

立法會
Legislative Council

LC Paper No. CB(1)2628/01-02
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PS/1

Legislative Council
Panel on Public Service

Minutes of meeting
held on Thursday, 23 May 2002 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon LI Fung-ying, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon Bernard CHAN
Hon Andrew WONG Wang-fat, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP

Members attending : Hon Emily LAU Wai-hing, JP
Hon Henry WU King-cheong, BBS

Member absent : Hon Howard YOUNG, JP

Public officers attending : **Agenda Item III**
Mr Joseph W P WONG, GBS, JP
Secretary for the Civil Service

Mrs Jessie TING, JP
Deputy Secretary for the Civil Service (2)

Mr I G M WINGFIELD
Law Officer (Civil Law)
Department of Justice

Agenda Item IV

Mr Colin SANKEY
Head, Efficiency Unit

Mrs Grace PUN
Deputy Head, Efficiency Unit

Mrs Jessie TING, JP
Deputy Secretary for the Civil Service (2)

**Attendance by
invitation**

: Agenda Item III

Mr LAU Kam-wah
Member
Police Force Council (Staff Side)
(Chairman, Junior Police Officers' Association)

Mr LIU Kit-ming
Member
Police Force Council (Staff Side)
(Chairman, Local Inspectors' Association)

Mr LUNG Wing-fat
Chairman
Model Scale I Staff Consultative Council (Staff Side)

Ms FUNG Mei-lan
Vice-Chairman
Model Scale I Staff Consultative Council (Staff Side)

Mr MAN Sai-kit
Chairman
Disciplined Services Consultative Council (Staff Side)

Mr LAM Kwok-ho
Representative
Disciplined Services Consultative Council (Staff Side)

Ms Cecilia SO
President
Hong Kong Chinese Civil Servants' Association

Mr Peter H WONG
Vice-President
Hong Kong Chinese Civil Servants' Association

Mr KWOK Chi-tak
Senior Vice-Chairman
Senior Non-Expatriate Officers Association

Mr CHAN Pak-fong
Vice-Chairman
Senior Non-Expatriate Officers Association

Mr LEUNG Chau-ting
Chairman
Hong Kong Federation of Civil Service Unions

Mr Felix CHEUNG
Chairman
Hong Kong Civil Servants General Union

Mr YAU Yan-hung
Vice-Chairman
Hong Kong Civil Servants General Union

Mr IP Yum-tak
Chairman
Government Model Scale I Staff General Union

Mr WONG Wah-hing
Vice-Chairman
Government Model Scale I Staff General Union

Mr WONG Wai-hung
Chairman
Government Disciplined Services General Union

Mr WAT Kei-on

Executive Committee Member
Government Disciplined Services General Union

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Mr LEE Yu-sung
Acting Legal Adviser

Ms Elyssa WONG
Deputy Head
Research & Library Services Division

Ms Cherry CHEUNG
Research Officer 4

Ms Rosalind MA
Senior Assistant Secretary (1)9

Action

I. Confirmation of minutes of meeting
(LC Paper No. CB(1)1765/01-02)

The minutes of the meeting held on 15 April 2002 were confirmed.

II. Date of next meeting and items for discussion

(LC Paper No. CB(1)1766/01-02(01) — List of outstanding items for discussion

LC Paper No. CB(1)1766/01-02(02) — List of follow-up actions)

2. Members agreed that the following items be discussed at the next regular meeting scheduled for 17 June 2002:

- (a) Draft report of the Panel on Public Service for submission to the Legislative Council in July 2002;
- (b) Review of civil service pay policy and system — Interim report on the first phase of the review; and
- (c) Review of the Voluntary Retirement Scheme.

3. On the item mentioned in paragraph 2(b) above, members noted that as agreed at the special meeting on 2 May 2002, the four central consultative councils and eight major civil service unions had been invited to attend the meeting on 17 June 2002 and join the discussion of the item.

