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Paper for the House Committee meeting on 28 June 2002

**Report of the Bills Committee on
Public Officers Pay Adjustment Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Public Officers Pay Adjustment Bill.

Background

2. Civil service pay adjustment is considered annually by the Administration after taking into account all relevant factors under the existing pay adjustment mechanism including: the net Pay Trend Indicators (PTIs) derived from the results of the annual Pay Trend Survey (PTS), the state of the economy of Hong Kong, budgetary considerations, changes in the cost of living, the staff sides' pay claims and civil service morale. Given the economic downturn in recent years and pay reduction in the private sector, the upward adjustment in civil service pay announced in mid 2001 aroused public concern about the possible erosion of broad comparability of civil service pay with the private sector. The views expressed by various sectors of the community sparked a public debate on whether civil service pay levels were reasonable. In response to calls for a review of civil service pay levels and pay adjustment mechanism, the Administration decided on 18 December 2001 to conduct a comprehensive review of the civil service pay policy and system. The Administration stressed that pending the outcome of the review, the civil service pay adjustment for 2002 would be determined in accordance with the existing pay adjustment mechanism.

3. Having regard to the current state of the economy and the stringent fiscal position, the Financial Secretary (FS), in the 2002-03 Budget Speech delivered on 6 March 2002, stated that he aimed to restore fiscal balance step by step through reducing the growth of Government expenditure and modestly raising revenue. As personnel-related expenses accounted for a significant part of Government operating expenditure, FS stated that for financial planning purposes, he had assumed in the

Medium Range Forecast that civil service pay would be cut by 4.75% and the salary-related portions of subventions to the various organizations would also be reduced by the same rate with effect from 1 October 2002. FS also stated that any decision on a civil service pay cut needed to go through the legislative process before it could be implemented. The assumption on civil service pay reduction made by FS before the findings of the 2001-02 PTS were available caused concern that the Administration had a predetermined stance on the pay adjustment exercise. It also invited queries on the need to implement civil service pay reduction by legislation.

4. In late April 2002, the Administration announced the findings of the 2001-02 PTS. The net PTIs for the three non-directorate salary bands were: -4.42% for the upper salary band (\$47,591 - \$97,325 a month), -1.64% for the middle salary band (\$15,520 - \$47,590 a month), and -1.58% for the lower salary band (below \$15,520 a month). On 22 May 2002, the Chief Executive (CE) in Council decided that an offer of a pay reduction of 4.42% for the directorate and the upper salary band, 1.64% for the middle salary band, and 1.58% for the lower salary band, with effect from 1 October 2002, should be put to the staff sides of the four central consultative councils.

5. Having considered all relevant factors including the staff sides' views, the Administration considered that the proposed pay adjustment, which was in line with the net PTIs of the 2001-02 PTS, was reasonable and had struck a balance between the concerns of civil servants and the wider interests of the community. The CE in Council decided on 28 May 2002 that civil service pay should be adjusted as originally proposed, and that the Public Officers Pay Adjustment Bill (the Bill) should be introduced into the Legislative Council (LegCo).

The Bill

6. The Bill aims to implement the Government's decision to reduce civil service pay with effect from 1 October 2002. It provides that the pay and allowances of public officers at different salary bands should be adjusted downward with effect from 1 October 2002 and specifies the relevant rates of adjustment. It further provides that the Bill does not prohibit adjustments made after that date and that the employment contracts of public officers are to be read as expressly authorizing the adjustments to their pay and allowances under the Bill.

7. The estimated savings arising from the proposed pay reduction in terms of civil service pay and allowances and subventions for the subvented sector from 1 October 2002 to 31 March 2003 will be \$1,551 million.

The Bills Committee

8. Following the first reading of the Bill on 5 June 2002, the House Committee agreed at its meeting on 7 June 2002 to form a Bills Committee to study the Bill. The Bills Committee first met on 12 June 2002 and Hon Mrs Selina CHOW LIANG Shuk-ye was elected Chairman. The membership list of the Bills Committee is in **Appendix I**.

