

立法會
Legislative Council

LC Paper No. CB(1)2629/01-02
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PS/1

Legislative Council
Panel on Public Service

Minutes of special meeting
held on Wednesday, 29 May 2002 at 10:45 am
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 HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon Bernard CHAN
Hon Howard YOUNG, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP

Members attending : Hon James TIEN Pei-chun, GBS, JP
Hon Cyd HO Sau-lan
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon LAU Chin-shek, JP
Hon Emily LAU Wai-hing, JP
Hon LAW Chi-kwong, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP

- Public officers attending** : 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
- Attendance by invitation** : Model Scale I Staff Consultative Council (Staff Side)
- Mr LUNG Wing-fat
Chairman
- Ms FUNG Mei-lan
Vice-Chairman
- Disciplined Services Consultative Council (Staff Side)
- Mr MAN Sai-kit
Chairman
- Mr LAM Kwok-ho
Representative
- Police Force Council (Staff Side)
- Mr LAU Kam-wah
Member
(Chairman, Junior Police Officers' Association)
- Mr LIU Kit-ming
Member
(Chairman, Local Inspectors' Association)
- Senior Civil Service Council (Staff Side)
- Mr Peter H WONG
Representative

Senior Non-Expatriate Officers Association

Mr KWOK Chi-tak
Senior Vice-Chairman

Mr CHAN Pak-fong
Vice-Chairman

Government Employees Association

Mr CHAN Che-kwong
Chairman

Mr SUEN Ming-fung
Vice-Chairman

Hong Kong Civil Servants General Union

Mr Felix CHEUNG
Chairman

Mr YAU Yan-hung
Vice-Chairman

Government Disciplined Services General Union

Mr WONG Wai-hung
Chairman

Mr WAT Kei-on
Executive Committee Member

Government Model Scale I Staff General Union

Mr IP Yum-tak
Chairman

Mr WONG Wah-hing
Vice-Chairman

Hong Kong Federation of Civil Service Unions

Mr LEUNG Chau-ting
Chairman

Mr CHU Wai-hung
Vice-Chairman

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

Staff in attendance : Mr Jimmy MA
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. 2002 Civil service pay adjustment

- (LC Paper No. CB(1)1832/01-02(01) — "List of information to be provided by the Administration after the meeting on 23 May 2002" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1) 1832/01-02(02) — The Administration's written response
- LC Paper No. CB(1) 1832/01-02(03) — Letter dated 24 May 2002 from Hon LEE Cheuk-yan to the Clerk to Panel
- LC Paper No. CB(1) 1832/01-02(04) — The Administration's written response to Hon LEE Cheuk-yan's letter

(File Ref: CSBCR/PG/4-085-001/30- — Legislative Council (LegCo) Brief
3 Pt 7) on "2002 Civil Service Pay
Adjustment and Public Officers Pay
Adjustment Bill" issued by the Civil
Service Bureau on 28 May 2002
LC Paper No. LS108/01-02 — Paper provided by the Legal Service
Division of the LegCo Secretariat)

Purpose of the special meeting

The Chairman advised that the purpose of the special meeting was for Members to further discuss with the Administration and the staff sides on issues relating to the civil service pay adjustment for 2002-03.

Briefing by the Administration

2. The Secretary for the Civil Service (SCS) referred Members to the Administration's written responses and the LegCo Brief on "2002 Civil Service Pay Adjustment and Public Officers Pay Adjustment Bill". He advised that on 28 May 2002, the Chief Executive in Council had decided that civil service pay be reduced by 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. In coming to this decision, the Administration had taken into consideration all relevant factors under the existing civil service pay adjustment mechanism including the net Pay Trend Indicators derived from the Pay Trend Survey, the state of economy of Hong Kong, budgetary considerations, changes in the costs of living, the staff sides' pay claims and civil service morale. The Public Officers Pay Adjustment Bill (the Bill) would be gazetted on 31 May 2002 and introduced into LegCo for first reading and commencement of second reading debate on 5 June 2002. The Bill aimed to cater specifically for the 2002 civil service pay adjustment and would not cover other conditions of service of the civil service. The Administration planned to seek LegCo's approval of the Bill within the current legislative session for implementation of the pay reduction with effect from 1 October 2002.

