

立法會
Legislative Council

LC Paper No. CB(1)552/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PS/1

Panel on Public Service

**Minutes of meeting
held on Monday, 17 November 2003 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 Kenneth TING Woo-shou, JP
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung, JP
Hon Bernard CHAN, JP
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, SBS, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP

Non-Panel Members attending : Hon CHAN Yuen-han, JP
Hon Emily LAU Wai-hing, JP

Members absent : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Albert CHAN Wai-yip

Public officers attending : Agenda Item III

Mr Joseph W P WONG, GBS, JP
Secretary for the Civil Service

Mrs Rebecca LAI, JP
Permanent Secretary for the Civil Service

Miss Jennifer MAK, JP
Deputy Secretary for the Civil Service (1)

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

Staff in attendance : Ms Rosalind MA
Senior Assistant Secretary (1)8

Ms May LEUNG
Legislative Assistant

I. Confirmation of minutes of meeting
(LC Paper No. CB(1)205/03-04 — Minutes of meeting on 9 October 2003)

The minutes of the meeting held on 9 October 2003 were confirmed.

II. Proposed discussion items for the Panel meetings to be held from December 2003 to June 2004

(LC Paper No. CB(1)296/03-04(01) — List of outstanding items for discussion

LC Paper No. CB(1)296/03-04(02) — List of follow-up actions)

2. The Chairman reported that he had discussed with the Secretary for the Civil Service (SCS) on 12 November 2003 on the discussion items proposed by members and the Administration for the Panel meetings to be held from December

2003 to June 2004. He then briefed members on the proposed discussion items set out in LC Paper No. CB(1)296/03-04(01).

3. The Chairman pointed out that the proposed discussion items for the meetings to be held from December 2003 to June 2004 were tentative and would have to be reviewed and updated in due course to meet the needs of the Panel and the Administration. On item 2 of the list of outstanding items for discussion (Employment of non-civil service contract staff), the Chairman informed members that SCS had agreed to provide the requested information in early 2004, before the discussion of the item at the Panel meeting on 19 April 2004.

4. Members agreed that the following items be discussed at the next regular meeting scheduled for 15 December 2003:

- (a) Progress on the development of an improved civil service pay adjustment mechanism; and
- (b) Reorganization of the Civil Service Training and Development Institute (CSTDI).

5. On paragraph 4(a) above, members noted that the item, which had originally been scheduled for discussion at this meeting, was deferred to the meeting in December at the request of the Administration. As regards paragraph 4(b) above, the Administration proposed to brief the Panel on the reorganization of CSTDI, and then submit the proposal to the Establishment Subcommittee and Finance Committee on 7 January 2004 and 20 February 2004 respectively.

III. Pension suspension policy for retired civil servants

(LC Paper No. CB(1)296/03-04(03) — Paper provided by the Administration

LC Paper No. CB(1)321/03-04(01) — The Administration's written reply to Question No. 11 raised at the Council meeting on 12 November 2003

LC Paper No. LS95/01-02

— Paper prepared by Legal Service Division in May 2002 on “Proposed Arrangements for Payment of Pension to Serving Civil Servants Appointed as Principal Officials under the Accountability System for Principal Officials”

LC Paper No. CB(2)1992/01-02(01)

— Paper provided by the Administration in May 2002 on “Retirement Arrangements for Pensionable Civil Servants”)

6. At the Chairman’s invitation, the Deputy Secretary for the Civil Service (1) (DSCS1) briefed members on the current pension suspension policy for retired civil servants. She pointed out that the civil service pension schemes comprised the Old Pension Scheme and the New Pension Scheme, which were governed by the Pensions Ordinance (PO) (Cap. 89) and the Pension Benefits Ordinance (PBO) (Cap. 99) respectively. Entitlement to pension benefits for those whose terms of appointment attracted pensions was a right as provided for under section 5 of both PO and PBO. Section 26 of PBO provided that if a retired civil servant was re-appointed to the public service, or appointed to service in any subvented organizations which was determined to be public service for the purpose of pension suspension by the Chief Executive (CE) by notice in the Gazette, his pension might be suspended during the period of such service. There was a similar provision in section 11 of PO. The exercise of this authority to suspend pension was discretionary but not mandatory.

