

立法會
Legislative Council

LC Paper No. CB(1)1367/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/08/2

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

**Second meeting on
Thursday, 26 March 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

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

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

- Attendance by invitation** : Agenda item II
Government Disciplined Services General Union
Mr WAT Ki-on
Consultant
Mr POON Chi-ming
Executive Committee Member
Hong Kong Federation of Civil Service Unions
Mr CHAN Wai-keung
Vice-Chairman
- 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
Ms Haley CHEUNG
Legislative Assistant (1)8
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Action

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)1117/08-09 — Minutes of meeting on 6 March 2009)

The minutes of the meeting held on 6 March 2009 were confirmed.

II Meeting with deputations and the Administration

Submission from deputation not attending the meeting

(LC Paper No. CB(1)1124/08-09(01) — Submission from Disciplined Services Consultative Council (Staff Side))

Follow-up to issues raised at the meeting on 6 March 2009

- (LC Paper No. CB(1)1009/08-09(01) — Civil Service Bureau Circular No. 9/2003 on Civil Service Provident Fund Scheme
- LC Paper No. CB(1)362/08-09(01) — Administration's supplementary information on post-service outside work of retired directorate civil servants and the appeal channel before reunification provided to the Panel on Public Service in December 2008
- LC Paper No. CB(1)1124/08-09(02) — Administration's paper on legal basis for forfeiture of retirement benefits of civil servants under the Civil Service Provident Fund Scheme
- LC Paper No. CB(1)1124/08-09(03) — Administration's paper on percentage of reduction of accrued benefits of Government's Voluntary Contribution and retrospective effect of the Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009)

Relevant papers previously issued

- (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 Service 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)

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

Follow-up actions to be taken by the Administration

3. To address the concern of the staff side and members about the progress of the review on the arrangements of disciplinary proceedings, the Administration was requested to expedite the work in this respect, so that fair and broadly consistent disciplinary proceedings across disciplined service departments (in particular the mode of keeping records of hearings) could be put in place in parallel with the enactment of the Bill. The Administration undertook to report the progress of the review to the Panel on Public Service (PS Panel) in due course.

Admin

4. Mr James TO expressed a strong view that the maximum percentage of reduction of the accrued benefits attributable to the Government's voluntary contribution (GVC benefits) on compulsory retirement of Civil Service Provident Fund (CSPF) civil servants (the forfeiture ceiling) should be provided in the legislation as in the case of pensionable civil servants. In this connection, the Administration was requested to consider Mr TO's suggestion and provide a response to the following:

Admin

- (a) any follow-up actions the Administration would take in this regard (e.g. providing the forfeiture ceiling through a separate bill if this could not be incorporated into the Bill under scrutiny); and
- (b) Mr TO's suggestion, echoed by the Chairman, as to whether the terms and conditions for provision of retirement benefits of CSPF civil servants could be laid down in the legislation, as in the case of the retirement benefits of pensionable civil servants provided under the Pensions Ordinance (Cap. 89) and the Pension Benefits Ordinance (Cap. 99).

5. In relation to Mr CHEUNG Man-kwong's concern about the recovery of GVC benefits already paid out, i.e. where the misconduct or offence came to light only after the officer had left the service and had fully withdrawn the GVC benefits, the Administration was requested to provide information on the possible means for recovery of GVC benefits from an officer who had committed a misconduct or offence other than the four specified offences under Civil Service Bureau (CSB) Circular No. 9/2003.

Admin

Follow-up actions to be taken by the Assistant Legal Adviser

6. To address Ms Audrey EU's concern as to whether the removal punishments impinging on the provision of retirement benefits under the CSPF Scheme proposed by the Administration might constitute variation of the employment contract of CSPF civil servants, Assistant Legal Adviser 7 would provide in writing, by reference to the

ALA7

information provided by the Administration on the legal basis for forfeiture of retirement benefits of CSPF civil servants (LC Paper No. CB(1)1124/08-09(02)), her views in this regard.

III Any other business

Date of next meeting

7. Members agreed that in order to allow sufficient time for the Administration to respond to members' concerns raised at the meeting, the meetings originally scheduled for 8 and 24 April 2009 would be cancelled. The next meeting would be held on 30 April 2009.

(Post-meeting note: The notice of the third meeting was issued to members vide LC Paper No. CB(1)1161/08-09 on 27 March 2009.)

8. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
21 April 2009

**Proceedings of the
Bills Committee on Disciplined Services Legislation
(Miscellaneous Amendments) Bill 2009
Second meeting on Thursday, 26 March 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000227 – 000311	Chairman	Confirmation of minutes of meeting on 6 March 2009 (LC Paper No. CB(1)1117/08-09)	
Meeting with deputations			
000312 – 000950	Chairman The Government Disciplined Services General Union (GDSGU)	(a) The Chairman's introductory remarks. (b) GDSGU's concern about the progress of the review on the arrangements of disciplinary proceedings (in particular the discrepancies in the mode of keeping records of hearings). GDSGU's view that fair and broadly consistent disciplinary proceedings should be put in place in parallel with the enactment of the Bill. GDSGU's dissatisfaction about the long lead time taken for the Administration to work out operational details of the review board under section 20(2) of the Public Service (Administration) Order (PS(A)O).	
000951 – 001206	The Hong Kong Federation of Civil Service Unions (HKFCSU)	HKFCSU's concern about the rights of middle and lower ranking civil servants in the disciplined services grades during disciplinary proceedings. HKFCSU's reference to the judgment handed down by the Court of Final Appeal (CFA) on the same day on an appeal lodged by an ex-Police Constable regarding the right of legal representation at disciplinary hearings. HKFCSU's concern about the follow-up actions to be taken by the Administration in the context of the review, such as whether the relevant departmental procedures and guidelines would be revised having regard to the judgment of CFA.	
001207 – 002236	Administration	(a) The Administration's advice that the disciplinary proceedings applicable to all civil servants, including both officers in the civilian and disciplined service grades, were guided by the principles of fairness and natural justice. While minor differences existed amongst disciplined services departments and between the disciplined services grades and civilian grades, broad comparability and consistency	

Time Marker	Speaker	Subject(s)	Action Required
		<p>were maintained in the civil service as a whole. CSB had set up a working group to review with the disciplined service departments the relevant arrangements of disciplinary proceedings. CSB was keeping a dialogue with the relevant staff council and union on the subject, and would report the progress of the review to PS Panel in due course. In case of major changes to the disciplinary proceedings as a result of the review, the Administration would consult staff sides before amending the relevant departmental procedures and guidelines.</p> <p>(b) As regards the review board which might be appointed by the Chief Executive under section 20(2) of PS(A)O to advise him on representations of public servants, the Administration's advice that more time would be required to examine past discussions on the subject and to consult, where necessary, relevant parties including staff and the Chief Executive's Office. The Administration's emphasis that it was working concurrently on the following three issues, i.e. removal punishments for CSPF civil servants and related proposals under the Bill, review of disciplinary procedures with disciplined services departments and operational details of the review board under PS(A)O.</p> <p>(c) The Administration's clarification that the proposed amendments under the Bill involved mainly technical amendments to the Disciplined Services Legislation to include references to the retirement benefits of CSPF civil servants which might be forfeited in cases of certain removal punishments. The Administration's advice that the proposed legislative amendments were introduced for sake of prudence and clarity as the contract with CSPF staff had already provided that GVC benefits were forfeitable upon punishment of a CSPF civil servant on ground of misconduct. The Administration's advice that civil service disciplinary decisions were subject to appeals and judicial reviews lodged by aggrieved officers, and that CSB and the relevant disciplinary authorities would monitor closely new developments in appeal cases, such as the judgment of CFA mentioned by HKFCSU, and examine whether changes</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>would have to be made in relevant legislation and departmental procedures and guidelines as a result.</p>	
<p>002237 – 004351</p>	<p>Mr IP Wai-ming Administration Chairman Dr PAN Pey-chyou Mr James TO</p>	<p>(a) Concern shared by Mr IP Wai-ming, Dr PAN Pey-chyou and Mr James TO about the discrepancies in disciplinary proceedings in different disciplined service departments. Their view that fair and consistent disciplinary proceedings across departments were crucial for safeguarding the interest of the civil servants concerned. Their request for the Administration to expedite the review and enquiry about the time required for rectifying the discrepancies, in particular for making changes to the mode of keeping records of disciplinary hearings so that audio recordings would be made in addition to or in lieu of written records.</p> <p>(b) The Administration's advice that CSB was working with disciplined service departments on the review steadily and had received positive support from departments. While CSB could provide advice and guidelines to disciplined services departments on issues pertinent to disciplinary proceedings, the heads of disciplined services departments were by law empowered with the authority to decide and amend their relevant departmental procedures and guidelines. CSB was working on the review actively and would endeavour to complete it as soon as practicable.</p> <p>(c) Mr James TO's view that the Administration should undertake to report progress of the review to the PS Panel.</p> <p>(d) The Chairman's advice that the PS Panel had arranged to follow up the subject with the Administration at its meeting. His request that the Administration should put forward concrete improvement proposals to the Panel. Dr PAN Pey-chyou's view that staff should be consulted on the proposed changes arising from the review, if any.</p> <p>(e) The Administration's advice that in case of major changes to the disciplinary procedures or related issues as a result of the review, the</p>	<p>The Administration to take action as</p>

