

立法會
Legislative Council

LC Paper No. CB(1)1666/08-09
(These minutes have been seen by
the Administration)

Ref : CB1/BC/2/08/2

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

Third meeting on
Monday, 4 May 2009, at 4:30 pm
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 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

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)1367/08-09 — Minutes of meeting on 26 March 2009)

The minutes of the meeting held on 26 March 2009 were confirmed.

II Meeting with the Administration

Follow-up to issues raised at the meeting on 26 March 2009

(LC Paper No. CB(1)1377/08-09(01) — Administration's paper on recovery of accrued benefits attributable to Government's voluntary contributions

LC Paper No. CB(1)1377/08-09(02) — Administration's paper on proposals to provide for the percentage of reduction of accrued benefits of Government's voluntary contributions and to provide for the terms and conditions of the Civil Service Provident Fund Scheme in legislation

LC Paper No. LS61/08-09 — Paper on effect of the Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009 on the contract of

employment of CSPF civil servants prepared by the Legal Service Division

Clause-by-clause examination of the Bill

- 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. 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

Admin

3. The Administration was requested to take the following actions:
- (a) to provide its views and response to the Committee Stage amendments (CSAs) proposed by Mr James TO for provision of the maximum percentage (i.e. 25%) of reduction of the accrued benefits attributable to the Government's voluntary contributions (GVC benefits) on compulsory retirement of Civil Service Provident Fund Scheme (CSPF) civil servants in the Bill;
 - (b) to provide a written response to the paper on effect of the Bill on the contract of employment of CSPF civil servants prepared by the Assistant Legal Adviser 7 (LC Paper No. LS 61/08-09); and
 - (c) to examine further the drafting of clause 6 of the Bill (which sought to amend section 31(2) of the Police Force Ordinance (Cap. 232)), in relation to members' concern about the propriety of using the word "vested" in the clause, and revert to the Bills Committee in this regard.

4. As regards members' 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 Bills Committee agreed that the subject be referred to the Panel on Public Service for follow-up.

Admin/
Clerk

III Any other business

Arrangement for the next meeting

5. The Bills Committee completed clause-by-clause examination of the Bill at the meeting. Members agreed that at the next meeting tentatively scheduled for 26 May 2009, the Bills Committee would follow up issues raised at this meeting and consider whether it would move the CSAs proposed by Mr James TO in its name.

(Post-meeting Note: Notice of meeting on 26 May 2009, together with Mr James TO's proposed CSAs, were circulated to members on 6 May 2009 vide LC Papers No. CB(1)1504/08-09.)

6. There being no other business, the meeting ended at 6:28 pm.

Council Business Division 1
Legislative Council Secretariat
22 May 2009

**Proceedings of the
Bills Committee on Disciplined Services Legislation
(Miscellaneous Amendments) Bill 2009
Third meeting on Monday, 4 May 2009, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000521 – 000607	Chairman	Confirmation of minutes of meeting on 26 March 2009 (LC Paper No. CB(1)1367/08-09)	
Follow-up to issues raised at the meeting on 26 March 2009			
000608 – 001222	Chairman Administration	(a) The Chairman's introductory remarks. (b) The Administration's briefing on its response regarding the recovery of Government's Voluntary Contributions (GVC benefits) and proposals to provide for the percentage of reduction of GVC benefits and to provide for the terms and conditions of Civil Service Provident Fund Scheme in legislation (LC Paper Nos. CB(1)1377/08-09(01) and (02) respectively).	
001223 – 001424	Mr James TO	(a) Mr James TO's reference to his proposed Committee Stage amendments (CSAs) (copy tabled at the meeting) to provide for the maximum percentage (i.e. 25%) of reduction of GVC benefits (the forfeiture ceiling) on compulsory retirement of CSPF civil servants in the Bill. His view that the undertaking by the Secretary for the Civil Service to consult staff sides and the Legislative Council on any future changes to the forfeiture ceiling could not adequately safeguard the interest of CSPF civil servants unless the forfeiture ceiling was provided in the legislation.	
001425 – 002906	Mr CHEUNG Man-kwong Administration Chairman	(a) Mr CHEUNG Man-kwong's concern on the possible means for recovery of GVC benefits from a CSPF civil servant where the misconduct or offence (other than the four specified offences under Civil Service Bureau (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 negative public perception. He was also concerned that the remedies available to the Government for misconduct or offences	