7. DSCS1 pointed out that the policy to suspend the pension of a retired civil servant on re-appointment to the public service had been in place for a long time. The rationale for pension suspension was that, under normal circumstances, there was no specific reason from the public finance angle to grant a recurrent monthly pension to a retiree if he was still gainfully employed in the Government with a stable monthly income financed by the public purse. Over the years, the pension suspension policy had been applied to suspend the pension of retired civil servants who were re-appointed to the public service or appointed to the gazetted subvented organizations except for two categories of retired civil servants. The first category involved those retired civil servants who had reached the earliest permissible retirement age under respective pension schemes and who were appointed as Principal Officials under the Accountability System. The second

category involved retired civil servants who took up part-time or short-term employment in the public service or one of the 16 gazetted subvented organizations. DSCS1 then referred members to the background and considerations for the arrangements for these two categories of retired civil servants set out in paragraphs 7 and 8 of the paper.

8. In conclusion, DSCS1 pointed out that the Administration considered the current pension suspension policy remained broadly appropriate.

Discussion

Exception to pension suspension arrangement: retired civil servants appointed as Principal Officials under the Accountability System

9. Mr CHEUNG Man-kwong queried whether it was justified and fair to exempt the retired civil servants appointed as Principal Officials under the Accountability System from pension suspension. Referring to paragraph 4 of the paper provided by the Administration, Mr CHEUNG pointed out that the rationale for pension suspension was that, under normal circumstances, there was no specific reason from the public finance angle to grant a recurrent monthly pension to a retiree if he was still gainfully employed in the Government with a stable monthly income financed by the public purse. He considered that this rationale should be applicable to the retired civil servants appointed as Principal Officials, and that the justifications set out in paragraph 7 of the paper for the exceptional arrangement for Principal Officials were unconvincing. He could not see any reason for allowing this category of retired civil servants to enjoy “double benefits”.

10. SCS declared interest as one of the Principal Officials receiving monthly pension. He pointed out that paragraph 4 of the paper referred to the rationale for pension suspension under normal circumstances, and that exceptions to this arrangement had been applied to two categories of retired civil servants, including those appointed as Principal Officials under the Accountability System. In allowing these officers to receive their pensions during their tenure as Principal Officials, the Chief Executive (CE) had taken into account the fact that the remuneration package for the Principal Officials appointment did not contain any gratuity or retirement benefits (other than the statutory minimum mandatory provident fund) and that there was no security of tenure. This special arrangement was only applicable during the relevant persons’ terms of office as Principal Officials. SCS added that this special arrangement was fully explained to the Legislative Council (LegCo) before the implementation of the Accountability System in July 2002. While some Members had raised similar

concerns during the discussion of the Accountability System, the entire package for the implementation of the System was subsequently approved by LegCo.

11. Mr CHEUNG Man-kwong maintained his view that the exceptional pension arrangement was unjustified and unfair. He pointed out that although the remuneration package for Principal Officials did not contain any gratuity, their pay levels were much higher than those of civil servants at D8 level. He requested the Administration to review the propriety of this exceptional arrangement.

12. Mr LEE Cheuk-yan, Mr Michael MAK, Mr Andrew WONG, Ms Emily LAU and Miss CHAN Yuen-han supported Mr CHEUNG Man-kwong's view and requested the Administration to review the exceptional pension arrangement. Mr LEE queried whether it was fair for the Administration to request civil servants to share the burden of the community by reducing their pay, while allowing the retired civil servants appointed as Principal Officials to enjoy "double benefits". Mr MAK was not convinced that the lack of security of tenure was a justification for the retired civil servants appointed as Principal Officials to enjoy "double benefits". Ms LAU pointed out that the public was very concerned about the unfair arrangement for some of the retired civil servants to be exempted from pension suspension and the concern needed to be addressed. Referring to the grave public concern about the approval given for the ex-Chairman of the Equal Opportunities Commission (EOC), Mr Michael WONG, to receive his monthly pension during his employment with EOC, Miss CHAN opined that the Administration should review as soon as possible the exceptional arrangement for retired civil servants appointed as Principal Officials to receive their pension during their tenure as Principal Officials.