III. 2002 Civil Service pay adjustment

- (LC Paper No. CB(1)1766/01-02(03) — Information note on "Civil Service Pay Adjustment and Pay Trend Surveys" prepared by the Research and Library Services Division of the LegCo Secretariat
- LC Paper No. CB(1)1769/01-02 — The Legislative Council Brief issued by the Civil Service Bureau on 22 May 2002
- LC Paper No. CB(1)1766/01-02(13) — Submission from Senior Civil Service Council (Staff Side))

Briefing by the Administration

4. At the Chairman's invitation, the Secretary for the Civil Service (SCS) briefed members on the Legislative Council (LegCo) Brief on "2002 Civil Service Pay Adjustment" issued on 22 May 2002. He advised that having considered carefully all the relevant factors under the established pay adjustment mechanism, the Chief Executive in Council had decided on 22 May 2002 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. The staff sides had been invited to submit comments by 24 May 2002. SCS pointed out that the proposed percentages of pay reduction were strictly in line with the net pay trend indicators (PTIs) of the 2001-02 Pay Trend Survey (PTS). In the event of a policy decision this year to reduce civil service pay, it was incumbent upon the Administration to ensure that the decision would be implemented with certainty. In the light of the legal advice obtained by the Administration, it was proposed that legislation be introduced to clearly provide for the specified rates of adjustment for different salary bands with effect from a specified date. SCS stressed that the proposed legislation aimed to cater specifically for the 2002 civil service pay adjustment and would not cover other conditions of service of the civil service.

Presentation of views by major civil service unions

Police Force Council (PFC) (Staff Side)
(LC Paper No. CB(1)1766/01-02(04))

5. Mr LAU Kam-wah, member of PFC (Staff Side), expressed great disappointment on behalf of PFC (Staff Side) over the Administration's proposal to

reduce civil service pay and its plan to implement the proposal through legislation. PFC (Staff Side) considered the legislative approach unacceptable and unreasonable, as it would deprive civil servants of their existing rights. He pointed out that the assumption of a 4.75% pay reduction for the civil service made by the Financial Secretary in his Budget Speech on 6 March 2002, which was well before the release of the findings of PTS, had demonstrated that the Administration did not respect the existing pay adjustment mechanism and the consultative machinery. As the staff sides were given very limited time to give their comments on the pay reduction offer, they were unable to study the findings of PTS thoroughly and formulate their proposals to the Administration. PFC (Staff Side) was also aggrieved at the adverse impact of a series of recent incidents on the image of the civil service, such as the publication of an anonymous letter entitled "A typist with a conscience" in the ninth issue of the Enhanced Productivity Programme Newsletter by the Finance Bureau in December 2001.

Model Scale I Staff Consultative Council (MSISCC) (Staff Side)
(LC Paper No. CB(1)1766/01-02(05))

6. Mr LUNG Wing-fat, Chairman of MSISCC (Staff Side), said that MSISCC (Staff Side) proposed pay freeze for the civil service for 2002-03. He pointed out that in addition to the PTIs of the 2001-02 PTS, the Administration should take into account other important factors in making a decision on civil service pay adjustment, including staff sides' claim, staff morale and the state of the economy. The proposed civil service pay reduction would affect the standard of living of staff at the lower ranks, undermine the spending power of civil servants and their families, and would have adverse impact on the economy. MSISCC (Staff Side) was also concerned that the proposed legislative approach for the pay reduction would set a precedent for the Administration to further cut back the conditions of service of civil servants in future.

Disciplined Services Consultative Council (DSCC) (Staff Side)
(LC Paper No. CB(1)1766/01-02(06))

7. Mr MAN Sai-kit, Chairman of DSCC (Staff Side), said that DSCC (Staff Side) proposed pay freeze for the civil service for 2002-03 and raised strong objection to the Administration's proposal to implement civil service pay reduction through legislation. DSCC (Staff Side) considered it unfair and illegal for the Administration to alter the terms of employment of civil servants unilaterally. It would set a very bad example for employers in the private sector to follow and a precedent for the Government to further cut back the conditions of service of civil servants in future. He pointed out that the contractual rights of civil servants employed on or before 30 June 1997 were protected by Article 160 of the Basic Law, which provided that documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong should continue to be valid and be recognized and protected by the Hong Kong Special Administrative Region, provided that they did not contravene the Basic Law. The Administration's proposal of implementing civil service pay reduction through legislation demonstrated its disrespect for the existing pay adjustment mechanism. This was detrimental to the relationship between the Government and the staff sides and

would give a further blow to the staff morale and stability of the civil service. DSCC (Staff Side) requested the Administration to negotiate with the staff sides through the existing consultative machinery so as to reach a mutually acceptable decision for the pay adjustment for 2002-03.