9. Under the chairmanship of Hon Mrs Selina CHOW, the Bills Committee held seven meetings. In view of the wide implications of the Bill on the civil service and subvented sector, the Bills Committee met with the four central consultative councils (staff sides), major civil service unions and deputation from the subvented sector. It received seven submissions from the civil service and subvented sector. It also exchanged views with the Law Society on the legal issues involved in the Bill. A list of the relevant organizations is in **Appendix II**.

Deliberations of the Bills Committee

Civil service pay adjustment mechanism

10. While the Bills Committee has no objection to the Administration's decision to reduce civil service pay in accordance with the existing pay adjustment mechanism, members are concerned whether the existing mechanism allows for pay reduction. They note the Administration's advice that both pay increase and reduction are allowed, as some of the factors considered under the existing mechanism (mentioned in paragraph 2 above) could have resulted in upward or downward movements. Some members however point out that the proposed legislative approach to implement the pay reduction is not part of the existing mechanism. They consider it more appropriate for the Administration to implement the pay reduction after seeking the consent of the staff sides. They question the legal grounds for the Administration to reduce civil service pay unilaterally and the need to implement the pay reduction by legislation. Some members have also expressed grave concern that the Bill may contravene the Basic Law and deprive civil servants of their existing rights, and would worsen the employer-employee relationship between the Government and civil servants, and would have great implications on the subvented sector.

Legislative approach to implement civil service pay reduction

11. On the legal grounds for the Administration to reduce civil service pay unilaterally, the Bills Committee notes the Administration's advice that the standard Memorandum on Conditions of Service (MOCS) applicable to civil servants provides a variation clause 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. An express provision authorizing pay reduction by the Government has also been added in the employment contracts of civil servants recruited since June 2000.

12. In view of the presence of the variation clause in MOCS applicable to civil servants, some members question the need to implement civil service pay reduction by legislation. According to the Administration, the legal advice obtained is that on the basis of decided cases, the courts are unlikely to accept that this general power of variation could apply to such a fundamental term as the salary. Despite the decision of the Hong Kong Court of Appeal in *Lam Yuk-ming v Attorney General* [1980] HKLR 815 in which the Court upheld the enforceability of the unilateral variation clause, a subsequent decision of the Hong Kong High Court in *Fynn v Attorney General* [1991] 1 HKLR 315 at 318 stated that –

“There seems to be little doubt that there is nothing to prevent the Government from effecting changes and modifications to the various regulations relating to the employment. However, it is doubtful whether a basic alteration could be made by the Government unilaterally such as changing the basis upon which the employee is to be remunerated.”

The Administration also points out that that approach is supported by decisions in the United Kingdom (UK) such as *United Associations for Protection of Trade Ltd. v Killairn* (17 September 1985, unreported) and the Court of Appeal’s decision in *Wandsworth London Borough Council v D’Silva* [1998] IRLR 193. It is therefore possible that the Government would face legal challenges if it relies solely on the general variation clause to implement the decision on a civil service pay reduction. The legal advice obtained by the Administration is that it should seek the enactment of legislation to provide for an express reduction of civil service pay and to provide that each officer’s contract shall be modified to the extent of the statutory variation. In the light of the legal advice, the Administration considers that legislation is the only way to implement the decision to reduce civil service pay with certainty.

13. The Bills Committee notes the views of the Legal Adviser of the LegCo Secretariat that while it might appear that the case of *Fynn v Attorney General* [1991] shows signs of a possible departure from the principles of law declared by the Court of Appeal in the case of *Lam Yuk Ming v Attorney General* [1980], it should be noted that *Fynn v Attorney General* [1991] was decided by a single High Court Judge when determining an appeal against a Master’s decision made at interlocutory proceedings. From the legal point of view, the case of *Lam Yuk Ming v Attorney General* [1980] still has binding effect on the same category of cases. As regards the two UK cases quoted by the Administration, the Legal Adviser also points out that they were decided in the context of UK employment law which is quite different from that in Hong Kong although principles relating to the law of contract are similar. On the need to implement the CE in Council’s decision to reduce civil service pay by legislation, the Bills Committee notes the Legal Adviser’s view that this method of implementing the decision is not legally imperative; because civil service pay is not regulated by legislation, there is no legal requirement for the Administration to effect the pay reduction by way of legislation. As far as general legal policy is concerned, if a matter

is purely one of contractual dispute, it should be for the courts instead of the legislature to deal with. However, the Legal Adviser points out that the proposal to legislate on the proposed civil service pay adjustment involves not only legal considerations, but also the considerations of public interest.

