

**LEGCO QUESTION NO. 11**

(Written Reply)

Asked by the Hon Emily LAU

Date of meeting: 12 November 2003

Replied by: Secretary for the Civil Service

Question

If civil servants or judicial officers to whom pensions have been granted are re-appointed to the public service, or appointed to service in any subvented organization, the authorities usually suspend the payment of the monthly pension to them during the period of their service. However, the Chief Executive ("CE") may exercise his discretionary power to allow them to continue to receive their pensions during the period concerned. In this connection, will the Executive Authorities inform this Council:

- (a) of the factors the CE normally takes into account before deciding whether to exercise the discretionary power;
- (b) of the number of cases in which the CE exercised the discretionary power in the past three years and, in respect of each case, the name of the retired officer, the public service taken up by him and the reasons for his being allowed to continue to receive his pension; and
- (c) as there have been comments that the continued receipt of pensions by the officers concerned during the periods of their service amounts to double benefits and abuse of public funds, whether the authorities will consider amending the legislation to abolish or tighten up the provisions on the CE's exercise of the discretionary power; if so, of the timeframe for introducing such amendments; if not, the reasons for that?

Reply

Madam President,

The question raised by the Hon Emily LAU touches on the arrangements for civil servants and judicial officers. In respect of judicial officers, we have consulted the Judiciary and have obtained the relevant information from them. Detailed reply is as follows –

- (a) The civil service pension schemes comprise the Old Pension Scheme and the New Pension Scheme which are governed by the Pensions Ordinance and the Pension Benefits Ordinance respectively. Both ordinances are administered by the Secretary for the Civil Service. Under section 11 of the Pensions Ordinance and section 26 of the Pension Benefits Ordinance, if a retired civil servant is re-appointed to the public service, or appointed to service in any subvented organization which is determined to be public service by the Chief Executive by notice in the Gazette, the Chief Executive may exercise his discretion to suspend the payment of monthly pension to the officer concerned. The exercise of this authority is discretionary but not mandatory. The Chief Executive may determine whether or not to exercise his discretion to suspend pension payment depending on individual circumstances.

The pensions legislation which are applicable to judicial officers include the Pensions Ordinance and the Pension Benefits (Judicial Officers) Ordinance. The former is related to the Old Pension Scheme while the latter is related to the New Pension Scheme. The

Pensions Ordinance is administered by the Secretary for the Civil Service while the Pension Benefits (Judicial Officers) Ordinance is administered by the Chief Justice.

In respect of judicial officers, under section 28 of the Pension Benefits (Judicial Officers) Ordinance (Cap 401), if a retired judicial officer is re-appointed to the public service, or appointed to service in any subvented organization determined by the Chief Executive by notice in the Gazette as public service, the Chief Executive may suspend the pension of the relevant officer. The ordinance does not specify the criteria for pension suspension. The Chief Executive may determine whether or not to exercise his discretion to suspend pension payment depending on individual circumstances.

- (b) In respect of civil servants, in the past three years, the Chief Executive has only waived the pension suspension for five cases. These five cases involved retired civil servants who have reached the earliest permissible retirement age under respective pension schemes and who were appointed as Principal Officials under the Accountability System. In allowing these officers to receive pensions while appointed as Principal Officials, the Chief Executive had taken into account the fact that the remuneration of the Principal Officials does not include any gratuities or retirement benefits (other than the statutory minimum mandatory provident fund) and there is no security of tenure. This approval is only applicable during the relevant persons' terms of office as Principal Officials. Once these persons step down from the position of Principal Officials and are appointed to the public service as stipulated under the pensions

legislation, payment of their pension may be suspended in accordance with the normal rule. This arrangement was fully explained to the Legislative Council in the context of implementation of the Accountability System.

In addition, in the past three years, under delegated authority from the Chief Executive, there were 442 cases (340 cases were re-appointments to the Government; 102 cases involved service in the relevant subvented organizations) involving retired civil servants taking up employment on a part-time (for a period of not more than 24 hours a week) or short-term basis (for a period of not more than three months) who were allowed to receive their pensions. The major consideration for allowing retired civil servants appointed to the public service on a part-time or short-term basis to continue to receive pensions is the short-term nature of these appointments. This arrangement has been a long-standing practice and was formalized in 1994.

In respect of judicial officers, in the past three years, the Chief Executive has only waived the pension suspension arrangement on one case which is the case already publicly known involving ex-Chairman of the Equal Opportunities Commission. In that case, the Chief Executive had taken into account the fact that the individual had to retreat from his retirement and to resign from various other public and private sector appointments in order to take up the full-time employment of the Commission. The Chief Executive therefore acceded to the individual's request not to suspend his pension. In addition, according to information provided by the

Judiciary, during the past three years, there were two cases involving retired judicial officers taking up positions in the public service on a part-time or short-term basis who were allowed to continue to receive their pensions.

To protect individual privacy, we do not consider it appropriate to disclose the names and the appointment of those concerned in the above-mentioned cases.

- (c) It should be noted that the grant of pensions to civil servants and judicial officers after retirement is a right as provided for under the pensions legislation. The current policy on pension suspension, as shown from the cases under (b), is that if a retired civil servant or judicial officer is appointed to the public service after retirement, the pension suspension arrangement will apply other than for short-term or part-time appointments or under exceptional circumstances. We consider that this policy remains broadly appropriate.