Hong Kong Chinese Civil Servants' Association (HKCCSA)
(LC Paper Nos. CB(1)1766/01-02(07) and CB(1)1823/01-02(01))

8. Ms Cecilia SO, President of HKCCSA, said that HKCCSA proposed a pay freeze for 2002-03 and considered the Administration's proposal to implement civil service pay reduction through legislation regrettable. In deciding the 2002-03 civil service pay adjustment, a number of factors should be taken into account, including the prevailing economic climate in Hong Kong, the Government's stringent financial situation, the impact of the comprehensive review of civil service pay policy and system as well as the accountability system for principal officials on the morale and stability of the civil service. Ms SO pointed out that as the civil service had been facing tremendous pressure from changes brought about by various reform measures, such as the Enhanced Productivity Programme, containing the size of the civil service, and outsourcing of Government services, a pay reduction would be detrimental to the staff morale. Senior Civil Service Council (SCSC) (Staff Side), including HKCCSA, would request the Chief Executive (CE) to appoint an independent Committee of Inquiry in accordance with the 1968 Agreement between the Hong Kong Government and Main Staff Associations (the 1968 Agreement) to deal with the disputes over the issue of civil service pay adjustment for 2002-03.

Senior Non-expatriate Officers Association (SNEOA)
(LC Paper No. CB(1)1766/01-02(13))

9. Mr KWOK Chi-tak, Senior Vice-Chairman of SNEOA, said that SNEOA shared the views stated in the written submission of the SCSC (Staff Side). He pointed out that as shown in previous civil service pay adjustment exercises, PTI was not the sole determining factor in deciding the size of adjustment. The Government should not reduce civil service pay unilaterally without the consent of civil servants. Its proposal to implement civil service pay reduction through legislation was unacceptable and would set bad precedent for settling disputes between employers and employees.

Hong Kong Federation of Civil Service Unions (HKFCSU)
(LC Paper No. CB(1)1766/01-02(08))

10. Mr LEUNG Chau-ting, Chairman of HKFCSU, said that HKFCSU proposed a pay freeze for 2002-03 and objected to the Government's proposal to implement civil service pay reduction through legislation. He highlighted the adverse impact of civil service pay reduction on private sector pay, the economy, staff morale and the standard of living of staff at the lower ranks. He also requested LegCo Members not to pass the proposed legislation. He considered that disputes over pay adjustment between employers and employees should be resolved by negotiation, but not by legislation.

Hong Kong Civil Servants General Union (HKCSGU)
(LC Paper No. CB(1)1766/01-02(09))

11. Mr Felix CHEUNG, Chairman of HKCSGU, said that HKCSGU strongly objected to the Administration's proposal to implement civil service pay reduction through legislation. He pointed out that the proposed Public Officers Pay Adjustment Bill would deprive civil servants of their legal rights under their employment contracts and set a bad example for employers in the private sector. It would also destroy the rule of law in Hong Kong and have adverse impact on the legal protection for all sectors of the community. If the Government insisted to press ahead with the Bill, HKCSGU would consider taking legal actions against the Government.

Government Model Scale I Staff General Union (GMSISGU)
(LC Paper No. CB(1)1766/01-02(10))

12. Mr IP Yum-tak, Chairman of GMSISGU, said that GMSISGU proposed a pay freeze for 2002-03. As shown in the findings of a survey conducted by GMSISGU in April 2002, a majority of the respondents had already reached the maximum point of their pay scale and would not have annual increments of salary. The annual pay adjustment would be the only way for these staff to get a pay rise and 82.9% of the respondents considered a pay reduction unacceptable. A majority of the respondents said that they would cut down family expenditure in case of a pay reduction and this would have adverse impact on the overall spending power of consumers. He suggested the Administration to consider increasing profit tax, instead of reducing civil service pay, for addressing the problem of fiscal deficit.

