

LEGISLATIVE COUNCIL BRIEF

DISCIPLINARY FRAMEWORK FOR CIVIL SERVANTS WHOSE RETIREMENT BENEFITS ARE PROVIDED UNDER THE CIVIL SERVICE PROVIDENT FUND SCHEME AND OTHER RELATED PROPOSALS

INTRODUCTION

At the meeting of the Executive Council on 10 February 2009, the Council ADVISED and the Chief Executive ORDERED that –

- (a) for civil servants on the Civil Service Provident Fund Scheme (“CSPF civil servants”),
 - (i) removal punishments which impinge on the provision of retirement benefits under the Civil Service Provident Fund Scheme (“CSPF Scheme”) should be introduced (as detailed in paragraph 9 below);
 - (ii) a non-statutory advisory panel should be set up to advise the Chief Executive (“CE”) on appeals from CSPF civil servants relating to forfeiture or reduction of CSPF benefits;
 - (iii) the description of former members/employees of the disciplined services as beneficiaries of their respective welfare funds under the law should be amended such that former CSPF civil servants of the disciplined services with retirement benefits will be accorded the same status as their pensionable counterparts;
- (b) for civil servants in general,
 - (i) the calculation of fine imposed as a form of disciplinary punishment should be changed from an increment-based approach to a salary-based approach, and the fine ceiling should be set at one month’s salary;

- (ii) the date of stoppage of pay and allowance for criminal conviction of police officers should be changed to the date of conviction as is the case for the rest of the civil service;
 - (iii) the punishment of compulsory retirement should be provided for a Traffic Warden grade officer who is found guilty of a disciplinary offence, on par with the arrangement for the rest of the civil service; and
- (c) the Disciplined Services Legislation¹ (Miscellaneous Amendments) Bill 2009 (“the Bill”) at **Annex** should be introduced into the Legislative Council for implementing the proposals in (a)(i), (a)(iii), (b)(ii) and (b)(iii) above.

2. The Administration will amend the Public Service (Administration) Order (“PS(A)O”)² to implement the proposal in paragraph 1(a)(i) above after the passage of the Bill, and the relevant Civil Service Regulations and Civil Service Bureau (“CSB”) circulars for implementing the proposals in paragraph 1(a) and (b) above at a subsequent stage.

JUSTIFICATIONS

3. The CSPF Scheme provides retirement benefits for civil servants appointed on or after 1 June 2000 on new entry terms and when they are appointed on permanent terms of appointment upon completion of probation and/or agreement. CSB Circular No. 9/2003 promulgated in 2003 sets out the terms and conditions of the CSPF Scheme, including a provision on the forfeiture and reduction of retirement benefits provided under the Scheme for a civil servant found guilty of misconduct or offence. The removal punishments impinging on the retirement benefits of CSPF civil servants set out in this paper are developed on the basis of this contractual provision.

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 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.

Removal Punishments for CSPF Civil Servants

(a) Present position

4. Civil servants who have been found guilty of misconduct or offences after disciplinary and/or criminal proceedings are subject to disciplinary punishments provided under the PS(A)O (for civil servants in civilian grades and senior ranking officers³ in disciplined service grades) and the Disciplined Services Legislation (“DSL”) (for middle ranking officers or below in disciplined service grades). Removal punishments are meted out for the most serious misconduct or offences.

5. Apart from loss of employment, removal punishments impinge on the retirement benefits of pensionable civil servants, in descending order of severity, as follows –

(a) Level 1: dismissal with forfeiture of entire pension benefits⁴;

(b) Level 2: compulsory retirement with reduction of up to 25% of entire pension benefits⁵ and with payment of pension benefits deferred until the prescribed retirement age in the relevant pension legislation⁶, irrespective of the number of years of

³ These refer generally to officers at a rank equivalent to Superintendent and above.

⁴ Section 16 of the PS(A)O stipulates that an officer 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 provides that on dismissal from the service an officer forfeits all rights or advantages of his appointment, and no retiring benefits are granted to him.

⁵ Section 15(1) of the Pensions Ordinance (“PO”) (Cap. 89) and section 29(3) of the Pension Benefits Ordinance (“PBO”) (Cap. 99) stipulate that pension may be cancelled, suspended or reduced on conviction of -

- (i) any offence in connection with the public service under the Government, which is certified by the CE to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service;
- (ii) any offence under Part II of the Prevention of Bribery Ordinance (Cap. 201), which is related to the person’s previous public service under the Government; or
- (iii) treason under section 2 of the Crimes Ordinance (Cap. 200).