14. The Bills Committee also notes the strong objection raised by the staff sides to the Administration's legislative approach to implement the pay reduction. The staff sides are concerned that the Bill would set a precedent for the Government to further cut back the conditions of service of civil servants in future. In this connection, the Senior Civil Service Council (Staff Side) has written to the Chief Executive, requesting for the setting up of an independent Committee of Inquiry under the 1968 Agreement between the Hong Kong Government and the Main Staff Associations (the 1968 Agreement) to deal with the dispute over this year's civil service pay adjustment. This request was supported by a total of 67 civil service unions. In their joint statement dated 5 June 2002, the 67 civil service unions undertake that they will accept the outcome of the inquiry and, irrespective of the outcome, they would not sue the Government. The staff sides are disappointed to note the CE's decision made on 11 June 2002 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. The staff sides consider this argument unacceptable, as the disputes over the pay adjustment have not yet been resolved.

15. Having considered the views of the Administration, Legal Adviser and the staff sides, some members are not convinced of the legislative approach to implement civil service pay reduction. In their view, the fact that the Administration pursues the legislative approach demonstrates that there is no sufficient legal basis for the Administration to reduce civil service pay. To rectify the situation once and for all, members request the Administration to consider introducing a general enabling legislation on civil service pay adjustment mechanism, providing the legal framework for implementing upward and downward pay adjustments. Members consider this general enabling legislation more appropriate than the proposed one-off legislation to deal with the civil service pay reduction for this year. While the Administration is prepared to give further thought to the suggestion, it considers that the proposed general enabling legislation and the Bill are not mutually exclusive and that the most pressing issue is the implementation of the pay reduction for this year. Some members still maintain their view that the problem should be tackled by a comprehensive, rather than a piecemeal, approach.

Alternatives to the legislative approach

16. On the alternatives to the legislative approach, some members urge the Administration to reconsider the staff sides' request for the setting up of a Committee of Inquiry, having regard to the undertaking made by the 67 civil service unions that they will accept the outcome of the inquiry. The Administration however maintains its stance. It also points out that the recommendations of a Committee of Inquiry, though

accepted by the central consultative councils and civil service unions, would not bind individual civil servants. If the pay reduction were implemented without legislation, individual civil servants might still take the Government to court and the risk of a legal challenge would remain. Some members are of the view that the proposed legislative approach could not eliminate this risk.

17. As regards the option of terminating civil servants' contracts by notice and offering them re-employment on a lower salary, the Bills Committee notes the Administration's advice that a great majority of civil servants have permanent contracts that cannot be terminated by notice. For those without permanent contracts, the termination route is theoretically possible. However, the prospect of dismissing civil servants en masse, with no guarantee that they would accept re-employment on lower salaries, would raise serious concerns about the impact on the smooth operation of the Government.

18. Some members consider that if individual civil servants who choose to resign in the face of the pay reduction, they should be offered a reasonable amount of compensation. The Administration points out that a vast majority of serving civil servants are employed on permanent and pensionable terms and enjoy job security until they reach retirement age. Should individual civil servants choose to resign, their pension benefits will be determined in accordance with the pensions legislation. The members however realize that civil servants on Old Pension Scheme (OPS) are entitled to pension benefits only when they retire at the normal retirement age of 55 or at the early retirement age of 45. In the circumstance, if civil servants who choose to resign in the face of the pay reduction are on OPS and below the age of 45, they will lose their pension benefits. A member considers it unfair to the civil servants concerned.

Basic Law issues

19. Some members and the staff sides query that the Bill would contravene Articles 100 and 103, 6 and 105, 39, and 160 of the Basic Law.

Articles 100 and 103

20. Article 100 of the Basic Law provides that public servants serving in all Hong Kong government departments before the establishment of the Hong Kong Special Administrative Region (HKSAR) may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before. The Bills Committee notes the Administration's advice that since the proposed pay reduction would not reduce the level of pay, in cash terms, of the civil servants employed before 1 July 1997 to a level below that they were receiving on 30 June 1997, there would be no question of breaching Article 100.