Government Disciplined Services General Union (GDSGU)

13. Mr WONG Wai-hung, Chairman of GDSGU, said that GDSGU objected to the Administration's proposal to implement civil service pay reduction through legislation. The proposed legislation would deprive civil servants of their legal rights under their employment contracts and contravene Articles 100 and 160 of the Basic Law. If the Administration insisted to introduce the Bill into LegCo, it would have adverse impact on the mutual trust and co-operative relationship between the Government and the staff sides. GDSGU considered that the civil service pay adjustment exercise this year should be held in abeyance pending the completion of the comprehensive review of civil service pay policy and system. The negative PTIs this year could then be considered in the context of the new pay adjustment mechanism to be put in place. This approach would be in line with the treatment for judges and judicial officers.

Discussion with the Administration and deputations

Administration's response to the views expressed by the deputations

14. SCS made the following points in response to the views expressed by the representatives of the central staff consultative councils and civil service unions at the meeting:

- (a) In deciding on the size of the civil service pay adjustment for 2002-03, the Government had taken full account of all the relevant factors, including PTIs derived from the 2001-02 PTS, the state of the economy, budgetary considerations, changes in the cost of living, the staff sides' claim for a pay freeze and civil service morale. The proposed size of pay adjustment was in line with the net PTIs derived from the 2001-02 PTS and the PTS results had been endorsed by the independent Pay Trend Survey Committee.
- (b) The legal advice obtained by the Administration confirmed that the proposed pay reduction would not contravene any provision in the Basic Law.
- (c) The standard Memorandum on Conditions of Service (MOCS) applicable to civil servants provided a variation clause that the Government reserved 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 obtained by the Administration was that on the basis of decided cases, the courts were unlikely to accept that the general variation clause could apply to such a fundamental term as the salary. The Administration was advised to seek the enactment of legislation to provide for an express reduction of civil service pay and to provide that each officer's contract should be modified to the extent of the statutory variation. The legislative approach would ensure that the policy decision to reduce civil service pay made under the established pay adjustment mechanism would be implemented with certainty.
- (d) The Administration did not agree with the view that the implementation of the decision on a civil service pay reduction was tantamount to depriving civil servants of their reasonable rights. The decision was made in accordance with the existing pay adjustment mechanism which had been in use for over twenty years and accepted by all civil servants. Given the ambiguity in the contractual provision, the Administration should seek a safe and sound way to implement the decision. The civil service should stand by the community in good and bad times. He urged that during the current period of economic downturn, the civil service should accept the proposed pay reduction and share the burden with the rest of the community.
- (e) The employment contracts between the Government and civil servants could not be directly compared with those in the private sector, as a great majority of civil servants had permanent contracts that could not be

terminated by notice. In other words, these civil servants enjoyed job security until they reached the statutory retirement age.

- (f) In recognition of the independent status of the Judiciary and in anticipation of the proposal to be put forward by the Chief Justice in early 2003 on a new institutional structure and mechanism as well as the appropriate methodology for the determination and revision from time to time of the pay and conditions of service for judges and judicial officers, the Government had decided to consider at a later stage, when the new institutional structure, mechanism and methodology were in place, whether the pay reduction currently proposed for civil servants should also be applied to judges and judicial officers and if so, as from what date.

Civil servants' willingness to accept a pay reduction

15. Ms Emily LAU sought clarification from the representatives of the staff sides on whether they were willing to accept a pay reduction if it was to be implemented in accordance with the existing pay adjustment mechanism, but not through legislation. Mr LAU Kam-wah, member of PFC (Staff Side), stated that PFC (Staff Side) respected the existing pay adjustment mechanism but objected to the proposed legislative approach to implement civil service pay reduction. Mr WONG Wai-hung, Chairman of GDSGU, said that he believed that civil servants were willing to stand by the community to share both its glory and pain and would accept a pay reduction if it was to be implemented in accordance with the existing pay adjustment mechanism. However, as the standard MOCS applicable to a majority of civil servants did not have an express provision authorizing pay reduction, he proposed that the civil service pay adjustment exercise this year be held in abeyance pending the completion of the comprehensive review of civil service pay policy and system. Mr Peter WONG, Vice-President of HKCCSA, pointed out that HKCCSA considered a pay freeze for this year appropriate as well as practical. Stressing that civil service pay adjustment was a complex issue, he requested the Administration to consider the issue thoroughly and adopt an option with the least adverse impact.