Section 15A(1)(c) of the PO and section 29A(2)(c) of the PBO stipulate that in the case of a reduction in a pension, gratuity or allowance, the amount of the reduction shall not exceed 25% of the pension, gratuity or allowance.

⁶ Section 6(2) of the PO provides that payment of pension to a pensionable civil servant on Old Pension Scheme compulsorily retired on discipline grounds will be deferred until he attains the age of 55 years. Section 7(a) of the PBO provides that payment of pension to a pensionable civil servant on New Pension Scheme compulsorily retired on discipline grounds will be deferred until he attains the age of 60 years if he was appointed on or after 1 July 1987, or 55 years if he was appointed before that date. For pensionable civil servants in the disciplined service grades, their pension, whether under the Old or New Pension Scheme, is not payable until they attain the age of 55 years or 57 years, depending on their rank and retirement age as prescribed.

continuous service at the time of compulsory retirement; and

- (c) Level 3: compulsory retirement with entire pension benefits and with payment of pension benefits deferred until the prescribed retirement age in the relevant pension legislation, irrespective of the number of years of continuous service at the time of compulsory retirement.

6. The above punishments cannot be applied to CSPF civil servants because the terms and conditions of the CSPF Scheme are different from those of the pension schemes. The benefits provided by the Government under the CSPF Scheme consist of the accrued benefits attributable to the Government's Mandatory Contribution ("GMC benefits") and those attributable to the Government's Voluntary Contribution ("GVC benefits")⁷. The GMC benefits cannot, by law, be tampered with under any circumstances. The GVC benefits, on the other hand, are by contract fully vested and paid to a CSPF civil servant when he leaves the service upon completion of at least ten years of continuous service or under other specified circumstances (e.g. retirement, death, permanent incapacity, etc). The GVC benefits may also by contract be forfeited – in whole or in part – as punishment for a CSPF civil servant found guilty of misconduct or offence.

7. As the first batch of CSPF civil servants will complete ten years of service by 2010 and be fully vested with their accrued GVC benefits when they leave the service, we need to put in place before then removal punishments which may impinge on the retirement benefits of CSPF civil servants found guilty of misconduct or offences, according to the terms and conditions of the CSPF Scheme; and provide for an appeal mechanism for the civil servants so affected.

(b) Proposals

8. In proposing the removal punishments for CSPF civil servants, we have taken account of the fact that pensionable civil servants and CSPF civil servants will co-exist for the next three decades or so before the former is completely phased out. For reasons of fairness, the removal punishments impinging on the retirement benefits for CSPF civil servants should be comparable with those for pensionable civil servants. We accept, however, that absolute parity cannot be achieved due to the inherent differences

⁷ For an eligible member of the CSPF Scheme who is a disciplined service grade officer, the Government will, in addition to GMC and GVC, make a monthly contribution of 2.5% of his basic salary as Special Disciplined Services Contribution ("SDSC") for him. Accrued benefits attributable to SDSC will only be payable under three specified circumstances, namely, retirement, death or permanent incapacity.

between the pension and CSPF schemes.

9. Based on the removal punishments in use for pensionable civil servants, we **propose** the following three levels of removal punishments, in descending order of severity, for CSPF civil servants with ten or more years of service –

- (a) Level 1: forfeiture of the entire GVC benefits at the time of dismissal – This is broadly comparable to the Level 1 punishment mentioned in paragraph 5(a) above. It is not identical as the GMC benefits cannot be forfeited under the law.
- (b) Level 2: reduction of up to 25% of the GVC benefits at the time of compulsory retirement – This is broadly comparable to Level 2 punishment mentioned in paragraph 5(b) above. The reduced GVC benefits will be vested and paid to the civil servant concerned upon his leaving the service.
- (c) Level 3: retention of entire GVC benefits at the time of compulsory retirement – This is broadly comparable with Level 3 punishment mentioned in paragraph 5(c) above. The GVC benefits will be vested and paid to the CSPF civil servant concerned upon his leaving the service.

10. Under the terms of the CSPF Scheme, a CSPF civil servant will only be eligible for his GVC benefits after completing at least ten years of continuous service. Therefore, a CSPF civil servant with less than this period of continuous service, who is retired compulsorily under Level 2 or 3 punishment, will not be eligible for any GVC benefits.

