

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

**Legal basis for forfeiture of retirement benefits of civil servants
under the Civil Service Provident Fund Scheme**

Background

At the meeting of the Bills Committee on 6 March 2009, Members enquired whether the removal punishments impinging on the provision of retirement benefits under the Civil Service Provident Fund (“CSPF”) Scheme proposed by the Administration (“the Proposal”) would constitute variation of the employment contract of CSPF civil servants. In this connection, the Administration was requested to provide -

- (a) a copy of Civil Service Bureau (“CSB”) 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 also requested to explain the relevance of the Public Service (Administration) Order (“PS(A)O”) in the implementation of the Proposal.

2. A copy of CSB Circular No. 9/2003 was provided to the Committee secretariat on 9 March 2009. The other requested information is provided in the ensuing paragraphs.

Contractual Basis for the Proposal

3. More specifically, the Proposal is concerned with removal punishments on disciplinary grounds which, in their two most severe forms

(namely “dismissal” and “compulsory retirement with reduction of up to 25% of accrued benefits of Government Voluntary Contribution (“GVC benefits”)), would lead to forfeiture, in whole or in part, of GVC benefits of a civil servant whose retirement benefits are provided under the CSPF Scheme. These civil servants are appointed on or after 1 June 2000 on new entry terms and subsequently appointed on permanent terms of appointment upon completion of probation and/or agreement (hereafter referred as “new permanent terms”).

4. The contractual basis for the forfeiture of GVC benefits on disciplinary grounds is provided 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.

Appointment Terms and Conditions of Service

5. The conditions of service for civil servants appointed on new permanent terms are set out in the Memorandum on Conditions of Service (“MOCS”) that accompanies the letter of appointment. Both the appointment letter and the MOCS form part of the contract of employment between the Government and a civil servant.

6. The letter of appointment expressly stipulates that GVC benefits may be forfeited on disciplinary grounds. It also refers to CSB Circular No. 9/2003 and the MOCS for detailed arrangements. The following is an extract from the letter of appointment:

“On appointment, you will be eligible for retirement benefits under the CSPF Scheme which is operated in the form of a provident fund scheme governed by the Mandatory Provident Fund Schemes Ordinance (Cap 485) The Government contributions will comprise mandatory and voluntary contributions. Please note the vesting criteria of the CSPF Scheme and that accrued benefits derived from GVC might be withheld, forfeited, reduced or recovered on disciplinary grounds. Please refer to the attached CSB Circular No. 9/2003 and Paragraph 11 (Retirement Benefits) of the MOCS for details of the CSPF arrangements.”

7. Attached to the letter of appointment is a form which a civil servant offered appointment on new permanent terms is required to sign if he accepts such terms. The relevant wording of the form is extracted as follows:

“I have read and understand the provisions contained in your letter of [date] and the MOCS attached therein. In particular, I am aware and agree that the accrued benefits attributable to the GVC under the CSPF Scheme in respect of me may be withheld, reduced, forfeited or recovered on disciplinary grounds in accordance with the then prevailing terms and conditions prescribed for that purpose. I also give consent to the Government to make necessary enquiries for the purpose of establishing my eligibility to GVC benefits and authorize the disclosure of information relating to whether there is or exists any likelihood of, and if so, the nature of, any disciplinary investigation/proceedings or criminal investigation involving me by any person or authority to whom relevant enquiries are made.

I confirm that I accept the offer of appointment as [office/rank title] in your Department and agree to abide by the provisions contained in the letter of appointment and the MOCS.”

8. Paragraph 11 of the MOCS further provides that:

“... the accrued benefits derived from the GVC will be vested with the officer in accordance with the prescribed terms and conditions as provided in the “Terms and Conditions of the CSPF Scheme”, the relevant Civil Service Regulations, CSB Circulars and CSB Circular Memoranda.”

“Notwithstanding the vesting provisions as stated above, the accrued benefits attributable to the GVC may be withheld, forfeited, reduced or recovered on disciplinary grounds. Details regarding whether and how the accrued benefits attributable to the GVC may be withheld, forfeited, reduced or recovered on disciplinary grounds are set out in the “Terms and Conditions of the CSPF Scheme”, the relevant Civil Service Regulations, CSB Circulars and CSB Circular Memoranda.”

