

**Extract from the minutes of meeting
of the LegCo Panel on Public Service
held on 18 March 2002**

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III. Civil Service - related issues featuring in the 2002 Budget Speech
(LC Paper No. CB(1)1284/01-02(03) — Paper provided by the Administration)

5. The Chairman pointed out that the Financial Secretary (FS)'s speech delivered on 6 March 2002 on the 2002-03 Budget touched on two issues which related to the civil service: the 2002 civil service pay adjustment and the progress of containing the size of the civil service.

6. At the invitation of the Chairman, Secretary for the Civil Service (SCS) highlighted two points. On civil service pay, FS had stated his 2002-03 Budget Speech that for financial planning purposes, he had assumed in the Medium Range Forecast that civil service pay would be cut by 4.75% and the salary-related portions of subventions to the various organizations would also be reduced by the same rate with effect from 1 October 2002. SCS stressed that the Government had so far not made any decision on the 2002 civil service pay adjustment. The 4.75% pay cut was only an assumption made for financial planning purposes. In deciding the 2002 civil service pay adjustment, the Government would continue to adopt the existing mechanism under which the Government would consider the results of the Pay Trend Survey (PTS), which would be available in May 2002, and other important factors including budgetary considerations, the state of the economy, changes in the cost of living, the staff sides' pay claims and civil service morale. In the event of a decision on a civil service pay reduction for 2002-03, the Administration intended to implement it by legislation and from a prospective date assumed to be 1 October 2002.

7. On containing the size of the civil service, SCS advised that FS had stated in his Budget Speech that the Administration would achieve the target of reducing the civil service establishment to around 181 000 by 31 March 2002. SCS added that there was no new target for reduction in the size of civil service establishment. He assured Members that the Administration would continue to streamline procedures, simplify structures and economize on manpower so as to release resources to meet additional service needs and to achieve greater efficiency.

Assumed civil service pay reduction

Appropriateness of the Administration's way of handling the issue

8. Mr CHEUNG Man-kwong, Ms LI Fung-ying and Mr Michael MAK considered it inappropriate for FS to have stated in his Budget Speech the assumed civil service pay reduction by 4.75% before the results of PTS were available. It seemed to imply that the Government would not follow the existing pay adjustment mechanism in deciding the 2002 civil service pay adjustment. SCS assured Members that the Government would continue to adopt the existing mechanism in deciding the 2002 civil service pay adjustment. He reiterated that the 4.75% pay cut was neither a proposal nor a decision, but an assumption made for financial planning purposes only. He also pointed out that in preparing the Budget, FS had to make a number of assumptions about the factors determining each of the components of Government's revenue and expenditure. The assumed 4.75% pay cut was made to work out the level of operating expenditure from 2002-03 to 2006-07.

9. Mr CHEUNG Man-kwong pointed out that the Secretary for the Treasury (S for Tsy) had stated on 22 February 2002 that taking into account the 12% cumulative deflation over the past three years, civil service pay had been adjusted upwards by about 17% to 23 % in real terms since the reunification in July 1997. Mr CHEUNG considered it inappropriate for S for Tsy to link civil service pay with the rate of deflation, which was not in line with the existing pay adjustment mechanism. He expressed his grave concern that the remarks made by S for Tsy and the assumed 4.75% pay cut mentioned by FS had intensified the recent debate on civil service pay, and widen the gap between civil servants and the general public. Mr LEE Cheuk-yan shared his view. Referring to paragraph 69 of the 2002-03 Budget Speech, Mr LEE pointed out that FS had stated that "I believe many colleagues in the civil service and the subvented organizations understand that we are facing a serious fiscal situation and that persistent fiscal deficits will adversely affect Hong Kong as a whole. In fact, many colleagues told me that they were willing to stand by the rest of the community in this time of difficulty and share the burden". Mr LEE queried whether FS implied that civil servants who did not accept pay reduction would be regarded as not willing to stand by the rest of the community. He cautioned that improper handling of the issue would have serious adverse impacts on social harmony and civil service morale. Ms LI Fung-ying shared this view.

10. SCS advised that the Government, including FS and S for Tsy, had stated that the existing mechanism would continue to be used in deciding the 2002 civil service pay adjustment. The Government fully appreciated that civil service pay was a matter of public concern, and would adhere to the principles of lawfulness, fairness and reasonableness in considering any issues which might affect civil service pay. SCS stressed that the Government would be fair to civil servants while being accountable to the public.

11. Ms Emily LAU stressed the need to follow the existing mechanism in deciding the 2002 civil service pay adjustment. She also considered it important for the Government to give a clear message to the public on civil service pay. The recent remarks made by different Government officials on the issue had caused confusion. Referring to a press report on a radio phone-in programme on 9 March 2002, Ms LAU noted that it was reported that SCS had advised the audience to listen only to him, but not other Bureau Secretaries, on civil service matters. Responding to Ms LAU, SCS clarified that he had in fact advised a caller not to mind the remarks of other people, and that he might wish to listen to SCS on civil service matters.

