

立法會

Legislative Council

LC Paper No. CB(1)354/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PS/1

Panel on Public Service

**Minutes of meeting held on
Monday, 20 October 2008, at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon LEE Cheuk-yan (Chairman)
Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon LEUNG Kwok-hung
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou

Members attending : Hon WONG Kwok-hing, MH
Hon WONG Kwok-kin, BBS

Public officers attending : **Agenda items II & III**

Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Ms Mimi LEE
Deputy Secretary for the Civil Service 3

Agenda item II

Mrs Ingrid YEUNG, JP
Deputy Secretary for the Civil Service 1

Mr Brian LO
Deputy Secretary for the Civil Service 2

Mr Jeff LEUNG
Ag Director of General Grades

Clerk in attendance : Ms Rosalind MA
Chief Council Secretary (1)2

Staff in attendance : Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

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- I** **Items for discussion at the next meeting scheduled for 17 November 2008**
(LC Paper No. CB(1)65/08-09(01) - List of outstanding items for discussion)

When considering the items for discussion at the next meeting scheduled for 17 November 2008, members noted the submission from Government Disciplined Services General Union on "Disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals" (to be discussed under agenda item III), which was tabled at the meeting. To address the concerns raised in the submission, members agreed to revisit the subject at the 17 November 2008 meeting, inviting deputations from major civil service consultative councils and staff associations to give views to the Panel. Members also agreed that a general invitation notice for submissions be posted on the Council's website on the Internet.

(Post-meeting note: The soft copy of the above submission was issued to members vide LC Paper No. CB(1)81/08-09 on 20 October 2008.)

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2. Members further concurred that the following items proposed by the Administration would be discussed at the November meeting –

- (a) Progress update on grade structure reviews (which should cover issues relating to the review of salaries and conditions of service for the disciplined service grades), if the Administration had received the review reports from the advisory bodies by end October 2008; and
- (b) Delegation of Chief Executive's power under section 20 of Public Service (Administration) Order.

(Post-meeting note: Item (a) was subsequently deferred to the Panel's regular meeting in December 2008 at the request of the Administration and with the concurrence of the Chairman.)

3. Members also agreed to discuss the item on "Civil Service Code" the latest in December 2008, notwithstanding the fact that consultation on the Code would still be in progress by then. As proposed by Mrs Regina IP and Mr CHEUNG Man-kwong, the Code should cover issues such as political impartiality on the part of civil servants, and whether civil servants could stand for elections.

II Briefing by the Secretary for the Civil Service on the policy initiatives of the Civil Service Bureau featuring in the Chief Executive's 2008-2009 Policy Address

(LC Paper No. CB(1)36/08-09(01) - Administration's paper on policy initiatives of the Civil Service Bureau under the 2008-2009 Policy Address and Policy Agenda

Address by the Chief Executive at the Legislative Council meeting on 15 October 2008 – "Embracing New Challenges"

The 2008-2009 Policy Address – "Policy Agenda")

4. The Secretary for the Civil Service (SCS) apprised the meeting on the new and on-going initiatives of the Civil Service Bureau featured in the 2008-2009 Policy Address and Policy Agenda, by highlighting the salient points in the Administration's paper.

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New entry system for the civil service

5. Mr WONG Kwok-hing noted with concern the appointment of civil servants under the new entry system, where new recruits were appointed to the civil service on three-year probationary terms, to be followed by three-year agreement terms (i.e. the 3+3 system). Mr WONG considered the requirement for long years of service for appointment to permanent terms too harsh. As this system had been implemented for eight years since June 2000, Mr WONG requested the Administration to conduct a review. The Chairman shared Mr WONG's view and asked the Administration to provide a review timetable.

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6. In response, SCS explained that with the general open recruitment freeze for the civil service from 2000 to 2007, the recruitment statistics on the implementation of the 3+3 system had largely been limited to certain grades and ranks in the disciplined services, for which special approval had been given for open recruitment. For new recruits to the disciplined service grades, they would be appointed on three-year probationary terms, followed by appointment to permanent terms subject to satisfactory performance. SCS said that the Administration had been monitoring the recruitment figures following the lifting of the open recruitment freeze in 2007. A review of the 3+3 system would be considered if anomalies were detected. She undertook to provide a paper on the matter to the Panel for discussion at a future meeting.