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		<p>committed by former CSPF civil servants were only limited to say, actions for recovery of GVC benefits or civil actions to sue for damage.</p> <p>(b) The Administration's reference to Paragraph 5.5 of the Terms and Conditions of the CSPF Scheme as set out in CSB Circular No. 9/2003 on the four specified offences for the Administration to recover, either wholly or in part, GVC benefits withdrawn by former CSPF civil servant convicted of the specified offence by means of civil action. The Administration's advice that the grounds on which civil actions for recovery of GVC benefits for a CSPF civil servants were designed having regard to the grounds on which pension benefits could be reduced for a pensionable civil servant. In the case of CSPF civil servants, on top of the conviction of any of the three specified criminal offences, there was an additional common law offence of misconduct in public office.</p> <p>(c) Mr CHEUNG Man-kwong's query whether a CSPF civil servant who had left the service could still be charged of misconduct in public office, particularly where the misconduct was committed when he was no longer in public service, e.g. breaching the sanitization requirement for post-service outside work. Mr CHEUNG's view that the Administration should take timely action to plug the loophole in the actions/remedies available to the Administration for misconduct or offences committed by CSPF civil servants who had left the service and fully withdrawn the GVC benefits, as the number of CSPF civil servants would increase over time and eventually replace all pensionable officers.</p> <p>(d) The Administration's response that the misconduct or offence referred to one that was committed while the officer was in public office, but conviction occurred after the officer had left the public office. In this scenario, the Administration could still take recovery action in respect of the GVC benefits of the CSPF officer concerned if the gravity of his offence so justified. The Administration's advice that</p>	

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		<p>it had relayed to the Committee on Review of Post-Service Outside Work for Directorate Civil Servants ("Review Committee") the concern about recovery of GVC benefits where there was a breach of post-service outside work restrictions which only came to light after a CSPF directorate civil servant had left the service and had fully withdrawn his GVC benefits. The Review Committee would discuss this issue when formulating its recommendations.</p> <p>(e) Responding to the Chairman's enquiry, the Administration's advice that as far as the offences related to the breach of the Official Secret Ordinance (Cap. 521) were concerned, there were established procedures for the Government to take actions against serving and former civil servants committing such offences.</p>	
002907 – 004000	Ms Audrey EU Administration Mr James TO Chairman	<p>(a) Ms Audrey EU's concern about the need for timely enactment of the Bill as CSPF civil servants who first joined the civil service in 2000 would be eligible for withdrawal of the GVC benefits by 2010 after completion of 10 years' service, and such civil servants might leave the service earlier than 2010 under other specified circumstances (e.g. retirement, death, permanent incapacity, etc.). Ms EU's view that it was outside the purview of the Review Committee to consider issues relating to the recovery of GVC benefits where there was a breach of post-service outside work restrictions by former CSPF civil servant. Her further comment that given the disparity in the existing sanctions for breaching post-service outside work control by CSPF and pensionable civil servants, steps should be taken to align the arrangements for these two categories of civil servants.</p> <p>(b) The Administration's clarification that while the Review Committee might not sort out the details of the measures, if any, for recovery of GVC benefits from former CSPF civil servants for breach of the post-service outside work restrictions, one of the nine salient issues to be addressed in the consultation launched by the Review Committee concerned sanctions for breaching the post-service outside work control</p>	The Administration/ the Clerk to take follow-up actions as required in paragraph 4 of the minutes.