11. Under the CSPF Scheme, a CSPF civil servant who is aggrieved by a decision to forfeit or reduce his GVC benefits may make representations to the CE within a period of 30 calendar days counting from the date of the notification of the decision or such longer period as the CE may permit; and that the CE shall determine the merits of the representations. This arrangement is similar to that provided for under the statutory pension schemes⁸.

⁸ Under section 15A(5) of the PO and section 29A(6) of the PBO, a person who is aggrieved by a decision of a designated officer made in the exercise of a power under section 14 or 15 of the PO and section 27 or 29 of the PBO respectively may, within the period of 30 days beginning on the date of the notification of the decision, or such longer period as the CE may permit, petition the CE against the decision.

12. However, unlike the pension schemes where there is a statutory appeal panel to which the CE may refer a petition relating to forfeiture or reduction of pension benefits for advice before he makes a decision, there is no comparable body to consider representations made by CSPF civil servants on forfeiture or reduction of GVC benefits. Accordingly, we **propose** to set up an independent advisory panel, on a non-statutory basis, to advise the CE on appeals on forfeiture or reduction of CSPF benefits. The terms of reference and membership of the non-statutory advisory panel will mirror those of the statutory appeal panel under the Pension Benefits Ordinance⁹ (Cap. 99). The 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. The above advisory body mechanism will be promulgated by way of a CSB circular announcing the new disciplinary framework for CSPF civil servants.

Calculation of Fine

13. Under the existing disciplinary system for both pensionable and CSPF civil servants, a fine may be imposed in conjunction with other forms of disciplinary punishment (e.g. severe reprimand, reprimand, etc.) to achieve the desired punitive effect in the light of the gravity of a misconduct by a civil servant. The fine under the PS(A)O is currently capped at an amount equivalent to two salary increments for 12 months. Under the DSL, a fine or like penalty (i.e. forfeiture of pay) is salary-based and generally capped at one month's salary.

14. An increment-based fine would, depending on the pay scales and pay points of individual civil servants, translate into different percentages of monthly salary. For instance, a fine equivalent to two increments for 12 months would mean some 1.4 months' salary to a junior civil servant remunerated on Master Pay Scale Point 2 (the lower end of the pay scale with monthly salary currently set at \$9,565), but 0.8 month's salary to a managerial level civil servant remunerated on Master Pay Scale Point 45 (the upper end of the pay scale with monthly salary currently set at \$80,485). Such disparity is not in line with the principle of equity. It is also difficult for civil servants to understand how the amount of fine is calculated.

⁹ This is an advisory panel established by the CE under section 29B of the PBO to consider and report to him on petitions against a designated officer's decision regarding the pension of a civil servant. The Panel advises on petitions made by virtue of section 15A(6) of the PO for civil servants on the Old Pension Scheme and section 29A(7) of the PO for civil servants on the New Pension Scheme. It consists of three members of whom (a) one shall be appointed from the legal profession; (b) another shall be appointed from amongst the justices of the peace who are not public officers; and (c) the remaining member shall be a person, other than a person described in (a) or (b) or a public officer.

15. Accordingly, we **propose** to change the calculation of fine under the 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. This proposal will not entail any change to the relevant provisions under the DSL.

Stoppage of Pay and Allowance upon Criminal Conviction of Police Officers

16. Section 37(4) of the Police Force Ordinance (Cap.232) stipulates that the payment of pay and allowance of a civil servant in the Police disciplined service grades will be stopped on the date following the date the civil servant is found guilty of a criminal offence by a court if the gravity of the offence so warrants. However, for the rest of the civil service (including the other disciplined services), the stoppage of pay and allowance is effective from the date the civil servant is convicted of a criminal offence.

17. For consistency, we **propose** that the service-wide arrangement on the stoppage of pay and allowance on the date of criminal conviction should be applied to civil servants in the Police disciplined service grades through amending section 37(4) of the Police Force Ordinance.

Compulsory Retirement in respect of Disciplinary Offence of the Traffic Warden Grade

18. Regulation 12(1) and the Schedule of the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) set out the punishments that may be awarded to a Traffic Warden grade officer who is found guilty of disciplinary offence. Compulsory retirement is hitherto not specified as a type of punishment under the above provisions. In line with the arrangement for the rest of the civil service, we **propose** that compulsory retirement should also be provided for under the above provisions as a punishment that may be awarded to a Traffic Warden grade officer who is found guilty of a grave disciplinary offence. For the avoidance of doubt, we also **propose** that certain punishments (namely reduction in rank, an order to resign forthwith without salary in lieu of notice and dismissal) currently provided for under the Schedule of the Traffic Wardens (Discipline) Regulations be repeated in regulation 12(1) of the same Regulations.

