

LC Paper No.

**LegCo Panel on Public Service
2002 Civil Service Pay Adjustment**

Committee of Inquiry under the 1968 Agreement

Purpose

1. This paper sets out background information on the Committee of Inquiry procedure under the 1968 Agreement and on previous requests made by the staff side of the Senior Civil Service Council (SCSC) to set up such a Committee of Inquiry.

Committee of Inquiry

2. A copy of the 1968 Agreement signed between the two sides of SCSC (adapted version) is at the Annex. Clauses 7 – 13 of the Agreement relate to the Committee of Inquiry procedure.

Previous Requests to set up a Committee of Inquiry

3. Since the signing of the 1968 Agreement, the staff side of the SCSC has requested, on four occasions, for the setting up of a Committee of Inquiry. Details are set out in paragraphs 4 - 8 below.

Committee of Inquiry in 1970

4. Due to disagreement between the two sides of the SCSC over the size of the 1969 civil service pay adjustment, a Committee of Inquiry was appointed in March 1970 at the request of the staff side to consider the 1969 pay adjustment. In June 1969, the Administration offered a 5% pay increase with effect from 1 April 1969. The staff side counter-proposed that in addition to the proposed 5% increase, there should be a further award of 2.5% for the period from 1 April 1968 to 31 March 1969. A Committee of Inquiry was appointed in March 1970 to look into the matter. It is noteworthy that the mechanism for determining the annual civil service pay adjustment in the late sixties was very different from the existing civil service pay adjustment mechanism, which was introduced in 1974 and which takes into account

various relevant factors including the results of the independent private sector pay trend survey.

Committee of Inquiry in 1988

5. The 1988 Committee of Inquiry was triggered by both the 1986 Pay Level Survey and the 1988 civil service pay adjustment. The results of the 1986 Pay Level Survey showed that generally, with the exception of the civil service packages for Model Scale One grades, and Directorate Pay Scale Point 3 and above, the civil service remuneration package compared favourably with the private sector. The general results of the 1986 Pay Level Survey, which were accepted by the Government, were however rejected by both the SCSC and the Police Force Council (PFC). The staff side of SCSC requested the appointment of a Committee of Inquiry to look into the results of the 1986 Pay Level Survey. The request was rejected by the Government on the ground that no specific Government proposals had yet been put forward for implementing the survey results.

6. While discussion on the results of the 1986 Pay Level Survey continued, there was further disagreement between the Administration and the staff sides over the size of the 1988 civil service pay adjustment. The Administration offered an adjustment which was equivalent to the pay trend indicators¹. The staff side of the SCSC, however, considered that the pay trend indicators in the 1987-88 Pay Trend Survey had been understated. It also did not accept that the 1986 Pay Level Survey should be used as the basis for adjusting the civil service pay in future years. As there were no prospects of reaching agreement with the staff side of SCSC on the 1988 civil service pay adjustment, a Committee of Inquiry was appointed in August 1988 to examine, inter alia, the methodology and findings of the 1986 Pay Level Survey and comment on their validity as a basis for making adjustments to civil service pay.

Request for the setting up of a Committee of Inquiry in 1992

7. In 1992, the staff side of SCSC did not accept the civil service pay adjustment offer that year on the ground that the 1992 pay adjustment should take into account

¹ When the Administration made this pay offer, the increment deduction formula for the calculation of the net pay trend indicators was not yet in place. The formula for calculating net pay trend indicators, which includes the percentage values of private sector merit pay and increments (e.g. bonus) from which the payroll cost of civil service increments is deducted, was introduced in 1989 following the recommendation of the 1988 Committee of Inquiry.

the alleged “shortfall” in salary adjustment in 1990 and 1991². The request was rejected by the Governor as it is a matter of settled public policy that in determining the size of each year’s civil service pay adjustment, the results of the Pay Trend Survey, together with other factors including the state of the economy, budgetary considerations, changes in the cost of living, the staff sides’ pay claims and civil service morale, are to be taken into account. It is also a settled public policy that each pay adjustment is a separate and independent exercise based on considerations pertaining to the prevailing circumstances. There was, therefore, no question of a “shortfall” of pay adjustment from previous years. Since the 1992 pay adjustment has been determined in accordance with the established policy, the then Governor ruled that there was no case for a review by a Committee of Inquiry.

