

For discussion
on 17 November 2003

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Pension suspension policy for retired civil servants

PURPOSE

This paper sets out our current pension suspension policy applicable to retired civil servants who are re-appointed to the public service or appointed to service in subvented organisations determined to be public service for the purpose of pension suspension under the pensions legislation.

BACKGROUND

2. The civil service pension schemes comprise the Old Pension Scheme (OPS) and the New Pension Scheme (NPS). Civil servants appointed before 1 July 1987 on terms which attract pension benefits belong to the OPS and their pension benefits are governed by the Pensions Ordinance (Cap.89). The NPS is applicable to officers appointed on or after 1 July 1987 on terms which attract pension, or officers appointed before this date who opted to transfer to the NPS when it was introduced. Their pension benefits are governed by the Pension Benefits Ordinance (Cap.99). Civil servants are entitled to receive pensions upon retirement under the relevant pensions legislation. Specifically, they will receive a one-off commuted lump sum gratuity on retirement and a recurrent monthly pension thereafter.

PENSION SUSPENSION POLICY

3. Entitlement to pension benefits for those whose terms of appointment attract pensions is a right as provided for under Section 5 of both the Pensions Ordinance and the Pension Benefits Ordinance. At the same time, Section 26 of

the Pension Benefits Ordinance provides that if a retired civil servant is re-appointed to the public service, or appointed to service in any subvented organisation which is determined to be public service for the purpose of pension suspension by the Chief Executive (CE) by notice in the Gazette, his pension **may** be suspended during the period of such service. There is a similar provision in Section 11 of the Pensions Ordinance, which stipulates that the pension of a retired civil servant **may** be suspended under the same condition. It should be noted that the exercise of this authority to suspend pension is discretionary but not mandatory. The CE may determine whether or not to exercise his discretion to suspend pension payment depending on individual circumstances.

4. The policy to suspend the pension of a retired civil servant on re-appointment to the public service has been in place for a long time. In this regard, we refer to full-time paid employment which requires the carrying out of executive duties/functions. The rationale for pension suspension under such condition is that, under normal circumstances, there is no specific reason from the public finance angle to grant a recurrent monthly pension to a retiree if he is still gainfully employed in the Government with a stable monthly income financed by the public purse.

5. The pension suspension policy was extended to cover employment in subvented organisations in 1987 when the NPS was introduced. The rationale forwarded in support of this is that since these organisations receive substantial subventions from the Government, under normal circumstances, retired civil servants employed by these organisations should not receive both monthly pension and salary from the same public coffers. This policy was first implemented in 1991 following the setting up of the Hospital Authority. As and when a new organisation is set up to execute new statutory functions or as a result of the disestablishment of a Government department, consideration would be given whether that organisation should be determined as public service for the purpose of pension suspension. Factors to be considered include, among other things, the source of funding of the organisation (e.g. the mode and level of government subventions to the subvented organisation) and the mode of operation of the organisation (e.g. whether it operates on prudent commercial principle). At present, a total of 16 subvented organisations have been declared and gazetted as public service for the purpose of pension suspension. Details are at **Annex**.

Exceptions to the pension suspension requirement

6. Over the years, the pension suspension policy has been applied to suspend the pension of retired civil servants who are re-appointed to the public service or appointed to the gazetted subvented organisations. Exceptions to this arrangement have been applied to two categories of retired civil servants as set out below.

Civil servants appointed as Principal Officials under the Accountability System

7. The first category involves those retired civil servants who have reached the earliest permissible retirement age under respective pension schemes and who were appointed as Principal Officials under the Accountability System. This special arrangement aims at facilitating the implementation of the Accountability System so that civil servants who are considered suitable for appointment as Principal Officials by the CE will not be inhibited by the transfer arrangements in considering such appointments. In allowing these officers to receive their pensions during their tenure as Principal Officials, the CE had taken into account the fact that the remuneration package of the Principal Officials appointment does not contain any gratuity or retirement benefits (other than the statutory minimum mandatory provident fund) and that there is no security of tenure. This special arrangement is only applicable during the relevant persons' terms of office as Principal Officials. Once these persons step down from the position of Principal Officials and if they are re-appointed to the public service or appointed to gazetted subvented organisations, payment of their pension may be suspended in accordance with the normal rule. This arrangement was fully explained to the Legislative Council in the context of implementation of the Accountability System.

Part-time and short-term employment

8. The second category involves retired civil servants who take up part-time (i.e. not more than 24 hours per week) or short-term employment (i.e. not more than three months) in the public service or one of the 16 gazetted organisations. Examples of such appointments include those who are appointed on an ad hoc basis to help conduct inquiries on conduct and discipline matters under the Public Service (Administration) Order; those who are appointed to assist in the prompt implementation of cleansing operations arising from

recommendations made by Team Clean following the SARS outbreak; part-time shroff for Sunday/public holidays and evening clinics; part-time lecturers for short courses in the tertiary institutions, etc. Taking into account the short-term and ad hoc nature of such appointments, and in order not to unnecessarily discourage retired civil servants to continue to contribute their expertise, we consider it appropriate not to suspend pension under such circumstances. This arrangement not to suspend pension had been in place since the 1970s before the criteria clearly defining what constitutes a part-time or short-term appointment for approving such waiver were formalised in 1994.

9. There are currently about 74 000 retired civil servants. Against this backdrop, in the past three years, the total number of cases where pension suspension has been waived under the first category is five while that under the second category is 442 (comprising 340 cases involving re-appointments to the Government and 102 cases involving service in the gazetted subvented organizations). Out of the 442 cases, 29 and 413 cases were from retired civil servants formerly holding directorate and non-directorate positions respectively.

10. As seen from the above statistics, the current pension suspension policy will apply to all re-appointments in the public service and appointments in the gazetted subvented organisations other than for short-term or part-time appointments or under exceptional circumstances. We consider that this policy remains broadly appropriate.

Civil Services Bureau
November 2003

Annex

Subvented organisations determined and gazetted as public service for the purpose of pension suspension

<u>Organisation/Institution</u>	<u>Effective Date</u>
1. Hospital Authority	25.1.1991
2. City University of Hong Kong	1.8.1991
3. Hong Kong Baptist University	1.8.1991
4. The Hong Kong Polytechnic University	1.8.1991
5. Lingnan University	1.8.1991
6. The Chinese University of Hong Kong	1.8.1991
7. The Hong Kong University of Science and Technology	1.8.1991
8. The University of Hong Kong	1.8.1991
9. Vocational Training Council	1.8.1991
10. Hong Kong Housing Authority	30.4.1993
11. Hong Kong Monetary Authority	12.11.1993
12. The Hong Kong Institute of Education	29.4.1994
13. The Legislative Council Commission	29.4.1994
14. Equal Opportunities Commission	5.1.1996
15. Office of the Privacy Commissioner for Personal Data	5.1.1996
16. Office of The Ombudsman	14.2.1997

Note : The list originally also included the Urban Council (effective date 30.4.1993) and the Regional Council (effective date 30.4.1993) until the disbandment of the two Councils on 1.1.2000.