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7. To illustrate the impact of the 3+3 system on the recruitment and retention of civil servants and facilitate future discussion of the subject, Mrs Regina IP suggested that the Administration should provide in the information paper a comparison of the numbers of applications for civil service posts and the wastage of the civil service before and after the introduction of the 3+3 system. Mrs IP also requested the Administration to provide breakdown on the recruitment and wastage figures for the disciplined service grades, which had obtained special permission for exemption from the general open recruitment freeze and where the 3+3 system did not apply. SCS undertook to provide the requested information.

8. As regards Mr WONG Kwok-hing's view that the 3+3 system was too harsh, SCS explained that the Government had to be mindful of the long-term commitment in appointing civil servants on permanent terms, as most of them would stay in the civil service until retirement. In this connection, SCS pointed out that during the past years when the Government was facing severe fiscal deficits, the Government had strived to maintain the stability of the civil service by undertaking no forced redundancy of civil servants.

9. Noting SCS's remarks, Ms LI Fung-ying expressed concern that the 3+3 system would in effect facilitate the Government to dismiss civil servants through forced redundancy. She said that such stringent arrangement under the

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3+3 system would set a bad example for employers in the private sector. She requested the Administration to address her concerns in its paper on the 3+3 system.

Manpower planning

10. Noting that a number of government departments had concerns about manpower shortage, Ms LI Fung-ying enquired about the target size of the civil service which the Administration intended to maintain. She urged the Administration to get prepared for likely succession problems in professional grades and technical ranks consequent upon the general freeze on open recruitment from 1999 to 2001 and 2003 to 2007.

11. SCS responded that instead of setting a target size of the civil service, the Administration would continue to contain the size of the civil service in accordance with the principles of "Big market, small government" and prudent management of public resources. Requests from Heads of Department and/or Directors of Bureaux (HoDs/DoBs) for additional manpower resources would be vetted by a panel co-chaired by the Chief Secretary for Administration and the Financial Secretary (the high-level panel) in the light of the justifications put forward and the prevailing financial condition of the Government. As to the concern about succession problems, SCS advised that since late March 2008, HoDs/DoBs could fill vacancies in most grades through open recruitment as they considered necessary. This should forestall succession problem in the longer term.

12. In response to Ms LI Fung-ying's enquiry on the outsourcing policy, SCS explained that the decision of contracting out the delivery of a public service was vested in the respective HoDs/DoBs. In accordance with the principle of "Big market, small government", HoDs/DoBs should decide whether a service should be delivered by the private sector through contracting out subject to no civil servant would be forced redundant as a result and subject to ensuring the quality of service would not be affected. She advised that before finalizing any large-scale outsourcing arrangement, the HoDs/DoBs concerned would carry out staff consultation.

13. The Chairman expressed concern that if the high-level panel was inclined to vet applications for additional manpower in a stringent manner, the civil servants would face immense workload as a result of the rising public expectations on the quality of public service. SCS responded that instead of setting a rigid target for the size of the civil service, the high-level panel would examine the merits of the applications, having regard to the manpower resources and service requirements of the departments/bureaux concerned. Requests for additional manpower had to be adequately justified, in that efforts should first be made to meet the manpower demand for new or enhanced service by internal

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deployment, streamlining, and re-engineering, etc. Responding to the Chairman's further enquiry, SCS advised that the staffing requests would be initiated by the HoDs/DoBs concerned rather than by the high-level panel, as the departments/bureaux would be in the best position to assess and determine their needs for additional manpower.