3. The Law Officer (Civil Law), Department of Justice (LO/CL, D of J) referred Members to the Administration's written response (LC Paper No. CB(1) 1832/01-02(02)) which set out the justifications for implementing a civil service pay reduction through legislation. He highlighted that in common law, the terms of a contract could not be unilaterally varied by one party so that unless there was reservation of express power in the contract, an employer could not reduce the pay of an employee. In civil service contracts, while the standard Memorandum on Conditions of Service (MOCS) applicable to civil servants provided that the Government reserved the right to alter any of the officers' terms of appointment and conditions of service should the Government considered this to be necessary, the employment contracts of most serving civil servants, except for a very small number of officers recruited since June 2000, did not contain any

express provision authorizing a pay reduction by the Government. The legal advice obtained by the Administration was that on the basis of decided cases, the courts were unlikely to accept that this general power of variation could apply to such a fundamental term as the salary. To reduce the risk of legal challenges from civil servants, legislation was the only way to implement the pay reduction with certainty.

4. LO/CL, D of J also drew Members' attention to the changes made to clause 9 of the Bill. He pointed out that under clause 9 of the draft Bill attached to the LegCo Brief issued on 22 May 2002, civil servants would not have any legal remedy in respect of the pay reduction. This provision had been included in the draft Bill for the avoidance of doubt. Upon further consideration by the Administration, there was no such doubt and the provision was therefore not necessary. Clause 9 was revised such that the contracts of employment of public officers were to be read as expressly authorizing the adjustments to pay and allowances made by the Bill.

Presentation of views by major civil service unions

Disciplined Services Consultative Council (DSCC) (Staff Side)
(LC Paper Nos. CB(1) 1766/01-02(06) and 1832/01-02(05))

5. Mr MAN Sai-kit, Chairman of DSCC (Staff Side), said that DSCC (Staff Side) objected to the legislative approach to implement civil service pay reduction, as this would deprive civil servants of their rights under the employment contracts and set a bad precedent for the Government to further cut back their conditions of service in future. He urged the Administration to respect the existing pay adjustment mechanism and appoint an independent Committee of Inquiry under 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. He pointed out that DSCC (Staff Side) would be willing to observe the recommendations of the Committee of Inquiry. If the Administration insisted to introduce the Bill into LegCo, DSCC (Staff Side) would not rule out the possibility of joining with other unions for more radical actions.

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

6. Mr LAU Kam-wah, member of PFC (Staff Side), reiterated PFC (Staff Side)'s objection to the implementation of civil service pay reduction through legislation. PFC (Staff Side) was very disappointed that despite strong objections from civil service unions, the Government still pursued the legislative approach. They considered the Government's decision regrettable. PFC (Staff Side) might support its members in taking more radical actions in protest of the Bill. Pointing out that 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 had distorted the image of the civil service, Mr LAU requested the Administration to clarify the facts in this regard.

7. Mr LIU Kit-ming, member of PFC (Staff Side), said that to his knowledge, MOCS was introduced in the late 1970s and different versions of MOCS had been introduced since then. As the express clause (clause 4.7 of MOCS June 2000 version) which stipulated that annual pay adjustment might take the form of pay increase, pay freeze or pay reduction was not included in the MOCS preceding the June 2000 version, it was clear that there were no legal grounds for the Government to reduce civil service pay unilaterally. He disagreed with the Administration's claim that legislation was the only way to implement the pay reduction with certainty. In fact, negotiation with the staff sides or the appointment of a Committee of Inquiry under the 1968 Agreement were feasible means to resolve the pay adjustment disputes. On the issue of whether the Bill would contravene provisions in the Basic Law, Mr LIU urged Members to take into consideration not only the views of the Administration, but also the views of other legal professionals.