Time Marker	Speaker	Subject(s)	Action Required
		Administration would consult staff sides. The Administration's reiteration that it would keep the PS Panel informed, and would take forward the review as soon as possible in earnest.	required in paragraph 3 of the minutes.
Follow-up to issues raised at the meeting on 6 March 2009			
004352 – 004852	Administration	Briefing by the Administration on the legal basis for forfeiture of retirement benefits of civil servants under the CSPF Scheme (LC Paper No. CB(1)1124/08-09(02)).	
004853 – 005046	Ms Audrey EU ALA7 Chairman	<p>(a) Ms Audrey EU's concern as to whether the implementation of the proposed forfeiture of retirement benefits of CSPF civil servants through the Bill might constitute variation of the employment contract of these civil servants. Ms EU sought the views of ALA7 in this regard.</p> <p>(b) ALA7's response that given the number of relevant documents governing the terms and conditions of employment of CSPF civil servants, and the Disciplined Services Legislation to be amended through the Bill, more time would be required to examine these documents and the proposed amendments before she could offer her view in response to Ms EU's concern.</p>	ALA7 to take action as required in paragraph 6 of the minutes.
005047 – 005332	Chairman Administration	<p>(a) The Chairman's query on the legal basis for the proposed reduction of the accrued benefits attributable to the GVC benefits on compulsory retirement of CSPF civil servants, as the forfeiture ceiling had not been provided in the appointment terms and conditions of the civil servants and would only be promulgated through a CSB circular to be issued after enactment of the Bill.</p> <p>(b) The Administration's response that the contractual basis for the forfeiture of GVC benefits, wholly or in part, on disciplinary grounds was provided solidly through the appointment terms and conditions of service as agreed and signed by civil servants upon appointment on new permanent terms, and through CSB Circular No. 9/2003. Legal advice obtained by CSB had confirmed that the forfeiture ceiling of 25% of GVC benefits under</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Level 2 punishment on disciplinary grounds would not constitute any violation of the employment contract with CSPF civil servants.</p>	
<p>005333 – 011607</p>	<p>Mr CHEUNG Man-kwong Administration Ms Audrey EU Chairman</p>	<p>(a) Mr CHEUNG Man-kwong's concern on the possible means for recovery of GVC benefits from an officer where the misconduct or offence (other than the four specified offences under CSB Circular No. 9/2003) came to light only after the officer had left the service and had fully withdrawn the GVC benefits, e.g. taking up post-service outside work which gave rise to concern about public perception.</p> <p>(b) The Administration's reference to the information paper provided to the PS Panel in late 2008 (LC Paper No. CB(1)362/08-09(01)) and advice that a number of sanctions might be imposed on directorate officer on CSFP terms who had breached the control regime for post-service outside work, e.g. issue of a public statement of criticism. The Government might also initiate civil action to sue for damage under contract law.</p> <p>(c) Mr CHEUNG Man-kwong's concern that the remedies available to the Government for misconduct or offences committed by CSPF civil servants who had left the service were only limited to, say, actions for recovery of GVC benefits or civil actions to sue for damage. The Administration might have to examine whether the control regime for pensionable civil servants would be equally effective for CSPF civil servants. Ms Audrey EU's view that the Administration should try to align the sanctions under the control regime for post-service outside work applicable to pensionable and CSPF civil servants.</p> <p>(d) The Administration's advice that under the terms and conditions of the CSPF Scheme, arrangements for retirement benefits involved two steps, i.e. vesting and payment of benefits. Before an officer left the service, his department would check whether he met the vesting criteria for GVC benefits and if so, check whether he was subject to, or likely to be subject to, disciplinary investigation or proceedings; or under investigation by the Independent</p>	<p>The Administration to take action as required in paragraph 5 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Commission Against Corruption and/or the Police. The GVC benefits of the officer concerned might be withheld if he was involved in the above-mentioned investigations/proceedings. If the misconduct/offence only came to light after the officer had left the service, the Government might take actions to recover the GVC benefits paid only under four conditions (if the offence involved was misconduct in public office, an offence which was certified by the CE as gravely injurious to Hong Kong, an offence under part 2 of the Prevention of Bribery Ordinance which was related to the civil servant's former public duties, and treason). In other circumstances, the Government might sue damage under contract law. The retirement benefits for pensionable and CSPF civil servants were administered under two different systems. While the Administration aimed to achieve broad comparability in the disciplinary sanctions/punishments for pensionable and CSPF civil servants, the disciplinary forfeiture of retirement benefits could not be exactly the same.