14. Dr Margaret NG commented that, as far as she understood, there were great discrepancies in the workload and working hours of civil servants across bureaux and departments. She enquired whether efforts had been made to monitor and improve such situation, and whether the implementation of five-day week in the Government had any impact in this regard. She was also concerned that under the policy of containing the size of the civil service, staffing requests would only be considered when new or enhanced service would be introduced. Hence, civil servants working in departments/bureaux which had all along been facing excessive workload would never get relief through the provision of additional manpower.

15. SCS responded that it was the responsibility of individual departmental management to put in place appropriate staffing arrangements to ensure equitable and reasonable distribution of work among staff. She also met regularly with the management and staff of departments/bureaux to understand their working conditions. At the request of Dr Margaret NG, SCS agreed to provide an update on the implementation of five-day week in the Government, with special regard to the impact on workload and working hours of civil servants, for discussion with the Panel at a future meeting.

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Non-civil service contract staff

16. Dr PAN Pey-chyou considered it unfair and demoralizing that when non-civil service contract (NCSC) staff applied for civil service posts, the years of service during which these NCSC staff were employed on contract terms were not taken into account for the provision of incremental credits. As such, successful applicants would only receive pay at the starting salary point of the respective ranks just like other new recruits. Sometimes they were also arranged to coach their counterparts who were completely "new" to the civil service. The Chairman expressed similar concern.

17. SCS responded that new appointees to the civil service generally received pay at the starting salary point. The appointment authority would grant incremental credits only under exceptional circumstances, namely when there were serious recruitment difficulties and when the experience of a new recruit was considered particularly valuable for meeting operational needs. The appointment authority would treat the previous relevant experience of an applicant in the same manner, regardless of whether such experience was gained in the private sector or in government departments through employment as

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NCSC staff. SCS further explained that such appointment arrangement would ensure consistency in the treatment of NCSC staff and other applicants in the appointment process. In considering whether to apply for a civil service post, NCSC staff would assess for themselves the entry pay and other factors such as promotion prospects.

18. Mr LEUNG Kwok-hung was unconvinced of SCS's explanation. He pointed out that the problem of "different pay for the same job" set a very bad example for the private sector. It was also unfair not to recognize the years of government service of NCSC staff while the work experience in the private sector of officials appointed under the political appointment system was taken into account in determining their pay levels.

19. In response, SCS reiterated that incremental credits would only be granted under exceptional circumstances where the appointment authority was faced with serious recruitment difficulties and where the experience of a new recruit was considered particularly valuable for meeting operational needs. SCS clarified that the officials appointed under the political appointment system were not civil servants. Hence, it was not appropriate to compare the appointment terms and arrangements between the two categories of officers. As to the concern about "different pay for the same job", SCS responded that the Government's civil service pay policy was to maintain broad comparability between civil service and private sector pay. For this purpose, regular pay surveys were conducted and, where necessary, civil service pay adjustments would be made subject to the approval of the Finance Committee.

Other concerns

20. Mr CHEUNG Man-kwong urged the Administration to look into and provide information on a recent phenomenon where, as a result of the implementation of the revised starting salaries of the teaching grades in 2007, certificated masters/mistresses (CMs) converted to graduate masters/mistresses after the new starting salaries took effect in August 2007 received salaries higher than those received by CMs similarly converted before August 2007. In his view, such arrangement was inequitable to the CMs concerned, and was in contravention of the Government's policy that the pay of serving civil servants would not be worse off than new recruits.

21. SCS advised that in implementing the upward adjustment to the starting salaries arising from the result of the 2006 Starting Salaries Survey, conversion arrangement had been adopted to ensure that serving officers would not receive pay lower than that received by new recruits to the same entry rank. According to the conversion arrangement, in the event of an upward adjustment of the starting minimum pay of an entry rank, the pay of a serving officer would be brought up to the new minimum if his existing pay was below the new

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minimum, or adjusted to the next higher pay point if his existing pay was equal to or above the new minimum, subject to not exceeding the maximum pay of the entry rank on the effective day of the revised salary of the rank. At the request of Mr CHEUNG Man-kwong, SCS undertook to look into and provide information on the phenomenon quoted by him.