Disciplined Services Welfare Funds

19. At present, the description of former members/employees of the disciplined services as beneficiaries of their respective welfare funds under the law covers, among others, civil servants who have retired on pension

benefits. We **propose** that the description be amended such that former CSPF civil servants of the disciplined services with retirement benefits will be accorded the same status under the respective disciplined services welfare funds as their counterparts retired on pension benefits.

THE BILL

20. The main provisions are –

- (a) **Part 2** deals with amendments that are necessary for the introduction of removal punishments impinging on the retirement benefits of certain CSPF civil servants employed in the disciplined services, including the introduction of the definitions on “civil service provident fund scheme” and “retirement benefits” in the following Ordinances and Regulations –
 - (i) the Fire Services Ordinance (Cap. 95) (clauses 3 and 4);
 - (ii) the Police Force Ordinance (Cap. 232) (clauses 5 to 7);
 - (iii) the Police (Discipline) Regulations (Cap. 232 sub. leg. A) (clauses 8 to 10);
 - (iv) the Prisons Ordinance (Cap. 234) (clauses 11 and 12);
 - (v) the Prison Rules (Cap. 234 sub. leg. A) (clause 13);
 - (vi) the Government Flying Service Ordinance (Cap. 322) (clause 14);
 - (vii) the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) (clause 15);
 - (viii) the Customs and Excise Service Ordinance (Cap. 342) (clause 16);
 - (ix) the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) (clause 17); and
 - (x) the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (clauses 18 to 20).
- (b) **Part 3** seeks to include certain CSPF civil servants who have

retired from the civil service with GVC benefits as beneficiaries of their respective disciplined services welfare funds by amending the relevant provisions in the Fire Services Ordinance (Cap. 95) (clause 21), the Police Force Ordinance (Cap. 232) (clause 22), the Prisons Ordinance (Cap. 234) (clause 23), the Government Flying Service Ordinance (Cap. 322) (clause 24), the Immigration Service Ordinance (Cap. 331) (clause 25) and the Customs and Excise Service Ordinance (Cap. 342) (clause 26).

- (c) **Part 4** seeks to provide for the punishment of compulsory retirement in respect of a Traffic Warden grade officer who is found guilty of disciplinary offence under the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (clauses 27 and 28). It also seeks to amend regulation 12(1) of Cap. 374 sub. leg. J by including certain punishments which are currently provided for under the Schedule of the same Regulations (clause 27).
- (d) **Part 5** contains an amendment to the Police Force Ordinance (Cap. 232) which seeks to bring the provision on stoppage of pay and allowance upon criminal conviction of police officers in line with the practice currently adopted in relation to other civil servants (clause 29).
- (e) **Part 6** seeks to provide for transitional provisions in relation to certain proposed amendments set out in the Bill (clause 30).

LEGISLATIVE TIMETABLE

21. The legislative timetable will be –

Publication in the Gazette	13 February 2009
First Reading and commencement of Second Reading Debate	18 February 2009
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

22. The proposals do not require additional financial and staffing resources. They are in conformity with the Basic Law, including the provisions concerning human rights. They have no financial, economic, productivity, environmental or sustainability implications. The legislative amendments set out in the Bill do not affect the existing binding effect of the legislation being amended.

CONSULTATION

Staff sides

23. We consulted the staff sides between May to July 2008 on the proposed disciplinary framework for CSPF civil servants and other related proposals. The staff sides were mainly concerned with four aspects of the original proposals, namely (a) the calculation of reduction of CSPF benefits for Level 2 punishment by making reference to the aggregated GMC and GVC benefits but subject to a cap at 100% of the GVC benefits; (b) the inclusion of investment return from GVC benefits in the calculation of reduction of GVC benefits under the proposed Level 2 punishment; (c) the proposed increase in fine ceiling from two increments by 12 months (or one month's salary for the disciplined services) to two months' salary; and (d) the proposed shortening of the triggering period for invoking summary dismissal action due to prolonged unauthorised absence for certain disciplined services. For (a), we have revised the proposals to the effect that only the GVC benefits will be used as the basis for the calculation of reduction of the retirement benefits for CSPF civil servants subject to Level 2 punishment. For (b), we consider that investment return arising from GVC benefits should be subject to forfeiture or reduction considering that such a term has been clearly set out in the contract terms for CSPF civil servants from the outset. For (c), we have revised the fine ceiling by capping it at one month's salary. For (d), we have decided not to take forward the proposal in this exercise.

