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4 April 2006

The Hon. Tam Yiu-chung, G.B.S., J.P.
Chairman
Legislative Council Panel on Public Service
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Yiu-chung,

Review of Fringe Benefit Type of Civil Service Allowances

I am pleased to enclose, for your reference, a copy of an information paper on the Review of Fringe Benefit Type of Civil Service Allowances, setting out the final package of change proposals following the completion of the allowance review.

Last September, we issued a consultation note setting out the change proposals for staff consultation and received 28 written submissions by the end of the consultation period in November. We presented to Members of the Legislative Council (LegCo) Panel on Public Service the Administration's change proposals and our preliminary response to the issues raised in the written submissions at the Panel meeting held on 16 January 2006. Over the last few months, we sought and obtained the advice of the advisory bodies on civil service salaries and conditions of service on the change proposals and the submissions received.

Taking account of the policy objectives of the review, legal considerations, the advice of the advisory bodies as well as the feedback from staff, we have finalized the package of change proposals. In considering whether an allowance should be removed or retained and what should be the appropriate rates for an allowance, we have been guided by the principles of lawfulness, reasonableness and fairness. We have also borne in mind the possible impact on eligible officers.

The more significant components of the final change proposals include –

- (a) adjust the ceiling rates for Overseas Education Allowance and Local Education Allowance to the 1997 level for new claimants starting from the 2006-07 or the 2007 school year, as the case may be, and maintain these rates until the phasing out of the Allowances;
- (b) freeze the current ceiling rates for Overseas and Local Education Allowances for existing claimants, with no further rate adjustment;
- (c) adjust the ceiling rates for School Passage Allowance to the 1998 level for existing and new claimants starting from their next cycle, and maintain these rates until the phasing out of this Allowance; and
- (d) abolish the provision of Air-conditioning Allowance and Hotel Subsistence Allowance.

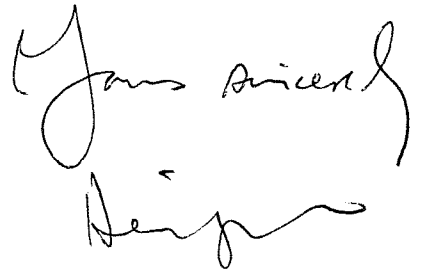
Where appropriate, we have incorporated into the final package of change proposals measures that address staff concerns or further rationalise the administration of some allowances, including –

- (a) keeping the rates of Overseas Education Allowance and Sea Passage Allowance in foreign currencies for all claimants;
- (b) removing the proposed restrictions on School Passage Allowance in respect of the number of splits and the class of travel;
- (c) retaining the provision of Furniture and Domestic Appliances Allowances on their existing terms;

- (d) changing the provision of Removal Allowance into fully non-accountable without adjusting the allowance rates; and
- (e) retaining the provision of Hotel Accommodation on its existing terms.

We believe the final package of change proposals has largely addressed the main concerns advanced by staff and has achieved the broad objectives of the allowance review. Subject to the approval of the Finance Committee of the Legislative Council, we shall promulgate the change measures for implementation starting from mid-2006.

I would be pleased to brief the LegCo Panel on Public Service at the meeting to be held on 20 April 2006 on the final change proposals set out in the attached paper.

A handwritten signature in black ink, appearing to read "Miss Denise YUE". The signature is written in a cursive, flowing style.

(Miss Denise YUE)
Secretary for the Civil Service

c.c. Clerk to LegCo Panel on Public Service

**For information
on 20 April 2006**

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Review of Fringe Benefit Type of Civil Service Allowances

PURPOSE

This paper briefs Members on the final package of change proposals arising from the review of fringe benefit type of civil service allowances (allowance review).

BACKGROUND

2. Over the years, some of the allowances provided to civil servants have become out of step with present day circumstances and are incongruous with a modernised civil service. Although the Government has already ceased to pay the majority of these allowances to new entrants, it still incurs considerable expenditure on the payment of various allowances to serving officers. This continues to draw concerns from the public and the Legislative Council (LegCo).

3. Accordingly, we have conducted a comprehensive review on the fringe benefit type of civil service allowances under the guiding principles of lawfulness, reasonableness and fairness. The objectives of our review are to explore ways to further streamline the payment of these allowances; to enhance control over government expenditure on these allowances; and to identify scope for improving efficiency in the administration of these allowances.