Civil Service Bureau Circular No. 9/2003

9. CSB Circular No. 9/2003 as referred to in the letter of appointment announces the implementation details of the CSPF Scheme. The terms and conditions of the Scheme are set out in Annex A of the Circular.

10. Paragraph 5.1 of the terms and conditions of the CSPF Scheme provides that 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 accrued benefits attributable to the GVC may be forfeited, either wholly or in part, having regard to the findings and the decision on punishment. In paragraphs 5.2 and 5.3, it is stipulated that where a CSPF civil servant leaves the service before the completion of disciplinary action, the Administration may withhold and/or forfeit his GVC benefits. Paragraph 5.5 further provides that where the misconduct or offence comes to light only after a CSPF civil servant has left the service and has fully paid his GVC benefits, the Administration may recover, either wholly or in part, such benefits by means of civil action if the officer is convicted of certain serious offences. Relevant extracts of the Circular are reproduced at **Annex A** for Members' ease of reference.

Disciplinary instruments

11. The letter of appointment and MOCS have an interface with civil service regulations and circulars including those on conduct and discipline which all civil servants are required to observe. There are particular references to rules and restrictions on acceptance of advantages and entertainment, conflict of interest, outside work and investments in the letter of appointment. There are also particular sections on conduct and discipline, and dismissal or punishment for misconduct in the MOCS. The MOCS contains provisions stipulating that civil servants are subject to executive orders issued by the Chief Executive ("CE") for the administration of the public service and to regulations and directions made under these orders. They are also subject to the provisions of, among others, any ordinances or regulations which apply to the office or to the department to which he is appointed, government regulations and circulars, and departmental instructions.

12. The control regime on civil servants' discipline is also provided through two instruments, namely, the PS(A)O (**Annex B**) made by the CE

and the Disciplined Services Legislation¹ (“DSL”). These disciplinary instruments set out, among others, the provisions governing how disciplinary proceedings should be instituted against civil servants alleged of misconduct or offences under their respective purview. While the PS(A)O is applicable to civil servants in civilian grades and senior ranking officers² in disciplined service grades, the DSL is applicable to middle ranking officers or below in disciplined service grades³.

Whether the Proposal constitutes variation of the employment contract of CSPF civil servants

13. The existing contractual provisions for a CSPF civil servant have already provided the Administration with a basis to forfeit his GVC benefits wholly or in part if he is found guilty of misconduct or offence. The proposed removal punishments for CSPF civil servants elaborate on the circumstances under which the Administration may invoke these provisions and the extent to which the GVC benefits may be affected. Such elaboration is in accordance with the framework provided in the employment contract and does not breach or vary the contract.

14. The Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009 (“the Bill”) seeks to, among others, include in the DSL references to removal punishments impinging on the retirement benefits (and specifically, GVC benefits) of CSPF civil servants employed in the disciplined services. The relevant proposals are dealt with in the Bill mainly by introducing the newly defined terms of “CSPF Scheme” and “retirement benefits”. These amendments are technical but necessary as all DSL predates the CSPF Scheme, and the retirement benefits referred to in such legislation, namely “pension, gratuity or other allowances”, do not cover those benefits under the CSPF Scheme. As the disciplinary matters of the middle and junior ranking civil servants in disciplined service grades are generally governed by the DSL apart from their employment contract, the Administration considers it prudent to amend the DSL to remove any doubt caused by the lack of reference to the retirement benefits under the CSPF Scheme in the DSL. The

¹ This refers to the main ordinances and subsidiary legislation that are applicable to specific disciplined service grades/ranks of the Hong Kong Police Force, Fire Services Department, Correctional Services Department, Customs and Excise Department, Immigration Department and Government Flying Service.

² These refer generally to officers at a rank equivalent to Superintendent and above.

³ Except for Immigration Department in which only the junior ranking officers (i.e. those of the Immigration Assistant grade) are subject to the DSL for the disciplinary offences specified therein, whilst the others are subject to the PS(A)O.

Proposal, therefore, has no conflict with the employment contract with CSPF civil servants.