</p> <p>(e) The Chairman's view that given the difference in the nature of retirement benefits for pensionable and CSPF civil servants, it might not be possible nor appropriate for the Administration to impose the same sanctions on these two types of officers who had left the service. The Chairman pointed out that while the Administration could suspend pension of the former in certain circumstances, the same sanction could not be imposed on the latter who had withdrawn the GVC benefits.</p>	
011608 – 012035	Administration	Briefing by the Administration on the percentage of reduction of GVC benefits and retrospective effect of the Disciplined Services Legislation (Miscellaneous Amendment) Bill 2009 (LC Paper No. CB(1)1124/08-09(03)).	
012036 – 013826	Mr CHEUNG Man-kwong Administration Mr James TO Chairman	(a) Mr CHEUNG Man-kwong's concern about safeguarding the interest of CSPF civil servants in the event of future revision to the forfeiture ceiling. Mr CHEUNG's request that the Secretary for the Civil Service (SCS) to undertake during the resumption of Second	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Reading debate of the Bill that the Administration would consult extensively with the staff sides through its established staff consultation mechanism within the civil service in the event that there was a future need to revise the forfeiture ceiling.</p> <p>(b) The Administration's response that Mr CHEUNG's concern would be relayed to SCS for consideration and its reiteration that extensive staff consultation would be conducted on any future revision of the forfeiture ceiling. Consultation with the PS Panel would also be done on any proposed changes to the forfeiture ceiling.</p> <p>(c) Mr James TO's strong view that the interest of CSPF civil servants in the forfeiture of GVC benefits might not be adequately protected if the forfeiture ceiling was not provided in the legislation, as in the case of pensionable civil servants. Mr TO's request that the Administration should undertake to provide the forfeiture ceiling in the legislation and if this could not be incorporated into the Bill under scrutiny, to undertake that this would be provided through a separate bill.</p> <p>(d) The Administration's explanation that the provision of retirement benefits under the CSPF Scheme was governed by the contractual arrangements upon appointment instead of specific legislation. Amendments to the Disciplined Services Legislation (which applied only to middle and lower ranking civil servants in the disciplined services grades) alone would leave some 70% of the civil servants who belonged to the civilian grade uncovered. Amending the Mandatory Provident Fund Schemes Ordinance (Cap. 485) would not be suitable as this legislation applied to all employers/employees in Hong Kong, not just the Government as an employer. The Administration considered it most appropriate to promulgate the forfeiture ceiling through a CSB circular to be issued after enactment of the Bill.</p> <p>(e) Mr James TO's suggestion as echoed by the Chairman that if no existing legislation could be</p>	<p>The Administration</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>amended to provide for the forfeiture ceiling in the legislation, the Administration should examine whether and how the terms and conditions for provision of retirement benefits of CSPF civil servants could be laid down in the legislation, as in the case of pensionable civil servants.</p> <p>(f) The Administration's response that protection of the interests of stakeholders might not necessarily be provided through statutory means. Many Government policies, procedures and practices were provided through administrative or other means and in cases of change, were safeguarded by an adequate consultation mechanism with the stakeholders.</p>	<p>to take action as required in paragraph 4 of the minutes.</p>
<p>013827 – 013937</p>	<p>HKFCSU</p>	<p>HKFCSU's view that while its members generally agreed to the 25% forfeiture ceiling during the earlier staff consultation, it would be in the interest of CSPF civil servants if the forfeiture ceiling was stipulated in the legislation as in the case of pensionable civil servants.</p>	
<p>013938 – 014157</p>	<p>Chairman Administration</p>	<p>Date of the next meeting</p>	