

**Suspension of Pension on Re-appointment to
the Public Service under the
Pensions Ordinance (Cap. 89) and
Pension Benefits Ordinance (Cap. 99)**

PURPOSE

This paper sets out the response of the Administration towards the enquiries raised by the Legal Service Division of the Legislative Council Secretariat regarding the exercise of discretion by the Chief Executive (CE) on pension suspension under the Pensions Ordinance (PO) (Cap. 89) and Pension Benefits Ordinance (PBO) (Cap. 99).

BACKGROUND

2. Under the Accountability System for Principal Officials, the CE has decided that serving civil servants who have reached the earliest permissible retirement ages under the respective pension schemes will be given approval to retire. They will receive their commuted pension gratuity upon retirement. Their monthly pension payment will not be subject to suspension during the term of his/her appointment as a principal official. Details of the retirement arrangements for pensionable civil servants under the Accountability System and the justifications are set out in LC Paper No. CB(2)1992/01-02(01) issued by the Administration in May 2002. A copy is attached at *Annex*. At the Finance Committee meeting on 16 June 2002, the Law Officer (Civil Law) further provided his advice on the exercise of the discretion by the CE in respect of pension suspension. He confirmed that the CE has not unlawfully fettered his discretion by announcing in advance that, as a matter of policy, he would not suspend the payment of pension of a pensioner who is appointed to the office of principal official during the term of his or her appointment.

3. In the light of the response from the Administration, the Legal Service Division of the Legislative Council Secretariat has requested the Administration to explain four issues –

- (a) how and why the policy declared by the CE is made on proper and relevant grounds;

- (b) how and why the policy is legally relevant to the exercise of the discretion by the CE under the PO and the PBO;
- (c) how and why the policy is consistent with the purposes of the enabling legislation; and
- (d) how and why the policy is not arbitrary or capricious.

The response of the Administration towards these enquiries is set out below.

RESPONSE

The Policy is Made on Proper and Relevant Grounds

4. We have provided a detailed account of the policy considerations for the retirement arrangements for civil servants appointed as Principal Officials in para. 7 of the paper at Annex. We consider these are on proper and relevant grounds.

5. It is essential for the policy to be formulated and announced in advance so that civil servants who are potential candidates for appointment as principal officials would know the terms and conditions to which their retirement or resignation from the civil service and appointment as principal officials would be subject.

The Policy is Legally Relevant under the Pensions Legislation

6. The suspension of pension is authorised by section 11 of the PO and section 26 of the PBO but the exercise of the authority is discretionary and not mandatory. In practice, since 1987, the Administration has, as a matter of policy, exercised its discretion to suspend the monthly pensions of pensioners under PBO who are re-appointed to public service or service in a relevant organization. As regards the pensioners under PO who are re-appointed to public service or service in a relevant organization, their consent is sought under section 11 of the Pensions Ordinance for the monthly pension to be suspended during such re-appointment. Exceptions to the pension suspension policy have been made in relation to part-time or short appointments in the public service or in a relevant organization. In respect of the pension arrangements for civil servants who retire to take up appointment as Principal Officials, it is a decision taken by CE not to exercise his discretion to suspend the pensions of former civil servants, rather than a decision to waive a

suspension which would otherwise apply.

The Policy is Consistent with the Purposes of the Enabling Legislation

7. The power to suspend monthly pensions under PO and PBO is discretionary. Given the policy considerations as detailed in para. 7 of the attached paper at Annex, we consider it appropriate and consistent with the purposes of the pensions legislation for the CE to exercise his discretion not to withhold the monthly pensions when these officers have reached the earliest permissible retirement age under their respective pension schemes. The arrangements, as announced, provide objective and reasonable criteria for the exercise of discretion by the CE, thus contributing to the transparency and consistency of the policy. Furthermore, the policy is applicable to a clear target group under specified circumstances, it has not in any way prejudged how the CE would exercise the discretion in relation to any other class of pensioner.

The Policy is Objective

8. The policy has been devised carefully having regard to the unique circumstances under the Accountability System and is only applicable to a clearly-defined group of pensioners. The discretion to be exercised by the CE is built on a reasonable basis with objective criteria. It is hence neither arbitrary nor capricious.