21. A member however points out that Article 100 not only safeguards the pay levels of civil servants, but also their conditions of service. As a result of the proposed

pay reduction, the civil servants employed before 1 July 1997 would have less favourable conditions of service than before. In the Administration's view, the primary purpose of Article 100 is to safeguard transitional rights and to ensure that no one will suffer discrimination as a direct consequence of the handover of sovereignty. The proposed pay reduction would not reduce the level of conditions of service of the civil servants employed before 1 July 1997 to a level below that they had on 30 June 1997.

22. Some members consider that as the implementation of civil service pay reduction by legislation is not part of the existing pay adjustment mechanism which has been in place since 1974, the proposed legislative approach would contravene Article 103 which provides that Hong Kong's previous system of management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained. The Administration reiterates that the proposed pay reduction has taken full account of all relevant factors under the established mechanism, which is itself consistent with Article 103. The legislative approach would simply be a measure to give effect to a justified decision made under the established mechanism.

Articles 6 and 105

23. Article 6 provides that the HKSAR shall protect the right of private ownership of property in accordance with law. Article 105 provides that the HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. While some members and the staff sides are of the view that the Bill would contravene Articles 6 and 105, the Administration points out that "private ownership of property" does not include future salary under a contract of employment. In the Administration's view, "future salary" is an amount of money that an officer will receive in the future, based on the work that he has already done under the contract. It would not be construed as property.

24. Some members express concern that the Bill would deprive civil servants of the rights to claim for compensation, damages or other remedies. They note the Legal Adviser's view that if the pay reduction could not be done lawfully without the proposed legislation, implementation of the legislation would appear to have the effect of depriving civil servants' rights that they would otherwise be able to exercise under their contract. Some members have expressed concern that it may not be right to take away people's existing rights by legislation. The Administration points out that some employees may have their employment status affected by the introduction of a statutory registration or licensing scheme or other restrictions on their entitlement to remain in employment. Legislation has been enacted which benefits both current and future employees at the expense of the employers. Outside the employment field, town planning legislation may affect the enjoyment of private property rights. The various trade sanctions legislation may frustrate or otherwise adversely affect existing contractual rights and obligations, without compensation. Some members consider the

circumstances provided by the Administration irrelevant, as they are not related to the current case where civil servants would be deprived of their existing rights after the passage of the Bill.

Article 39

25. Article 39 provides that the provisions of international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. Some members and the staff sides consider that the Bill would contravene the Labour Relations (Public Service) Convention 1978 (the Convention), as the Administration has not fully utilized the machinery for negotiation of the terms and conditions of employment as required under Article 7 of the Convention, and has not sought to settle the pay adjustment disputes through independent and impartial machinery as required under Article 8 of the Convention. The Administration points out that in conducting this year's civil service pay adjustment exercise, the Administration has followed the established procedures for consulting the staff sides of the central consultative councils. The CE in Council's decision on this year's pay adjustment was made after considering the staff sides' views and other relevant factors. Once the pay adjustment has been determined in accordance with the machinery which is consistent with Article 7, a dispute over the method to implement the decision is not within the terms of Article 8. The Administration is therefore of the view that the proposed implementation of civil service pay reduction by legislation would not contravene the Convention, nor Article 39 of the Basic Law.

Article 160

26. Article 160 provides that documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the HKSAR, provided that they do not contravene the Basic Law. Some members and the staff sides point out that the contractual rights of civil servants employed on or before 30 June 1997 are protected by this provision. The Administration however considers that the pay of those who remain in Government employment has been increased since 30 June 1997 and as the pay reduction would not lower their salaries to a level below that on that date, their right to the salary as at that date would be fully recognized and protected. The Administration also does not share the view that the rights protected by Article 160 include a right not to have any legislative interference with a subsisting contract. In the Administration's view, Article 160 is primarily a savings provision to ensure that contractual rights do not fall away as a result of the Reunification. Given that amendments consistent with the Basic Law can be made to laws previously in force, it would be difficult to argue that contractual rights cannot be modified by legislation.

27. The Bills Committee notes the Law Society's view that the Bill is consistent with Articles 100 and 103, 6 and 105, and 160 of the Basic Law.