Request for the setting up of a Committee of Inquiry in 1994

8. In late 1994, the staff side of the SCSC requested the appointment of a Committee of Inquiry to review the Government’s decision not to allow participants who had already joined the Home Financing Scheme (HFS) to receive the new higher rates of allowances for new HFS participants. The Governor rejected the request on the ground that the HFS arrangement is a matter of settled public policy and falls outside the remit of a Committee of Inquiry.

Civil Service Bureau
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² The civil service pay adjustments in 1990 and 1991 respectively were slightly lower than the net pay trend indicators in those two years.

**1968 AGREEMENT BETWEEN THE HONG KONG GOVERNMENT
(NOW KNOWN AS THE GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION)
AND THE MAIN STAFF ASSOCIATIONS
(1998 ADAPTED VERSION)**

1. The following is an interpretation of certain words and expressions used in this document :

“The Government of the Hong Kong Special Administrative Region” means the Chief Executive, acting where appropriate after taking the advice of the Executive Council and/or with the consent of the Legislative Council or any Standing Committee thereof save where the context otherwise requires.

“The Chief Executive” means the Chief Executive of the Hong Kong Special Administrative Region and includes the acting Chief Executive.

“Chief Executive-in-Council” means the Chief Executive acting with the advice of the Executive Council, but not necessarily in accordance with such advice nor necessarily in such Council assembled.

“Chief Secretary for Administration” and “Secretary for the Civil Service” mean the persons for the time being holding these offices in either a substantive or acting capacity.

“Main Staff Associations” and “Staff Associations” and “Associations” and “Association” mean the Hong Kong Chinese Civil Servants’ Association, the Association of Expatriate Civil Servants of Hong Kong and the Senior Non-Expatriate Officers’ Association, or any one of these three Associations, or any other Association that may be granted central recognition. Central recognition may be granted by the Chief Secretary for Administration after consulting the Council as constituted for the time being.

“Senior Civil Service Council” and “Council” mean the Council set up in accordance with Clause 3(2) of this Agreement.

“Official Side” and “Staff Side” shall have the meanings as described in the Constitution of the Council.

2. This Agreement is the revised version of the Agreement made on the seventeenth day of June 1968 between the Hong Kong Government and the Main Staff Associations.

3. (1) The Government of the Hong Kong Special Administrative Region undertakes not to make any considerable change in conditions of service which affects a substantial part of the Service as a whole, or of the members of one or more of the Main Staff Associations, without prior consultation with the appropriate Associations or Association.

(2) Such consultation shall take place through the Senior Civil Service Council which has the object of :

(a) discussing, in a spirit of goodwill, any matters which fall within the scope of this Agreement, or which may be more specifically set out in the Constitution of the Senior Civil Service Council, and

(b) reaching agreement if possible between the Official and Staff Sides of the Council on any such matter generally, and in particular on any changes in conditions of service whether proposed officially or by the Associations, jointly or severally.

The Constitution of the Council is contained in Appendix A to this Agreement.

(3) The Government of the Hong Kong Special Administrative Region also undertakes that matters on which agreement cannot be reached after full and proper discussion in the Council may be referred to an independent Committee of Inquiry, to be set up in the manner described in Clause 7 of this Agreement, subject to the conditions and limitations set out in Clauses 7 and 8 of this Agreement.

(4) Staff on the Model 1 pay scale, members of the Police Force and directorate officers are, however, excluded from the provisions of this Agreement.

4. The Government of the Hong Kong Special Administrative Region and the Associations undertake to be bound by any agreement reached at the Council, subject to any decision thereon of the Chief Executive-in-Council and/or the Legislative Council or the Finance Committee thereof whenever the Chief Executive considers that reference to any of these bodies is necessary.

5. Informal consultation may take place at any time between the Staff Associations and the Secretary for the Civil Service and the Civil Service Bureau Officers.

6. Committees of the Senior Civil Service Council with representation therein from the Official Side and the Staff Side may be appointed in such manner as the Council determines to consider particular matters after they have been raised in the Council. Any agreement reached in any Committee shall be subject to endorsement by the Council but may be endorsed in the Council without the necessity of representatives of Association that are not concerned being present.