13. On the remuneration package for Principal Officials, SCS pointed out that the Administration had set out, in a paper presented to LegCo in April 2002 on the implementation of the Accountability System, the basis on which the remuneration package was worked out and the components of the package. A consultant was engaged to conduct a study and recommend an appropriate remuneration package for Principal Officials based on a survey of the remuneration packages of Chief Executive Officers in the private sector. The consultant recommended that the median level and not the top level of the total remuneration packages of the Chief Executive Officers surveyed should be used as the reference point for that of the Principals Officials. The resultant remuneration package was so structured that there was no housing allowance, leave passage allowance, children's education allowance and gratuity or retirement benefits. It was also comparable to that of incumbent substantive civil servants at D8 level, when the total weighted average cost for remuneration of civil servants at D8 level was considered. SCS also pointed out that while the remuneration package for Principal Officials was not

linked to civil service pay, the pay of Principal Officials had been reduced by 4.42% with effect from October 2002 in line with the civil service pay reduction. The Principal Officials further voluntarily reduced their pay by 10% with effect from 1 April 2003, well before the civil service pay reduction to be implemented from 1 January 2004, as a demonstration of their determination to share the hard times with the community.

14. On the lack of security in tenure, SCS pointed out that as a matter of fact, the employment of Principal Officials was not as secure as that of civil servants. Nevertheless, Principal Officials would serve the community with full commitment and dedication.

15. On the retirement benefits of the ex-Chairman of EOC, SCS clarified that as Mr Michael WONG was a retired judge, the payment of pensions to him was provided for under the Pension Benefits (Judicial Officers) Ordinance (Cap. 401), which was administered by the Chief Justice. CSB was not involved in Mr WONG's application for permission to take up appointment in the public service without suspension of pension.

16. Referring to SCS's advice that the remuneration package for Principal Officials was comparable to the total weighted average cost for remuneration of civil servants at D8 level, Mr CHEUNG Man-kwong pointed out that the remuneration package for Principal Officials had included the element of pension in effect. Ms Emily LAU also pointed out that while the remuneration package for Principal Officials did not include any housing allowances, the incumbent officers of the Chief Secretary for the Administration, the Financial Secretary and the Secretary for Justice were provided with official residences without paying any rental charges.

17. Mr CHEUNG Man-kwong urged the Administration to review the exceptional pension arrangement without delay. In response, SCS said that he was not in a position to respond to Members' request for a review as it was outside his purview. However, he reiterated that the arrangement for payment of pension to retired civil servants appointed as Principal Officials was endorsed by LegCo as part of the package of the proposals for the implementation of the Accountability System in 2002. The remuneration package of the Principal Officials did not include any pension or contract gratuity. The justifications put forward by the Administration for the arrangement at that time were still considered valid by the Administration. SCS considered that while LegCo might request for a review of the arrangement, the review, if considered necessary, should be conducted in the context of the package of the proposals for the implementation of the Accountability System and not as a stand alone proposal. SCS also pointed out

that it would be inappropriate for him to participate in the review, as he was an interested party, being one of the Principal Officials exempted from pension suspension.

18. Mr LEE Cheuk-yan opined that if it was outside the purview of SCS to respond to the request for a review of the exceptional pension arrangement, the Administration should advise the Panel of who was the officer responsible for the review. Mr CHEUNG Man-kwong shared his view. Mr Andrew WONG considered that the review should be undertaken by the Secretary for Constitutional Affairs.

Exception to pension suspension arrangement: retired civil servants who took up part-time or short-term employment in the public service

19. Referring to paragraph 9 of the paper, Mr LEE Cheuk-yan noted that there were 442 cases where the retired civil servants who took up part-time or short-term employment in public service or gazetted subvented organizations were exempted from pension suspension. Mr LEE queried the need for employing retired civil servants to take up the posts concerned, in particular the 29 retired civil servants formerly holding directorate positions. He considered it unfair for not offering the posts to other job seekers in the market for open competition.