Civil Service Bureau
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LC Paper No. CB(2)1992/01-02(01)

**Legislative Council Subcommittee to
Study the Proposed Accountability System for
Principal Officials and Related Issues**

Retirement Arrangements for Pensionable Civil Servants

Purpose

This paper briefs Members of the proposed retirement arrangements for pensionable civil servants to be appointed as Principal Officials (PO) under the accountability system.

Existing Retirement Arrangements for Pensionable Civil Servants

2. The Government operates two statutory, non-contributory pensions schemes for civil servants who are employed on permanent and pensionable terms –

- (a) the Old Pension Scheme (OPS), governed by the Pensions Ordinance (Cap 89), is applicable to civil servants appointed before 1 July 1987; and
- (b) the New Pension Scheme (NPS), governed by the Pension Benefits Ordinance (Cap 99), is applicable to civil servants appointed on or after 1 July 1987 as well as officers formerly on the OPS but have opted to join the NPS.

The retirement age and circumstances for the grant of pension benefits under the two pension schemes are laid down in the pensions legislation.

3. Under the OPS, the normal retirement age is 55 but voluntary early retirement may be approved upon reaching the age of 45. Upon normal or early retirement, officers will be granted their pension benefits immediately. However, if an officer leaves before the age of 45, no pension benefits will be granted.

4. Under the NPS, the normal retirement age is 60 and for those officers who were appointed before 1 July 1987 and opted to join the NPS, they can choose to retire once they reach the age of 55. On retirement, they will be granted their pension benefits immediately. If an officer who has completed more than 10 years of service resigns from the civil service before he reaches the age of 55, he will be entitled to a deferred pension which will be payable when he reaches the age of 60 (if he is appointed on or after 1 July 1987) or 55 (if he is appointed before 1 July 1987 and opted to join the NPS).

5. The pensions legislation also provides that the monthly pension of a pensioner may be suspended if he is re-appointed to the public service or appointed to service in any subvented organizations determined to be public service for the purpose of pension suspension by the Chief Executive (CE) by notice in the Gazette. Since 1987, we have been invoking this provision to suspend the monthly pension of pensioners who are re-appointed to the public service. However, appointments which are of short-term or part-time nature are not subject to this arrangement.

Proposed Retirement Arrangements for Civil Servants Appointed as Principal Officials

6. We consider it appropriate to allow pensionable civil servants to retire or resign from the civil service for taking up the appointments as PO within the framework of the pension legislation –

- (a) for civil servants who have already reached the earliest permissible retirement age (45 under OPS or 55 under NPS), they will be given approval to retire immediately. In accordance with the pensions legislation, they will be granted both the commuted pension gratuity and monthly pension immediately on retirement under such circumstances;
- (b) for civil servants who have not reached the earliest permissible retirement age, they will be given approval to resign if they are on the NPS. The CE will make a directive under the Pension Benefits Ordinance to grant the commuted pension gratuity immediately on resignation. As regards the monthly pension, it will be suspended until they reach their earliest permissible retirement age or after they have stepped down from their PO positions and are no longer in the public service, whichever is

the earlier; and

- (c) to provide a clean break from the civil service, the retired/resigned civil servants will be given approval to encash all their accumulated leave balance and leave passage account on a no-gain-no-loss basis.

7. We believe that the above retirement arrangements are appropriate having regard to the following –

- (a) the accountability system is an important initiative to enhance the governance of the Hong Kong Special Administrative Region. It is therefore essential to allow the CE to choose from within the civil service the persons he considers to be the most suitable for particular positions and not to place any unnecessary impediment on the transfer arrangements;
- (b) the civil servants leaving the civil service to take up the PO appointments will not receive any enhanced pension. They will only get what they have earned for the period they have served in the civil service;
- (c) it is not appropriate to withhold the monthly pension due to pensioners when they become principal officials because :
 - (i) the nature of the appointment is very different from a normal public service appointment : there is no security of tenure and the principal official may be required to step down any time for major policy failures.
 - (ii) more importantly, the remuneration of the principal official does not contain any gratuity or retirement benefits (other than the statutory minimum MPF). (At present, if a pensioner is re-employed in the public service, he receives a contract gratuity.); and
- (d) the purpose of the special arrangement for the ex civil servant principal officials (i.e. they can receive their monthly pension once they step down from the PO position and are no longer in the public service although they have not reached their

permissible retirement age) is not to unnecessarily inhibit younger officers to consider the PO appointments, if offered. It is also conditional on their not taking up any jobs in the public service.

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