Civil Service Bureau
March 2009

**Extracts of relevant provisions relating to forfeiture of
accrued benefits attributable to Government's voluntary contributions
in Civil Service Circular No. 9/2003**

The Circular (main text)

Para. 9

“As for the payment of accrued benefits arising from GVC/SDSC, the bureau/department will verify the officer's service records and inform the Trustee whether payment could be made. In particular, the bureau/department has to check whether the officer meets the vesting criteria as stipulated in the ‘Terms and Conditions of the CSPF Scheme’ and to confirm that there are no disciplinary reasons to withhold, forfeit or reduce the accrued benefits attributable to GVC/SDSC before approving its payment.”

Annex A to the Circular

Para. 5.1

“Where an officer is found guilty of a disciplinary or criminal offence and is given a punishment upon conclusion of disciplinary proceedings, his accrued benefits attributable to the GVC (and the SDSC if applicable) may be forfeited, either wholly or in part, having regard to the findings and the decision on punishment.”

Para. 5.2

“Where an officer leaves the service –

- (a) before conclusion of disciplinary or criminal proceedings, if such proceedings have started; or*

- (b) *if formal proceedings have yet to start, but the Government has reasonable grounds to suspect that the officer may have committed a misconduct which, had the disciplinary proceedings taken place and the misconduct substantiated, would be so serious as to warrant a punishment of removal from the service,*

his accrued benefits attributable to the GVC (and the SDSC if applicable) may be withheld in full until conclusion of the relevant proceedings (or until a decision is taken by Government that no such proceedings will commence)."

Para. 5.3

"Subsequent to para. 5.2 above, upon conclusion of relevant proceedings to establish whether an officer's accrued benefits attributable to the GVC (and the SDSC if applicable) should be forfeited, the accrued benefits of the officer concerned may be forfeited either wholly or in part, having regard to the findings and the decision so made."

Para. 5.5

"Where the misconduct or offence comes to light only after the officer has left the service and has fully withdrawn his accrued benefits attributable to the GVC (and the SDSC if applicable), the Government may recover, either wholly or in part, such benefits by means of civil action, if the officer is –

- (a) *convicted of the common law offence of misconduct in public office; or*
- (b) *convicted of any offence under Part II of the Prevention of Bribery Ordinance (Cap 201), being an offence related to his previous government service; or*
- (c) *convicted of any offence related to his Government service, being certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service; or*

- (d) *convicted of treason under Section 2 of the Crimes Ordinance (Cap 200).*”

Annex B to the Circular

The entire Annex B which sets out the provisions on forfeiture of accrued benefits, amongst others, is attached at **Appendix**.

**Procedures on approving the payment of
Accrued Benefits Attributable to
Government Voluntary Contributions (GVC)/
Special Disciplined Services Contributions (SDSC)**

Procedures on releasing/withholding Accrued Benefits

When an officer is due to leave the service or gives notice to resign, his Department should check whether he meets the vesting criteria for accrued benefits attributable to GVC/SDSC (hereafter referred to as ‘accrued GVC/SDSC benefits’) as stipulated in the ‘Terms and Conditions of the Civil Service Provident Fund Scheme’.

2. If he is not eligible for the accrued GVC/SDSC benefits (e.g. less than 10 years continuous service with the Government, removal from service on disciplinary grounds with accrued benefits forfeited), his Department should inform the Trustee of the Master Trust Scheme (MTS) joined by the officer under the CSPF Scheme (hereafter referred to as ‘scheme trustee’) to return the accrued benefits to the Government.

3. If he meets the vesting criteria, his Department should check whether the officer is –

(a) subject to, or likely to be subject to, disciplinary investigation or proceedings; or

(b) under criminal investigation by the Police and/or ICAC.

In this regard, a letter giving consent to the Government to make any necessary enquiries for the purpose of establishing his eligibility to the accrued GVC/SDSC benefits and authorizing the disclosure of information relating to whether there is or exists any likelihood of, and if so, the nature of, any disciplinary investigation/proceedings or criminal investigation involving the officer by any person or authority to whom the relevant enquiries are made will be signed by the officer when he is offered permanent terms of appointment.

