

## **LEGISLATIVE COUNCIL BRIEF**

### **Volunteer and Naval Volunteer Pensions Ordinance (Chapter 202)**

### **VOLUNTEER AND NAVAL VOLUNTEER PENSIONS (AMENDMENT) BILL 1999**

#### **INTRODUCTION**

At the meeting of the Executive Council 25 May 1999, the Council ADVISED and the Chief Executive ORDERED that the Volunteer and Naval Volunteer Pensions (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council. The Bill empowers the Secretary for Health and Welfare to adjust the rates of pensions, gratuities and other allowances under the Volunteer and Naval Volunteer Pensions Ordinance in accordance with the percentage increase given to civil service pensions. Provision to back-date payment is also proposed.

#### **BACKGROUND AND ARGUMENT**

##### **The Volunteer and Naval Volunteer Pensions Ordinance**

2. The Ordinance provides for the payment of pensions, gratuities or other allowances in respect of the death, disablement or sickness of members of the two volunteer forces<sup>1</sup> who fought in the defence of Hong Kong during the Second World War. Allowances are payable in recognition of the need for constant care, loss of earning

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<sup>1</sup> These two volunteer forces are the Hong Kong Naval Volunteer Force and the Hong Kong Volunteer Defence Corps.

power, disruption to work and loss of income and the need to support dependants. Until June 1997, the Ordinance was operated on the basis of the UK Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1978 (“the UK Order”). Any revisions to the rates, or the conditions of award made by the UK were automatically applied to these HK veterans. At present, 67 beneficiaries receive payments totalling \$3.8 million per annum.

### **Mechanism for Rate Revision**

3. In early 1997, amendments were made to remove the link to the UK Order by incorporating the relevant provisions of the UK Order into the Ordinance. Individual rates are specified in Schedules 3 to 8 to the Ordinance. Under section 35, the Secretary for Health and Welfare may by Order amend the Schedules. Since July 1997, this has been at a rate consistent with that of the civil service pension increase, made by the Chief Executive under section 4 of the Pensions (Increase) Ordinance.

4. However, this mechanism involves an annual legislative exercise to provide for the same adjustment as is applied to the civil service pensions. We propose therefore to simplify the process by establishing a formal link between adjustments to the Volunteer and Naval Volunteer pensions and the annual revision of civil service pensions.

### **Effective date of payment**

5. The new rates for the civil service pensions normally take effect on 1 April although the decision on the new rates is often not made

until sometime later. The power to “back-date” payment is provided for under section 4(1C) of the Pensions (Increase) Ordinance. This enables the difference between the new pension and the pension already paid, to be given to beneficiaries.

6. Similar provision for the new rates to take retrospective effect is absent from the Volunteer and Naval Volunteer Pensions Ordinance. In 1998/99, the Order setting out the new pension rates under the Ordinance was gazetted on 4 September 1998. The difference in payment covering the period between 1 April and 3 September 1998 was paid by means of a one-off ex-gratia payment. This arrangement, which was made exceptionally by Secretary for the Treasury under delegated authority, should be rectified as early as practicable.

### **The Proposal**

7. We propose therefore to amend the Ordinance so that for any adjustment made to pensions payable under the Pensions (Increase) Ordinance, the same percentage increase would apply to the rates specified in Schedules 3 to 8 to the Volunteer and Naval Volunteer Pensions Ordinance. Provision is also required in the Ordinance to ensure that the new rates take effect on the same date as the effective date of the civil service pension increase (which in practice is 1 April).

8. On this basis, amendments to the rates of payment contained in the Schedules will continue to be made by the Secretary for Health and Welfare by Order in the Gazette. Since these amendments do not involve any change in policy, we propose to make it clear in the Ordinance that these Orders are not subject to the requirement under section 34 of the

Interpretation and General Clauses Ordinance, that subsidiary legislation should be laid before the Legislative Council.

## **THE BILL**

9. Clause 2 of the Bill amends section 35 of the Ordinance to the effect that -

- (a) when the Chief Executive declares a percentage increase under section 4(1B) of the Pensions (Increase) Ordinance, the Secretary for Health and Welfare may, by Order, adjust the various pensions, gratuities and allowances specified in Schedules 3 to 8 of this Ordinance by the same percentage;
- (b) a new provision is made to enable the new rates under the Ordinance to come into effect on the same date as that specified in the notice made under section 4(C) of the Pensions (Increase) Ordinance; and
- (c) section 34 of the Interpretation and General Clauses Ordinance does not apply to such Orders made by the Secretary for Health and Welfare.

The existing provision which is being amended is at Annex B.

## **LEGISLATIVE TIMETABLE**

10. The legislative timetable will be :-

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| Publication in the Gazette   | 28 May 1999    |
| First Reading and commencement of Second Reading debate                | 2 June 1999    |
| Resumption of Second Reading debate, committee stage and Third Reading | to be notified |

## **BASIC LAW IMPLICATIONS**

11. The Department of Justice advises that the proposed Bill is consistent with the Basic Law.

## **HUMAN RIGHTS IMPLICATIONS**

12. The Department of Justice advises that the Bill has no human rights implications.

## **BINDING EFFECT**

13. The amendments will not affect the current binding effect of the Ordinance.

## **FINANCIAL AND STAFFING IMPLICATIONS**

14. There are no financial and staffing implications.

## **PUBLIC CONSULTATION**

15. The Welfare Panel of the Legislative Council was consulted on 11 January 1999 and supported the proposal. Veterans' associations including the Royal British Legion (Hong Kong and China Branch), the Hong Kong Prisoners of War Association, the Royal Hong Kong Regiment The Volunteers Association, and the World War II Veterans Association have no objection to the proposal.

## **PUBLICITY**

16. A press release will be issued on 28 May 1999. For enquiries please contact Mr David Yip, Assistant Secretary for Health and Welfare, at 2973 8128.

Health and Welfare Bureau

May 1999

**VOLUNTEER AND NAVAL VOLUNTEER PENSIONS  
(AMENDMENT) BILL 1999 : ANNEXES**

Annex A - Volunteer and Naval Volunteer Pensions (Amendment) Bill  
1999

Annex B - Section 35 of Volunteer and Naval Volunteer Pensions  
Ordinance