Senior Civil Service Council (SCSC) (Staff Side)
(LC Paper No. CB(1)1766/01-02(13))

8. Mr Peter WONG, representative of SCSC (Staff Side), reiterated SCSC (Staff Side)'s objection to the legislative approach to implement civil service pay reduction and urged the Administration to resolve the pay adjustment dispute through the existing pay adjustment and consultative mechanisms. SCSC (Staff Side) would request the Chief Executive (CE) to appoint a Committee of Inquiry under the 1968 Agreement to resolve the pay adjustment disputes. Referring to the Administration's written response to Mr LEE Cheuk-yan's letter (LC Paper No. CB(1)1832/01-02(04)), Mr WONG considered it inaccurate and misleading for the Administration to state that the recommendations of a Committee of Inquiry would not bind staff associations who were not parties to the 1968 Agreement nor would they bind individual civil servants, even if they were members of the relevant associations. Quoting the Committee of Inquiry appointed in 1988 as an example, he pointed out that the recommendations of the Committee accepted by the then Governor-in-Council did apply to all civil servants. Mr WONG expressed his grave concern that the Administration's interpretation would cast doubt on the validity and legality of the 1968 Agreement, SCSC and other central consultative councils, and the civil service consultative machinery as a whole. He urged Members to consider the matter thoroughly.

Government Disciplined Services General Union (GDSGU)

9. Referring to the Administration's claim that legislation was the only way to implement the pay reduction with certainty, Mr WONG Wai-hung, Chairman of GDSGU, considered that this clearly demonstrated that the Government had no legal grounds to reduce civil service pay unilaterally. As Article 39 of the Basic Law provided that international labour conventions applied to Hong Kong should remain in force and Article 160 provided that contracts valid under the laws of Hong Kong before the reunification in July 1997 should continue to be valid, the implementation of pay reduction through legislation would deprive civil servants of their rights under the

employment contracts and would contravene these two Articles of the Basic Law. Pointing out that the Bill would affect all civil servants, staff of subvented organizations, and their family members, Mr WONG urged Members not to support the Bill. He also urged the Administration to consider civil service unions' request for the appointment of a Committee of Inquiry to settle the pay adjustment disputes. If the Administration insisted not to accept this request, it would only invite civil service unions to take stronger actions to protest against the Government's decision.

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

10. Mr IP Yum-tak, Chairman of GMSISGU, urged the Administration to accept civil service unions' request for the appointment of a Committee of Inquiry to settle the pay adjustment disputes. The precedent case in 1988 demonstrated that this was an effective and proper way for handling pay adjustment disputes. GMSISGU was concerned that the implementation of pay reduction through legislation would deprive civil servants of their rights under the employment contracts. Mr IP urged Members not to support the Bill.

Government Employees Association (GEA)
(LC Paper No. CB(1) 1832/01-02(07))

11. Mr CHAN Che-kwong, Chairman of GEA, said that GEA respected the existing pay adjustment mechanism and was willing to accept a decision on pay adjustment made in accordance with the mechanism. However, GEA considered it unnecessary for the Government to implement its decision on pay reduction through legislation and urged the Administration to reconsider the issue.

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

12. Mr Felix CHEUNG, Chairman of HKCSGU, said that HKCSGU was willing to consider any feasible options to resolve the pay adjustment disputes provided that the options would not deprive civil servants of their existing rights. HKCSGU strongly objected to the legislative approach adopted by the Administration, as clause 9 of the Bill, though revised, would deprive civil servants of their existing rights. The Bill, if passed, would set a bad example for the private sector to follow. As a result, the rights of private sector employees would also be affected. HKCSGU's prime concern was about the legal principle but not the extent of the pay reduction. Mr CHEUNG also pointed out that the misconception about civil servants being overpaid as compared with employees in the private sector was caused by the unfair comparison made between the pay levels of newly appointed staff in the private sector and civil servants who had been in service for over ten years.