4. If the officer is not subject to/not likely to be subject to disciplinary action, or not under criminal investigation, his Head of Department (HoD) will check whether the officer has any other outstanding loan or payment with the Government. If there is no money due to the Government, the HoD will notify the scheme trustee to release the officer's accrued GVC/SDSC benefits. The decision to release the benefits should be made by an officer who is not lower than D2 in rank, or an officer who is at least two ranks above the officer leaving the service if the latter is at directorate level himself.

5. If there are allegations of misconduct against the officer or where disciplinary proceedings are in progress, his HoD, in consultation with the Civil Service Bureau (CSB), will consider whether to release or withhold the accrued GVC/SDSC benefits. If the officer is at directorate rank, his case will be considered by Secretary for the Civil Service (SCS).

6. Similarly, if the officer is currently under investigation by the Police or ICAC, his HoD, in consultation with CSB, will consider whether to release or withhold the accrued GVC/SDSC benefits. If the officer is at directorate rank, his case will be considered by SCS.

7. Where it is considered necessary to withhold an officer's accrued GVC/SDSC benefits, his Department should, as soon as practicable and normally not later than **three months** after the officer's last day in service, inform the officer of the proposed withholding action and the reasons for doing so. The officer should be invited to submit, within **14 calendar days**, a statement to explain why the proposed action should not be taken. If the officer has submitted explanation, the designated authority (i.e. his HoD or SCS if the officer is at directorate rank) should take this into account before reaching the decision on whether or not to withhold his accrued GVC/SDSC benefits and notify the officer accordingly. CSB should be consulted in advance. Under such circumstances, the decision to withhold an officer's accrued GVC/SDSC benefits should normally be made no later than **four months** after the officer's last day in service.

8. In parallel, the Department should notify the scheme trustee of the withholding action. During the period in which an officer's accrued GVC/SDSC benefits are withheld, he will be allowed to continue to exercise his right as a scheme member to decide how the accrued GVC/SDSC benefits are to be invested within the scheme.

9. The initial withholding period will be **three months**. The designated authority should review the case within the initial withholding period, and thereafter at regular intervals to decide whether the withholding should continue. Normally, the withholding will be up to a maximum of **six months** (for an officer who is subject to disciplinary investigation) or **12 months** (for an officer who is being investigated by the Police or ICAC) counting from the date when the accrued GVC/SDSC benefits is first withheld. By the end of the withholding period, if the officer is not subject to disciplinary or criminal charge, the designated authority should consider whether the accrued GVC/SDSC benefits should be released or forfeited on the basis of the progress/outcome of the investigation. If the designated authority decides to forfeit the accrued GVC/SDSC benefits or if the officer is subject to disciplinary or criminal charge, the designated authority should take action in accordance with the procedures on forfeiture of the accrued benefits as set out in paragraphs 10 to 16 below. Otherwise, after consultation with CSB, the order to withhold the accrued benefits should be rescinded.

Procedures on Forfeiture of the Accrued Benefits

10. If, after investigation by the Police or ICAC, no criminal charges have been made, or an officer is charged but subsequently acquitted of all criminal charges, or an officer is convicted but subsequently his conviction is quashed upon appeal, the department should study the relevant report and, if necessary, conduct a departmental investigation. The department should examine whether there is any evidence to suggest a disciplinary misconduct, or whether the investigation or the court case has revealed other misconduct which may warrant disciplinary action. If, as a result of the investigations/examination, there is evidence of a misconduct which is serious enough to warrant forfeiture of accrued GVC/SDSC benefits, the designated authority may approve the continued withholding of the officer's accrued benefits and pursue the disciplinary/forfeiture proceedings (see paragraph 13 below). Otherwise, after consultation with CSB, the order to withhold the accrued benefits should be rescinded.

11. If, after investigation by the Police or ICAC, an officer is charged and is convicted of criminal offence, the designated authority should study the court ruling when available and, after consultation with CSB, take a view as to whether the officer's accrued GVC/SDSC benefits should be forfeited, having regard to the gravity of the criminal conviction.

12. If disciplinary proceedings has been taken and upon completion of

the proceedings, the designated authority will, on the basis of the outcome of the proceedings and in consultation with CSB, consider whether to release or forfeit the accrued GVC/SDSC benefits.

