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Legislative Council

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

Background brief

Purpose

This paper sets out the background of the proposed disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme (CSPF civil servants) and other related proposals (collectively referred to as "the Proposals" hereafter). It also gives an account of the discussion of the Panel on Public Service (the PS Panel) on the Proposals at its meetings on 20 October and 17 November 2008.

Background

CSPF Scheme

2. The CSPF Scheme was set up by the Government as a mandatory provident fund scheme under the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485). Both the Government as an employer and civil servants as employees are required to make mandatory contributions as stipulated under MPFSO. The Government also makes voluntary contributions in addition to mandatory contributions under the CSPF Scheme. Civil servants appointed on new entry terms on or after 1 June 2000 are eligible to join the CSPF Scheme when they progress onto new permanent terms upon completion of probation and/or agreement.

3. Under the CSPF Scheme, a civil servant's retirement benefits comprise the accrued benefits attributable to his mandatory contributions, the accrued benefits attributable to Government's Mandatory Contribution (GMC benefits) and those to Government's Voluntary Contribution (GVC benefits). While GMC benefits are by law not to be tampered with under any circumstances, GVC benefits are by contract fully vested and payable to a CSPF civil servant when he leaves service upon completion of at least 10 years of continuous service since first appointment or under other specified circumstances (e.g. retirement, death, permanent incapacity, etc). GVC

benefits may also by contract be forfeited, in whole or in part, if a CSPF civil servant is found guilty of a disciplinary or criminal offence and is punished for the offence.

Disciplinary punishments

4. A civil servant who has been found guilty of a disciplinary or criminal offence upon completion of disciplinary proceedings is subject to disciplinary punishments, which comprise two broad categories, namely, removal¹ or non-removal punishments². While all non-removal punishments are applicable to CSPF civil servants, the existing removal punishments which impinge on the provision of pension benefits are not applicable to CSPF civil servants. As the first batch of CSPF civil servants will complete 10 years of service by mid-2010 and be fully vested with their GVC benefits when they leave the service, there is a need to put in place before then removal punishments which may impinge on their retirement benefits according to the terms and conditions of the CSPF Scheme³, and an appeal mechanism for the civil servants so affected.

The Proposals

Removal punishments for CSPF civil servants

5. Based on the removal punishments in use for civil servants on pensionable terms, the Administration proposes the following three levels of removal punishments for CSPF civil servants –

¹ There are three main levels of removal punishments under the Public Service (Administration) Order (PS(A)O) and the disciplined services legislation (DSL) - (i) Level 1: dismissal (with forfeiture of all pension benefits); (ii) Level 2: compulsory retirement with reduction of up to 25% of pension benefits; and (iii) Level 3: compulsory retirement with pension benefits.

² Under PS(A)O, there are three types of non-removal punishments - (i) reduction in rank; (ii) severe reprimand; and (iii) reprimand, and three types of financial penalties - (i) stoppage or deferment of increments; (ii) reduction in salary; and (iii) fine. The civil servants concerned are also subject to the summary punishment of written warning and verbal warning. Under DSL, there are similar punishments of reduction in rank, severe reprimand and reprimand, but the presence of warning and financial penalties varies from one DSL to another. Some punishments, e.g. forfeiture of pay, extra duties, etc, are present in some DSL but not PS(A)O.

³ As stipulated in the contract terms, where a CSPF civil servant is found guilty of a disciplinary or criminal offence and is given a punishment upon conclusion of disciplinary proceedings, his GVC benefits may be forfeited, either wholly or in part, having regard to the findings and the decision on punishment.

Level of punishment	CSPF civil servants with 10 or more years of service⁴
Level 1	Dismissal with forfeiture of full GVC benefits
Level 2	Compulsory retirement with reduced GVC benefits (the level of forfeiture will be pitched at up to 25% of the GVC benefits at the time of compulsory retirement of the staff concerned)
Level 3	Compulsory retirement with full GVC benefits

6. According to the Administration, the removal punishments proposed above are broadly comparable to those for pensionable civil servants.

Appeal mechanism for CSPF civil servants

7. The Administration proposes to set up a non-statutory advisory panel to advise the Chief Executive (CE) on appeals from CSPF civil servants relating to the forfeiture or reduction of CSPF benefits. With the establishment of the proposed advisory panel, CE may refer any representation made to him by CSPF civil servants to this panel, before he may confirm, vary or reverse the decision to which the representation relates. This largely mirrors the arrangements for pensionable civil servants. The above advisory body mechanism will be promulgated by way of a Civil Service Bureau (CSB) circular announcing the new disciplinary framework for CSPF civil servants.

Other related proposals

8. The Administration also takes this opportunity to introduce the following technical refinements to the civil service disciplinary system -

(a) *Calculation of fine*

The fine under the Public Service (Administration) Order (PS(A)O)⁵ is currently capped at an amount equivalent to two salary increments for 12 months, which equals approximately one month's salary. Under the disciplined services legislation (DSL), a fine or like penalty (i.e. forfeiture of pay) is salary-based and generally capped at one month's salary.

