

File ref: CSBCR/DP/4-075-002/4-3 Pt. 5

LEGISLATIVE COUNCIL BRIEF

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

AMENDMENTS TO THE PUBLIC SERVICE (ADMINISTRATION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 12 January 2010, the Council ADVISED and the Chief Executive (“CE”) ORDERED that the Public Service (Administration) Order (Amendment) Order 2010 (“the Amendment Order”) at **Annex** be approved to provide for removal punishments which impinge on the provision of retirement benefits and other related matters for civil servants on the Civil Service Provident Fund Scheme (“CSPF civil servants”).

JUSTIFICATIONS

2. The Civil Service Provident Fund Scheme (“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 their probation and/or agreement. The retirement benefits provided by the Government under the CSPF Scheme consist of the Government’s Mandatory Contribution and the Government’s Voluntary Contribution (“GVC”)¹. The accrued benefits attributable to the Government’s Mandatory Contribution cannot, by law, be tampered with under any circumstances. The accrued benefits attributable to GVC (“GVC benefits”), on the other hand, are by contract fully vested in 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 (namely, retirement, death or permanent incapacity). GVC

¹ For an eligible member of the CSPF Scheme who is a disciplined service grade civil servant, the Government will, in addition to the Government’s Mandatory Contribution and GVC, make a monthly contribution of 2.5% of his basic salary as the Special Disciplined Services Contribution (“SDSC”) for him. The accrued benefits attributable to SDSC will only be vested in and payable to the eligible civil servant upon his retirement on or after reaching the prescribed retirement age, death or permanent incapacity.

benefits may also by contract be forfeited – in whole or in part – as punishment for a CSPF civil servant found guilty of misconduct or an offence. A circular promulgated by the Civil Service Bureau in 2003 sets out the terms and conditions of the CSPF Scheme and implementation details.

3. On 11 February 2009, we advised this Council by a Legislative Council Brief, among others, the following decisions by the Executive Council :

- (a) removal punishments² which impinge on the provision of retirement benefits under the CSPF Scheme should be introduced for CSPF civil servants; and
- (b) the Disciplined Services Legislation³ (Miscellaneous Amendments) Bill 2009 (“the Bill”) should be introduced into this Council for implementing the decision at item (a) above and related proposals.

This Council was also informed of the Administration’s plan to amend the Public Service (Administration) Order (“PS(A)O”)⁴ to implement the decision at item (a) above in full after passage of the Bill.

4. On 17 June 2009, this Council enacted the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance 2009 (“the Ordinance”), which is applicable generally to middle and junior ranking civil servants in the disciplined service grades. The Ordinance will come into operation on a date to be appointed by the Secretary for the Civil

² The removal punishments, in descending order of severity, are –

- (a) Level 1: forfeiture of the entire GVC benefits at the time of dismissal;
- (b) Level 2: reduction of up to 25% of GVC benefits at the time of compulsory retirement; and
- (c) Level 3: retention of the entire GVC benefits at the time of compulsory retirement.

GVC benefits are paid in accordance with the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and its subsidiary legislation, government regulations and governing rules of the scheme joined by CSPF civil servants.

³ The Disciplined Services Legislation refers to the main ordinances and subsidiary legislation which provide, among others, disciplinary provisions that are applicable to civil servants in specific discipline service grades/ranks (generally civil servants in middle and junior ranks of the disciplined service grades of the Correctional Services Department, Customs and Excise Department, Fire Services Department, Government Flying Service, Hong Kong Police Force and Immigration Department).

⁴ The PS(A)O is an executive order made by the CE under Article 48(4) of the Basic Law. It sets out, among others, the Administration’s authority to appoint and discipline public servants; to act on representations made by public servants; and to make related disciplinary regulations. It applies to public servants in civilian grades and in specific disciplined service grades/ranks (generally senior ranking civil servants) of the disciplined services departments who are not subject to the Disciplined Services Legislation.

Service (“SCS”) by notice published in the Gazette. As the first batch of CSPF civil servants were appointed shortly after 1 June 2000 and will soon complete ten years of service and become eligible for the vesting of their GVC benefits upon leaving the civil service, SCS will appoint 31 March 2010 as the operation date of the Ordinance and will publish the relevant notice (namely the Disciplinary Services Legislation (Miscellaneous Amendments) Ordinance 2009 (Commencement) Notice) in the Gazette at the end of January 2010. The Notice is a piece of subsidiary legislation and is subject to negative vetting by this Council.