4. We consulted staff on a package of change proposals arising from the allowance review *vide* a consultation note issued on 22 September 2005. A copy of the consultation note was sent to Members for information on the same day (see LC Paper No. CB(1)2298/04-05). We received a total of 28 submissions from individual staff and staff associations by the end of the consultation period on 21 November 2005. We forwarded a copy of all the submissions received, a summary of the feedback from staff and the general public, as well as the Administration's preliminary response to the issues raised in the written submissions to Members for discussion at the Panel meeting held on 16 January 2006 (see LC Paper No. CB(1)675/05-06(03)).

5. In January 2006, we sought the advice of the advisory bodies on civil service salaries and conditions of service¹ (advisory bodies) on the change proposals and the written submissions received. The advisory bodies expressed support for the change proposals in principle and considered that the review was in the right direction. They recommended to us to confirm the legal position of the change proposals in finalizing the package. They also suggested refinements to some change proposals and invited us to allow for greater flexibility in the administration of the allowances and to further rationalize the administrative rules and procedures as far as practicable to achieve value for money.

6. Taking account of the policy objectives of the review, legal considerations, the views of the advisory bodies as well as the feedback from staff, we have finalized the package of change proposals as set out in paragraphs 7 to 18 below.

FINAL PROPOSALS

- (A) *Education allowances*
 (i) *Overseas Education Allowance (OEA)*

7. In view of the outdated nature of OEA and the significant increase in expenditure (from \$342.5M in 2000-01 to \$642.6M in 2005-06), we will *retain* the change proposals to adjust the ceiling rates for OEA to the level as at 30 June 1997 for new claimants² who start to draw the allowance from the 2006-07 or the 2007 school year as the case may be, and to freeze the ceiling rates for both new and existing claimants with no further rate adjustment until the complete phasing out of the allowance. Currently, some 120 000 serving officers are eligible for OEA. Based on their age profile, we estimate the allowance will be completely phased out by around 2040.

8. Whilst the Department of Justice (DoJ) has confirmed that it is legally permissible to bring the OEA ceiling rates back to the level as at 30 June 1997 for both existing and new claimants, we consider it justified for existing claimants to retain the current ceiling rates without an adjustment to the level prevailing before 1 July 1997. This is to minimise the possible disruption that might be caused to the overseas schooling arrangements already made for existing claimants.

9. Taking account of the consultation feedback, we have decided to *withdraw* the original proposal to set the OEA ceiling rates for new claimants in Hong Kong dollars. This means the OEA ceiling rates will continue to be set in foreign currencies but the actual disbursement of the allowance will be made in Hong Kong dollars as at present. This takes account of the fact that overseas school fees are paid

¹ The advisory bodies are the Standing Commission on Civil Service Salaries and Conditions of Service, the Standing Committee on Disciplined Services Salaries and Conditions of Service and the Standing Committee on Directorate Salaries and Conditions of Service.

² "Claimants" refer to the eligible children for whom an allowance is claimed.

in foreign currencies and exchange rate fluctuation is something individual officers cannot predict.

(ii) Local Education Allowance (LEA)

10. In view of the outdated nature of the allowance and the increase in expenditure (from \$226.4M in 2000-01 to \$309.8M in 2005-06), we will *retain* the change proposals to adjust the ceiling rates for LEA to the level as at 30 June 1997 for new claimants³ who start to draw the allowance from the 2006-07 school year, and to freeze the ceiling rates for both new and existing claimants with no further rate adjustment until the complete phasing out of the allowance. Currently, some 150 000 serving officers are eligible for LEA. Based on their age profile, we estimate the allowance will be completely phased out by around 2042. For the reasons set out in paragraph 8 above, existing claimants will be allowed to retain the current LEA ceiling rates without an adjustment to the level as at 30 June 1997.

(B) Passage and related allowances

(i) Sea Passage

11. As regards sea passage, we will continue its provision at an officer's entitled class of travel until this allowance is completely phased out. We will *retain* the proposal to cap the allowance rates for sea passage for the respective class of travel at the rates approved for the 1997 sailing to the United Kingdom, but to set the maximum rates in pound sterling instead of in Hong Kong dollars, in line with the modified proposal for OEA in paragraph 9 above.

(ii) School Passage Allowance (SPA)

12. On similar considerations applicable to the education allowances, we will *retain* the proposal to adjust the SPA rates for all claimants to the level as at 1 July 1998 (when SPA started to be provided in the form of a cash allowance instead of air tickets) as originally proposed. The allowance rates will be frozen at that level with no further rate adjustment. Taking account of the consultation feedback, we will not pursue the proposal to impose restrictions on number of splits per cycle (i.e. no more than two return passages for children under 19 years old and one return passage for children aged between 19 and 20 every 12 months) and the class of travel (i.e. travel on economy class only) to simplify the administration of the allowance.