Legislative Council

24. The Legislative Council Panel on Public Service ("the Panel") was consulted on 20 October 2008 and 17 November 2008. At the meeting held on 17 November 2008, the Panel received deputations from the Disciplined Services Consultative Council Staff Side ("DSCC Staff Side") and the Government Disciplined Services General Union ("GDSGU"). On

the Panel's request, we further consulted the DSCC Staff Side and GDSGU in December 2008 and January 2009 respectively, and explained to them the need to bring the legislative amendments (together with requisite amendments to the other disciplinary instruments) into effect before mid-2010. At the same time, we assured them of our undertaking to conduct separate reviews regarding concerns which were outside the scope of the Bill. On 12 January 2009, we reported back to the Panel on the further actions we took as set out above.

Public Service Commission

25. We have consulted the Public Service Commission ("PSC") on the proposed disciplinary framework for CSPF officers and the proposed revision to the calculation of fine. The PSC generally supports the proposals.

PUBLICITY

26. The Bill at Annex will be gazetted on 13 February 2009. A spokesman will be available to answer media enquiries.

ENQUIRIES

27. Enquiries on this brief should be addressed to Mr Aaron Liu, Principal Assistant Secretary (Civil Service) (Conduct and Discipline), at telephone number 2810 2140.

Civil Service Bureau
11 February 2009

**DISCIPLINED SERVICES LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2009**

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A BILL

To

Amend various enactments relating to the disciplined services of the Government –

- (a) to extend the provisions on punishments that may be imposed so that, on removal from office of certain public officers employed in those services, their beneficial interests attributable to the voluntary contributions made by the Government under the civil service provident fund scheme (together with any investment income, profits or losses) may be reduced or forfeited;
- (b) to include certain former public officers who have retired from those services, with their beneficial interests attributable to the voluntary contributions made by the Government under the civil service provident fund scheme paid to them, as beneficiaries under their respective disciplined services welfare funds;
- (c) to provide for the compulsory retirement of traffic warden grade officers who are found guilty of a disciplinary offence and to make minor textual amendments for achieving consistency in certain provisions on punishments that may be imposed on them; and
- (d) to revise the date from which pay and allowance may cease to be payable to police officers who are found guilty of a criminal offence by a court.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for the Civil Service by notice published in the Gazette.

PART 2

AMENDMENTS RELATING TO PUNISHMENTS IMPINGING ON RETIREMENT BENEFITS OF PUBLIC OFFICERS EMPLOYED IN DISCIPLINED SERVICES

Fire Services Ordinance

3. Interpretation

Section 2 of the Fire Services Ordinance (Cap. 95) is amended by adding –
“civil service provident fund scheme” (公務員公積金計劃) means the

Civil Service Provident Fund Scheme referred to in the
government regulations;

“retirement benefits” (退休福利), in relation to a person, means –

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
 - (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99);
- or

- (c) the part of that person's beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;”.

4. Punishment of subordinate officers and members of other ranks for offences against discipline

(1) The Third Schedule is amended, in Part I, in paragraph (1)(a)(i), by adding “without retirement benefits” after “dismissal”.

(2) The Third Schedule is amended, in Part I, in paragraph (1)(a)(ia), by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits;”.

(3) The Third Schedule is amended, in Part II, in paragraph (a)(i), by adding “without retirement benefits” after “dismissal”.

(4) The Third Schedule is amended, in Part II, in paragraph (a)(ia), by adding “with full retirement benefits or reduced retirement benefits or without retirement benefits” after “compulsory retirement”.

Police Force Ordinance

5. Interpretation

Section 3 of the Police Force Ordinance (Cap. 232) is amended by adding –
 ““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“provident fund benefits” (公積金利益), in relation to a person, means the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;

“retirement benefits” (退休福利), in relation to a person, means –

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99);
or
- (c) the provident fund benefits of that person;”.

6. Summary dismissal

Section 31(2) is amended by repealing everything after “declare” and substituting –

“that –

- (a) a police officer dismissed under subsection (1) is –
 - (i) for the purposes only of the Pensions Ordinance (Cap. 89), deemed to have retired from the public service in accordance with section 6(1)(d) of that Ordinance; or
 - (ii) for the purposes only of the Pension Benefits Ordinance (Cap. 99), deemed to

have retired from the public service in accordance with section 11(1)(g) of that Ordinance; or

- (b) the provident fund benefits of a police officer dismissed under subsection (1) are to be vested in that officer.”.