13. In circumstances where disciplinary proceedings cannot be completed on the last day of an officer's service, the department concerned will ask the officer to indicate whether he wishes to continue with the proceedings. If the officer wishes to continue with the proceedings, he should indicate in writing, within **14 calendar days**, that he agrees to the continuation of the disciplinary proceedings and that he will attend the disciplinary inquiry if conducted. Upon receipt of the officer's written confirmation, the proceedings will continue in the same manner as if the officer has not left the service until the proceedings are completed. If the officer indicates that he does not wish to continue with the proceedings or if no reply is received from the officer after the stipulated deadline, the designated authority would discontinue the disciplinary proceedings, and consider the case on the basis of evidence collected from previous investigation. This procedure is referred to as the 'forfeiture proceedings'.

14. If the designated authority decides not to forfeit the accrued GVC/SDSC benefits after the disciplinary/forfeiture proceedings, he will, after consultation with CSB, approve the release of the accrued GVC/SDSC benefits. The officer designated in the department to certify payments of accrued GVC/SDSC benefits will notify the scheme trustee to release the accrued benefits to which the officer is entitled.

15. If the designated authority decides to forfeit the benefits, either wholly or in part, after the disciplinary/forfeiture proceedings, the Department concerned will notify the officer in writing that –

- (a) consideration is being given to forfeiting his accrued benefits, either wholly or in part, and the grounds for so doing; and
- (b) the officer may submit representations within **30 calendar days**, and that the representations, if made, would be considered by the designated authority before a final decision is made.

16. If representations from the officer are not received by the end of the specified period or if the representations are not considered exculpatory, the designated authority may, after taking into account the advice of CSB and the

Public Service Commission, exercise his authority to order forfeiture of the officer's accrued GVC/SDSC benefits, either wholly or in part. The officer should be notified of the decision accordingly.

Appeal Mechanism

17. If the officer is aggrieved by a decision to forfeit his accrued GVC/SDSC benefits, he may make representations to the Chief Executive (CE) within a period of **30 calendar days** counting from the date of the notification of the decision. The CE shall determine the merits of the representations. He may confirm, vary or reverse the decision to which the representations relate.

Recovery of the Accrued Benefits already paid out

18. Where the misconduct or offence comes to light only after the officer has left the service and has fully withdrawn the accrued GVC/SDSC benefits, the Government may recover, either wholly or in part, such benefits by means of civil action, if the officer is –

- (a) convicted of the common law offence of misconduct in public office;
or
- (b) convicted of any offence under Part II of the Prevention of Bribery Ordinance (Cap 201), being an offence related to his previous government service; or
- (c) convicted of any offence related to his Government service, being certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service; or
- (d) convicted of treason under Section 2 of the Crimes Ordinance (Cap 200).

PUBLIC SERVICE (ADMINISTRATION) ORDER

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PUBLIC SERVICE (ADMINISTRATION) ORDER

PART I

PRELIMINARY

1. Citation

- (1) This Order may be cited as the Public Service (Administration) Order. (*Amended by Executive Order (E.O.) 1 of 2000 s.2*)
- (2) (*Repealed by E.O. 1 of 2000 s.2*)

2. Interpretation

In this Order, unless the context otherwise requires--

"Basic Law" (《基本法》) means the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China;

"Category A Officer" (甲類人員) means an officer who is appointed to and confirmed in an established office;

"Category B Officer" (乙類人員) means any officer who--

- (a) holds a non-established office;
- (b) holds an established office either on month-to-month terms or probationary terms;
- or
- (c) holds an office on agreement terms;

"established office" (設定職位) has the meaning assigned to it by section 2 of the Pensions Ordinance (Cap. 89);

"HKSAR" (特區) means the Hong Kong Special Administrative Region of the People's Republic of China;

"non-established office" (非設定職位) means an office which is not an established office;

"public officer" (公職人員) means public officer within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);

"public servant" (公務人員) and "officer" (人員) mean any person holding an office of emolument under the Government of HKSAR, whether the office is permanent or temporary, and serving in a government bureau or department;

"Public Service Commission" (公務員絀用委員會) means the Public Service Commission established under section 3 of the Public Service Commission Ordinance (Cap. 93);

"punishment" (懲罰)--

- (a) includes dismissal, compulsory retirement with pension, gratuity or other allowances or, without such benefits or with reduced benefits, fine, reduction in rank, severe reprimand, reprimand, stoppage or deferment of increments and reduction in salary;
- (b) does not include retirement in the public interest under section 12;

"regulations" (《規例》) means regulations made by the Chief Executive under section 21.