Assumed percentage of civil service pay reduction

12. Mr Howard YOUNG pointed out that a recent survey conducted by the Liberal Party had revealed that the pay levels of 18 ranks in the civil service were much higher than those in the private sector, and the difference between the two ranged from 30% to 80%. Referring to paragraph 5 of the paper provided by the Administration, Mr YOUNG noted that in working out the assumed 4.75% pay cut, the Administration had taken into account the cumulative pay rises for civil servants of certain ranks (i.e Directorate Pay Scale Point 3 (D3) and above) since the reunification in July 1997. Responding to Mr YOUNG, SCS advised that the pay rises for civil servants since July 1997 were as follows:

	<u>Lower pay band</u>	<u>Middle pay band</u>	<u>Upper pay band /Directorate (D1 and D2)</u>	<u>Directorate (D3 and above)</u>
1997-98	5.79%	5.79%	6.03%	(Pay freeze)
1998-99	(Pay freeze)	(Pay freeze)	(Pay freeze)	(Pay freeze)
1999-2000	(Pay freeze)	(Pay freeze)	(Pay freeze)	(Pay freeze)
2000-01	2.38%	2.38%	4.99%	4.99%

13. Responding to Mr Howard YOUNG's concern about the disparity in pay between the civil service and private sector, SCS pointed out that one of the areas covered by the review being conducted by the Task Force set up by the Standing Commission on Civil Service Salaries and Conditions of Service, in conjunction with the Standing Committee on Disciplined Services Salaries and Conditions of Service and the Standing Committee on Directorate Salaries and Conditions of Service, was the methodology for determining pay levels in the civil service, including the timing and frequency of conducting a full-scale private sector pay comparability study if it was decided that the principle of broad comparability with the private sector should be upheld.

Implications of civil service pay reduction on the economy

14. Miss CHAN Yuen-han considered that the Administration should fully assess the implications of civil service pay reduction. In her view, it would undermine the spending power of civil servants, cause further reduction in private sector pay and hamper the recovery of the economy. Quoting the outsourcing of government services in recent years as an example, Miss CHAN pointed out that it had resulted in a reduction in private sector pay. In response, SCS advised that the Administration would consider a number of factors, including the state of the economy, in deciding the 2002 civil service pay adjustment. The Government Economist would be consulted on this aspect. As regards outsourcing of government services, SCS said that it was one of the measures adopted to contain the size of the civil service and to enhance the efficiency of government operations so as to uphold the principle of small government. In recent years, the procedures involved in outsourcing had been improved. The contractors concerned were required by some departments to state the pay levels of their employees required to perform the outsourcing work. The Administration would take this into account in assessing the suitability of the contractors concerned in taking up the contracts.

Justifications for implementing civil service pay reduction by legislation

15. Having regard to the fact that civil service pay rises in previous years had not been implemented by legislation, Mr Howard YOUNG asked for the justifications for implementing civil service pay reduction by legislation. SCS advised that while the employer-employee relationship between the Government and civil servants was not governed by the Employment Ordinance (Cap. 57), it was provided in the Memorandum on Conditions of Service for civil servants that notwithstanding anything contained in the Memorandum or in the covering letter of offer of appointment, the Government reserved the right to alter any of the officer's terms of appointment, and/or conditions of service set out in the Memorandum or the said covering letter should the Government at any time consider this to be necessary. This was confirmed by the legal advice sought by the Administration. The Administration had accepted the legal advice that in the event of a decision on a civil service pay reduction for 2002-03, the pay reduction would be implemented by legislation in the interest of certainty.

16. Mr LEE Cheuk-yan pointed out that the Administration's proposal implied that a civil service pay reduction not implemented by legislation would give rise to uncertainty. This demonstrated the fact that the Government did not have solid legal grounds to alter unilaterally civil servants' pay and conditions of service. In Mr LEE's view, civil servants, same as private sector employees, were protected by the law of contract and should have the right to sue the employer if the latter breached any of the terms of the employment contract. Mr LEE therefore expressed reservation on the Administration's proposal to implement civil service pay reduction by legislation, as it would deprive civil servants of the right to sue the Government and bring the issue to the court for judgement. SCS reiterated that the legal advice sought by the Administration confirmed that under the provision in the Memorandum on Conditions of Service for civil servants, the Government reserved the right to alter unilaterally

civil servants' pay and conditions of service. As civil service pay reduction had only been implemented once in 1936 and had not so far been implemented since the existing pay adjustment mechanism was in place in 1974, the Administration had accepted the legal advice to implement pay reduction by legislation to avoid any legal disputes. Mr LEE was not satisfied with the reply and requested the Administration to provide the legal advice sought on the issue, in particular the legal grounds for the Government to alter unilaterally civil servants' pay and conditions of service and full justifications for the proposal to implement civil service pay reduction by legislation. SCS said he would consult the legal adviser before providing the information. Ms Emily LAU considered the information essential to facilitate Members' consideration of the issue. She urged the Administration to provide the required information in detail.