7. Conviction of police officer

Section 37(5) is amended by repealing “, compulsorily retired” and substituting “without retirement benefits, compulsorily retired with full retirement benefits or reduced retirement benefits or without retirement benefits”.

Police (Discipline) Regulations

8. Punishment of junior police officers

(1) Regulation 13(1)(g) of the Police (Discipline) Regulations (Cap. 232 sub. leg. A) is amended by repealing “pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

(2) Regulation 13(1)(h) is amended by adding “without retirement benefits” after “dismissal”.

(3) Regulation 13(4)(b) is amended by adding “without retirement benefits” after “dismissed”.

9. Commissioner may report to Chief Executive

(1) Regulation 27(1) is amended by repealing “such that dismissal or compulsory retirement with pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “are such that dismissal without retirement benefits, or compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits”.

(2) Regulation 27(3)(a) is amended by repealing “dismiss the inspector” and substituting “order that the inspector be dismissed without retirement benefits”.

(3) Regulation 27(3)(b) is amended by repealing “dismiss the inspector” and substituting “order that the inspector be dismissed without retirement benefits”.

(4) Regulation 27(3)(ba) is amended by repealing “such pension, gratuity or other benefits as he may determine” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

10. Powers of punishment

(1) The Schedule is amended, in the entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, in column (2), in paragraph 4(a), by adding “without retirement benefits” before “, with”.

(2) The Schedule is amended, in the entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, in column (2), in paragraph 4(c), by repealing “pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

(3) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 4(a), by adding “without retirement benefits” before “, with”.

(4) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 4(c), by repealing “pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

(5) The Schedule is amended, in the entry relating to Chief Executive, in column (3), in paragraph 2, by adding “without retirement benefits” after “Dismissal”.

(6) The Schedule is amended, in the entry relating to Chief Executive, in column (3), in paragraph 3, by repealing “pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

Prisons Ordinance

11. Interpretation

Section 2 of the Prisons Ordinance (Cap. 234) is amended by adding –

““civil service provident fund scheme” (公務員公積金計劃) means the

Civil Service Provident Fund Scheme referred to in the government regulations;

“retirement benefits” (退休福利), in relation to a person, means –

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99);
- or
- (c) the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income,

profits or losses arising from any investment of those sums and of such income or profits;”.

12. Power to make rules

(1) Section 25(1)(*dc*)(i) is amended by adding “without retirement benefits” after “dismissal”.

(2) Section 25(1)(*dc*)(ia) is amended by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits;”.

Prison Rules

13. Punishment of officers (other than Assistant Officers) and other persons

(1) Rule 254(*b*)(ii) of the Prison Rules (Cap. 234 sub. leg. A) is amended by adding “without retirement benefits” after “dismissal”.

(2) Rule 254(*b*)(iii) is amended by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

Government Flying Service Ordinance

14. Interpretation

Section 2(1) of the Government Flying Service Ordinance (Cap. 322) is amended by adding –

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“retirement benefits” (退休福利), in relation to a person, means –

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);

- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99);
or
- (c) the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;”.

Government Flying Service (Discipline) Regulation

15. Punishment of members for disciplinary offence

(1) Section 17(2)(b) of the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) is amended by adding “without retirement benefits” after “dismissal”.

(2) Section 17(2)(c) is amended by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

Customs and Excise Service Ordinance

16. Interpretation

Section 2 of the Customs and Excise Service Ordinance (Cap. 342) is amended by adding –

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“retirement benefits” (退休福利), in relation to a person, means –

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99);
or
- (c) the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;”.

Customs and Excise Service (Discipline) Rules

17. Punishment of inspectors for disciplinary offence

(1) Rule 15(b)(ii) of the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) is amended by adding “without retirement benefits” after “dismissal”.

(2) Rule 15(b)(iii) is amended by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

Traffic Wardens (Discipline) Regulations

18. Interpretation

Regulation 2 of the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) is amended by adding –

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“government regulations” (政府規例) means the administrative rules known as the Government Regulations and any other administrative rules or instruments regulating the public service;

“retirement benefits” (退休福利), in relation to a person, means –

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99);
or
- (c) the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;”.

19. Punishment

Regulation 12(3)(b) is amended by adding “without retirement benefits” after “dismissed”.