PART II

APPOINTMENTS

3. Appointments

(1) Subject to Article 48(5) of the Basic Law, the Chief Executive may by virtue of Article 48(7) of the Basic Law appoint and promote public servants in accordance with this Order.

(2) In making his selection of persons for appointment or promotion, the Chief Executive shall take account of any advice tendered by the Public Service Commission under or by virtue of the Public Service Commission Ordinance (Cap. 93).

4. Concurrent appointments

(1) The Chief Executive may, when a public servant is on leave of absence pending relinquishment of his office, appoint substantively another person to the same office.

(2) When 2 or more persons are holding the same office by reason of an appointment made under subsection (1) the person last appointed to the office shall, for the purposes of any function conferred upon the holder of that office, be deemed to be the holder of that office.

PART III

DISMISSAL, SUSPENSION AND DISCIPLINE

5. Dismissal, suspension and discipline

Subject to article 48(5) of the Basic Law, the Chief Executive may by virtue of article 48(7) of the Basic Law, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any public servant or take such other disciplinary action, in accordance with this Order and regulations as may seem to him desirable.

6. Disciplinary procedures not to prejudice any law providing for punishment, etc.

This Order and regulations are without prejudice to any law providing for the punishment of officers by the Chief Executive or any other officer or authority.

7. Disciplinary procedures applicable to Category A Officers

Sections 9 to 18 shall apply only to Category A Officers.

8. Disciplinary procedures applicable to Category B Officers

Disciplinary procedure in relation to Category B Officers shall be carried out in accordance with regulations and any directions given by the Chief Executive under section 21(3).

9. Misconduct not warranting dismissal or compulsory retirement

(1) If it is represented to the Chief Executive that an officer has been guilty of misconduct, and the Chief Executive is of the opinion that the misconduct alleged is not serious enough to warrant proceedings under section 10, he may cause an inquiry to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Chief Executive under section 21(2).

(2) If after such inquiry the Chief Executive is of the opinion that the officer has been guilty of misconduct, he may inflict such punishment, other than dismissal or compulsory retirement, upon the officer as may seem to him to be just.

(Amended by E.O. 1 of 2000 s.3)

10. Misconduct warranting dismissal or compulsory retirement

(1) If it is represented to the Chief Executive that an officer has been guilty of misconduct, and the Chief Executive is of the opinion that the misconduct alleged may be serious enough to warrant the dismissal or compulsory retirement of the officer, he may cause an inquiry to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Chief Executive under section 21(2).

(2) If after such inquiry the Chief Executive is of the opinion that the officer has been guilty of misconduct, he may inflict such punishment upon the officer as may seem to him to be just.

(3) Where an officer is absent from duty without leave for a period exceeding 14 days and it is represented to the Chief Executive that the officer--

(a) cannot be traced; or

(b) on being required by notice in writing (sent by post to his last known address) to give, within the period specified in the notice, an excuse for his absence, has failed to give any excuse or to give an excuse that is reasonable,

the Chief Executive need not cause an inquiry to be made under subsection (1) and may summarily dismiss the officer.

(Amended by E.O. 1 of 2000 s.4)

11. Action further to criminal charge

If an officer has been convicted on a criminal charge the Chief Executive may, upon a consideration of the proceedings of the court on such charge, inflict such punishment upon the officer as may seem to him to be just, without any further proceedings.

12. Retirement in the public interest

(1) The Chief Executive may, at any time if it is represented to him that the retirement of an officer is desirable in the public interest, call for a report from the head of any department in which the officer has served. The officer shall be informed of the grounds on which his retirement is contemplated under this section and be given an opportunity to make representations.

(2) The Chief Executive may, upon a consideration of the report and of any representations submitted under subsection (1), require the officer to retire from the service, if he is of the opinion that, having regard to conditions of the public service, the usefulness of the officer thereto and all other circumstances of the case, the termination of the officer's service is desirable in the public interest and the officer's service shall accordingly terminate on such date as the Chief Executive may specify.