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		<p>regime.</p> <p>(c) View shared by the Chairman and Mr James TO that the issue relating to possible sanctions to be imposed on and remedies to be sought from former CSPF civil servants in breach of the post-service outside work control regime should be referred to the Panel on Public Service for follow-up.</p>	
004001 – 005344	ALA7	Briefing by ALA7 on the effect of the Bill on the contract of employment of CSPF civil servants (LC Paper No. LS 61/08-09).	
005345 – 010235	Chairman Ms Audrey EU ALA7 Administration	Ms Audrey EU's enquiry and the Administration's advice that the Special Disciplined Services Contribution (SDSC) was covered by the expression "voluntary contributions made by the Government" in the Bill.	
010236 – 010950	Chairman Administration Mr CHEUNG Man-kwong	<p>(a) The Chairman's concern about the propriety of using the word "vested" in Clause 6 of the Bill (which sought to amend section 31(2) of the Police Force Ordinance (PFO) (Cap. 232)), and questioned whether it was logical for the Chief Executive (CE) to approve the vesting of the provident fund benefits of a police officer whose benefits had been forfeited as a result of his summary dismissal. The same question of logic might also exist in the summary dismissal provisions in other disciplinary services legislation.</p> <p>(b) The Administration's response that the proposed amendments in clause 6 of the Bill sought to align the arrangements for police officers appointed on pensionable terms and CSPF terms to retain their entitlement for retirement benefits upon being summarily dismissed, if CE thought fit. As the said provision in PFO had never been invoked, no precedent case could be cited on when and how CE would exercise his discretion under section 31(2).</p> <p>(c) The Administration's further advice that section 31 of PFO was a unique provision in that a police officer might be summarily dismissed for contravention of police regulations or police orders given verbally or in writing. For other disciplined services legislation, an officer would</p>	

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		<p>only be summarily dismissed for having been absent from duty for 14 or 21 days without justifiable reasons. Before an officer was summarily dismissed under the disciplined services legislation, there would be disciplinary proceedings involved such as the notification of the intended action to the officer concerned, invitation of representations from him, and decision by the authority concerned.</p>	
<p>010951 – 011544</p>	<p>Chairman ALA7 Administration Ms Audrey EU</p>	<p>(a) On the CSAs proposed by Mr James TO, ALA7's advice that she had provided her initial views to Mr TO earlier on and would further examine the drafting should the Bills Committee decide to move the CSAs in its name. The Administration's advice that more time would be required to consider the proposed CSAs. The Administration would provide its views and response at the next Bills Committee meeting.</p> <p>(b) In response to the Chairman's enquiry, the Administration's advice that it would not be feasible to enable application of the 25% forfeiture ceiling to both pensionable and CSPF civil servants by only amending the pensions legislation.</p> <p>(c) Members' agreement that the Bills Committee would consider Mr James TO's proposed CSAs and whether the Bills Committee would move the CSAs in its name when the Administration's view and response was available at the next meeting.</p>	<p>The Administration to take action as required in paragraph 3(a) of the minutes.</p>
<p>011545 – 011632</p>	<p>Administration Chairman</p>	<p>(a) The Administration's offer to provide a written response to the paper on effect of the Bill on the contract of employment of CSPF civil servants (LC Paper No. LS 61/08-09).</p>	<p>The Administration to take action as required in paragraph 3(b) of the minutes.</p>
<p>Clause-by-clause examination of the Bill</p>			

Time Marker	Speaker	Subject(s)	Action Required
011633 – 012900	Chairman ALA7 Ms Audrey EU Administration	<p>Part 1</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Commencement</u></p> <p>Members raised no question on clauses 1 and 2.</p> <p>Part 2</p> <p>Fire Services Ordinance</p> <p><u>Clause 3 – Interpretation</u></p> <p>(a) ALA7's advice that the "voluntary contributions made by the Government" would include GVC, SDSC, and future voluntary contribution(s) made by the Government, if any.</p> <p>(b) In response to Ms Audrey EU's enquiry about the levels of penalty for different removal punishments, the Administration's advice that based on the removal punishment in use for pensionable civil servants, three levels of removal punishments were proposed for CSPF civil servants, inter alia, forfeiture of the entire GVC benefits upon dismissal, reduction of up to 25% of GVC benefits upon compulsory retirement or retention of entire GVC benefits upon compulsory retirement.</p> <p><u>Clause 4 – Punishment of subordinate officers and members of other ranks for offences against discipline</u></p> <p>Police Force Ordinance</p> <p><u>Clause 5 – Interpretation</u></p> <p>Members raised no question on clauses 4 and 5.</p>	
012810 – 014524	The Chairman ALA7 Mr CHEUNG Man-kwong Mr IP Wai-ming	<p><u>Clause 6 – Summary dismissal</u></p> <p>(a) The Chairman and ALA7's concern whether CE could declare under section 31(2)(b) of PFO that provident fund benefits of a police officer dismissed under section 31(1) be "vested" to that officer, as such benefits would have been forfeited upon summary dismissal.</p>	