22. Ms LI Fung-ying referred to the revision in 2005 of the procedures for handling sub-standard performers before recourse to action for compulsory retirement in the public interest under section 12 of the Public Service (Administration) Order, in particular the lowering of the threshold for invoking section 12 action from 12 months of unsatisfactory performance to six months. Ms LI was concerned about the effectiveness and impacts of the revised procedures in removing persistent under-performers.

23. SCS said that the revision had been made to address the concern of the public and the Legislative Council about the long processing time for disciplinary cases. As a result of the revision, the processing time for cases not requiring formal hearings was reduced to about three months. Where formal hearings were arranged, the normal processing time ranged from six to nine months, except for cases of high complexity and special circumstances. At Ms LI's request, SCS agreed to provide a paper with information on the processing time for section 12 cases following the implementation of the revised procedures.

(Post-meeting note: The requested information was issued to members vide LC Paper No. CB(1)195/08-09 dated 11 November 2008.)

24. Mr LEUNG Kwok-hung enquired whether senior civil servants who had quitted the civil service to take up political appointments as principal officials would receive pay at the starting salary point if they subsequently returned to the civil service. SCS responded that except for the appointee to the SCS post, who should come from the body of serving civil servants and could revert back to the civil service upon completion of his appointment as SCS, all other principal officials had to apply for civil service posts through open recruitment and be remunerated on the starting salary of the respective rank, should they wish to join the civil service after their political appointments.

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III Disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals

(LC Paper No. CB(1)36/08-09(02) - Administration's paper on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals)

25. At the Chairman's invitation, the Secretary for the Civil Service (SCS) briefed members on the Administration's proposals on the disciplinary framework for civil servants whose retirement benefits were provided under the Civil Service Provident Fund (CSPF) Scheme (CSPF civil servants) and other related proposals (the Proposals).

Views of staff on the Proposals

26. Ms LI Fung-ying was concerned that if the proposed disciplinary punishments had not been provided for in the employment contracts of the CSPF civil servants, the implementation of the Proposals might give rise to applications for judicial review from aggrieved CSPF civil servants on grounds of unilateral variation of contract terms. SCS responded that it was clearly stipulated in the terms and conditions of the CSPF Scheme, which formed part of the employment contracts of CSPF civil servants that, if a civil servant was found guilty of a disciplinary or criminal offence and was given a punishment upon conclusion of disciplinary proceedings, his accrued benefits attributable to the Government's Voluntary Contribution (GVC), including any investment income generated there from, might be forfeited in whole or in part.

27. Ms LI Fung-ying further expressed concern about staff consultation on the Proposals, as well as the views and concerns put forward by CSPF civil servants during the consultation. She sought information on whether and in what ways staff comments had been taken forward and incorporated in the Proposals. In response, SCS advised that the Administration had consulted the staff sides, whose comments had been incorporated where appropriate into the Proposals. She highlighted some of the revisions made to the original proposals in response to staff concerns, as follows –

- (a) capping the fine under the Public Service (Administration) Order (PS(A)O) at an amount equivalent to one month's salary instead of two months' salary as originally proposed; and

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- (b) pitching the level of forfeiture for Level 2 removal punishment at up to 25% of the GVC benefits at the time of the compulsory retirement of the civil servant concerned, instead of 25% of the sum of the GVC benefits and benefits attributable to Government's Mandatory Contribution.

28. SCS also mentioned that a staff union had expressed views on the review board to advise the Chief Executive (CE) on representations under section 20 of PS(A)O. She explained that the review board was different from the currently proposed non-statutory appeal mechanism for CSPF civil servants on forfeiture or reduction of GVC benefits.

The removal punishments

29. Referring to the removal punishments proposed for CSPF civil servants, Mr CHEUNG Man-kwong questioned the propriety and fairness of imposing disciplinary punishments on civil servants convicted of criminal offences. In his view, such a disciplinary mechanism would amount to double penalty on the convicted officer for the same offence. As regards the three levels of removal punishment proposed, Mr CHEUNG opined that flexibility should be allowed for imposing forfeiture of GVC benefits in the range between 25% and 100% to correspond with the gravity of the offence in question.