(iii) Travelling expenses in the country of origin or place of study

13. As originally proposed, we will subsume the allowance for travelling expenses in the place of study for SPA claimants under the adjusted SPA without separate provision, and freeze the allowance rates for travelling expenses in the country of origin at the current levels for claimants on overseas terms.

³ "Claimants" refer to the eligible children for whom an allowance is claimed.

(C) ***Housing and related allowances and benefits***

(i) ***Original proposals retained***

14. We will ***retain*** the change proposals in relation to the Non-accountable Cash Allowance, the Accommodation Allowance and the Private Tenancy Allowance. These proposals mainly aim to rationalize the allowance rates and/or the rate adjustment mechanisms, as appropriate.

15. We will ***cease*** the payment of air-conditioning allowance and hotel subsistence allowance to all eligible officers as originally proposed.

(ii) ***Furniture and Domestic Appliances Allowances (F&DAA)***

16. We originally proposed to abolish the F&DAA, while retaining the provision of furniture and domestic appliances (F&DA) to eligible officers. Taking account of the consultation feedback and the fact that most of the existing claimants (around 12 000) are junior staff (in the disciplined services), we have decided to ***withdraw*** the proposal to abolish the F&DAA. We will also continue with the existing arrangement to provide the F&DA to occupants of government quarters subject to availability of funds/stock.

(iii) ***Removal Allowance***

17. Taking account of the consultation feedback, we will further simplify the administration of the Removal Allowance by turning it ***into a fully non-accountable allowance without a 5% reduction in allowance rate*** of the existing accountable component. This is in recognition of the fact that officers claiming the allowance are required to move into/out of their quarters under the direction of the management and have been subject to various degrees of disturbance.

(iv) ***Provision of Hotel Accommodation***

18. Taking account of the consultation feedback, we have decided to ***withdraw*** the proposals relating to hotel accommodation⁴ in view of infrequent claims and the insignificant expenditure involved. Hotel accommodation will continue to be provided to eligible officers on its existing terms.

19. A summary of the final change proposals is at the **Annex**. The final package of change proposals is estimated to bring about savings of \$30M for the first year and a cumulative savings of \$390M over the first five years.

⁴ These include the proposal to standardise the maximum period for which short-term hotel accommodation is provided to eligible officers on overseas terms on final leave at three nights and the proposal to remove the provision of one-night hotel accommodation to eligible officers on overseas terms before and after taking leave.

Legal considerations

20. DoJ has advised that based on the legal principles established by the Court of Final Appeal (CFA) judgment in the pay adjustment ordinances case, article 100 of the Basic Law⁵ does not seek to prohibit or inhibit changes to pay, allowances, benefits or conditions of service of public officers appointed before 1 July 1997, except to the extent that such changes make them less favourable than those entitlements before that date. In other words, changes which were permissible before July 1997 by statute or under the unilateral variation clause embodied in the terms of appointment of civil servants⁶ may be implemented subject to the “no less favourable than before” test.

21. DoJ further advises that while as a general principle an employer may not change the terms of an employment contract to the detriment of an employee without the employee’s consent, that principle is subject to an express term of the contract⁶ which allows unilateral variation of a term by the employer provided the term under variation is not a fundamental element of the contract. In determining whether an allowance or benefit is fundamental to the contract, it is necessary to consider whether an eligible officer has a contractual right to receive the allowance or benefit and whether it represents a significant part of his total emoluments. It follows that the unilateral variation clause embodied in the terms of appointment of civil servants (which existed prior to July 1997) may permit the Government to abolish an outmoded allowance or benefit which is not a significant part of an eligible officer’s total emoluments. The same clause may also be used to implement a variation to the adjustment mechanism of an allowance, including a permanent freeze in the allowance rates.

22. On the basis of the above considerations, DoJ has advised that the final change proposals are lawful, and may be effected under the unilateral variation clause without the enactment of legislation.

WAY FORWARD

23. Members are invited to note the final change proposals arising from the allowance review. The Administration will submit the proposals to the Finance Committee of LegCo for approval as necessary at its meeting to be held on 19 May 2006.

Civil Service Bureau
April 2006

⁵ Article 100 of the Basic Law provides : “Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.”.