Justifications to implement civil service pay reduction through legislation

16. Mr LEE Cheuk-yan stated that the Hong Kong Confederation of Trade Unions shared the views of the staff sides and objected to the Administration's legislative approach to implement its decision to reduce civil service pay. He queried whether the Government had the right to reduce civil service pay unilaterally under the employment contracts between the Government and civil servants. He was also concerned that the proposed legislation would deprive civil servants of their existing rights under their employment contracts. SCS reiterated the points mentioned in paragraph 14(c) and (d) above. The Law Officer (Civil Law), Department of Justice (LO/CL, D of J) supplemented that the reserved power for an employer to alter the remuneration of the employees unilaterally had to be provided in express terms in the MOCS if such power were to be exercised with certainty.

17. In response to Mr CHEUNG Man-kwong's enquiry, the Acting Legal Adviser of the Legislative Council Secretariat (Atg LA) pointed out that the Administration had, in both the Panel meeting on 18 March 2002 and a follow-up paper provided after the meeting (LC Paper No. CB(1)1473/01-02), given justifications for implementing the proposed civil service pay reduction through legislation. The Administration had stated that insofar as a pay reduction was concerned, legal advice received by the Administration was that it would be prudent to implement a reduction by legislation to put the matter beyond doubt and to ensure smooth implementation. In the variation clause of the standard MOCS, the Administration had expressly reserved the right to alter any of the officer's terms of appointment, and/or conditions of service set out in the MOCS or letter of appointment. As regards the Administration's view that decided cases had indicated that the courts were unlikely to accept that this general power of variation could apply to such a fundamental term as the salary, Atg LA said that the Legal Service Division had not been provided with the authorities and therefore could not offer comments at that stage. In this connection, the Chairman requested the Administration to provide relevant information on the decided cases for Members' consideration.

18. Mr CHEUNG Man-kwong commented that if legislation was required for the smooth implementation of changes in any of the terms of appointment and/or conditions of service of a civil servant, the variation clause in MOCS would not serve any meaningful purpose. He requested the Administration to provide details of the legal advice given to it, in particular on the reasons why the variation clause in MOCS was not sufficient for enabling the Government to reduce the pay of civil servants. The Chairman invited the Legal Adviser to provide the Panel with his advice/comments in writing on the need to implement civil service pay reduction through legislation and the Administration's claim that the variation clause under MOCS was insufficient for enabling the Administration to reduce the pay of civil servants.

19. Mr CHEUNG Man-kwong noted that under clause 4.7 in the MOCS tabled at the meeting, "*The pay scale will be subject to review in accordance with the annual pay adjustment exercise. Such adjustment may take the form of pay increase, pay freeze or pay reduction*". He queried why this clause could not provide sufficient legal basis for the Administration to reduce civil service pay unilaterally. In response, LO/CL, D of J pointed out that the MOCS tabled at the meeting was the June 2000 version which was only one of the various MOCS versions introduced over the years and still in force. Broadly speaking, the variation clause (similar to clause 23 of the MOCS June 2000 version) had been included in most MOCS versions for decades. However, in all the MOCS preceding the June 2000 version, there was no express provision that pay adjustment could be made in the form of a pay reduction as in clause 4.7 of the June 2000 version. In other words, with the estimation of about 5 400 officers who would have been issued with the June 2000 version of MOCS, the employment contracts of the great majority of serving civil servants (totaling over 160 000) did not contain an express power for the Government to reduce pay.

20. Mr CHEUNG Man-kwong also noted that under the general clause (clause 1.1) in the MOCS tabled at the meeting, *"The officer is subject to Executive Orders issued from time to time by the Chief Executive for the administration of the public service and to regulations and directions made under these orders"*. He asked whether the decision to reduce civil service pay could be implemented through the issue of Executive Orders by CE. Responding to Mr CHEUNG, Atg LA advised that in the context of the MOCS, an Executive Order referred to in clause 1.1 was unlikely to be regarded as the appropriate vehicle for civil service pay reduction.