Purpose of the Bill

(Long title)

28. Given the Bill is intended to be a piece of one-off legislation for reducing the pay and amounts of allowances payable to certain categories of public officers with effect on and from 1 October 2002, some members consider that this policy intent should be clearly set out in the long title of the Bill. The Bills Committee notes the Administration's view that the long title, as currently drafted, has made clear this policy intent. Clause 8 of the Bill further reinforces this point by providing that the adjustments made by the Bill do not prohibit or affect any adjustment to the pay or the amounts of any allowances payable to public officers made after 1 October 2002. For the sake of clarity, the Administration proposes a minor Committee Stage amendment (CSA) to the long title of the Bill to replace "public officers" by "certain public officers".

Scope of application of the Bill

Officers covered by the Bill (Clauses 2, 3, 4, 5 and 6)

29. The Bills Committee notes that the Bill applies to civil servants (clause 3), officers of the Independent Commission Against Corruption (ICAC) (clause 4), certain public officers who are not civil servants or ICAC officers (clause 5), and the Director of Audit (clause 6). For the sake of clarity, some members suggest that a definition of "civil servants" be provided in clause 2 (Interpretation). Having considered members' views, the Administration proposes a CSA to clause 2 to provide that "civil servant" means a public officer employed by the Government on civil service terms of appointment at a civil service rank.

30. Members note that a great majority of civil servants and ICAC officers are covered by clauses 3(2) and 4(2), and the remaining ones by clauses 3(3) and 4(3). However, clause 4(3), in its present form, only covers those ICAC officers who are remunerated on the ICAC Pay Scale. To ensure that the Bill covers all ICAC officers, including those who are remunerated according to the civil service pay scales, the Administration would move a CSA to clause 4(3) to this effect.

31. Members also note that the drafting of clause 3(3), the proposed amended clause 4(3) and clause 5 are very similar. Under these clauses/subclauses, the officers concerned are broadly categorized as follows:

- (a) **Category 1:** those whose pay is *determined* in accordance with or by reference to, directly or indirectly, a point on the civil service pay scales (or the ICAC pay scale) (e.g. an officer is paid at a level equivalent to a certain pay point on the Master Pay Scale); or
- (b) **Category 2:** those whose pay is *adjusted* in accordance with or by reference to, directly or indirectly, adjustments to the civil service pay scales (or the ICAC pay scale) (e.g. an officer is paid at a level

entirely unrelated to any pay points on the civil service pay scales, but his pay is required to be adjusted in line with adjustments to the equivalent civil service salary band); or

- (c) **Category 3:** those whose pay is both *determined and adjusted* as mentioned in items (a) and (b) respectively (e.g. an officer is paid at a level equivalent to a certain pay point on the Directorate Pay Scale and his pay is required to be adjusted in line with adjustments to the Directorate Pay Scale).

32. Members request the Administration to illustrate the difference between the term “in accordance with” and the term “by reference to” with examples. On *pay determined in accordance with a civil service pay scale*, members note the Administration's advice that the pay of some ICAC officers (e.g. Executive Officer (CAC) grade, Clerical Officer (CAC) grade, etc.) are determined in accordance with the civil service pay scales although they are not civil servants. The pay scale of these officers is expressed as a number of pay points on the civil service Master Pay Scale or the civil service Model Scale One Pay Scale. On *pay determined by reference to a civil service pay scale*, an example is that the honorarium paid to Legal Trainees in the Department of Justice, who are not civil servants, is set at the equivalent of Master Pay Scale Point 22. The honorarium is determined by reference to a pay point on the relevant civil service pay scale. On *pay adjusted in accordance with adjustments to a civil service pay scale*, an example is that the ICAC pay scale is adjusted in accordance with the adjustment to the civil service pay scales and thus the pay of ICAC officers remunerated on the ICAC pay scale is adjusted in accordance with the civil service pay adjustment. As regards *pay adjusted by reference to adjustments to a civil service pay scale*, an example is that the Contract Managers appointed by the Post Office are paid a salary which does not relate to any pay point on the civil service pay scales but is adjusted with reference to the annual civil service pay adjustment.

33. Members note that the Administration has not so far identified any civil servant who will fall under Category 1 and Category 3 mentioned above (clause 3(3)(a) and 3(3)(c)), and any ICAC officers who will fall under Category 2 (amended clause 4(3)(b)). However, in the interest of comprehensive coverage and to avoid any possible omissions, the Administration maintains the view that the relevant subclauses should be retained.