20. The Permanent Secretary for the Civil Service (PSCS) explained that of the 442 cases, 340 cases involved retired civil servants who took up part-time or short-term employment in the Government and 102 cases in the gazetted subvented organizations. The 340 cases included those appointed to assist in the prompt implementation of cleansing operations arising from recommendations made by Team Clean following the outbreak of the Severe Acute Respiratory Syndrome and part-time shroff for Sunday/public holidays and evening clinics. Other short-term or part-time employment which did not require special skills or experience in the public sector had been offered to the job market. The 102 cases involved jobs such as part-time lecturers for short courses in tertiary institutions. As regards the 29 cases involving retired civil servants formerly holding directorate positions, PSCS pointed out that they were mainly involved in appointments to work on an ad hoc basis to help conduct inquiries on conduct and disciplinary matters under the Public Service (Administration) Order and to assist in the arrangement of ad hoc international programmes or seminars. Their previous administrative and managerial experience in the public sector facilitated the smooth implementation of these programmes or seminars.

21. Ms LI Fung-ying requested the Administration to provide further information on the 442 cases, showing a breakdown of the 340 cases, 102 cases

and 29 cases by the type of jobs taken up by the retired civil servants concerned. She also requested the Administration to provide information on whether there were cases where consecutive short-term employment had been offered to the retired civil servants concerned and the number of such cases. DSCS1 undertook to provide the information after the meeting.

(*Post-meeting note:* Supplementary information provided by the Administration was circulated to members vide LC Paper No. CB(1)527/03-04(01) on 8 December 2003.)

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22. Mr LEE Cheuk-yan requested the Administration to allow fair competition for the part-time or short-term employment in the public service. In response, PSCS undertook to draw the attention of Heads of Department (HoDs) to the need for striking a balance between providing employment opportunities to all job seekers in the market and benefiting from the experience of retired civil servants.

23. Mr Michael MAK opined that Directors of Bureau (DoBs) and HoDs should minimize the need for employing part-time or short-term staff through effective resource management and better advance planning. He asked whether there was any checks and balances in the employment procedures to guard against favouritism of retired civil servants in the recruitment of part-time and short-term staff. SCS explained that recruitment and appointments to the public service were subject to established procedures to ensure impartiality and fairness of the process, which were open and highly transparent. The Administration was willing to investigate into any cases of alleged favouritism upon request or complaint.

24. Ms LI Fung-ying enquired about the mechanism for processing applications from retired civil servants for part-time or short-term employment in the public service and the role of the Civil Service Bureau (CSB) in the process. In reply, SCS explained that under the pensions legislation, retired civil servants were required to seek prior permission from CE before they entered into business or took up employment in Hong Kong within a specified period after retirement if the principal part of their business or employment was carried out in Hong Kong. Application from directorate officers would be centrally processed by CSB on the advice of the Advisory Committee on Post-retirement Employment. Applications from non-directorate officers would be approved by their respective HoDs or Heads of Grade.

Criteria for approving waiver for pension suspension

25. Referring to the written reply from SCS to her written question for the Council meeting on 12 November 2003, Ms Emily LAU requested SCS to elaborate on the factors considered by CE before deciding whether to exercise his discretionary power to waive the pension suspension arrangement, in particular, the factors considered by CE in the case of the ex-Chairman of EOC. SCS advised that the factors normally considered by CE in deciding whether to accede to an individual retired officer's request not to suspend his pension and the factors considered by CE in respect of the case of the ex-Chairman of EOC had already been set out in his written reply. SCS reiterated that the latter case involved arrangements for judicial officers, which was mainly administered by the Chief Justice except for those officers under the Old Pension Scheme. CSB had consulted the Judiciary and obtained the relevant information from them in preparing the reply to Ms LAU's written question.

26. Ms Emily LAU noted from paragraph 10 of the paper provided by the Administration that "the current pension suspension policy will apply to all re-appointments in the public service and appointments in the gazetted subvented organizations other than for short-term or part-time appointments or under exceptional circumstances". She was concerned about the meaning of "exceptional circumstances". Mr Howard YOUNG shared her concern. SCS clarified that as shown from past statistics, there were no exceptional cases other than the five retired civil servants appointed as Principal Officials or the retired civil servants taking up part-time or short-term employment in the public service or the gazetted subvented organizations. He was not prepared to make any assumptions on cases of "exceptional circumstances" which might arise in the future. Mr HUI Cheung-ching pointed out that from the sentence in paragraph 10 of the paper quoted by Ms Emily LAU, it seemed that retired civil servants taking up part-time or short-term employment in the public service or the gazetted subvented organizations were not regarded as cases of "exceptional circumstances". SCS clarified that those were regarded as cases of "exceptional circumstances".