21. At the request of Mr CHEUNG Man-kwong and Mr Michael MAK, LO/CL, D of J agreed to provide copies of the various versions of MOCS currently in force for Members' reference and to highlight the differences in their provisions, in particular, whether provisions similar to clauses 1.1, 4.7 and 23 in the June 2000 version were included in each of the other versions.

22. Mr CHAN Kwok-keung considered the legislative approach to implement the pay reduction unnecessary, as the Administration had other feasible means to implement the reduction. He asked whether it was the Administration's intention to introduce a bill on civil service pay reduction whenever negative PTIs were derived from the PTS. SCS responded that the Administration would, as in the past, adjust civil service pay in accordance with the existing pay adjustment mechanism. As pay adjustment was considered on an annual basis, the Administration was not in a position to comment on the possible size of adjustment for the coming years and the approach to be adopted to implement the decision on the annual pay adjustment in future years.

23. Pointing out that the existing pay adjustment mechanism allowed for upward or downward adjustment in civil service pay, Mr Andrew WONG could not see why the proposed legislation was needed to ensure that the decision to reduce civil service pay would be implemented with certainty. He was concerned that the proposed legislation, once passed, would deprive the existing rights of civil servants under their employment contracts and set a bad precedent for the private sector. Mr WONG also queried whether it was the Administration's intention that by adopting the legislative approach for the pay reduction, LegCo would have to share the blame with the Government for depriving the existing rights of civil servants. SCS clarified that that was not the case. He stressed that in the light of the legal advice obtained by the Administration, the legislative approach was needed to ensure that the decision to reduce civil service pay could be implemented with certainty. It was for LegCo to decide whether the proposed legislation should be passed. LO/CL, D of J also pointed out that the employment relationship between the Government and civil servants was a matter of both private and public law. The funds required for paying civil servants, including additional provisions to pay increases in civil service salaries and to provide them with pensions, had to be voted by LegCo. LegCo, therefore, had a role to play in the annual civil service pay adjustment. Mr WONG considered that implementing the decision on civil service pay reduction through legislation was a serious matter which merited further thought by the Administration.

24. Mr Albert CHAN strongly criticized the Administration for politicized the civil service pay adjustment issue and expressed strong objection to the legislative approach. In his view, the fact that the Administration pursued the legislative approach demonstrated that there was no sufficient legal basis for the Administration to reduce civil service pay. SCS reiterated that according to the legal advice obtained by the Administration, there was a risk that a decision to reduce civil service pay without legislation would be subject to a successful legal challenge. To overcome these legal difficulties, the legislative approach was needed to ensure that the decision to reduce civil service pay could be implemented with certainty. To facilitate Members' consideration of the issue, SCS undertook to provide detailed justifications for the legislative approach in writing.

25. On the Administration's view that the variation clause in the standard MOCS was not sufficient to enable the Government to reduce the pay of civil servants, Mr LEE Cheuk-yan requested the Administration to advise whether this meant that there was no legal basis for the Government to reduce the pay of civil servants, and whether such reduction in pay would contravene Article 100 of the Basic Law. In this connection, Mr Michael MAK asked the Administration to provide legal advice on the interpretation of "*no less favourable than before*" under Article 100 of the Basic Law.

Alternative means to implement civil service pay reduction

26. Mr LEE Cheuk-yan urged the Administration to respect the existing arbitration mechanism provided under the 1968 Agreement and to appoint an independent Committee of Inquiry for the settlement of disputes between the Government and the staff sides over the pay adjustment issue. He cautioned that the legislative approach pursued by the Administration would only result in confrontation and even radical protest from the staff sides.