Officers not covered by the Bill
(Clauses 10 and 11, Schedule 3 and new clause 2A)

34. Clause 10 provides that the Bill does not apply to officers specified in Schedule 3, i.e. officers who are remunerated on starting salaries that are not linked to the annual civil service pay adjustment, and judges and judicial officers, because the determination of their pay and allowance is not related to the pay scales stipulated in Schedule 1 of the Bill. Some members consider that this policy intent should be set out

in the main body of the Bill and therefore propose that a new clause on "Application" be added. They also consider the heading of clause 10 and Schedule 3, "Exempted Public Officers and Allowances", misleading, as the two categories of officers stipulated therein are not exempted from the Bill. In fact, the main provisions of the Bill do not apply to them.

35. Members also note that clause 11 provides that the CE in Council may, by notice published in the Gazette, amend Schedule 3. Some members are concerned about the circumstances under which the CE in Council may exercise that power. In view of the policy intent that the Bill caters specifically for this year's civil service pay adjustment which is intended to take effect from 1 October 2002 and the Administration's advice that it does not envisage that the CE in Council will exercise the power to amend Schedule 3 before or after 1 October 2002, members do not see the need to provide the CE in Council with this power. Members also note the Legal Adviser's view that a notice published in the Gazette under clause 11 would be subsidiary legislation subject to the negative vetting of LegCo. In view of the summer recess of LegCo from mid-July to early October, such a notice will only be tabled in LegCo after 1 October 2002 and any LegCo amendment to the notice may create practical complications.

36. To address members' concern, the Administration agrees to add a new clause 2A on "Application", and to delete Part 6 of the Bill (clauses 10 and 11) and Schedule 3.

Express authority for adjustments (Clause 9)

37. Clause 9 of the Bill provides that the contracts of employment of public officers are to be read as expressly authorizing the adjustments to pay and the amounts of the allowances made by the Bill. The Bills Committee notes the Administration's advice that the purpose of this clause is to modify the contracts between the Government and public officers to authorize the adjustments to pay and the amounts of the allowances made by the Bill. Some members consider that the drafting of clause 9 should be amended to reflect this purpose more directly, such as to replace "to be read as" by "varied". The Administration has accepted members' view and agreed to move a CSA to this effect. Clause 9, if amended, will read: "The contracts of employment of public officers are *varied so as to* expressly authorize the adjustments to pay and the amounts of the allowances made by this Ordinance".

Implications on the subvented sector

38. The Bills Committee notes that about 1 423 subvented organizations receive current Government subvention which is price adjusted annually according to formulae including a factor of civil service pay adjustment. If civil service pay is reduced with effect from 1 October 2002, the Government subventions will be reduced accordingly

to reflect the revised factor of civil service pay adjustment. While the Administration claims that it will not be requiring the subvented organizations to make similar adjustments to the pay of their staff, as the question of pay for subvented staff is generally a matter between the subvented organizations and their employees, subvented organizations will have to review, in line with the general subvention principle, whether the remuneration packages for subvented staff remain no better than those for comparable civil service grades after an adjustment of civil service pay. In this connection, members express grave concern how subvented organizations could adhere to the “no better than” principle if they fail to obtain the consent of their staff for pay reduction, and how the subvented organizations could meet the claims for compensation or other remedies from staff who resort to exercising their rights under the Employment Ordinance.

39. The Bills Committee notes the Administration's advice that where subvention has been reduced, the subvented organisations wishing to grandfather the remuneration of any of their publicly-funded employees for the remaining duration of these employees' existing contracts will have to absorb the costs of grandfathering within the reduced subvention or with their reserves accumulated from unspent subventions. There will be no conflict with the “no better than” principle if the subvented organizations use private funds to support the “excess” cost in a package which is better than that for comparable civil service ranks, both for existing and new contracts. In the event that a subvented organization has to terminate the employment of individual employees who refuse to give consent to a pay cut, it will have to assess the amount of termination compensation with reference to statutory provisions in the Employment Ordinance and the terms of the employment contracts. In this regard, individual subvented organizations have accumulated some reserves or have other sources of income which may help them tide over the short-term difficulties. The Administration does not preclude the possibility of offering some short-term tide over financial assistance if individual organizations have genuine difficulties shouldering the termination compensation, subject to the merits of each case and Government's budgetary considerations.