Senior Non-Expatriate Officers Association (SNEOA)
(LC Paper No. CB(1)1832/01-02(06))

13. Mr KWOK Chi-tak, Senior Vice-Chairman of SNEOA, said that SNEOA strongly objected to the legislative approach to implement civil service pay reduction, as it was against the principle of justice for the Administration to reduce civil service pay unilaterally and it would also deprive civil servants of their rights to seek remedies under the employment contract. Mr KWOK urged the Administration to resolve the pay adjustment disputes through the established mechanism by appointing a Committee of Inquiry under the 1968 Agreement. SNEOA would observe the recommendations of the Committee of Inquiry. However, if the Government insisted to pursue the legislative approach, SNEOA would not rule out the possibility of taking more radical actions jointly with other civil service unions.

Briefing by the Legal Adviser
(LC Paper No. LS108/01-02)

14. The Legal Adviser (LA) briefed Members on the paper prepared by the Legal Service Division of the LegCo Secretariat in response to Members' concerns expressed at the Panel meeting on 23 May 2002 and the Administration's written response to Members' concerns. On the need to implement the Chief Executive in Council's decision to reduce civil service pay through legislation, LA considered that this method of implementing the decision was not legally imperative; because civil service pay was not regulated by legislation, there was no legal requirement for the Administration to effect the pay reduction by way of legislation. As far as general legal policy was concerned, if a matter was purely one of contractual dispute, it should be for the courts instead of the legislature to deal with. LA also pointed out that the proposal to legislate on the proposed civil service pay adjustment involved not only legal considerations, but also the considerations of public interest. As regards the question of whether the proposed legislation would deprive civil servants of the right to claim for compensation, damages or other remedies, LA was of the 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.

Discussion with the Administration and deputations

Administration's response to views expressed by the deputations

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

- (a) The civil service pay adjustment exercise this year had been conducted in full accordance with the existing pay adjustment mechanism. Under the established mechanism, the decision of annual pay adjustment was made after careful consideration of all relevant factors which were capable of having a positive and negative effect on the size of the civil service pay

adjustment. Thus, the final decision could be a pay increase or a pay reduction. The decision of a pay reduction this year was made after taking full account of the views of civil servants and the overall interests of the community. The Administration considered it a reasonable and fair decision.

- (b) The Administration fully respected the 1968 Agreement. Under the 1968 Agreement, an independent Committee of Inquiry would be appointed by CE, provided that CE so decided or the staff associations which were parties to the Agreement so requested, and provided that the matter in dispute was not one which, in the opinion of CE, was trivial, or was a matter of settled public policy, or affected the security of the Hong Kong Special Administrative Region. The Administration considered that as the decision on this year's civil service pay adjustment had been determined on the basis of a settled public policy, it did not satisfy the requirement for the appointment of a Committee of Inquiry under the 1968 Agreement. Nevertheless, it was for the staff associations to consider whether to submit a request to the CE for the appointment of a Committee of Inquiry and it would be for the CE to decide whether the request should be acceded to.
- (c) The contractual relationship between the Government and civil servants could not be compared directly with that between employers and employees in the private sector. Civil servants were public officers whose pay and fringe benefits were paid out of public funds. During the current period of economic downturn, civil servants should share the burden with the rest of the community.

16. LO/CL, D of J pointed out that while the 1968 Agreement provided for the appointment of a Committee of Inquiry, there was no reference in individual civil servant's contracts to this dispute resolution mechanism. Any agreement reached between the Government, the central consultative councils and staff associations following the recommendations of the Committee would not bind individual civil servants. It would therefore be difficult for the Government to enforce any such agreement. As the variation clause in most MOCSs currently applicable to civil servants did not expressly reserve a power for the Government to reduce civil service pay, the legal advice obtained by the Administration was that it would not be safe to rely on that variation clause to implement a decision on a pay reduction. On that basis, legislation was the only viable means to implement the Government's decision with certainty. He also pointed out that the employment relationship between the Government and civil servants concerned public law as well as private law. As the funds required for paying civil servants, including additional provisions to pay increases in civil service salaries, were public funds, the level of civil service pay would ultimately affect the amount of appropriation from the General Revenue.