30. SCS advised that the question on double penalty under the civil service disciplinary mechanism had been examined by the court in a previous case of judicial review. The court's judgement confirmed the legality of the disciplinary proceedings in accordance with PS(A)O on the civil servant concerned who had previously been convicted of a criminal offence. The introduction of removal punishments were considered necessary for staff management and discipline in the civil service. Moreover, the employment contracts of CSPF civil servants had already provided for the forfeiture of GVC benefits in whole or in part, if they were found guilty of a disciplinary or criminal offence. SCS further pointed out that the imposition of punishments for CSPF civil servants would be determined on a case-by-case basis having regard to the circumstances and gravity of the offences.

31. On the flexibility in deciding the percentage of forfeiture of GVC benefits, SCS highlighted that the Administration aimed to introduce for CSPF civil servants removal punishments broadly comparable to those for their pensionable counterparts. Forfeiture of full GVC benefits under Level 1 of removal punishment was broadly comparable with the forfeiture of entire pension benefits where dismissal was applied to a pensionable civil servant. As for Level 2 of the removal punishment, the level of forfeiture pitched at up to 25% of the GVC benefits was broadly comparable to the pension reduction of up to 25% permissible under the existing pensions legislation.

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The appeal mechanism

32. Ms LI Fung-ying sought details on the composition and role of the appeal mechanism for pensionable civil servants, and those for CSPF civil servants. Noting that the proposed appeal panel for considering representations from CSPF civil servants would be non-statutory, Ms LI expressed doubt about its effectiveness as its decision might be ignored. SCS responded that under the appeal mechanism for pensionable civil servants, a panel comprising three members from the legal and other sectors would consider representation from a civil servant aggrieved by a decision concerning pension forfeiture. The panel played an advisory role and the decision of referring an appeal to the panel for advice was vested in CE. The proposed appeal panel under the appeal mechanism for CSPF civil servants would largely mirror the arrangements for pensionable civil servants. Furthermore, any civil servant aggrieved by CE's decision had the right to seek judicial review of the decision should he/she consider that the decision was not arrived at properly or the principle of natural justice had not been observed.

Disciplinary procedures for the disciplined service grades

33. Dr Margaret NG highlighted that certain disciplinary practices of the disciplined service grades were unfair and should be reviewed –

- (a) Police officers removed through compulsory retirement would receive pension only when they reached the normal retirement age. This arrangement would cause financial hardship to the officers concerned as they might not be able to find a new job after compulsory retirement; and
- (b) While flexibility was normally allowed in interdiction of civilian grade officers during disciplinary/criminal proceedings, disciplined service grade officers, particularly those in the Police Force, were mostly interdicted during the proceedings. Given that interdicted officers would only receive partial payment of salary and allowance, the officers concerned would not have adequate means to make ends meet during the interdiction.

34. SCS responded that the practice at paragraph 8 (a) above would apply only to pensionable civil servants and not to CSPF civil servants. The arrangement for payment of pension upon a civil servant reaching the prescribed retirement age was clearly provided for in the Pensions Ordinance (Cap. 89) and the Pension Benefits Ordinance (Cap. 99).

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Admin 35. Regarding the practice at paragraph 8 (b) above, SCS advised that partial payment of salary/allowance was made to balance the need for the interdicted officer to meet his/her financial needs and the fact that the interdicted officer concerned was not required to work. As a practice, while at most 50% of the salary of an interdicted officer could be withheld during disciplinary/criminal proceedings under PS(A)O, the officer concerned could apply for a higher percentage of payment in case of financial hardship. At the request of Dr Margaret NG and the Chairman, SCS agreed to provide further information on the disciplinary mechanism and procedures for the disciplined service grades, including the principles and considerations for determining the percentage of salary and/or allowance paid to interdicted officers and the application of such principles. Dr NG also suggested that relevant staff associations should be invited to the meeting of the Panel when the subject was discussed.

IV Any other business

36. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
9 December 2008