20. Powers of punishment

(1) The Schedule is amended, in the entry relating to Senior Police Officer, in column (2), in paragraph 4(a), by repealing “; or” and substituting “without retirement benefits;”.

(2) The Schedule is amended, in the entry relating to Senior Police Officer, in column (3), in paragraph 2(a), by repealing “dismissal and reduction in rank before dismissal; or” and substituting “dismissal without retirement benefits and reduction in rank before dismissal;”.

(3) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 2(a), by repealing “; or” and substituting “without retirement benefits;”.

(4) The Schedule is amended, in the entry relating to Commissioner of Police, in column (3), in paragraph 2(a), by repealing “dismissal and reduction in rank before dismissal; or” and substituting “dismissal without retirement benefits and reduction in rank before dismissal;”.

PART 3

AMENDMENTS RELATING TO BENEFICIARIES UNDER DISCIPLINED SERVICES WELFARE FUNDS

Fire Services Ordinance

21. Definitions: Part IV

Section 18 of the Fire Services Ordinance (Cap. 95) is amended, in the definition of “former Fire Services employee”, in paragraph (a), by repealing “on a pension, gratuity or other allowance” and substituting “with retirement benefits”.

Police Force Ordinance

22. Definitions: Part IV

(1) Section 39(1) of the Police Force Ordinance (Cap. 232) is amended, in the definition of “former civilian officer”, in paragraph (a), by repealing “on a pension, gratuity or other allowance” and substituting “with retirement benefits”.

(2) Section 39(1) is amended, in the definition of “former police officer”, in paragraph (a), by repealing everything after “retired” and substituting “from service as a police officer with retirement benefits; or”.

Prisons Ordinance

23. Definitions: Part III

Section 24C of the Prisons Ordinance (Cap. 234) is amended, in the definition of “former Correctional Services employee”, in paragraph (a), by repealing “on a pension, gratuity or other allowance” and substituting “with retirement benefits”.

Government Flying Service Ordinance

24. Control of the fund

(1) Section 16(a)(ii) of the Government Flying Service Ordinance (Cap. 322) is amended by adding “with retirement benefits” after “retired”.

(2) Section 16(a)(v) is amended by adding “with retirement benefits” after “retired”.

Immigration Service Ordinance

25. Definitions: Part IV

(1) Section 15 of the Immigration Service Ordinance (Cap. 331) is amended, in the definition of “former member of the Service”, in paragraph (a), by repealing “on a pension, gratuity or other allowance; or” and substituting –

“with any of the following retirement benefits –

- (i) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
 - (ii) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99);
 - (iii) the part of that person's beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits; or”.
- (2) Section 15 is amended by adding –
- ““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;”.

Customs and Excise Service Ordinance

26. Definitions: Part IV

Section 18 of the Customs and Excise Service Ordinance (Cap. 342) is amended, in the definition of “former member of the Service”, in paragraph (a), by repealing “on a pension, gratuity or other allowance” and substituting “with retirement benefits”.

PART 4

AMENDMENTS RELATING TO COMPULSORY RETIREMENT OF AND OTHER PUNISHMENTS THAT MAY BE IMPOSED ON TRAFFIC WARDEN GRADE OFFICERS FOUND GUILTY OF A DISCIPLINARY OFFENCE

Traffic Wardens (Discipline) Regulations

27. Punishment

(1) Regulation 12(1)(c) of the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) is amended by repealing “or”.

(2) Regulation 12(1)(d) is amended by repealing the full stop and substituting a semicolon.

(3) Regulation 12(1) is amended by adding –

- “(e) reduction in rank;
- (f) an order to resign forthwith without salary in lieu of notice;
- (g) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits;
- or
- (h) dismissal without retirement benefits.”.

28. Powers of punishment

(1) The Schedule is amended, in the entry relating to Senior Police Officer, in column (2), in paragraph 4(b), by repealing the full stop and substituting “; or”.

(2) The Schedule is amended, in the entry relating to Senior Police Officer, in column (2), in paragraph 4, by adding –

- “(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

(3) The Schedule is amended, in the entry relating to Senior Police Officer, in column (3), in paragraph 2(b), by repealing the full stop and substituting “; or”.

(4) The Schedule is amended, in the entry relating to Senior Police Officer, in column (3), in paragraph 2, by adding –

“(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

(5) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 2(b), by repealing the full stop and substituting “; or”.