40. The Bills Committee notes the submission from the Convenor of the Heads of Universities Committee (HUCOM) on the implications of civil service pay reduction on the institutions funded by the University Grants Committee (UGC). As the pay for academic, clinical and senior administrative staff of the UGC-funded institutions is linked to civil service pay, in accordance with the criteria approved by the Finance Committee, UGC-funded institutions will have no choice but to reduce the pay of their staff following the civil service pay reduction. On the proposition that the institutions could terminate the contract of those staff who do not wish to give their consent to pay reduction, HUCOM points out that many of the staff in the UGC-funded sector are highly trained academics and professionals who are difficult to recruit and replace, and that the UGC-funded sector is unique in that a considerable number of employees' contracts of employment can only be terminated with a “good cause” which carries a restricted meaning. In the event that individual staff members refuse to

accept a pay cut, the institutions may not have the choice of terminating their appointments as the claims for breach of contract and damages by the staff who are protected by "good cause" could be substantial. The Bills Committee is assured by the Administration that it fully appreciates the unique situation of the UGC-funded sector and has already started examining with the institutions and the UGC the nature and extent of the problem with a view to identifying a unique solution to resolve the problem.

41. As regards HUCOM's request to include the UGC-funded sector in the Bill, the Bills Committee notes the Administration's advice that it has considered whether it should introduce legislative provisions enabling subvented organizations to lawfully reduce the pay of their staff without having to seek their consent, while protecting the organizations from claims from employees. The Administration has decided against such legislation on the consideration that unlike civil service employment, employment in the subvented sector, like employment in the rest of the private sector, is governed by the Employment Ordinance. The Ordinance sets out clearly the rights and obligations of, and protection available to, employees and employers. It provides for variation of contract terms through mutual consent and termination of contracts under prescribed conditions. The Administration therefore considers it undesirable to legislate for a pay cut in the subvented sector, and in so doing, override the rights and obligations under the Employment Ordinance. The Administration also believes that such a move is unnecessary, since in respect of the vast majority of cases the Employment Ordinance will already have provided an adequate framework for the subvented organizations and their employees to resolve the issues that might arise from the cut in civil service pay and subventions.

42. On the social welfare sector, the Bills Committee notes that while the Fighting for Social Welfare Alliance has no objection to a pay reduction in line with the civil service pay reduction, it is concerned that the non-government organizations (NGOs) may take this opportunity to make additional changes to the terms and conditions of the employment contracts of their staff. The Administration clarifies that the Bill does not give any authorization to employers in the subvented sector to alter the terms and conditions of the employment contracts of their staff. Any variation of contracts, whether to give effect to the pay adjustment or in any other aspect, must only be done in compliance with the provisions of the Employment Ordinance. Those provisions provide considerable protection to employees, including employees in subvented organizations. Additional protection is provided by the Government to the "snapshot staff*" of NGOs which have joined the Lump Sum Grant subvention system. The Lump Sum Grant Steering Committee chaired by the Director of Social Welfare will handle any complaints from this group of staff against their employers for altering the terms and conditions of their employment contracts, such as the stoppage of the offer of salary increment.

* The Government has taken a snapshot of staff strength of each NGO in the social welfare sector as at 1 April 2000 when NGOs were invited to join the Lump Sum Grant subvention system.

Committee Stage amendments

43. A full set of the CSAs to be moved by the Administration is in **Appendix III**.

44. At the conclusion of the last Bills Committee meeting on 25 June 2002, no member indicated that they would move CSAs to the Bill.

Recommendation

45. The Bills Committee notes that the Administration has given notice to resume the Second Reading debate on the Bill on 10 July 2002.