27. In reply, SCS stressed that the Administration had, in strict accordance with the established consultative machinery, invited the staff sides to submit a pay claim and then to comment on the pay offer made by the Government. In view of the gap between the staff sides' claim for a pay freeze and the Government's offer of a pay reduction, the chance for both sides to reach an agreement through further consultation and negotiation was rather remote. SCS reiterated that the decision to reduce civil service pay was made under the established pay adjustment mechanism, and that there was no other alternative to the legislation approach which would enable the Government to implement the decision with certainty. SCS also pointed out that the 1968 Agreement did not form part of the existing pay adjustment mechanism. Any request for the appointment of a Committee of Inquiry under the 1968 Agreement would have to be justified on merit and was subject to the decision of CE. LO/CL, D of J also pointed out that even if an agreement on pay reduction were reached between the Government and civil service central consultative councils through negotiation, it could not prevent individual civil servants from challenging the pay reduction. Hence, the only safe way to achieve a lawful reduction in civil service pay was through legislation. After the enactment of the legislation, the risk of a successful legal challenge would be significantly reduced.

28. Mr LEE Cheuk-yan maintained his view that the Administration's proposal to implement civil service pay reduction through legislation was unnecessary and inappropriate. He sought clarification on whether the Administration would defer the introduction of the proposed Public Officers Pay Adjustment Bill into LegCo if an independent Committee of Inquiry would be appointed and whether the recommendation of the Committee of Inquiry would be binding on the Government and all civil servants. He pointed out that the problems encountered in the current pay adjustment issue could have been avoided if a statutory collective bargaining mechanism for the staff sides was in place. He therefore urged the Administration to rectify the situation and put in place such a statutory mechanism.

Draft Public Officers Pay Adjustment Bill

29. Atg LA invited members to consider the proposed clause 9(2)(a) and (b) of the draft Public Officers Pay Adjustment Bill at Annex A of the Legislative Council Brief. Clause 9(2)(a) and (b), proposed to make public officers not entitled to compensation or damages, or to exercise any contractual right or remedy, only because of the pay reduction made by the Bill. In response, LO/CL, D of J advised that the Bill aimed at overcoming the legal difficulties in the implementation of the policy decision to reduce civil service pay. The intent of clause 9 was to modify the contracts of employment of public officers to expressly authorize the adjustments made by the Bill and to make it clear that the reductions in pay and allowances effected by the Bill did not give rise to any claim for compensation, damages or other remedies.

30. Referring to recent press reports that amendments to the Bill would not be allowed by the Administration, Mr LEE Cheuk-yan requested the Administration to advise in writing whether that was the case and if so, the legal justifications.

Way forward

31. Ms Emily LAU suggested that a further Panel meeting be held to address the concerns of Members and the staff sides expressed at this meeting, as well as to consider the written information provided by the Administration. Mr Albert CHAN concurred and urged the Administration not to introduce the Bill into LegCo before further discussion by the Panel.

32. Members agreed that a special meeting be held on Wednesday, 29 May 2002 at 10:45 am to further discuss the issues related to the civil service pay adjustment for 2002-03 with the Administration and the staff sides. The Administration undertook to provide written response to Members' questions before the special meeting. The Legal Adviser was invited to provide written comments on the Administration's response.

(Post-meeting note: The Administration's written response to Members' concerns was circulated to Members vide LC Paper No. CB(1)1832/01-02(02)

on 27 May 2002. The Legal Adviser's written comments were tabled at the special meeting on 29 May 2002 and circulated to Members vide LC Paper No. LS 108/01-02 on 30 May 2002.)

IV. Proposed integration of Efficiency Unit and Management Services Agency
(LC Paper No. CB(1)1766/01-02(14) — Paper provided by the Administration)

33. The Chairman invited members' views on the proposed integration of the Efficiency Unit and the Management Services Agency into a single unit to provide a one-stop shop for bureaux and departments seeking to implement Government's reform agenda in enhanced productivity and improved service quality. He also drew members' attention that the Administration planned to submit the proposal to the Establishment Subcommittee for consideration at its meeting on 19 June 2002.

34. Responding to Ms LI Fung-ying, Head, Efficiency Unit advised that the proposed integration would result in a net deletion of one directorate post and 13 non-directorate posts. As regards the proposed creation of one supernumerary Assistant Director (D2) post for one year, Deputy Head, Efficiency Unit advised that the post was one of the four Assistant Director posts required to spearhead the four key programmes of the integrated unit. The long-term need for the post would be reviewed after one year in the context of the overall staffing review for the integrated unit.

35. There being no other business, the meeting ended at 5:05 pm.

Legislative Council Secretariat
4 October 2002