5. As CSPF civil servants not covered by the Disciplined Services Legislation, namely those in the civilian grades and generally those in senior ranks of the disciplined service grades, are subject to the PS(A)O, we need to amend the PS(A)O through the Amendment Order to provide removal punishments which impinge on the provision of retirement benefits under the CSPF Scheme. We will bring the amendments to the PS(A)O into effect on the same date on which the Ordinance is to come into operation, i.e. 31 March 2010.

THE AMENDMENT ORDER

6. The Amendment Order aims to introduce removal punishments which impinge on the provision of retirement benefits under the CSPF Scheme. This is achieved by replacing the existing references to pension-related benefits in the PS(A)O by a generic term covering both pension-related benefits under the statutory pension schemes and GVC benefits under the CSPF Scheme. The opportunity is taken to make a further amendment to the PS(A)O to clarify that retirement in the public interest⁵, which is not a punishment, applies equally to CSPF civil servants.

7. The main provisions of the Amendment Order are as follows :

- (a) **Section 1** provides that the Amendment Order will come into operation on 31 March 2010.
- (b) **Section 2** amends the defined terms in the interpretation provision so that removal punishments impinging on

⁵ The CE is empowered by section 12 of the PS(A)O to require an officer to retire from the service, if he is of the opinion that (a) having regard to conditions of the public service, the usefulness of the officer thereto and all other circumstances of the case, the termination of the officer’s service is desirable in the public interest; or (b) upon consideration of an inquiry into the conduct of an officer or the proceedings of a court by which an officer has been convicted of a criminal charge, the officer does not deserve to be punished but the inquiry or proceedings disclose grounds for requiring him to retire in the public interest.

retirement benefits apply to CSPF civil servants who are subject to the PS(A)O. The amendments include:

- (i) amendment of the definitions of “Category A Officer” and “Category B Officer” to denote respectively civil servants who are members of the CSPF Scheme and those who are on probation or agreement or other terms and are not eligible to join the CSPF Scheme. This arrangement is comparable to pensionable civil servants who are also categorised into “Category A Officer” and “Category B Officer”. Generally speaking, the main difference in the disciplinary and related procedures applicable to Category A Officer and Category B Officer subject to the PS(A)O is that the Public Service Commission must be consulted before imposing a punishment on a Category A Officer; and
 - (ii) introduction of definitions for the terms “civil service provident fund scheme”, “government regulations” and “retirement benefits”.
- (c) **Section 3** provides that retirement in the public interest applies equally to CSPF civil servants. A CSPF civil servant who is retired in the public interest may be granted GVC benefits.
- (d) **Section 4** provides for the application of the punishment of dismissal to CSPF civil servants. A CSPF civil servant who is dismissed forfeits all claims to GVC benefits and any other benefits or advantages⁶.
- (e) **Section 5** adds a new section to stipulate clearly that the punishment of compulsory retirement is applicable to both pensionable and CSPF civil servants. If a CSPF civil servant is compulsorily retired, GVC benefits and other benefits or advantages may be granted to the civil servant in full or may be reduced or forfeited.
- (f) **Section 6** provides for transitional provisions to ensure that the Amendment Order applies to disciplinary and related actions taken in respect of misconduct or offences which have taken place before the commencement of the Amendment Order.

⁶ Including earned leave and passage (where applicable).

IMPLICATIONS

8. The implementation of the Amendment Order does not require additional financial or staffing resources. It is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial, economic, productivity, environmental or sustainability implications.

CONSULTATION

9. In the context of putting in place a disciplinary framework for CSPF civil servants and other related proposals as set out in the Legislative Council Brief dated 11 February 2009, we consulted the staff sides⁷, the Panel on Public Service of this Council and the Public Service Commission. They generally supported the proposals. We have also informed the staff sides of the approval of the Amendment Order and the operation date of the Amendment Order and the Ordinance.

PUBLICITY

10. The Amendment Order will be gazetted on 29 January 2010 and will take effect on 31 March 2010. A spokesman will be available to answer media enquiries. The Civil Service Bureau will issue a circular to all staff, announcing the overall disciplinary framework for CSPF civil servants including the amendments to the PS(A)O.

ENQUIRIES

11. Enquiries on this brief should be addressed to Ms Ivy Law, Principal Assistant Secretary (Civil Service) (Conduct and Discipline), at telephone number 2810 2140.

Civil Service Bureau
27 January 2010

⁷ Four staff consultative councils and four service-wide staff unions/associations were consulted. The four staff consultative councils are the Senior Civil Service Council, Police Force Council, Disciplined Services Consultative Council and Model Scale 1 Staff Consultative Council. The four service-wide unions/associations are the Hong Kong Federation of Civil Service Unions, Government Disciplined Services General Union, Hong Kong Government Employees Association and Hong Kong Civil Servants General Union. Upon request, briefings were conducted for six staff unions/associations.

