

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1117/08-09  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/2/08/2

**Bills Committee on Disciplined Services Legislation  
(Miscellaneous Amendments) Bill 2009**

**First meeting on  
Friday, 6 March 2009, at 10:45 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon LEE Cheuk-yan (Chairman)  
Hon James TO Kun-sun  
Hon CHEUNG Man-kwong  
Hon Audrey EU Yuet-mee, SC, JP  
Hon IP Wai-ming, MH  
Dr Hon PAN Pey-chyou

**Member absent** : Hon TAM Yiu-chung, GBS, JP

**Public officers attending** : Civil Service Bureau  
  
Ms Mimi LEE  
Deputy Secretary for the Civil Service 3  
  
Mr Aaron LIU  
Principal Assistant Secretary for the Civil Service  
(Conduct and Discipline)  
  
Department of Justice  
  
Ms Phyllis KO  
Senior Assistant Law Draftsman

Ms Frances HUI  
Senior Government Counsel

**Clerk in attendance :** Ms Rosalind MA  
Chief Council Secretary (1)5

**Staff in attendance :** Miss Winnie LO  
Assistant Legal Adviser 7

Mr Noel SUNG  
Senior Council Secretary (1)4

Miss Haley CHEUNG  
Legislative Assistant (1)8

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## **I Election of Chairman**

Mr LEE Cheuk-yan, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr LEE Cheuk-yan was nominated by Ms Audrey EU and the nomination was seconded by Mr James TO. Mr LEE accepted the nomination. There being no other nomination, Mr LEE Cheuk-yan was elected Chairman of the Bills Committee.

## **II Meeting with the Administration**

(LC Paper No. CB(3)361/08-09	— The Bill
CSB CR/DP/4-075-002/4	— The Legislative Council Brief issued by the Civil Services Bureau
LC Paper No. LS41/08-09	— The Legal Service Division Report on the Bill
LC Paper No. CB(1)953/08-09	— Background Brief on the Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009 prepared by the Legislative Council Secretariat
LC Paper No. CB(1)954/08-09(01)	— Marked-up copy of the Bill prepared by the Legal Service Division)

3. The Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

Admin 4. With regard to members' concern that the removal punishments impinging on the provision of retirement benefits under the Civil Service Provident Fund Scheme (CSPF Scheme) proposed by the Administration (the Proposal) might constitute variation of the employment contract of CSPF civil servants, the Administration was requested to provide:

- (a) a copy of Civil Service Bureau Circular No. 9/2003 promulgated in 2003 which set out the terms and conditions of the CSPF Scheme; and
- (b) an analysis from the legal viewpoint, by reference to a sample employment contract with the CSPF civil servants, of whether the implementation of the Proposal would give rise to a breach or variation of the employment contract.

In this regard, the Administration was requested to explain the relevance of the Public Service (Administration) Order in the implementation of the Proposal.

5. In response to Ms Audrey EU's concern about the possible sanctions to be imposed on and remedies to be sought from former directorate CSPF civil servants in breach of the control regime for post-service outside work, the Administration undertook to provide a copy of a relevant information paper issued to the Panel on Public Service in late 2008.

Admin 6. To address Mr CHEUNG Man-kwong's concern that the maximum percentage of reduction of the accrued benefits attributable to the Government's voluntary contribution on compulsory retirement of CSPF civil servants was not provided in the legislation, unlike the case of pensionable civil servants, the Administration was requested to:

- (a) provide information on the safeguards against abrupt changes to the maximum percentage of reduction as agreed by staff; and
- (b) consider the relevance of providing the maximum percentage of reduction in the disciplined services legislation for CSPF civil servants of the disciplined service grades.

Admin 7. As regards Mr James TO's concern about the retrospective application of the proposed provisions under the Bill to CSPF civil servants who left the service under other specified circumstances (e.g. retirement, death, permanent incapacity, etc.) before the passage of the Bill, the Administration undertook to provide

supplementary information on the arrangements available under the employment contracts of the CSPF civil servants, as well as the transitional provisions in Part 6 of the Bill.