⁴ A CSPF civil servant will only be eligible for his GVC benefits when leaving the service after completing 10 years of continuous service. Levels 2 and 3 punishments – which preserve GVC benefits in part and in whole respectively upon removal – will have no application to CSPF civil servants with less than 10 years' continuous service. As such, only one level of removal punishment (i.e. dismissal without GVC benefits) will be applicable to these civil servants.

⁵ This is an executive order drawn up under Article 48(4) of the Basic Law, setting out the CE's authority in regard to the management of the civil service, including discipline matters.

To address the equity problem and to make the basis of the fine more readily comprehensible to staff, the Administration proposes to change the calculation of fine under PS(A)O from an increment-based approach to a salary-based approach, and cap the fine at an amount equivalent to one month's salary.

(b) *Stoppage of salary/allowance upon criminal conviction*

The service-wide arrangement on the stoppage of salary and/or allowance upon criminal conviction, i.e. effective from the date of conviction, should also be applied to police officers.

(c) *Departmental welfare fund of the disciplined services*

The description of former member/employee of the disciplined services as beneficiaries of their respective departmental welfare funds under the law covers only civil servants who have retired on a pension, gratuity or other allowance basis. The Administration proposes that the description be amended such that CSPF civil servants of the disciplined services will be accorded the same status as their pensionable counterparts under their respective departmental welfare funds.

(d) *Punishment of compulsory retirement for officers of the Traffic Warden grade*

The punishment of compulsory retirement should be provided for a Traffic Warden grade officer who is found guilty of a disciplinary offence, on a par with the arrangement for the rest of the civil service.⁶

9. The Administration introduced the Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009 into the Legislative Council on 18 February 2009 to implement the proposals in paragraph 5 and paragraph 8(b), (c) and (d) above.

10. The Administration will amend PS(A)O to implement the proposals in paragraph 5 above after the passage of the Bill, and the relevant Civil Service Regulations and CSB circulars for implementing the proposals in paragraphs 5

⁶ This proposal was not included in the Administration's briefing for the PS Panel. In response to the Legislative Council Secretariat's enquiry, the Administration advises that when reviewing the Traffic Warden (Discipline) Regulations (Cap. 374J) in the context of the legislative proposal, the Administration notes that the Regulations have omitted the punishment of compulsory retirement for Traffic Warden grade officers found guilty of a disciplinary offence. This entails a technical amendment so that compulsory retirement can be applied to Traffic Warden grade officers on pension scheme and CSPF scheme, as is the case for the rest of the civil service.

to 8 above at a subsequent stage.

Major views and concerns expressed by members of the PS Panel

11. The Administration briefed the PS Panel on the Proposals on 20 October 2008. The Panel subsequently invited views from civil service unions and met with representatives of the Government Disciplined Services General Union (GDSGU) and Disciplined Services Consultative Council (Staff Side) (DSCC Staff Side) at its meeting on 17 November 2008. Members' views on the Proposals are summarized in the ensuing paragraphs.

Inclusion of investment returns in the forfeiture formula for the proposed level 2 punishment

12. Hon LI Fung-ying and Dr Hon PAN Pey-chyou were concerned that under the proposed Level 2 punishment, the level of forfeiture would be pitched at up to 25% of a CSPF civil servant's accrued GVC benefits at the time of compulsory retirement, and that any investment returns generated from the GVC benefits would also be included in determining the amount of the accrued GVC benefits. As investment returns depended on the performance of the investment portfolios for which the staff concerned had opted, the proposed arrangement could give rise to a situation that the forfeiture amounts of two staff members could differ a lot, even though their grades, years of service and the offences committed were the same. Some members including Hon LEE Cheuk-yan and Hon Mrs Regina IP suggested capping the forfeiture amount at 25% of the GVC benefits and any gains generated from investment returns be disregarded in calculating the amount.

13. The Administration explained that there was great difficulty to come up with a proposal which could take into account the differences in investment returns arising from individual CSPF civil servants' personal choice of investment portfolios. The Administration considered that the current proposal was broadly comparable to the arrangements for pensionable civil servants, and the staff side generally agreed that the proposal was acceptable.

Sanctions under the control regime governing post-service outside work of directorate CSPF civil servants

14. Hon CHEUNG Man-kwong was concerned how retired directorate CSPF civil servants (who were already paid their GVC benefits upon retirement) could be deterred from or punished for taking up post-service outside work which might constitute conflicts of interest with their previous government service, or taking up such employment without obtaining the required permission.