Disclosure of names and appointments of retired civil servants with pension suspension waived

27. Referring to her written question for the Council meeting on 12 November 2003, Ms Emily LAU pointed out that she had requested the Administration to disclose the names and appointments of the retired civil servants who had been exempted from pension suspension. The Administration however considered it inappropriate to disclose the relevant information for the protection of individual privacy. Ms LAU opined that as pension payable to these officers and their remuneration from the appointment in the public service were public

moneys, it would be in the public interest to disclose the relevant information, particularly for the 29 cases which involved retired civil servants formerly holding directorate positions. To ensure legality of the disclosure, Ms LAU suggested that the Administration should obtain the consent of the retired civil servants when considering their applications for waiving pension suspension. SCS noted Ms LAU's suggestion. In the event that there was a need to disclose the required information in future for reason of public interest, the Administration would seek the advice of the Privacy Commissioner for Personal Data and legal advice before deciding whether the information should be disclosed.

Motion proposed by Mr LEE Cheuk-yan

28. Mr LEE Cheuk-yan pointed out that the disparity in treatment of retired civil servants appointed as Principal Officials and other retired civil servants taking up employment in the public service was unjustified. He said that from his preliminary estimation, if the pension suspension policy was applied to the Principal Officials concerned, there would be an annual saving of about \$5 million. He requested immediate review of the exceptional pension arrangement applicable to Principal Officials and put forward the following motion for members' consideration:

“本委員會要求政府立即檢討現時由公務員轉任問責官員可在任期內享有退休金的雙重福利安排。”

29. Whilst indicating that he had no objection to the review, Mr LEUNG Fu-wah doubted whether the proposed motion should be dealt with at the meeting of the Panel on Public Service. He considered it more appropriate for the motion to be debated at a Council meeting so that all Members could participate.

30. The Chairman drew members' attention to House Rule 22(p) which provided that “[d]uring a Panel meeting, a motion may be proposed if it is considered by the chairman of the Panel as directly related to an agenda item of that meeting. The motion will be proceeded with if agreed by a majority of the members voting”. The Chairman considered the proposed motion directly related to the agenda item of the meeting. He also considered it appropriate for the Panel to deal with the motion because the subject matter of the motion related to the retired civil servants appointed as Principal Officials.

31. Mr HUI Cheung-ching opined that the proposed motion should be modified to avoid using the term “雙重福利 (double benefits)”, which was ambiguous and might not be interpreted as the exceptional pension arrangement

applicable to Principal Officials. Mr LEE Cheuk-yan agreed that the wording of the motion be revised.

32. Mr LEE Cheuk-yan formally proposed the following motion for members' consideration:

“本事務委員會要求政府立即檢討現時由公務員轉任問責官員後，仍可在問責官員的任期內同時享有公務員退休金的安排。”

(“That this Panel calls on the Government to review immediately the existing arrangement whereby civil servants appointed as Principal Officials under the Accountability System are still entitled to receive their pensions during their tenure as Principal Officials.”)

33. In accordance with House Rule 22(p), the Chairman sought members' view on whether the motion proposed by Mr LEE Cheuk-yan should be proceeded with. A majority of the members present agreed that the motion should be proceeded with. Mr LEUNG Fu-wah said that he would not participate in the voting. He then withdrew from the meeting.

34. The Chairman put the motion to vote. The seven members present voted for the motion. The Chairman declared the motion passed. He invited the Administration to take the necessary follow-up actions and provide a written response in due course. The Administration was also requested to address members' question on who was responsible for the review of the relevant arrangement.

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IV. Update on review of remuneration of senior executives of statutory and other bodies

35. Owing to time constraints, the Chairman proposed and members agreed that the subject under Agenda Item IV be deferred to the next regular meeting to be held on 15 December 2003.

V. Any other business

36. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
12 December 2003