Legislative approach to implement civil service pay reduction

17. In view of the variation clause in the standard MOCS applicable to civil servants, Miss Margaret NG queried the need to implement civil service pay reduction through legislation. Referring to the Administration's written response (LC Paper No. CB(1)1832/01-02(02)), she noted 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. She sought clarification from the Administration on whether this was not good law so that the Government needed to pursue the legislative approach to reduce civil service pay. She was also concerned that under clause 9 of the Bill, the contracts of employment of public officers were to be read as expressly authorizing the adjustments to pay and the amounts of the allowances made by the Bill. She queried whether it was appropriate for LegCo to enact legislation of this kind. As the issue of civil service pay adjustment was a matter of contractual dispute, it should be for the courts instead of LegCo to deal with. Instead of pursuing the legislative route, Miss NG considered that the Administration should resolve the dispute by seeking a judicial review.

18. In response, LO/CL, D of J advised that while the case of *Lam Yuk Ming v Attorney General* might still be good law, it did not deal with the question of whether express power, rather than a general power, would have to be reserved in order that the Government may reduce pay which was a term of the contract. He also pointed out that despite the court decision in the case of *Lam Yuk Ming v Attorney General*, 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.”

LO/CL, D of J advised that that approach was supported by court decisions in the United Kingdom. In view of the absence of an express power in the standard MOCS for the Government to reduce the pay of civil servants, there was a serious risk that a decision to reduce civil service pay without legislation would be subject to a successful legal challenge. In the light of the legal advice obtained by the Administration, legislation was the only way to implement the decision to reduce civil service pay with certainty. In this connection, clause 9 of the Bill aimed to provide an express authority for the Government to implement the pay reduction specified in the Bill. As regards Miss Margaret NG's suggestion that the Administration should resolve the dispute by seeking a judicial review, LO/CL, D of J advised that his assessment was that if the matter were to be put to the court for a decision, the Administration would lose.

19. Responding to Ms Emily LAU, LA advised that while the case of *Fynn v Attorney General* showed 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*, it

should be noted that the case of *Fynn v Attorney General* was decided by a single High Court Judge when determining an appeal against a Master's decision made at interlocutory proceedings. At present, the decision of the Court of Appeal in the case of *Lam Yuk Ming v Attorney General* still had binding effect on the courts in Hong Kong.

20. Referring to LA's advice set out in paragraphs 15 and 16 of LC Paper No. LS 108/01-02, Ms Emily LAU was concerned that the legislative approach to implement civil service pay might deprive civil servants of their rights under the employment contracts as well as their rights to claim for compensation, damages or other remedies. She considered that LegCo should not enact legislation of this kind. Mr LEE Cheuk-yan shared her view. To facilitate Members' consideration of the matter, Ms LAU requested LA to elaborate on his advice.

21. LA advised that the question of whether there were legal grounds for the Government to reduce civil service pay unilaterally was controversial. He therefore set out two scenarios in paragraphs 15 and 16 of LC Paper No. LS 108/01-02. If it was accepted that there was a contractual right under the variation clause for the Government to reduce pay, there would be no question of deprivation of rights to claim compensation, damages and other remedies. On the other hand, if the civil service 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 of rights that they would otherwise be able to exercise under the contract.

22. SCS said that while the proposed legislation might affect certain existing legal rights enjoyed by civil servants, the key issue to address was whether the provisions of the proposed legislation were reasonable and in the overall interests of the community. The Government's decision to reduce civil service pay this year had been made in accordance with the existing pay adjustment mechanism and the size of the reduction was fairly modest. The pay adjustment was thus reasonable and fair to civil servants as well as in the interest of the community at large.

23. Mr CHAN Kwok-keung, Mr LAU Chin-shek, Mr LEE Cheuk-yan and Mr Michael MAK were unconvinced of the need to implement the Government's decision to reduce civil service pay through legislation. They also cautioned that if the Administration insisted to adopt the legislative approach, it would have adverse impact on civil service morale as well as the relationship between the Government and civil servants. Mr CHAN asked how the Administration would handle the situation if the Bill were voted down by LegCo. SCS pointed out that the most pressing task for the Administration was to try its best to get the support of LegCo Members for the passage of the Bill to enable the implementation of a pay reduction with certainty. The Administration would not make any assumption at this stage on whether the Bill would eventually be passed or not.