17. Mr Andrew WONG also queried whether the Government had legal grounds to alter unilaterally civil servants' pay and conditions of service. He pointed out that prior to the reunification in July 1997, the administration of the civil service had been provided for in the Letters Patent (LP), Colonial Regulations (CRs) and Civil Service Regulations. As LP and CRs were imperial legislation lapsed on 1 July 1997, the Administration had identified two options as possible means of providing for the continuation of the previous arrangements after the transfer of sovereignty: to enact public service legislation, or to use the powers given to the Chief Executive (CE) under Article 48(4) of the Basic Law to issue executive orders. Mr WONG said that when the Administration consulted the Panel on the two options in early 1997, he had indicated his support for the first option. However, the Administration had finally decided to adopt the second option. Since then, the legal status of executive orders had been a matter of concern. Mr WONG asked whether the need to address this concern had given rise to the Administration's proposal to implement civil service pay reduction by legislation. SCS confirmed that the executive orders issued by CE under Article 48(4) of the Basic Law had legal effect. Since the reunification, CE had only issued one executive order, i.e. the Public Service (Administration) Order. SCS also clarified that the Administration's proposal to implement civil service pay reduction by legislation was to avoid any possible disputes that might be caused by different legal viewpoints.

18. Mr Andrew WONG was not convinced that executive orders issued by CE under Article 48(4) of the Basic Law had legal effect. If they had such effect, there was no need for the Government to implement civil service pay reduction by legislation. At Mr WONG's request, SCS undertook to provide a written response after the meeting.

19. Mr Michael MAK stated that he would not support the proposed legislation on civil service pay reduction. He asked how the Administration would handle the situation if the relevant bill was not passed by the Legislative Council (LegCo). SCS pointed out that it would be for LegCo to decide whether or not to support the bill, and that it was inappropriate for him to make any assumptions on LegCo's decision.

20. Referring to the practice that civil service pay rises in previous years had retrospective effect and was effective from 1 April of the years concerned, Mr Howard YOUNG and Mr HUI Cheung-ching asked for the justifications for the Administration's proposal to implement civil service pay reduction for 2002-03, if finally so decided, from a prospective date on 1 October 2002. SCS advised that under existing legal policy, legislative proposals normally had no retrospective effect and would only take effect on a date after their passage. Subject to the Administration's decision on civil service pay reduction for 2002-03 to be made after the results of PTS were available in May 2002, the Administration would introduce the relevant bill into LegCo by end-May for passage before the end of the current session in mid-July. If the bill was passed by LegCo in July, the Administration considered it reasonable to allow civil servants some time to make the necessary financial arrangements to tie in with the pay reduction. The Administration therefore proposed to implement the pay reduction from 1 October 2002. At the request of Ms Emily LAU, SCS agreed to provide in writing the justifications for the proposed implementation from a prospective date on 1 October 2002.

(Post-meeting note: The Administration's response to the issues raised by Members at paragraphs 16, 18 and 20 above was circulated to Members vide LC Paper No. CB(1)1473/01-02 on 11 April 2002.)

Legislative timetable

21. Mr Howard YOUNG and Miss CHAN Yuen-han expressed concern about the tight timetable which would allow Members only one month, i.e. from end-May to end-June, to scrutinize the relevant bill. In response, SCS pointed out that as the bill was not complicated, it might be possible for Members to complete scrutiny of the bill within four to five weeks.

Scope of the proposed legislation

22. The Chairman and Miss CHAN Yuen-han asked whether the relevant bill would cover the civil service pay reduction for 2002-03 only or provide for the mechanism for civil service pay reduction in future. SCS advised that the matter was being considered by the Administration.

Way forward

23. To facilitate Members' discussion on the 2002-03 civil service pay adjustment, Ms Emily LAU proposed and members agreed that the following information for the past ten years be compiled by the Secretariat for Members' reference:

- (a) Annual civil service pay adjustment for various pay bands;
- (b) Findings of the annual PTS;
- (c) Findings of the pay surveys conducted by other bodies, such as the Hong

Kong Institute of Human Resource Management;

- (d) Annual statistics on Gross Domestic Product; and
- (e) Annual statistics on civil service emoluments (% of Government expenditure).

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