

立法會

Legislative Council

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**Paper for the House Committee Meeting
on 23 May 2003**

Legal Service Division Report on Public Officers Pay Adjustments (2004/2005) Bill

I. SUMMARY

1. **Objects of the Bill** To adjust the pay of and the amounts of allowances payable to public officers by reducing them to the level they were at, in dollar terms, on 30 June 1997.
2. **Comments**
 - (a) The Bill is essentially modelled on the Public Officers Pay Adjustment Ordinance (Cap. 574) ("POPA Ordinance") and has 2 similar exemptions:-
 - (i) officers on delinked starting salaries appointed before 26 February 2003, and officers promoted to a basic rank on delinked starting salaries before that date, so long as they remain on those salaries; and
 - (ii) the pay and allowances of a judicial officer holding a judicial office or appointed by the Chief Justice.
 - (b) The Bill seeks to interpret the employment relationship between public officers and the Government so as to allow the proposed reduction. It provides that the contracts of employment of public officers are varied so as to expressly authorize the adjustments to the pay and the amounts of the allowances made by the Bill.
3. **Public Consultation** The staff sides of the 4 central consultative councils and 4 major service-wide staff unions were consulted on the draft Bill and some of them have raised comments on the policy aspects of the Bill.
4. **Consultation with LegCo Panel** The LegCo Panel on Public Service Panel ("PS Panel") was briefed on the arrangements in relation to the proposed civil service pay adjustment at its meeting on 25 February 2003. The following concerns were raised by Members:-
 - (a) the urge of members of the Bills Committee formed to study the POPA Bill in 2002 for general enabling legislation on a civil service pay adjustment mechanism to provide for upward and downward pay adjustments instead of one-off legislation;
 - (b) the Basic Law implications of the magnitude of civil service pay adjustment;
 - (c) implications on the remuneration for judges and judicial officers.
5. **Conclusion** In view of the controversial issues involved, the representations made by staff side and the concerns raised at the PS Panel meeting, we recommend a Bills Committee be formed to study the Bill in detail.

II. REPORT

Objects of the Bill

To adjust the pay of and the amounts of allowances payable to public officers by reducing them to the level they were at, in dollar terms, on 30 June 1997.

LegCo Brief Reference

2. CSB CR PG/4-085-001/33 issued by the Civil Service Bureau dated 13 May 2003.

Date of First Reading

3. 21 May 2003.

Comments

4. The Bill is essentially modelled on the Public Officers Pay Adjustment Ordinance (Cap. 574) ("POPA Ordinance") passed in July 2002. It seeks to provide for the following adjustments with respect to the pay of public officers:-

- (a) to adjust the pay of public officers remunerated below the level applicable to Directorate Pay Scale Point 3 or its equivalent by reducing the pay pertaining to each relevant point on the civil service pay scales, the Hospital Authority pay scales applicable to civil servants and the ICAC pay scale to their 30 June 1997 levels in dollar terms by 2 adjustments of broadly the same amounts on 1 January 2004 and 1 January 2005;
- (b) to adjust the pay of public officers remunerated at the level applicable to Directorate Pay Scale Point 3 and above or equivalent by reducing the pay pertaining to each relevant point on the civil service pay scales, the Hospital Authority pay scales applicable to civil servants and the ICAC pay scale to their 30 June 1997 levels in dollar terms on 1 January 2004;
- (c) to make corresponding adjustments to the amounts of the allowances payable to public officers that are determinable or adjustable in accordance with or by reference to the civil service pay scales or the ICAC pay scale or adjustments made to those pay scales;

- (d) to adjust the reference pay scales (the pay scales applicable to public officers appointed or promoted to a basic rank) by reducing the pay pertaining to each point on those scales by 2 adjustments of broadly the same amounts on 1 January 2004 and 1 January 2005 so that they will be in alignment with the civil service pay scales and the ICAC pay scale respectively on 1 January 2005 in dollar terms.

5. An exemption is made in the Bill to provide that the Bill does not apply to officers on delinked starting salaries appointed pursuant to an offer of employment made to them before 26 February 2003, or to officers promoted to a basic rank on delinked starting salaries before that date, so long as they remain on those salaries. When the pay of these officers becomes payable in accordance with a civil service pay scale or the ICAC pay scale, the pay is payable in accordance with the relevant scale as adjusted by the Bill.

6. Another exemption made in the Bill is that the Bill does not apply to the pay or allowances of a judicial officer holding a judicial office or appointed by the Chief Justice. On 23 April 2003, the Chief Justice submitted to the Administration a set of proposals which include a proposed new review body to determine judicial pay as well as a proposal to enact legislation to prohibit any reduction to judicial pay. According to the Administration, because of the time required for careful examination of the Chief Justice's proposals and the need to take forward the present legislative exercise as soon as possible, the Chief Executive in Council has decided that judges and judicial officers are to be excluded from the application of the Bill (para. 10 of LegCo Brief).

7. Clause 14 of the Bill is similar to section 9 of the POPA Ordinance. It provides that the adjustments made by this Bill 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. According to the Administration, the intention of the provision is to underline the one-off nature of the Bill and that the implementation of civil service pay adjustments by legislation is not a permanent feature of the civil service pay system (para. 13 of LegCo Brief).

8. Clause 15 of the Bill is also similar to section 10 of the POPA Ordinance. It seeks to provide for an interpretation of the employment relationship between public officers and the Government so as to allow the proposed reduction. The provision provides that the contracts of employment of public officers are varied so as to expressly authorize the adjustments to the pay and the amounts of the allowances made by the Bill.

9. The Administration has advised that there are applications for judicial review on the question of the lawfulness of the POPA Ordinance and 2 of these cases were scheduled to be heard in May 2003. The Administration's legal advice is that the Government is not precluded from introducing a bill into LegCo, pending the judgment of the Court of First Instance, provided that the resumption of the second

reading debate on the bill is to be deferred until after the judgment is given (para. 8 of LegCo Brief).

Public consultation

10. The Administration has consulted the staff side of the 4 central consultative councils and 4 major service-wide staff unions on the draft Bill. Some of them have raised comments on the policy aspects of the Bill. The detailed feedback from staff representatives is set out in para. 3 to 7 of the LegCo Brief and the Administration's comments are found in para. 8 to 13 of the LegCo Brief.

Consultation with LegCo Panel

11. The LegCo Panel on Public Service Panel ("PS Panel") was briefed on the arrangements in relation to the proposed civil service pay adjustment exercise at its meeting on 25 February 2003.

12. At the meeting, some members pointed out that members of the Bills Committee formed to study the POPA Bill in 2002 had clearly expressed their views that it was inappropriate for the Administration to legislate on a one-off basis, and had urged the Administration to introduce general enabling legislation on a civil service pay adjustment mechanism to provide a legal framework for implementing upward and downward pay adjustments. Some members queried why the Administration still proposed to introduce a piece of one-off legislation to implement the civil service pay reduction in 2004 and 2005. Some members also expressed concern about the Basic Law implications of the magnitude of civil service pay adjustment and the implications of the Bill's proposals or the Chief Justice's own proposals on judges and judicial officers.

Conclusion

13. In view of the controversial issues involved, the representations made by the staff representatives to the Administration and the concerns raised at the PS Panel meeting, we recommend a Bills Committee be formed to study the Bill in detail.

Prepared by

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