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		<p>(b) The Administration's explanation that the Bill did not seek to amend section 31(1) of PFO, which was enacted in the 1970s and had never been invoked. In practice, if this section was invoked, the Commissioner of Police might consider the need to recommend CE to invoke section 31(2) in parallel for the officer concerned. The concept of vesting of provident fund benefits before payment of the benefits to the individual concerned was in line with those in the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485) and the Terms and Conditions of the CSPF Scheme.</p>	<p>The Administration to take action as required in paragraph 3(c) of the minutes.</p>
<p>014525 – 014907</p>	<p>Chairman Administration</p>	<p><u>Clause 7 – Conviction of police officer</u></p> <p>Police (Discipline) Regulations</p> <p><u>Clause 8 – Punishment of junior police officers</u></p> <p><u>Clause 9 – Commissioner may report to Chief Executive</u></p> <p><u>Clause 10 – Powers of punishment</u></p> <p>Prisons Ordinance</p> <p><u>Clause 11 – Interpretation</u></p> <p><u>Clause 12 – Power to make rules</u></p> <p>Prison Rules</p> <p><u>Clause 13 – Punishment of officers (other than Assistant Officers) and other persons</u></p> <p>Government Flying Service Ordinance</p> <p><u>Clause 14 – Interpretation</u></p> <p>Government Flying Service (Discipline) Regulation</p> <p><u>Clause 15 – Punishment of members for disciplinary offence</u></p> <p>Customs And Excise Service Ordinance</p> <p><u>Clause 16 – Interpretation</u></p>	

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		<p>Customs And Excise Service (Discipline) Rules</p> <p><u>Clause 17 – Punishment of inspectors for disciplinary offence</u></p> <p>Traffic Wardens (Discipline) Regulations</p> <p><u>Clause 18 – Interpretation</u></p> <p><u>Clause 19 - Punishment</u></p> <p><u>Clause 20 – Powers of punishment</u></p> <p>Members raised no question on clauses 7 to 20</p>	
014907 – 015110	Chairman Administration	<p>Part 3</p> <p>Fire Services Ordinance</p> <p><u>Clause 21 – Definitions: Part IV</u></p> <p>Police Force Ordinance</p> <p><u>Clause 22 – Definitions: Part IV</u></p> <p>Prisons Ordinance</p> <p><u>Clause 23 – Definitions: Part III</u></p> <p>Government Flying Service Ordinance</p> <p><u>Clause 24 – Control of the fund</u></p> <p>Immigration Service Ordinance</p> <p><u>Clause 25 – Definitions: Part IV</u></p> <p>Customs and Excise Service Ordinance</p> <p><u>Clause 26 – Definitions: Part IV</u></p> <p>Members raised no question on clauses 21 to 26</p>	
015111 – 015440	Chairman Administration	<p>Part 4</p> <p>Traffic Warden (Discipline) Regulations</p> <p><u>Clause 27 – Punishment</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<u>Clause 28 – Powers of punishment</u> Members raised no question on clauses 27 and 28	
015441 – 015621	Chairman Administration	Part 5 Police Force Ordinance <u>Clause 29 – Conviction of police officer</u> Members raised no question on clause 29	
015622 – 015806	Chairman Administration	Part 6 <u>Clause 30 – Transitional provisions</u> Members raised no question on clause 30	
015807 – 015914	Chairman Administration	Arrangement for the next meeting	