

Clause 14 of the Public Officers Pay Adjustments (2004/2005) Bill

At the meeting of the Bills Committee held on 2 July 2003, Members raised the concern about the legal implications of clause 14 of the Public Officers Pay Adjustments (2004/2005) Bill ("the Bill"). This paper seeks to examine the legal implications of clause 14 in the context of the Bill and in comparison with section 9 of the Public Officers Pay Adjustment Ordinance (Cap. 574) ("Cap. 574") passed in July 2002.

2. Clause 14 of the Bill reads as follows:

"The adjustments made by this Ordinance to the pay and the amounts of any allowances payable to public officers do not prohibit any adjustment being made to the pay or the amounts of the allowances after 1 January 2005."

3. Clause 14 of the Bill is essentially modeled on section 9 of Cap. 574, which provides as follows:

"The adjustments made by this Ordinance to the pay, and the amounts of any allowances, payable to public officers do not prohibit or affect any adjustment to the pay or the amounts of any allowances payable to public officers made after 1 October 2002."

4. The Administration's policy intention is that the adjustments to the pay and the amounts of allowances payable to public officers made by Cap. 574 and the Bill are meant to be a one-off exercise (para. 13 of the LegCo Brief, ref: CSB CR PG/4-085-001/33), however, this intention is not expressly stated in Cap. 574 and the Bill.

5. Although there is a slight textual difference between the 2 provisions, their effects in law are basically the same. These provisions themselves do not authorize any future adjustments to the pay or the amounts of allowances payable to public officers after the particular dates stated in the legislation, i.e. 1 October 2002 in the case of Cap. 574 and 1 January 2005 in the case of the Bill. They serve no more than providing a declaratory statement to make it clear that the adjustments authorized by the relevant legislation do not prohibit adjustments, if any, made after the particular dates. As a consequence, any future adjustments will have to be put in place by the means as required by the law.

6. The Bill does not provide for any mechanism of future adjustments through administrative means. The dollar amount of the pay and the amounts of allowances payable to public officers as provided in the Bill will remain at those levels unless and until it is further adjusted by the means as required by the law. The Bill itself does not authorize future adjustments, be they upward or downward adjustments, by a means other than that required by the law.

7. The object of clause 14 of the Bill is to remove the doubt that whether the mechanism of pay adjustments (both upward and downward) which exists before the enactment of Bill will be affected by the Bill. The effect of clause 14 seems to be that, firstly, if the existing law requires legislation be enacted for any downward pay adjustments, further legislation is similarly necessary if the Administration proposes further downward adjustments. Secondly, if the existing mechanism implements upward adjustments through administrative means, the same mechanism is preserved.

Prepared by

Legal Service Division
Legislative Council Secretariat
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