pay increase or a pay reduction. This year, we have decided to reduce, with effect from 1 October 2002, civil service pay in line with the net pay trend indicators, i.e. by 1.58% to 4.42%. This decision, which has taken full account of the views of civil servants and the overall interests of the community, is both reasonable and fair. Indeed, the community at large and many civil servants also find this justified and modest pay reduction acceptable.

The pay reduction decision has been made in strict accordance with the mechanism agreed by the Government and the civil service, and is generally accepted by the community. It is thus incumbent on us, as a responsible government, to take necessary steps to implement the decision with certainty. Otherwise, we will be criticized for failing our duties.

Legislation is the only means to implement the pay reduction with certainty

Enacting legislation to give effect to this year's civil service pay reduction is essentially a matter of implementation. It is a decision taken after careful and thorough deliberations within the Administration. As the Law Officer (Civil Law) and I have explained on various occasions, the contractual arrangements between the Government and the vast majority of serving civil servants do not contain an express provision authorising the Government to reduce pay. While the standard Memorandum on Conditions of Service applicable to civil servants provides that the Government reserves the right to alter any of the officer's terms of appointment and conditions of service should the Government at any time consider this to be necessary, the legal advice we have obtained is that based on decided cases the courts are unlikely to accept that this general power of variation applies to such a fundamental term as the salary. It would, therefore, not be safe to rely solely on this provision to reduce civil service pay. Without legislation, we cannot preclude the possibility that the Government might face legal challenges from individual civil servants even though the pay reduction has been determined in accordance with the established mechanism and is accepted by most civil servants. Should the court decide in a single case that there is inadequate legal basis for the Government to reduce civil service pay, it may lead to a proliferation of similar court actions. In such an eventuality, the stability of the civil service would be jeopardised. Moreover, as the public would criticise the Government for failing to give careful consideration to the legal implications beforehand, the good governance of the Government would also be seriously affected. In view of the foregoing, legislation is the only way to implement with certainty the decision on a civil service pay reduction.

General enabling legislation for civil service pay reduction and the Public Officers Pay Adjustment Bill are not mutually exclusive

A view has been expressed that it is inappropriate to legislate on a one-off basis, as would be the case for the Public Officers Pay Adjustment Bill which caters specifically for this year's pay adjustment for civil servants and other relevant public officers. Instead, the Government should consider enacting a piece of general enabling legislation to make clear that the annual pay adjustment may be upwards or downwards. We are prepared to give further thought to this suggestion. The suggested general enabling legislation for pay reduction and the Bill are, in fact, not mutually exclusive. If there is a consensus in the community and within the civil service on the merits of enacting such general enabling legislation to facilitate a pay reduction, the Government may in due course introduce a bill for this purpose into the

Legislative Council. But the most pressing issue that we need to tackle now is the implementation of this year's pay reduction decision, which has been made in accordance with the established mechanism. As it is generally considered that the size of this year's civil service pay reduction is acceptable, there is no justification for delaying the implementation of the decision.

Unreasonable to ask for both job security and compensation upon resignation

Under the Employment Ordinance, employees in the private sector are entitled to severance payment if they do not accept an offer of pay reduction. It has been suggested that individual civil servants should also be entitled to compensation if they choose to resign in the face of a pay reduction. I must point out that a vast majority of serving civil servants are employed on permanent and pensionable terms and enjoy job security until they reach the statutory retirement age. Except in specified circumstances, such as disciplinary action, the Government is not at liberty to dismiss these civil servants. Should individual civil servants choose to resign, their pension benefits will be determined according to the relevant legislation. Employees in the private sector, on the other hand, do not enjoy such job security. Their employers may terminate the employment contracts subject to payment of compensation as required by the Employment Ordinance. In view of this, when we consider the rights of the employees in the private sector, we should also bear in mind that their employment contracts are subject to termination by their employers. As far as civil servants are concerned, it would be difficult to justify, in addition to job security, the payment of compensation to those who resign in protest of a reasonable pay reduction.