7. (1) If the Chairman of the Council and the leader or leaders of the Staff Side jointly declare that there are no prospects of reaching agreement on any matter within the scope of this Agreement, existing administrative channels shall first be used in an effort to enable agreement to be reached, failing which an independent Committee of Inquiry will be appointed by the Chief Executive, provided the Chief Executive so decides or the Associations so request, and provided the matter in dispute is not one which, in the opinion of the Chief Executive :

(a) is trivial; or

(b) is a matter of settled public policy; or

(c) affects the security of the Hong Kong Special Administrative Region;

and provided further that the Chief Executive may at any time, if he considers that the prospects for reaching agreement have materially improved, direct that the matter in dispute be referred back to the Council for reconsideration.

(2) The Associations will have the right to state a case to the Chief Executive in rebuttal of triviality or of a matter being regarded as one of settled public policy, but after consideration thereof the Chief Executive's decision shall be final. The Chief Executive's decision that a matter affects the security of the Hong Kong Special Administrative Region will not be open to question.

(3) The Secretary for the Civil Service and the Associations will co-operate with a view to the appointment of a Committee of Inquiry within two months after a decision being made by the Chief Executive that such a Committee should be appointed.

8. Matters which are specifically not referable to a Committee of Inquiry are pensions and retirement allowances which are governed by Ordinance; the grant or refusal of pensionable status, numbers or complements of staff; actual times of attendance of staff, disciplinary questions, and matters concerning individual officers and individual grades.

9. The Terms of Reference of a Committee of Inquiry will, if possible, be agreed between the Chairman of the Council and the leader or leaders of the Staff Side at a meeting of the Senior Civil Service Council. In the event of inability to agree, the Government of the Hong Kong Special Administrative Region will put forward one version which, together with the Staff Associations' version or versions, will together constitute the Terms of Reference, provided that such a Committee will not be entitled to consider issues beyond the scope of Clauses 7 and 8 of this Agreement.

10. (1) A Committee of Inquiry shall be appointed on an ad hoc basis and shall have the following composition :

(a) A Chairman to be appointed by the Chief Executive;

(b) a member nominated by the Staff Side for appointment by the Chief Executive; and

(c) a member nominated by the Official Side for appointment by the Chief Executive.

The members of a Committee of Inquiry may be civil servants, provided they have no direct personal interest in any matter to be considered by the Committee of Inquiry.

(2) The Secretary and secretarial staff to a Committee of Inquiry will be provided by the Government of the Hong Kong Special Administrative Region, which will also meet any other expenses necessarily incurred by such Committee, subject to the proviso contained in Sub-Clause (4) of this Clause.

(3) In the event that the Associations cannot agree on a member to be proposed by them to sit on a Committee of Inquiry, the Chief Executive will accept for first consideration the person nominated by any two of them.

(4) In the event that the Associations desire to propose a member of a Committee of Inquiry from overseas who is otherwise acceptable to the Chief Executive, the Associations shall bear the cost of his passages to and from the Hong Kong Special Administrative Region, and his accommodation therein, unless the Government of the Hong Kong Special Administrative Region agrees that such overseas member is desirable and accepts these charges.

11. A Committee of Inquiry will examine any matter set before it in accordance with Clause 9 of this Agreement and may call for any relevant information it requires from either the Chief Secretary for Administration or the Associations or any one of them, who shall furnish the information desired to the best of their reasonable ability. On completion of the examination of any matter included in its Terms of Reference a

Committee of Inquiry will make its report as set out in Clause 12(1) of this Agreement.

12. (1) The Report of a Committee of Inquiry will be submitted to the Chief Executive, copies being made available simultaneously to the Associations, in confidence if necessary in the first instance.

(2) The recommendations of a Committee of Inquiry (including recommendations concerning dates of implementation) will not be subject to further consultation under Clause 3 of this Agreement but will be subject to any decision thereon by the Chief Executive -in-Council and/or the Legislative Council or the Finance Committee thereof whenever the Chief Executive considers that reference to any of those bodies is necessary. In matters not requiring such reference, the recommendations of the Committee of Inquiry will be binding on the Government of the Hong Kong Special Administrative Region and the Associations provided they are acceptable to both parties.

(3) Recommendations of a Committee of Inquiry which are accepted by the Government of the Hong Kong Special Administrative Region, or are rejected or modified after reference to the Chief Executive-in-Council and/or the Legislative Council or the Finance Committee thereof, shall not again be considered in the Council within twelve (12) months without leave of the Chief Secretary for Administration so to do : provided that this prohibition shall not be held to extend to discussion of the detailed machinery by which any recommendation or modified recommendation may best be put into effect.