⁶ The Memorandum on Conditions of Service issued to all civil servants, including those serving in the Government immediately before 1 July 1997, on appointment includes a standard variation clause, whereby the Government reserves the right to alter any of the officer’s terms of appointment and/or conditions of service should the Government consider that to be necessary.

**Review of Fringe Benefit Type of Civil Service Allowances :
Summary of Final Package of Change Proposals**

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| (I) Education allowances |
| (A) Overseas Education Allowance (OEA) |
| <p><u>Existing claimants¹</u></p> <ul style="list-style-type: none"> Freeze the OEA ceiling rates at the existing levels in foreign currencies and no further rate adjustment in future. The UK rates are : <ul style="list-style-type: none"> <i>Boarding School Allowance :</i> Junior : GBP 7,434 Senior : GBP 9,138; and <i>Day School Allowance :</i> GBP 1,289. Other rules (e.g. subsidy level, duration of subsidy, age and number of eligible dependants and place of study) remain unchanged. <p><u>New claimants¹ joining the scheme from the 2006-07 school year/ 2007 school year²</u></p> <ul style="list-style-type: none"> Adjust the OEA ceiling rates to the levels as at 30.6.1997 and no further rate adjustment in future. The OEA ceiling rates are to continue to be set in foreign currencies. The UK rates are : <ul style="list-style-type: none"> <i>Boarding School Allowance :</i> Junior : GBP 6,450 Senior : GBP 7,437; and <i>Day School Allowance :</i> GBP 1,241. Other rules (e.g. subsidy level, duration of subsidy, age and number of eligible dependants and place of study) will remain unchanged. |

¹ In this context, claimants refer to the eligible children in respect of whom an OEA is claimed.

² The adjusted OEA rates will apply to new claimants joining the scheme from the 2006-07 school year (in the case of UK and Ireland) and the 2007 school year (in the case of Australia, New Zealand and South Africa).

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| <p>(B) Local Education Allowance (LEA)</p> |
| <p><u>Existing claimants³</u></p> <ul style="list-style-type: none"> • Freeze the LEA ceiling rates at the existing levels (i.e. Primary: \$31,950, F1 to F3: \$53,025, and F4 & above: \$49,238) and no further rate adjustment in future. • Other rules (e.g. basic charge, subsidy level, duration of subsidy, age and number of eligible dependants) remain unchanged. <p><u>New claimants³ joining the scheme from the 2006-07 school year</u></p> <ul style="list-style-type: none"> • Adjust the LEA ceiling rates to the levels as at 30.6.1997 (i.e. Primary: \$29,925, F1 to F3: \$49,650 and F4 & above: \$46,313) and no further rate adjustment in future. • Other rules (e.g. basic charge, subsidy level, duration of subsidy, age and number of eligible dependants) remain unchanged. |
| <p>(II) Passage and related allowances</p> |
| <p>(A) Sea Passage</p> |
| <ul style="list-style-type: none"> • Retain the provision of sea passage at an officer's entitled class of travel. • Cap the allowance rates for sea passage at the maximum allowance rates at the 1997 level for the respective class of travel approved for the 1997 sailing to the UK. The ceiling rates are to continue to be set in pound sterling. • We intend to implement the new arrangement starting from the 2007 sailing. |
| <p>(B) School Passage Allowance (SPA)</p> |
| <ul style="list-style-type: none"> • Adjust the ceiling rates of SPA to the rates as at 1.7.1998 when school passage started to be provided in the form of a cash allowance instead of economy class air tickets, with no further rate adjustment in future. The revised rates are : <p style="margin-left: 40px;">SPA Level 3: \$11,800; SPA Level 2: \$23,600; SPA Level 1: \$17,700.</p> |

³ In this context, claimants refer to the eligible children in respect of whom a LEA is claimed.