(6) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 2, by adding –

“(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

(7) The Schedule is amended, in the entry relating to Commissioner of Police, in column (3), in paragraph 2(b), by repealing the full stop and substituting “; or”.

(8) The Schedule is amended, in the entry relating to Commissioner of Police, in column (3), in paragraph 2, by adding –

“(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

PART 5

AMENDMENT RELATING TO STOPPAGE OF PAY AND ALLOWANCE ON CONVICTION OF POLICE OFFICERS

Police Force Ordinance

29. Conviction of police officer

Section 37(4) of the Police Force Ordinance (Cap. 232) is amended by repealing “following” and substituting “with effect from”.

PART 6

TRANSITIONAL PROVISIONS

30. Transitional provisions

(1) If, after the commencement of Parts 2 and 4, any public officer who is found guilty of or pleads guilty to any misconduct or offence for which that officer is punishable under any enactment amended by this Ordinance, that officer is to be punished in accordance with that enactment as amended by this Ordinance even though the misconduct or offence was committed before the commencement.

(2) If, after the commencement of Part 5, a court in criminal proceedings finds that a charge against any police officer in respect of a criminal offence has been proved, pay and allowance may cease to be payable to that officer in accordance with section 37(4) of the Police Force Ordinance (Cap. 232) as amended by this Ordinance even though the criminal offence was committed before the commencement.

Explanatory Memorandum

The main object of this Bill is to amend the disciplined services legislation so that certain provisions which apply to public officers employed in the disciplined services of the Government who are appointed on pensionable terms would also apply to certain public officers employed in the disciplined services of the Government who are members of the Civil Service Provident Fund Scheme (“CSPF officers”).

2. In particular, Part 2 deals with amendments made to the provisions on punishment which impinge on retirement benefits in –

- (a) the Fire Services Ordinance (Cap. 95) (clauses 3 and 4);
- (b) the Police Force Ordinance (Cap. 232) (clauses 5 to 7);
- (c) the Police (Discipline) Regulations (Cap. 232 sub. leg. A) (clauses 8 to 10);
- (d) the Prisons Ordinance (Cap. 234) (clauses 11 and 12);
- (e) the Prison Rules (Cap. 234 sub. leg. A) (clause 13);
- (f) the Government Flying Service Ordinance (Cap. 322) (clause 14);
- (g) the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) (clause 15);
- (h) the Customs and Excise Service Ordinance (Cap. 342) (clause 16);
- (i) the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) (clause 17); and
- (j) the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (clauses 18 to 20).

3. The effect of the amendments in Part 2 is mainly that, like officers appointed on pensionable terms whose pensions may be forfeited or reduced on dismissal or compulsory retirement, CSPF officers may also be subject to the following punishment on removal from office –

- (a) in the case of dismissal, their retirement benefits (being the part of their beneficial interests attributable to the voluntary contributions made by the Government as employer in respect of those CSPF officers, together with any investment income, profits or losses) will not be payable to them; or
- (b) in the case of compulsory retirement, their retirement benefits may be granted to them in full, reduced or forfeited.

4. Part 3 seeks to include certain former CSPF officers who have retired from the disciplined services of the Government, with their retirement benefits paid to them, as beneficiaries of their respective disciplined services welfare funds by amending the relevant provisions in –

- (a) the Fire Services Ordinance (Cap. 95) (clause 21);
- (b) the Police Force Ordinance (Cap. 232) (clause 22);
- (c) the Prisons Ordinance (Cap. 234) (clause 23);
- (d) the Government Flying Service Ordinance (Cap. 322) (clause 24);
- (e) the Immigration Service Ordinance (Cap. 331) (clause 25);
and
- (f) the Customs and Excise Service Ordinance (Cap. 342) (clause 26).

5. Part 4 amends the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (clauses 27 and 28) –

- (a) to provide that traffic warden grade officers who are found guilty of a disciplinary offence may be compulsorily retired; and
- (b) to make minor textual amendments for achieving consistency in certain provisions on punishments that may be imposed on those officers.

6. Part 5 contains an amendment to the Police Force Ordinance (Cap. 232) which seeks to bring the provision on stoppage of pay and allowance on conviction of police officers in line with the practice currently adopted in relation to other public officers (clause 29). The effect of the amendment is that pay and allowance may cease to be payable to a convicted officer with effect from the date on which that officer is found guilty of a criminal offence by a court, instead of the date following that of the finding.

7. Clause 30 in Part 6 deals with transitional provisions.