15. The Administration advised that since the restrictions on post-service outside work were stipulated in the employment contracts, the Government as employer could initiate civil action against a retired CSPF civil servant who did

not comply with relevant requirements on grounds of breach of contract. Except for pension suspension which could only be applied to retired directorate civil servants on pensionable terms, all the other sanctions under the control regime governing post-service outside work of retired directorate civil servants on pensionable terms could also be applied to retired directorate civil servants on CSPF terms. As regards the sanction of instituting civil action to sue for damages against a retired directorate civil servant under contract law for failure to comply with the control regime, legal advice obtained by the Administration indicated that there was no limit on the amount of damage the Administration might claim.

Appeal mechanism for CSPF civil servants

16. Some members requested the Administration to take appropriate measures to ensure that the operation of the proposed non-statutory appeal panel had a high degree of transparency. Some suggested that consideration should be given to revising the proposal on the non-statutory panel to make it statutory.

17. The Administration explained that it would be inappropriate to make the proposed panel statutory as the CSPF Scheme was provided by contract, not legislation. The proposed panel would largely mirror the existing appeal mechanism provided under the Pensions Ordinance (Cap. 89) and the Pension Benefits Ordinance (Cap. 99) for handling appeals on pension forfeiture/suspension/reduction matters.

Other issues relating to the civil service disciplinary system

Discrepancies in disciplinary proceedings and "review board" provided under section 20(2) of PS(A)O

18. Hon LI Fung-ying considered that the disciplinary proceedings must be fair, and requested the Administration to rectify the existing discrepancies in the disciplinary proceedings of different disciplined services as highlighted by GDSGU.

19. The Administration advised that it had informed the disciplined services staff unions that it would review with the disciplined services departments the issue concerning disciplinary proceedings, and would consult staff on any proposed changes. The Administration also undertook to provide a progress report on the review to the Panel in the second quarter of 2009.

20. Some members also requested the Administration to follow up the concern raised by the deputations regarding the lack of progress in the establishment of the "review board" provided under section 20(2) of PS(A)O. The Administration clarified that this appeal mechanism was outside the scope of the amendment bill. Under this mechanism, CE might appoint a review board to advise him on representations addressed to him relating to appointment, dismissal and discipline of public servants as he thought fit. The

Administration would review the progress of the matter and would consult the staff side when it was in a position to do so.

21. At the request of the Panel, the Administration further met with DSCC Staff Side and GDSGU to address their concerns and reaffirm the Administration's undertaking to conduct separate reviews on the above issues. The Administration reported to the Panel in writing on 12 January 2009 on its meeting with DSCC Staff Side and GDSGU and their agreement for processing of the amendment bill and aforesaid reviews for in parallel.

Relevant papers

22. A list of relevant papers is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
5 March 2009

**Disciplined Services Legislation
(Miscellaneous Amendments) Bill 2009**

List of relevant papers

Committee	Paper	LC Paper No.
Meeting of Panel on Public Service (PS Panel) on 20 October 2008	✧ Administration's paper on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1020cb1-36-2-e.pdf	CB(1)36/08-09(02)
	✧ Minutes of meeting http://www.legco.gov.hk/yr08-09/english/panels/ps/minutes/ps20081020.pdf	CB(1)354/08-09
Meeting of PS Panel on 17 November 2008	✧ Submission from Government Disciplined Services General Union http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1020cb1-81-1-c.pdf	CB(1)81/08-09(01)
	http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-226-2-c.pdf	CB(1)226/08-09(02)
	✧ Submission from Hong Kong Civil Servants General Union Negotiation Committee http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-169-4-c.pdf	CB(1)169/08-09(04)
	✧ Submission from Model Scale 1 Staff Consultative Council (Staff Side) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-169-5-c.pdf	CB(1)169/08-09(05)

Committee	Paper	LC Paper No.
	<p>✧ Submission from Government Employees Association</p> <p>http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-169-6-c.pdf</p>	<p>CB(1)169/08-09(06)</p>
	<p>✧ Submission from Senior Civil Service Council (Staff Side)</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1117cb1-203-1-e.pdf</p>	<p>CB(1)203/08-09(01)</p>
	<p>✧ Submission from Government Electrical & Mechanical Works Supervisors, Craftsmen & Workmen Association</p> <p>http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-226-1-c.pdf</p>	<p>CB(1)226/08-09(01)</p>
	<p>✧ Administration's response to the submission from Hong Kong Civil Servants General Union Negotiation Committee</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1117cb1-208-1-e.pdf</p>	<p>CB(1)208/08-09(01)</p>
	<p>✧ Administration's response to the submission from Government Electrical & Mechanical Works Supervisors, Craftsmen & Workmen Association</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1117cb1-227-1-e.pdf</p>	<p>CB(1)227/08-09(01)</p>
	<p>✧ Administration's response to the submission from Government Disciplined Services General Union</p> <p>http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-247-1-c.pdf</p>	<p>CB(1)247/08-09(01)</p>