24. Mr James TIEN pointed out that a survey conducted by the Liberal Party in early 2002 had revealed that the pay levels of 18 ranks in the civil service were much higher than those in the private sector. The problem that the existing pay levels of civil servants

had outstripped those of their counterparts in the private sector needed to be addressed. Given the present state of the economy and the fiscal deficit faced by the Government, Mr TIEN hoped that civil servants would share the burden with the rest of the community and accept the proposed pay reduction for 2002-03. Mr TIEN considered that if there was a need to implement the decision on pay reduction through legislation, the Administration should consider introducing a piece of general enabling legislation on civil service pay adjustment mechanism to provide the legal framework for implementing upward and downward pay adjustments. The general enabling legislation would be more appropriate than the Bill which only aimed to deal with civil service pay reduction on a one-off basis.

25. SCS advised that the Administration had considered introducing the general enabling legislation but finally decided not to do so at this stage because of two reasons. First, in view of staff concerns about the legislative approach and that the proposed legislation would set a precedent for the Government to further cut back the conditions of service of civil servants in future, the Administration considered it more appropriate to introduce a bill to cater specifically for the civil service pay adjustment for 2002-03. Secondly, as the comprehensive review of civil service pay policy and system (including the existing pay adjustment mechanism) was underway and changes might or might not be introduced after the review, the Administration considered it not the right time to introduce the general enabling legislation at this stage.

26. Mr James TIEN was concerned whether the general enabling legislation would be in place before the civil service pay adjustment exercise next year. SCS advised that if there was a consensus among LegCo Members on the need for such general enabling legislation, the Administration would be prepared to give further thought to this suggestion and consult the staff sides accordingly. In any case, the most pressing issue was the implementation of the Government's decision to reduce civil service pay for 2002-03 through the enactment of the Bill.

Alternatives to the legislative approach

27. Ms Emily LAU and Ms Cyd HO considered that pay adjustment disputes should be resolved through negotiation between employers and employees, instead of through legislation. Referring to paragraph 2 of the Administration's written response (LC Paper No. CB(1)1832/01-02(02)), Ms LAU noted that at common law, the terms of a contract could not be unilaterally varied by one party so that, without the agreement of an employee, or the reservation of an express power in the contract, an employer could not reduce the pay of an employee. It seemed that the pay adjustment disputes could be resolved if an agreement could be reached between the Government and the staff sides. SCS pointed out that in the absence of a mechanism for collective bargaining, an agreement reached between the Government and civil service unions would not bind individual civil servants. If a civil servant took the matter to the court and was successful in challenging the Government's decision on pay reduction, the court's decision would also be applicable to other civil servants. In the Administration's view, legislation was the only way to implement with certainty the policy decision to reduce civil service pay.

28. Mr LEE Cheuk-yan and Mr LAU Chin-shek disagreed that legislation was the only way to do so. They 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. Referring to his letter dated 24 May 2002 (LC Paper No. CB(1)1832/01-02(03)), Mr LEE pointed out that the Administration had, in a booklet published in 1977 on the employment relationship between the Hong Kong Government and civil servants, stated its interpretation of the 1968 Agreement that "... the civil service associations pledge to observe any recommendations made by the independent Committee of Inquiry and accepted by the Government. Under such circumstances, members and non-members of the civil service associations concerned will adhere to the decisions made and no individual civil servant will be permitted to make any personal choice unless it is so stipulated in the Agreement...". In view of this interpretation made by the Administration in 1977, Mr LEE queried why the Administration claimed that any agreements made between the Government and civil service unions would not bind individual civil servants.

29. LO/CL, D of J explained that the booklet referred to by Mr LEE Cheuk-yan was only advisory in nature, which had no legal force as far as the employment relationship between the Government and individual civil servants was concerned. It was an expression of the intention of the two parties to the 1968 Agreement to abide by its terms to the extent that they were able to do so. Nevertheless, the 1968 Agreement only applied to certain civil service staff associations, and was not part of the contract between the Government and individual civil servants.