Advice sought

46. Members are requested to note paragraph 45 above.

Council Business Division 1
Legislative Council Secretariat
27 June 2002

《公職人員薪酬調整條例草案》委員會
Bills Committee on Public Officers Pay Adjustment Bill

委員名單
Membership List

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委員 Members	田北俊議員, GBS, JP	Hon James TIEN Pei-chun, GBS, JP
	朱幼麟議員, JP	Dr Hon David CHU Yu-lin, JP
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	陳智思議員	Hon Bernard CHAN
	陳鑑林議員	Hon CHAN Kam-lam
	梁劉柔芬議員, SBS, JP	Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
	梁耀忠議員	Hon LEUNG Yiu-chung
	黃宏發議員, JP	Hon Andrew WONG Wang-fat, JP
	黃宜弘議員	Dr Hon Philip WONG Yu-hong
	曾鈺成議員, JP	Hon Jasper TSANG Yok-sing, JP
	楊孝華議員, JP	Hon Howard YOUNG, JP
	楊耀忠議員, BBS	Hon YEUNG Yiu-chung, BBS
	劉千石議員, JP	Hon LAU Chin-shek, JP
	劉慧卿議員, JP	Hon Emily LAU Wai-hing, JP
	蔡素玉議員	Hon CHOY So-yuk
	譚耀宗議員, GBS, JP	Hon TAM Yiu-chung, GBS, JP
	石禮謙議員, JP	Hon Abraham SHEK Lai-him, JP
	李鳳英議員, JP	Hon LI Fung-ying, JP
	麥國風議員	Hon Michael MAK Kwok-fung
	勞永樂議員	Dr Hon LO Wing-lok
	葉國謙議員, JP	Hon IP Kwok-him, JP
	余若薇議員, SC, JP	Hon Audrey EU Yuet-mee, SC, JP
	馬逢國議員	Hon MA Fung-kwok
	(總數：34位議員)	(Total : 34 Members)
秘書 Clerk	陳美卿小姐	Miss Salumi CHAN
法律顧問 Legal Adviser	馬耀添先生	Mr Jimmy MA
日期 Date	2002年6月12日 12 June 2002	

Bills Committee on Public Officers Pay Adjustment Bill

List of organizations submitted views on the Bill

- *1. Disciplined Services Consultative Council (Staff Side)
- *2. Model Scale I Staff Consultative Council (Staff Side)
- *3. Police Force Council (Staff Side)
- *4. Senior Civil Service Council (Staff Side)
(including: Hong Kong Chinese Civil Servants' Association,
Senior Non-expatriate Officers Association,
Association of Expatriate Civil Servants of Hong Kong)
- *5. Senior Non-expatriate Officers Association
- *6. Hong Kong Federation of Civil Service Unions
- *7. Hong Kong Civil Servants General Union
- *8. Government Disciplined Services General Union
- *9. Government Model Scale I Staff General Union
- 10. Hong Kong Chinese Civil Servants' Association
- *11. The Law Society of Hong Kong
- 12. Heads of Universities Committees
- 13. Hong Kong Council of Social Service
- *14. Fighting for Social Welfare Alliance

Remark:

“*” denotes those organizations the representatives of which have attended Bills Committee meetings.

PUBLIC OFFICERS PAY ADJUSTMENT BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Civil Service

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	(a) By adding "certain" after "adjust the pay of". (b) By adding "certain" after "payable to".
2	By adding - "civil servant" (公務員) means a public officer employed by the Government on civil service terms of appointment at a civil service rank;".
3	By adding in Part 1 - "2A. Application This Ordinance does not apply to - (a) the pay of a public officer who is remunerated on a salary, being a starting salary, that is not linked to the annual civil service pay adjustment; (b) the pay or allowances of a judicial officer - (i) holding a judicial office -

(A) specified in
Schedule 1 to
the Judicial
Officers
Recommendation
Commission
Ordinance (Cap.
92); or

(B) known as Senior
Deputy
Registrar, High
Court; or

(ii) appointed by the
Chief Justice.".

- 4(3)
- (a) In paragraph (a), by adding "civil service pay scales or the" after "a point on the".
 - (b) In paragraph (b), by adding "civil service pay scales or the" after "adjustments to the".
 - (c) By adding "civil service pay scales as adjusted under section 3(1), or the" after "by reference to the".
 - (d) By adding ", as the case requires" after "under subsection (1)".

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By deleting "to be read as expressly authorizing" and substituting "varied so as to expressly authorize".

Part 6 By deleting the Part.

Schedule 3 By deleting the Schedule.