

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

**Administration's responses to the paper on
"Effect of the Disciplined Services Legislation (Miscellaneous
Amendments) Bill 2009 on the contract of employment of
CSPF civil servants"**

Background

At the meeting of the Bills Committee on 4 May 2009, the paper entitled "Effect of the Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009 ("the Bill") on the contract of employment of CSPF civil servants" prepared by the Assistant Legal Adviser ("ALA") (LC Paper No. LS61/08-09) ("the paper") was discussed. The Administration –

- (a) undertook to provide a written response to the observations made by ALA in the paper, in addition to the clarifications and explanation which have already been made by the Administration at the meeting; and
- (b) was requested to examine further the use of the word "vested" in clause 6 of the Bill which seeks to amend section 31(2) of the Police Force Ordinance ("PFO") (Cap. 232).

ALA's paper

Forfeiture and reduction

2. In paragraph 5(b) of the paper, ALA mentioned that as forfeiture of accrued benefits attributable to Government's voluntary contributions¹ ("GVC benefits") seemed to be part of the punishment that might be given, the phrase "is given a punishment" in paragraph 5.1 of the Terms and Conditions ("T&C")² of the Civil Service Provident Fund ("CSPF") Scheme

¹ Including Government's Voluntary Contribution ("GVC") made for all CSPF civil servants and Special Disciplined Services Contribution ("SDSC") made additionally for disciplined services grade officers.

² Paragraph 5.1 of the T&C reads - "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

should more logically be read as “is to be given a punishment” in the context of the paragraph and in the light of our earlier explanation.

3. Insofar as the interpretation of the legal effect of paragraph 5.1 of the T&C is concerned, we have the same understanding as ALA’s. As pointed out by ALA, the relevant disciplinary authority will mete out a punishment to a CSPF civil servant if he is found guilty of a disciplinary/criminal offence upon conclusion of disciplinary proceedings. Where the punishment is a non-removal one (e.g. reprimand), the civil servant’s GVC benefits will not be affected in any way. Where the punishment is a removal one (e.g. dismissal or compulsory retirement), the civil servant’s GVC benefits may be forfeited, wholly or in part, depending on the forfeiture (if any) that comes with the decision on punishment. In our view, the phrase “is given a punishment” which appears in the first part of paragraph 5.1 of the T&C reflects the fact that a punishment will be given to the civil servant concerned. For the latter part of paragraph 5.1 of the T&C, it reflects that the punishment given may or may not involve a forfeiture of GVC benefits.

Forfeiture of accrued benefits attributable to SDSC (“SDSC benefits”)

4. According to paragraph 4.4.1 of the T&C, the SDSC benefits in respect of a disciplined services grade officer, subject to paragraph 5 of the T&C, will only be vested and payable under three specified circumstances, namely, retirement on or after reaching the prescribed retirement age, death or retirement on permanent incapacity. The same paragraph also states that if the officer concerned leaves the civil service in any circumstance other than the above-mentioned specified circumstances, he will not be entitled to any SDSC benefits.

5. As rightly pointed out by ALA in paragraph 12 of the paper, the SDSC benefits in respect of a disciplined services grade officer will be liable to be forfeited if one of the three specified circumstances occurs before the conclusion of relevant proceedings. The extent of forfeiture will depend on the decision made after these proceedings. On the other hand, if a specified circumstance arises after the conclusion of such proceedings (which result in the meting out of a removal punishment, i.e. dismissal, or compulsory retirement with full or reduced retirement benefits), the officer concerned will leave the civil service in a circumstance other than the specified circumstances and will therefore not be entitled to any SDSC benefits.

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.”

Use of the word “vested” in clause 6 of the Bill seeking to amend section 31(2) of the PFO (Cap. 232)

6. In paragraph 15 of ALA’s paper, it was mentioned that the precise practical effect of the proposed section 31(2)(b) of the PFO concerning summary dismissal of police officers was unclear. The key concern was how the vesting by the Chief Executive (“CE”) could be effected in the case of a summarily dismissed CSPF police officer whose benefits had already been forfeited. The Administration was requested by members at the meeting on 4 May 2009 to examine the propriety of using the word “vested” in clause 6 of the Bill.

7. To address the above-mentioned concerns, it is useful to note the effect of dismissal (including summary dismissal) on a civil servant. When a civil servant is punished by dismissal upon conclusion of disciplinary proceedings, the effect is that he forfeits all claims to civil service benefits³. In the case of a CSPF police officer who is summarily dismissed under section 31(1) of the PFO, he forfeits all claims to his GVC benefits. There is thus no question of any vesting of GVC benefits to the police officer concerned, who has forfeited all claims to such benefits upon his summary dismissal. This notwithstanding, where the CE thinks fit to exercise his discretion under section 31(2) of the PFO to provide the dismissed police officer with GVC benefits, the CE can declare that such benefits are to be vested in that officer.

8. In the light of the foregoing analysis, we are of the view that the proposed formulation under clause 6 of the Bill, including the use of “vested” in the proposed section 31(2)(b) of the PFO, is in order from the drafting point of view.

Civil Service Bureau
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³ Section 16 of the Public Service (Administration) Order provides that a civil servant who is dismissed forfeits all claims to any pension, gratuity or other like benefits and to any other benefits or advantages. Civil Service Regulation 411 also stipulates that on dismissal from the service a civil servant forfeits all rights or advantages of his appointment, and no retiring benefits are granted to him.