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| <ul style="list-style-type: none"> • Adjust the payment rules for SPA to align with the original purpose of the school passage benefit before the introduction of the cash allowance on 1.7.1998, i.e. no carrying forward of SPA to the next cycle will be allowed. • Subsume travelling expenses in the place of study under SPA of the revised ceiling rates without separate provision. • Apply all the above measures to all claimants from their next SPA cycle commencing on or after the effective date. |
| <p>(C) Travelling expenses in country of origin or place of study</p> |
| <ul style="list-style-type: none"> • Freeze the allowance rates for travelling expenses in country of origin at the current levels (i.e. \$2.19 per kilometre for adults (including children aged 16 or above) and \$1.10 per kilometre for children) for claimants on overseas terms. • Subsume travelling expenses in place of study under SPA of the revised ceiling rates without separate provision. |
| <p>(III) Housing and related allowances and benefits</p> |
| <p>(A) Non-accountable Cash Allowance (NCA) Scheme</p> |
| <p><u>New claimants</u></p> <ul style="list-style-type: none"> • Adjust the rates of NCA to 5% below the corresponding rates of Home Financing Allowance (HFA)/Home Purchase Allowance (HPA) to restore the original differential between the NCA rates and HFA/HPA rates, and apply the revised rates to all new joinees and re-joinees on re-appointment with a break in service. Based on the current rates as at 1.4.2006, the revised rates of NCA will be as follows – <ul style="list-style-type: none"> (i) officers who commence to draw NCA on or above MPS 34 (or equivalent): \$13,100 to \$36,280 a month; and (ii) officers who commence to draw NCA below MPS 34 (or equivalent): \$1,610 to \$16,530 a month. • The rates for re-appointed civil servants with a break in service will be based on the scale of rates prevailing when they re-join the Scheme or the scale prevailing when they first drew the allowance, whichever is the lesser. • Adjust the future NCA rates in line with the annual percentage adjustment to HFA/HPA. |

- Impose a 3-year service requirement on officers remunerated on MPS 22-33 (or equivalent) before they may queue for a quota place to align with the existing arrangement for comparable officers offered appointment before 1.6.2000 who may only queue for a quota after confirmation to the permanent establishment or completion of one agreement.
- Apply the rules on prevention of double housing benefits fully for Accommodation Allowance (AA) claimants opting for NCA.

(B) Accommodation Allowance (AA) Scheme

Existing claimants⁴

- Starting from a new tenancy/upon renewal of tenancy, lock the scale of allowance rates payable to an individual officer to the scale prevailing when he commences a tenancy for the entire tenancy term, irrespective of any subsequent upward and downward annual adjustments to the allowance rates. Officers on salary progression or promotion may continue to progress to a higher rate of allowance from the relevant scale during the tenancy term subject to the terms of the Scheme.
- Adjust the rates of allowance according to the territory-wide rental movements, instead of the rental movements for selected districts only, compiled by the Rating and Valuation Department (RVD).
- Option to switch to NCA subject to the following conditions –
 - (i) the NCA Scheme as revised under the proposals put forward for that Scheme;
 - (ii) the rate of NCA payable when the officer commences to draw the allowance must be no higher than the rate of AA applicable to the officer; and
 - (iii) an officer may receive the NCA for up to a maximum of 120 months or up to his AA entitlement period, whichever date comes first.

⁴ All officers eligible for the AA Scheme have already joined the Scheme.

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| <p>(C) Private Tenancy Allowance (PTA)</p> |
| <p><u>Existing and new claimants</u></p> <ul style="list-style-type: none"> • Starting from a new tenancy/upon renewal of tenancy, lock the scale of allowance rates payable to an individual officer to the scale prevailing when he commences a tenancy for the entire tenancy term, irrespective of subsequent upward and downward annual adjustments to the allowance rates. Officers on salary progression or promotion may continue to progress to a higher rate of allowance from the relevant scale during the tenancy term subject to the terms of the Scheme. • Adjust the rates of allowance according to the territory-wide rental movements, instead of the rental movements for selected districts only, compiled by RVD. |
| <p>(D) Provision of Furniture and Domestic Appliances (E) Furniture and Domestic Appliances Allowances</p> |
| <ul style="list-style-type: none"> • Continue the provision of furniture and domestic appliances to occupants of government quarters subject to availability of funds/stock under existing arrangements. • Continue payment of the furniture and domestic appliances allowances under existing arrangements. |
| <p>(F) Removal Allowance</p> |
| <ul style="list-style-type: none"> • Change the removal allowance into a fully non-accountable allowance. The allowance rate will be adjusted from time to time having regard to the change in CPI(A), as at present. • Maintain the current arrangement whereby removal allowance are normally payable within twelve months before the vacation deadline. |
| <p>(G) Air-conditioning Allowance</p> |
| <ul style="list-style-type: none"> • Abolish the air-conditioning allowance. |

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| (H) Provision of Hotel Accommodation |
| <ul style="list-style-type: none">• No change to the existing arrangement of providing up to seven nights' short-term hotel accommodation to eligible officers on overseas terms on final leave.• No change to the existing arrangement of providing one-night hotel accommodation to eligible officers on overseas terms before and after taking leave. |
| (I) Hotel Subsistence Allowance |
| <ul style="list-style-type: none">• Abolish the hotel subsistence allowance. |