

立法會
Legislative Council

LC Paper No. LS41/08-09

**Paper for the House Committee Meeting
on 20 February 2009**

**Legal Service Division Report on
Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009**

I. SUMMARY

- 1. Objects of the Bill**

To amend disciplined services legislation so that -

 - (a) removal punishments impinging on retirement benefits and post-retirement entitlement under disciplined services welfare funds relating to civil servants who are members of the Civil Service Provident Fund Scheme (CSPF civil servants) in those services; and
 - (b) certain punishments applicable to police officers and traffic warden grade officers

would be aligned with their pensionable counterparts or the rest of the civil service.
- 2. Comments**

The Bill proposes to amend disciplined services legislation to -

 - (a) introduce for CSPF civil servants removal punishments (i.e. dismissal with forfeiture of the entire accrued benefits attributable to the voluntary contributions made by the Government (GVC benefits) and compulsory retirement with full or reduced GVC benefits);
 - (b) include retired CSPF civil servants as beneficiaries under their respective disciplined services welfare funds;
 - (c) provide for the compulsory retirement of traffic warden grade officers; and
 - (d) revise the date from which pay and allowance may cease to be payable to police officers on conviction.
- 3. Public Consultation**

No public consultation has been conducted but the Administration has consulted the staff sides, including the Government Disciplined Services General Union and the Disciplined Services Consultative Council (Staff Side) and the Public Service Commission on the proposals in the Bill.
- 4. Consultation with LegCo Panel**

The Panel on Public Service discussed the proposals in the Bill at its meetings on 20 October and 17 November 2008. Members raised concerns on the implications and the implementation of the legislative proposals and requested the Administration to conduct further staff consultation.
- 5. Conclusion**

Members may wish to consider the need for a Bills Committee in view of Members' concerns.

II. REPORT

Objects of the Bill

To amend disciplined services legislation so that -

- (a) removal punishments impinging on retirement benefits and post-retirement entitlement under disciplined services welfare funds relating to civil servants who are members of the Civil Service Provident Fund (CSPF) Scheme (CSPF civil servants) in those services; and
- (b) certain punishments applicable to police officers and traffic warden grade officers

would be aligned with their pensionable counterparts or the rest of the civil service.

LegCo Brief Reference

2. CSBCR/DP/4-075-002/4 issued by the Civil Service Bureau on 11 February 2009.

Date of First Reading

3. 18 February 2009.

Comments

Removal Punishments

4. According to paragraph 7 of the LegCo Brief, the first batch of CSPF civil servants will complete ten years of service by 2010 and be fully vested with their accrued benefits attributable to the voluntary contributions made by the Government (GVC benefits) when they leave the service. There is a need to put in place before then removal punishments which may impinge on retirement benefits of CSPF civil servants found guilty of misconduct or offences, according to the terms and conditions of the CSPF Scheme.

5. Under Part 2 of the Bill, amendments are proposed to be made to the provisions on punishments which impinge on retirement benefits of CSPF civil servants in the following disciplined services legislation -

- (a) the Fire Services Ordinance (Cap. 95);

- (b) the Police Force Ordinance (Cap. 232);
- (c) the Prisons Ordinance (Cap. 234);
- (d) the Government Flying Service Ordinance (Cap. 322);
- (e) the Customs and Excise Service Ordinance (Cap. 342); and
- (f) the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J).

6. The effect of the proposed amendments in Part 2 is mainly that, like civil servants appointed on pensionable terms whose pensions may be forfeited or reduced on dismissal or compulsory retirement respectively, CSPF civil servants may also be subject to the following similar punishments on removal from office -

- (a) in the case of dismissal, their GVC benefits, together with any investment income, profits or losses, will not be payable to them; or
- (b) in the case of compulsory retirement, their GVC benefits may be granted to them in full, reduced or forfeited.

Disciplined Services Welfare Funds

7. Under Part 3 of the Bill, the description of former members/employees of disciplined services as beneficiaries of their respective disciplined services welfare funds in the following Ordinances is proposed to be amended to include former CSPF civil servants who have retired from the disciplined services of the Government so that such former CSPF civil servants will be accorded the same status as their pensionable counterparts under their respective departmental welfare funds -

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

Compulsory Retirement of Traffic Warden Grade Officers

8. Part 4 of the Bill amends the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) to provide that traffic warden grade officers who are found guilty of a disciplinary offence may be compulsorily retired and to make minor textual

amendments for achieving consistency in provisions on punishments that may be imposed on those officers. According to paragraph 18 of the LegCo Brief, the proposed addition of compulsory retirement as punishment is in line with the arrangement for the rest of the civil service.

Stoppage of Pay and Allowance of Police Officers

9. Under Part 5 of the Bill, section 37(4) of the Police Force Ordinance is proposed to be amended so that pay and allowance may cease to be payable to a convicted police 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. According to the LegCo Brief, this is 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.

Transitional Provisions

10. Part 6 of the bill deals with transitional provisions in relation to Parts 2, 4 and 5 of the Bill such that these Parts will apply after commencement notwithstanding that the misconduct or offence or criminal offence was committed before the commencement.

Public Consultation

11. According to paragraph 23 of the LegCo Brief, the Administration consulted the staff sides between May to July 2008 on the original proposed disciplinary framework for CSPF civil servants and other related proposals. The staff sides were mainly concerned with four aspects of the original proposals regarding the calculation of reduction of CSPF benefits for compulsory retirement with reduced GVC benefits, the inclusion of investment return from GVC benefits in the calculation of reduction of GVC benefits, the proposed increase in fine ceiling and the proposed shortening of the triggering period for invoking summary dismissal action due to prolonged unauthorized absence for certain disciplined services. These concerns were taken into account by the Administration in revising the original proposals.

12. According to paragraph 25 of the LegCo Brief, the Administration also consulted the Public Service Commission on the proposals in the Bill. The Public Service Commission generally supports the proposals.

Consultation with LegCo Panel

13. The Panel on Public Service discussed the proposals in the Bill at its meetings on 20 October and 17 November 2008. At the meeting on 17 November 2008, the Panel also received views from the Government Disciplined Services General Union (GDSGU) and the Disciplined Services Consultative Council (Staff Side) (DSCC Staff

Side) on the proposals. Some members considered that the proposals had far-reaching implications on CSPF civil servants and requested the Administration to conduct further staff consultation. Some members expressed concern over the inclusion of investment returns in the forfeiture formula for the proposed compulsory retirement with reduced GVC benefits for CSPF civil servants found guilty of misconduct or offence. A member was concerned how retired directorate CSPF civil servants, who were already paid their accrued benefits attributable to GVC benefits upon retirement, could be deterred from or punished for taking up post-service outside work which might constitute conflict of interest with their previous government service. Some members urged the Administration to address concerns raised by staff over the existing discrepancies in the disciplinary proceedings of different disciplined services.

14. On the request of the Panel, the Administration further consulted DSCC Staff Side and GDSGU on 12 December 2008 and 6 January 2009 respectively. On 12 January 2009, the Administration reported back to the Panel in writing (LC Paper No. CB(1)590/08-09(01)).

15. Members may wish to refer to the minutes of the relevant meetings of the Panel (LC Paper No. CB(1)354/08-09 and CB(1)560/08-09) for details of the discussion.

Conclusion

16. In view of the concerns expressed by Members in paragraph 13 above, Members may wish to consider whether it is necessary to form a Bills Committee to study the Bill. Meanwhile, the Legal Service Division will continue to scrutinize the legal and drafting aspects of the Bill.

Prepared by

LO Wing-yee, Winnie
Assistant Legal Adviser
Legislative Council Secretariat
17 February 2009