**EXECUTIVE ORDER
No. 1 of 2010**

**PUBLIC SERVICE (ADMINISTRATION) ORDER
(AMENDMENT) ORDER 2010**

I, Donald TSANG, Chief Executive of the Hong Kong Special Administrative Region of the People's Republic of China, pursuant to the power vested in me by Article 48(4) of the Basic Law, make the following Order –

1. Commencement

This Order comes into operation on 31 March 2010.

2. Interpretation

(1) Section 2 of the Public Service (Administration) Order (Executive Order No. 1 of 1997) is amended, in the definition of “Category A Officer”, by repealing everything after “an officer” and substituting –

“who –

- (a) is appointed to and confirmed in an established office; or
- (b) is a member of the civil service provident fund scheme;”.

(2) Section 2 is amended, in the definition of “Category B Officer” –

- (a) in paragraph (b), by repealing everything after “an established office” and substituting “on month-to-month terms; or”;
- (b) in paragraph (c), by adding “probationary or” before “agreement terms”.

(3) Section 2 is amended, in the definition of “established office”, by adding “or section 2 of the Pension Benefits Ordinance (Cap. 99)” before the semicolon.

(4) Section 2 is amended, in the definition of “punishment”, in paragraph (a), by repealing “with pension, gratuity or other allowances or, without such benefits or with reduced benefits”.

(5) Section 2 is amended, in the English text, in the definition of “regulations”, by repealing the full stop and substituting a semicolon.

(6) Section 2 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 Government Regulations and any other administrative rules or instruments regulating the public service;

“retirement benefits” (退休福利), in relation to an officer, means –

- (a) the pension, gratuity or other allowance of that officer as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that officer as provided for under the Pension Benefits Ordinance (Cap. 99); or
- (c) the part of that officer’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government of HKSAR, as employer, in respect of that officer 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.”.

3. Retirement in the public interest

Section 12(4) is amended by repealing everything after “may be granted” and substituting “retirement benefits”.

4. Forfeiture of benefits on dismissal

Section 16 is amended by repealing “any pension, gratuity” and substituting “retirement benefits”.

5. Section 16A added

The following is added –

“16A. Forfeiture or reduction of benefits on compulsory retirement

If an officer is compulsorily retired, the officer may be granted retirement benefits or other like benefits in full, or those benefits may be reduced or not be granted to the officer, and may be granted any other benefits or advantages that the officer is eligible to receive.”.

6. Section 24 added

The following is added –

“24. Provisions transitional to the enactment of the Public Service (Administration) Order (Amendment) Order 2010

(1) The provisions of this Order as amended by the Amendment Order apply in relation to an officer who, after the commencement of the Amendment Order, is –

- (a) found guilty of misconduct for which the officer is punished under section 10(2), even though the misconduct was committed before the commencement;

- (b) absent from duty without leave for which the officer is summarily dismissed under section 10(3), even though the officer's absence began before the commencement;
- (c) convicted on a criminal charge for which the officer is punished under section 11, even though the offence that the officer was convicted of on the criminal charge was committed before the commencement;
- (d) on the grounds referred to in section 12(2) required to retire from the service under section 12, even though those grounds on which the retirement is contemplated came into existence before the commencement; or
- (e) on the grounds referred to in section 12(3) required to retire from the service under section 12, even though the conduct of the officer into which the inquiry has been made was committed before the commencement or the offence that the officer has been convicted of in the proceedings of the court on the criminal charge was committed before the commencement.

(2) In this section, "Amendment Order" (《修訂命令》) means the Public Service (Administration) Order (Amendment) Order 2010 (Executive Order No. 1 of 2010).".

Made this day of 2010

Chief Executive

Explanatory Note

This Executive Order amends the Public Service (Administration) Order (Executive Order No. 1 of 1997) so that its provisions apply to any public officer who is a member of the Civil Service Provident Fund Scheme (“CSPF officer”) as follows –

- (a) if a CSPF officer is required to retire in the public interest, the officer may be granted the part of the beneficial interests that is attributable to sums derived from the voluntary contributions made by the Government of HKSAR, as employer, in respect of that officer under the Scheme (“GVC beneficial interests”);
- (b) if a CSPF officer is dismissed, the GVC beneficial interests and other benefits or advantages will not be granted to the officer; or
- (c) if a CSPF officer is compulsorily retired, the GVC beneficial interests may be granted to the officer in full or may be reduced or forfeited, and the officer may be granted other benefits or advantages that the officer is eligible to receive.