13. As regards matters that are not referable to a Committee of Inquiry, if after discussions in the Senior Civil Service Council it is found impossible to meet the views of the Associations at official level, reasons will be given and the official view will be explained to the Associations. In such cases, if the subject matter under discussion falls to be determined by the Chief Executive-in-Council, the Legislative Council or the Finance Committee thereof, such views as the Associations may wish to express will be forwarded to any of these authorities which considers the matter.

14. In the event of a consultative council being established by the Government of the Hong Kong Special Administrative Region to represent the interest of Model Scale 1 staff, such a consultative council and the Senior Civil Service Council shall function as distinct and separate entities. Matters of mutual interest and concern may be discussed between the Staff Side and those members of such a consultative council who represent the interests of Model Scale 1 staff therein.

15. The terms of this Agreement shall be reviewed initially after one year and thereafter at periods of not less than every two years by the Senior Civil Service Council, which may then recommend any modifications it considers desirable. Minor

modifications may also be recommended by agreement in the Council at all times, but all modifications will be subject to the approval of the Government of the Hong Kong Special Administrative Region.

16. (1) Notwithstanding the terms of this Agreement, the Government of the Hong Kong Special Administrative Region may, at any time, if satisfied that the public interest so requires, make or refuse to make any change in conditions of service whether or not the Main Staff Associations have been consulted and whether or not they have agreed thereto.

(2) The Government of the Hong Kong Special Administrative Region shall, when exercising the right referred to in Sub-Clause (1) of this Clause, inform the Main Staff Associations of the reasons for such exercise. The Staff Associations shall comply with any requirement as to secrecy which the Government of the Hong Kong Special Administrative Region may impose when supplying this information.

(3) The right to alter, or refuse to alter, conditions of service referred to in Sub-Clause (1) of this Clause comprises also the right to make such amendments to Civil Service Regulations, and any other Regulations issued by and on behalf of the Government of the Hong Kong Special Administrative Region, as may be necessary to give effect to any exercise of the right referred to in Sub-Clause (1) of this Clause.

17. Nothing in this Agreement shall affect any rights of making representation under the Public Service (Administration) Order 1997.

September 1998

**Constitution of the Senior Civil Service Council
(1998 Adapted Version)**

Membership

1. The Council shall consist of a maximum of six official members appointed by the Chief Secretary for Administration and a maximum of nine staff members appointed by the Staff Associations from amongst their members, together with a Staff Side Secretary appointed by the Government of the Hong Kong Special Administrative Region. The official members will form the Official Side of the Council and the staff members together with the Staff Side Secretary, will constitute the Staff Side of the Council. All appointments and terminations of appointment will be notified to both secretaries by the appointing authority concerned.

Officers

2. Chairman. The Chairman of the Council shall be an official member of the Council, appointed by the Chief Secretary for Administration. The staff members of the Council may nominate a leader of the Staff Side, or each Association may nominate a leader as preferred.

3. Secretaries. There shall be two joint Secretaries to the Council. The Official Side Secretary shall be an official member of the Council nominated by the Chairman, and the Staff Side Secretary shall be a member of the Staff Side of the Council. The Secretaries shall be responsible for arranging meetings, settling agendas, circulating papers etc. The Official Side Secretary will be responsible for the production of minutes which will be submitted to the Staff Side for comment. If an agreed minute cannot be arrived at, separate wordings will be recorded.

4. Quorum. A quorum shall consist of not less than 3 official members and not less than 1 staff member from each Association which has not indicated that it does not desire to be represented at the meeting.

5. (1) Meetings, etc. Meetings of the Council may be held as often as necessary. If the Chairman or the leader or leaders of the Staff Side request the Official Side Secretary to convene a meeting, such meeting shall be convened if at all possible within twenty-one days of such request being received. The person requesting the meeting shall at the time of the request provide both secretaries with a list of items

to be placed on the agenda together, where available, with his submissions thereon in sufficient copies for distribution. Copies of these submissions will be made available by the Official Side Secretary to all members at the time of convening the meeting.