*(Post-meeting note: The documents requested in paragraphs 4(a) and 5 were circulated to members vide LC Paper CB(1)1009/08-09 on 10 March 2009.)*

### **III Any other business**

#### Invitation for submission

8. Members agreed that civil service consultative councils and staff unions should be invited to give views on the Bill. In addition to inviting the eight deputations listed in Appendix III of the Members' brief, a general notice inviting submissions on the Bill would also be placed on the website of the Legislative Council. In line with the usual practice, the 18 District Councils would also be invited to give views on the Bill.

*(Post-meeting note: Invitation letters were sent to the eight deputations in the proposed list and the District Councils on 9 March 2009. A general notice inviting submissions on the Bill was posted on the Council's website on 10 March 2009.)*

#### Schedule of meetings

9. Members agreed to schedule three meetings in March and April on the following dates:

Thursday, 26 March 2009;  
Wednesday, 8 April 2009; and  
Friday, 24 April 2009.

10. There being no other business, the meeting ended at 12:00 noon.

Council Business Division 1  
Legislative Council Secretariat  
23 March 2009

**Proceedings of the  
Bills Committee on Disciplined Services Legislation  
(Miscellaneous Amendments) Bill 2009  
First meeting on Friday, 6 March 2009, at 10:45 am  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000404 – 000450	Mr LEE Cheuk-yan Mr James TO Ms Audrey EU	Election of Chairman	
000451 – 002702	Chairman Administration	Briefing by the Administration on the proposals in the Bill.	
002703 – 003256	Chairman Administration	<p>(a) The Chairman's recapitulation of the Administration's undertaking to follow up staff concern about the discrepancies in the disciplinary proceedings with the disciplined services departments. His enquiry on the timeframe for the Administration's review in this regard.</p> <p>(b) The Administration's advice that to follow up staff concern about the discrepancies in disciplinary proceedings across disciplined service departments, including the mode of keeping records of hearings, the Civil Service Bureau (CSB) had set up a working group to review with the disciplined services departments the relevant arrangements of disciplinary proceedings. As the subject fell outside the scope of the Bill, CSB was keeping a dialogue with the relevant staff unions on this subject, and would report the progress to the Panel on Public Service in due course as appropriate. In case of major changes to the disciplinary proceedings as a result of the review, the Administration would consult staff sides.</p>	
003257 – 005023	Mr James TO Administration Chairman	(a) Mr James TO's concern that the removal punishments impinging on the provision of retirement benefits under the Civil Service Provident Fund Scheme (CSPF Scheme) proposed by the Administration (the	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>Proposal) might constitute variation of the employment contract of CSPF civil servants.</p> <p>(b) The Administration's advice that the CSB Circular on CSPF Scheme promulgated in 2003 (“CSB Circular in 2003”), which formed part of the employment contract with CSPF civil servants, and was promulgated after extensive staff consultation at the time, set out the terms and conditions of the CSPF Scheme. Such terms and conditions included provisions on the withholding, forfeiture (in whole or in part) and recovery of the accrued benefits of Government voluntary contributions (“GVC benefits”) provided under the Scheme for civil servants found guilty of misconduct or offence. CSPF civil servants were specifically referred to this CSB circular upon appointment on permanent terms. The CSB Circular in 2003, together with the letter of appointment and the terms and conditions related thereto, provided the contractual basis for the withholding, forfeiture (in whole or in part) and recovery of GVC benefits of CSPF civil servants on disciplinary grounds. The proposed amendments under the Bill would not constitute any variation of the employment contract of CSPF civil servants, nor give rise to Basic Law and human right concerns.</p> <p>(c) Mr James TO's concern about the retrospective application of the proposed provisions under the Bill to CSPF civil servants who left the service under other specified circumstances (e.g. retirement, death, permanent incapacity, etc.) before the passage of the Bill.</p> <p>(d) The Administration's advice that CSPF civil servants who left under other specified circumstances (e.g. retirement, death,</p>	<p>The Administration to take action as required in paragraph 4(a) of the minutes.</p> <p>The Administration to take action as</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>permanent incapacity, etc.) were entitled to the vesting and payment of GVC benefits even if their service with the Government was less than ten years. The number of such cases was few and the Bill, if passed, would not have retrospective effect on such cases. However, the transitional provisions in Part 6 of the Bill would enable application of the removal punishments impinging on the retirement benefits of CSPF civil servants for misconduct or offence committed before the passage of the Bill.</p>	<p>required in paragraph 7 of the minutes.</p>