30. Mr LEE Cheuk-yan maintained his view that the proper way to handle the pay adjustment dispute was through negotiation with the staff sides for reaching a mutually agreeable solution. If such a solution could not be reached, the dispute should be put to the court for judgement, but not to LegCo. LO/CL, D of J considered it proper for the Government to introduce the Bill into LegCo for Members' scrutiny. He reiterated that the employment relationship between the Government and civil servants concerned public law as well as private 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 civil service pay adjustment.

Basic Law issues

31. Responding to Miss Margaret NG, LO/CL, D of J confirmed that the Government's decision to reduce civil service pay this year and the implementation of the decision through legislation were consistent with the provisions in the Basic Law. If any potential litigant did not share this view, he could challenge the enacted legislation on the grounds that it was unconstitutional.

32. Miss Margaret NG was concerned that the Bill might contravene Articles 6 and 105 of the Basic Law. LO/CL, D of J said that in the Administration's view, the provisions in these two Articles were related to property, rather than employment contracts or salary.

33. Responding to Mr Michael MAK, LA referred Members to paragraph 14 of LC Paper No. LS 108/01-02 and pointed out that there had not been any established authoritative interpretation of "no less favourable than before" in the context of Article 100 of the Basic Law. LO/CL, D of J also drew Members' attention to paragraph 15 of the Administration's written response (LC Paper No. CB(1)1832/01-02(02)). While it was arguable that "no less favourable than before" in Article 100 could be construed to take account of the changes in the cost of living, that issue did not arise in the context of the proposed pay reduction since even after the reduction, the pay of civil servants would still be at or above the level in cash terms that they were receiving on 30 June 1997. Mr Michael MAK considered it misleading for the Administration to take such a simplistic interpretation of "no less favourable than before" by comparing only the pay levels in cash terms before and after 30 June 1997.

Further views of the deputations

34. Responding to Mr Michael MAK, Mr WONG Wai-hung, Chairman of GDSGU, said that members of GDSGU would accept pay reduction if it was implemented in accordance with the existing pay adjustment mechanism instead of through legislation, and would also accept the recommendations made by an independent Committee of Inquiry appointed under the 1968 Agreement.

35. Ms Cyd HO asked whether the deputations would conduct surveys to ascertain their members' readiness to accept the proposed pay reduction if it was implemented in accordance with the existing mechanism instead of through legislation. Mr MAN Sai-kit, Chairman of DSCC (Staff Side), undertook to conduct such a survey. Mr Peter WONG, representative of SCSC (Staff Side), said that SCSC (Staff Side) had already written to all central consultative councils and civil service unions, seeking their support for the request for the appointment of an independent Committee of Inquiry under the 1968 Agreement to resolve the pay adjustment disputes this year. Mr LAU Kam-wah, member of PFC, said that according to the survey conducted by the Local Inspectors' Association, its members would accept pay reduction if it was implemented in accordance with the existing pay adjustment mechanism. Mr LEUNG Chau-ting, Chairman of Hong Kong Federation of Civil Service Unions (HKFCSU), said that members of HKFCSU would respect a decision on pay adjustment made in accordance with the existing pay adjustment mechanism. Mr Felix CHEUNG, Chairman of HKCSGU, considered that the survey should be conducted by the Administration, as it had the resources to conduct a comprehensive survey covering all civil servants.

36. SCS stressed that the Government respected the existing pay adjustment mechanism and that this year's pay adjustment exercise had been conducted in full accordance with the existing mechanism. However, in view of the difficulties

encountered by the Government to implement its decision to reduce civil service pay as explained earlier at the meeting, legislation was the only way to implement the decision with certainty.

Way forward

37. The Chairman thanked the Administration and the deputations for attending the meeting. As the Administration planned to introduce the Bill into LegCo for first reading and commencement of second reading debate on 5 June 2002, the Bill would be scrutinized by a Bills Committee to be formed for the purpose.

II. Any other business

38. There being no other business, the meeting ended at 1:15 pm.

Legislative Council Secretariat

4 October 2002