(3) If upon consideration of--

- (a) an inquiry into the conduct of an officer under section 9 or 10; or
- (b) the proceedings of a court by which an officer has been convicted of a criminal charge,

the Chief Executive is of the opinion that the officer does not deserve to be punished but that the inquiry or proceedings disclose grounds for requiring him to retire in the public interest, the Chief Executive may require the officer to retire from the service under this section, and in such a case it shall not be necessary for the Chief Executive to comply with the procedure mentioned in subsections (1) and (2). (*Amended by E.O. 1 of 2000 s.5*)

(4) Where an officer is required to retire under this section, he may be granted a pension, gratuity or other allowance in accordance with any pensions law for the time being in force.

13. Interdiction from exercise of powers and functions of office

(1) The Chief Executive may interdict an officer from the exercise of powers and functions of his office if--

- (a) proceedings have been, or are to be, taken against him under section 10; or
- (b) criminal proceedings have been, or are likely to be, instituted against him; or
- (c) inquiry of his conduct is being undertaken and it is contrary to the public interest for him to continue to exercise the powers and functions of his office. (*Amended by E.O. 1 of 2000 s.6*)

(2) An officer who has been interdicted under--

- (a) subsection (1)(a) shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Chief Executive shall think fit; or
- (b) subsection (1)(b) shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Chief Executive shall think fit until such time as he may be convicted on a criminal charge serious enough to warrant his dismissal from the service whereupon he shall not receive any such emoluments pending the consideration of his case by the Chief Executive; or
- (c) subsection (1)(c) shall be allowed to receive the full amount of the emoluments of his office.

(3) If the proceedings against any officer do not result in any punishment of the officer, he shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted.

(4) If a punishment other than dismissal is inflicted, the officer may be paid such proportion of the emoluments withheld as a result of his interdiction as the Chief Executive shall think fit.

14. Disciplinary proceedings to be held over pending determination of charge

If criminal proceedings are instituted against an officer, disciplinary proceedings based upon any grounds involved in the criminal charge shall not be taken pending the determination of the criminal proceedings.

15. Restriction on punishment if acquitted

An officer acquitted of a criminal charge shall not be punished in respect of any charges upon which he has been acquitted, but he may nevertheless be punished on any other charges arising out of his conduct in the matter which do not raise substantially the same issues as those on which he has been acquitted and the appropriate proceedings may be taken for the purpose.

16. Forfeiture of benefits on dismissal

An officer who is dismissed forfeits all claims to any pension, gratuity or other like benefits and to any other benefits or advantages of an officer.

17. *(Repealed by E.O. 1 of 2000 s.7)*

18. Consultation with Public Service Commission on punishment

Except as may be provided by regulations made by the Chief Executive under section 21(2) and except in the case of an officer who is one of the officers designated in section 6(2) of the Public Service Commission Ordinance (Cap. 93), the Chief Executive shall not inflict any punishment upon an officer under sections 9 to 11 or require an officer to retire under section 12 without first consulting the Public Service Commission.

PART IV

MISCELLANEOUS

19. Delegations of power

(1) Subject to subsection (2), the Chief Executive may delegate to any public servant or any other public officer any powers or duties conferred or imposed on him by sections 3, 9 to 18 and 20(1). (*Amended by E.O. 1 of 2008 s.2*)

(2) The Chief Executive shall not delegate the power to make regulations under section 21(2).

(3) All delegations to a public servant or other public officer of powers or duties (similar to those referred to in subsection (1)) vested in or exercisable by the Governor which were in force immediately before 1 July 1997 shall on and after that date continue in force and be deemed to have been made by the Chief Executive to the corresponding public servant or public officer, as the case may be, in the HKSAR.

20. Representations by officers

(1) Every officer who has any representations of a public or private nature to make to the Government of HKSAR should address them to the Chief Executive. The Chief Executive shall consider and act upon each representation as public expediency and justice to the individual may require.

(2) The Chief Executive may appoint a review board to advise him on such representations addressed to him relating to appointment, dismissal and discipline of public servants as he thinks fit.