Committee of Inquiry cannot resolve contractual issue

It has been suggested that in view of the differences between the Government and the staff sides on the pay reduction legislation, the matter should be put to a Committee of Inquiry to be set up under the 1968 Agreement signed between the Government and the major civil service staff associations for resolution. I should point out that there are clear provisions in the 1968 Agreement on the circumstances under which a Committee of Inquiry may be established. Recently, the Chief Executive has, in accordance with the 1968 Agreement, decided that there is no case to set up a Committee of Inquiry as this year's civil service pay adjustment has been determined on the basis of a settled public policy. In fact, in 1992 and 1994 respectively, the then Governor had for the same reason that the matter in dispute was a matter of settled public policy rejected the request of the staff side to set up a

Committee of Inquiry to look into certain matters concerning the pay and conditions of service of civil servants. Moreover, even if a Committee of Inquiry were to be established, and the Government, the central consultative councils and the staff associations were willing to accept the recommendations of the Committee of Inquiry, such recommendations would not bind the entire civil service. In other words, if we implemented the pay reduction without legislation, individual civil servants might still take the Government to court and the risk of legal challenge which I mentioned earlier would remain. In short, the establishment of a Committee of Inquiry would not resolve the practical, implementation problem which has arisen from the contractual arrangements between the Government and individual civil servants.

Overall interests of the community

Some people are opposed to the Public Officers Pay Adjustment Bill on the ground that the legislative approach would undermine the rights of civil servants. I do not share this view. While it is true that legislation affects certain pre-existing legal rights enjoyed by individuals, the key issue to address is whether the provisions of the legislation are reasonable and are in the overall interests of the community. The decision to reduce civil service pay this year has been made on the basis of a pay adjustment mechanism which has been in use for over twenty years and has been accepted by all civil servants. Moreover, the size of the pay reduction is fairly modest. The pay adjustment is thus both reasonable and fair to civil servants. It is also in the interests of the community at large. This is because the salaries of civil servants are paid from the public purse. Through legislation, we can remove the identified ambiguity in the contractual provision so that the decision to reduce civil service pay can be implemented with certainty. If it is generally accepted that civil service pay should be reduced in accordance with the existing pay adjustment policy and mechanism, one should support the enactment of the Public Officers Pay Adjustment Bill. If the pay reduction decision could not in the end be implemented, the public at large might be under the impression that civil servants are only concerned with their personal interests and are unwilling to share the burden with the community. Another possible consequence is that the Government will be unable to ameliorate the fiscal deficit. Such an outcome would be detrimental to the interests of both the civil service and the community at large.

Balance between rights of individuals and interests of the community

As far as the rights of employers and employees are concerned, the Government has from time to time amended the Employment Ordinance to, for

instance, prescribe working hours and rest days, clarify compensation details and stipulate that employees should not be dismissed during pregnancy or paid sick leave. The Government has also introduced, through legislation, mandatory registration schemes for various professions and imposed certain restrictions on eligibility to engage in specified trades. Such amendments and legislation have, to a certain extent, affected the contractual rights previously enjoyed by the employers and employees concerned. Yet they are generally supported because they are reasonable and fair, and have struck a balance between the concerns of individuals and the wider interests of the community.

Sharing the burden in time of difficulty

Some staff unions object to the implementation of the pay reduction by legislation, primarily because of the concern that this will set a precedent for the Government to curtail the conditions of service of civil servants in future by legislative means. I understand these concerns. But I must stress once again that the proposed Bill is a piece of one-off legislation to cater specifically for the implementation of this year's civil service pay reduction decision which has been made in accordance with the existing mechanism, no more and no less. Hence, I call upon staff unions to consider the pay reduction objectively and rationally. I also hope that all civil servants will demonstrate their commitment to the community they serve and their readiness to share the burden with the rest of the community.

Secretary for the Civil Service

June 2002