(2) An agenda and any papers connected therewith shall be circulated to all members not less than 14 days before the meeting of Council. Business not on the agenda shall be taken only with the agreement of both the Chairman and the leader or leaders of the Staff Side.

6. The Council may draw up such standing orders and rules for the conduct of its business, not incompatible with the 1968 Agreement or this Constitution as it may deem necessary.

Objects

7. General objects. The objects of the Council shall be to attain the greatest measure of co-operation between the Government of the Hong Kong Special Administrative Region in its capacity as employer, and the general body of civil servants in matters affecting the Civil Service, with a view to improving the efficiency of the Public Service, and securing the well-being of those employed to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view or representatives of the Civil Service.

Functions

8. The scope of the Council shall be as described in Clause 3(1) of the 1968 Agreement (1998 Adapted Version) as amended from time to time, and its functions shall include the following :

- (a) The provision of machinery for utilising the ideas and experience of the staff in matters relating to conditions of service.
- (b) The provision of opportunities for the staff to play a greater part in the formation of the policies governing the conditions under which their duties are carried out, and in determining the most appropriate methods of applying those policies.
- (c) Discussion of the general principles governing conditions of service, e.g. recruitment, hours of work, remuneration, promotion, discipline, leave, housing, pension etc., provided that :

- (i) The discussion of promotion shall be restricted to the general aspects of the subject and the principles upon which promotions in general should rest. In no circumstances shall individual cases be taken into consideration.
- (ii) It shall be open to the Council to discuss the general principles underlying disciplinary action, but there shall be no discussion of individual cases.
- (d) The consideration of methods of encouraging enhanced proficiency amongst civil servants, and their further training in duties appropriate to their grades in the Service.
- (e) The consideration of methods of improving organisational efficiency and of providing opportunities for the joint study of suggestions made by the staff to this end.
- (f) The provision of a means for the joint study of proposed legislation, insofar as it has a bearing upon the position of civil servants in relation to their employment.
- (g) The consideration of matters referred by departmental consultative committees concerning the interpretation and general application of service-wide policies falling within the scope of the Council.

9. The Council may appoint standing committees, special committees or ad hoc committees as it may determine and may refer particular matters to such committees for consideration after they have been raised in the Council.

10. Any agreement reached in any Committee shall be presented to the Council for endorsement, in accordance with the provisions of Clause 6 of the 1968 Agreement (1998 Adapted Version). Where no agreement has been reached on any matter requiring agreement, separate reports reflecting the differing opinions held shall be made to the Council.

11. The Council may by agreement invite observers, invite the attendance of special advisers and may appoint on committees such persons not necessarily being members of the Council as may serve the special purposes of the Council.

Decisions of the Council

12. (1) Nothing shall be held to be decided in the Council except by agreement between the Official Side and the representatives of each of those Associations

concerned in the matter under consideration. For this purpose, the agreement or otherwise of the Official Side shall be notified to the Council by the Chairman; and for each of the Associations by its leader or by one spokesman nominated by the Association to the Chairman for this purpose. A notification that the Official Side or one or more Association does not desire to express agreement or disagreement; or in the circumstances that one or more Association, not being concerned, is not represented at the meeting; shall not affect any agreement reached by the other parties.

(2) Where no agreement is reached, a brief statement reflecting the differing views expressed shall be recorded in the minutes in lieu of a decision.

(3) Provisional agreement 'ad referendum' may be notified to the Council by the Chairman or by Association spokesman. In this event, the person notifying such agreement shall confirm or withdraw the provisional agreement recorded with all reasonable speed; but until confirmation or withdrawal has been notified, the matter shall be regarded as remaining undecided.

Publication of Proceedings

13. Statements of the deliberations of the Council and any decisions or agreements reached at Council meetings may be issued under the authority of the Council to any member of the Public Service who is concerned, and shall be as full and informative as possible. The Council may from time to time draw up rules for issuing to the general public statements of proceedings in the Council.

Minutes

14. The Council shall keep minutes of its proceedings in such manner as it shall determine, subject to the provisions of paragraph 3 of this Constitution.

Amendment of the Constitution

15. The constitution of the Council may be amended by agreement in the Council, subject to the covering approval of the Chief Secretary for Administration being obtained before the amendment is brought into effect. Notice of any proposed amendment of the constitution of the Council must be given and circulated to the members of the Council at least one month before the meeting at which it is to be discussed.