<p>005024 – 005901</p>	<p>Ms Audrey EU Administration Chairman</p>	<p>(a) Ms Audrey EU's concern about the possible sanctions to be imposed on and remedies to be sought from former directorate CSPF civil servants in breach of the control regime for post-service outside work.</p> <p>(b) The Administration's advice that the Government might recover, either wholly or in part, the GVC benefits by means of civil action if a civil servant was convicted of any of the four specified offences under the CSB Circular in 2003 which came to light only after the civil servant had left the service and was paid the GVC benefits. The control over post-service outside work for directorate civil servants was promulgated through civil service regulations and circulars. In case of a breach of such control regime, as a remedy, the Government might initiate civil action to sue for damage under contract law.</p> <p>(c) The Chairman's suggestion and members' view that the subject should be followed up by the Panel on Public Service during the discussion of post-service outside work of former directorate civil servants.</p> <p>(d) Ms Audrey EU's concern that the Proposal might constitute variation of the employment contract of CSPF civil servants if there was no clear provision for the</p>	<p>The Administration to take action as required in paragraph 5 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>removal punishments impinging on the retirement benefits of CSPF civil servants in their employment contracts. Her enquiry about the legal implication of the Proposal as implemented through the Bill.</p> <p>(e) The Administration's response that the forfeiture of GVC benefits, in whole or in part, on disciplinary grounds was clearly provided in the CSB Circular in 2003 which formed part of the employment contract with CSPF civil servants. The proposed amendments to the disciplined services legislation was to put beyond doubts that the forfeiture of GVC benefits, instead of only pension benefits as currently provided in the legislation, would be included under the legislation which governed the disciplinary regime of middle and lower ranking civil servants in the disciplined services grades.</p>	
005902 – 011428	Mr CHEUNG Man-kwong Administration Chairman	<p>(a) Mr CHEUNG Man-kwong's concern about the mechanism to protect CSPF civil servants from any abrupt changes to the maximum percentage of reduction which was not provided in the legislation, unlike the case of pensionable civil servants.</p> <p>(b) The Administration's response that it would conduct staff consultation on any proposal to change the maximum percentage of reduction of GVC benefits and would duly take into account staff's views before deciding on any such proposal. The Administration had received staff support for the current proposal in the legislation. The Administration's advice that in deciding the maximum percentage of reduction of GVC benefits under the Proposal, it aimed to maintain broad comparability with the removal punishments of pensionable civil servants.</p> <p>(c) The Chairman's view that the general provision for withholding, forfeiture and</p>	<p>The Administration to take action as required in paragraph 6 of the minutes.</p> <p>The Administration</p>



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		recovery of GVC benefits in the terms and conditions of the employment contract of CSPF civil servants might not adequately empower the Government to determine or make changes to the percentage of reduction of GVC benefits. His query that the Proposal, or any future changes to its details, might constitute a breach or variation of the employment contract and might not be implemented without the written consent of all CSPF civil servants.	to take action as required in paragraph 4(b) of the minutes.
011429 – 011725	Chairman Clerk	(a) Invitation for submissions  (b) Schedule of meetings	

Council Business Division 1  
Legislative Council Secretariat  
23 March 2009