

CSBCR/PG/4-085-001/33 Pt.11

2810 3112

2147 3292

**By Fax - 2877 5029**

4 September 2003

Miss Kitty Cheng  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Miss Cheng,

**Public Officers Pay Adjustments (2004/2005) Bill**

Thank you for your letter of 22 August 2003. My reply to your questions on clause 14 of the Public Officers Pay Adjustments (2004/2005) Bill (the Bill) is as follows:-

- (a) The purpose of clause 14

Clause 14 underlines the one-off nature of the legislation, which caters specifically for the civil service pay adjustments that are to take effect from 1 January 2004 and 1 January 2005 respectively. As currently drafted, the provision does not itself authorize any future adjustments to the pay or the amounts of allowances payable to public officers after 1 January 2005. Any future pay adjustment would still need to be implemented in a manner that is lawful without recourse to clause 14.

Clause 14 also makes it clear that the current draft legislation does not mandate a statutory system for effecting future adjustments to the pay or the amounts of allowances payable to public officers

after 1 January 2005. Under the provision, legislation would not be required to implement upward adjustments in the pay of public officers and in the amounts of their allowances, made after that date.

(b) The drafting of clause 14

Except for the different effective dates of pay adjustments, clause 14 of the Bill has the same legal effect as section 9 of the Public Officers Pay Adjustment Ordinance (Cap.574). In section 9 of Cap.574, we used the words “do not prohibit or affect” to reflect the one-off nature of the legislation and the policy intention that the legislation does not itself authorize any future adjustments made to the pay or the amounts of allowances after 1 October 2002. On further reflection, we consider that the words “do not prohibit” should have already achieved the same purpose. We have therefore deleted the words “or affect” from clause 14 of the Bill.

(c) Implication on future pay adjustment in the absence of clause 14

Clause 14 of the Bill makes it clear that the legislation does not prohibit any future adjustment to the pay and the amounts of allowances payable to public officers after 1 January 2005. Without this provision, the legislation may be interpreted as specifying by statute the level of pay and allowances payable to public officers as adjusted by it, which would then continue to prevail after 1 January 2005 until amended by subsequent legislation. In such circumstance, a consequence would be that a future upward adjustment to pay and the amounts of allowances could only be implemented by legislation.

Yours sincerely,

(Eddie Mak)  
for Secretary for the Civil Service

*c.c.* Mr. Ian Wingfield, Department of Justice  
Mr. David Morris, Department of Justice  
Ms. Betty Cheung, Department of Justice