21. Regulations and directions

(1) Subject to subsection (2), the Chief Executive may make regulations--

(a) for prescribing anything to be prescribed by regulations; and

(b) generally for regulating practice and procedure, under this Order.

(2) The Chief Executive may, with the advice of the Executive Council, make regulations referred to in sections 9(1), 10(1) and 18.

(3) The Chief Executive may give written directions regulating matters relating to the conditions of service and terms of appointment for officers as well as conduct and discipline matters, and generally providing for such matters as are contemplated by or necessary for giving full effect to this Order and for the due administration of the public service.

(4) Regulations and directions given under subsection (3) shall be deemed to have come into operation on 1 July 1997 or such other dates as may be specified by the Chief Executive and shall apply to any proceedings instituted under the Colonial Regulations or regulations or directions by the Governor in exercise of the powers conferred by the Letters Patent or the Colonial Regulations before 1 July 1997 pending determination.

(5) Regulations and directions given under subsection (3) shall not be subsidiary legislation within the meaning of that expression in the Interpretation and General Clauses Ordinance (Cap. 1).

22. Transitional

Anything done under--

- (a) the Letters Patent;
- (b) the Colonial Regulations; or
- (c) any other regulations or directions by the Governor in exercise of the powers conferred by the Letters Patent or the Colonial Regulations,

shall, if in force on or immediately prior to the commencement of this Order, continue in force and have effect as if done under the provisions of this Order or regulations.

23. Provisions transitional to the enactment of the Public Service (Administration) Order 1997 (Amendment) Order 2000

(1) The amendment made under section 4 (b) (i) of the Amendment Order does not apply in the case of an officer whose period of absence from duty without leave for the purposes of section 10(3) began before the commencement date, and section 10(3) as applying immediately before the commencement date continues to apply to the case as if that amendment had not been made.

(2) To avoid doubt, it is declared that this Order as amended applies in relation to an investigation made under this Order as applying before amendment and which has not been completed before the commencement date, as it applies in relation to an inquiry made under this Order as amended on or after the commencement date, and, accordingly, on and after the commencement date, such an investigation or anything done in relation to such an investigation shall be deemed to be an inquiry or done in relation to an inquiry, as the case may be, under this Order as amended.

(3) In this section -

“Amendment Order” (《修訂命令》) means the Public Service (Administration) Order 1997 (Amendment) Order 2000 (Executive Order No. 1 of 2000);

“commencement date” (生效日期) means the date on which the Amendment Order comes into operation;

“Order as amended” (《經修訂命令》) means the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997) as amended by the Amendment Order;

“Order as applying before amendment” (《修訂前命令》) means this Order as it applied immediately before the commencement date.

(Added by E.O. 1 of 2000 s.8)

Explanatory Note
Amendments to the Public Service (Administration) Order 1997

1. The Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997) (“Principal Order”) has been amended by the Public Service (Administration) Order 1997 (Amendment) Order 2000 (Executive Order No. 1 of 2000) (“Amendment Order”). The amendments will come into operation on 17 April 2000.
2. For ease of reference, editorial notes setting out the sources of amendments have been inserted to the provisions of the revised Principal Order where amendments have been made. These notes are in *italic*.
3. The principal amendments introduced by the Amendment Order are as follows.
 - (a) The citation of the Principal Order is amended and the revised Principal Order may be cited as the Public Service (Administration) Order.
 - (b) Section 10(3) of the Principal Order is amended in order to reduce from 21 days to 14 days the period of unauthorised absence for which summary dismissal action may be taken.
 - (c) Section 17 of the Principal Order is repealed to ensure consistency with the Hong Kong Bill of Rights Ordinance (Cap. 383).
 - (d) Transitional provisions are inserted to provide for transitional arrangements in connection with the making of the Amendment Order.
 - (e) All references to “investigation” in the Principal Order are replaced with “inquiry”.

Explanatory Note
Public Service (Administration) Order (Amendment) Order 2008

The Public Service (Administration) Order (Amendment) Order 2008 (Executive Order No. 1 of 2008) amends section 19(1) of the Public Service (Administration) Order (Executive Order No. 1 of 1997). The purpose of the amendment is to empower the Chief Executive to delegate to any public servant or any other public officer his duty to consider and act upon representations made to him by any officer as public expediency and justice to the individual may require.