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Paper for the House Committee meeting on 13 June 2008

**Subcommittee on Pension Benefits Ordinance (Established Offices)
(Amendment) (No. 2) Order 2008**

Purpose

This paper reports on the deliberations of the Subcommittee on Pension Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order 2008 (the Subcommittee).

Background

Conversion of Model Scale 1 staff to Category A status

2. According to the Public Service (Administration) Order, a civil servant appointed to and confirmed in an established office is classified as a Category A officer. A civil servant who holds a non-established office, or an established office on month-to-month or probationary terms, or an office on agreement terms, is classified as a Category B officer. Model Scale 1 (MOD 1) grades¹ are non-established offices. Therefore, all serving MOD 1 civil servants are Category B officers.

3. In May 2006, the Staff Side of the Model Scale 1 Staff Consultative Council (MOD 1 SCC) requested that MOD 1 staff should be converted from Category B to Category A status without changing their pay or conditions of service. The Administration undertook to consider the staff side's request after completion of the 2006 Pay Level Survey and implementation of its findings. In January and February 2008, the staff side further requested that the leave earning rate of serving MOD 1 staff converted to Category A status should be enhanced by phases to align with that applicable to junior civil servants remunerated on the Master Pay Scale, and that such staff's leave accumulation limit should also be increased.

¹ There are 11 MOD 1 grades, comprising six common grades (i.e. Car Park Attendant II, Ganger, Property Attendant, Ward Attendant, Workman I and Workman II), four departmental grades (i.e. Explosives Depot Attendant, Gardener, Workshop Attendant and Barber) and one general grade of Supplies Attendant.

4. Having regard to the long-term service needs for a core workforce of MOD 1 staff and the Staff Side of MOD 1 SCC's request for conversion to Category A status, the Administration considers it reasonable to give an option to serving MOD 1 staff to decide whether or not to convert from Category B to Category A status on condition that the conversion should not lead to any substantial change in the pay and conditions of service of MOD 1 staff, having regard to the fact that the change in status would not give rise to any major change to their duties and skills.

5. The conversion arrangements proposed by the Administration are set out below:

- (a) all serving MOD 1 staff would be allowed to opt, within a specified period of time and on an irrevocable basis, to convert from Category B to Category A status, subject to no change to their salary, pay scale, leave earning rate, conditioned hours and education benefits, with those belonging to the MOD 1 common grades being subject to the inter-departmental posting condition;
- (b) serving MOD 1 staff on local terms who opt for and are converted to Category A would have their leave accumulation limit increased from 45 days to 50 days (for staff with less than ten years' service) or from 90 days to 100 days (for staff with ten years' service or more) as appropriate; and
- (c) new outside recruits to the MOD 1 grades would be subject to the prevailing terms of appointment for officers appointed to established offices at basic ranks (i.e. three-year probation followed by three-year agreement before being considered for appointment on permanent terms) and be subject to the inter-departmental posting condition.

Pension Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order 2008 (L.N. 104)

6. The Pension Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order 2008 (the Order) is made by the Chief Executive under section 2(1) of the Pension Benefits Ordinance (Cap. 99) after consultation with the Executive Council. The Order amends Schedules 1 and 2 to the Pension Benefits Ordinance (Established Offices) Order (Cap. 99 sub. leg. J) by including MOD 1 grades as established offices so as to enable MOD 1 staff to become Category A officers (i.e. officers appointed to and confirmed in established offices).

7. The scrutiny period of the Order has been extended from 4 June 2008 to 25 June 2008 by a resolution of the Council.

The Subcommittee

8. The House Committee agreed at its meeting on 9 May 2008 to form a subcommittee to study the Order. Chaired by Hon KWONG Chi-kin, the Subcommittee has held three meetings with the Administration to discuss the related matters. The membership list of the Subcommittee is in **Appendix I**. The Subcommittee has also received views from representatives of various staff unions and associations. A list of the staff unions and associations which have made representations to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

9. The Subcommittee notes that the request of the Staff Side of MOD 1 SCC for conversion to Category A status stems from a desire for greater security in employment and better safeguard in terms of disciplinary and related procedures. Compared with a Category B officer, a Category A officer enjoys greater job security, more favourable arrangements upon in-service appointment to another grade², and better safeguard in respect of disciplinary and related procedures in the sense that the Public Service Commission should be consulted before a decision is made on the punishment of a Category A officer or before requiring a Category A officer to retire in the public interest. As such, the majority of the staff associations and unions giving views to the Subcommittee have indicated support for the proposed conversion of MOD 1 staff to Category A status and expressed the wish for its early implementation.

10. The Subcommittee notes that whilst expressing support in principle of the conversion proposal, the staff associations/unions consider that the proposal cannot fully satisfy the demands of all serving MOD 1 staff. Some staff associations/unions have requested that for equity reason, the leave earning rate of serving MOD 1 staff converted to Category A status should be enhanced to align with that applicable to junior civil servants remunerated on the Master Pay Scale. Some staff associations/unions also request that the period of time allowed for all serving MOD 1 staff to opt to convert from Category B to Category A status should be lengthened to one year.

11. The Subcommittee also notes that the staff associations/unions hold a strong view regarding the inter-departmental posting arrangement. Under the Administration's proposal, MOD 1 common grade staff who opt for and are converted to Category A status will be subject to inter-departmental posting at the discretion of the management to fill posts in the same grades. The staff associations/unions are worried that the Government may make use of this flexibility to speed up the outsourcing of government services. Due to variation in organization culture and job

² Category A officers are appointed on trial terms upon in-service transfer. They may revert to the parent grade if they fail to pass the trial bar. Category B officers are appointed on probationary terms upon in-service transfer. They have to leave the civil service altogether in the event they fail to pass the probation bar.

requirements and skills among different departments, the affected staff may find it difficult to adapt, thus affecting their performance. In the worst case, they may be treated like "human ball" and kicked between different departments or forced to retire. Some staff associations/unions therefore requests that the inter-departmental posting arrangements be deleted from the conversion proposal. Some staff associations/ unions also hold the view that the consultation conducted by the management is not adequate and request that another round of consultation be conducted to gauge the views of all affected MOD 1 staff before the conversion proposal is considered by the Legislative Council.

12. Considering the strong views expressed by the staff side on the Administration's proposal for introducing the inter-departmental posting arrangement, members are mostly concerned that if the Administration takes forward the outsourcing programme, MOD 1 common grade staff who opt to change to Category A status will be seriously affected as they may be forced to resign in the end. The Subcommittee has requested the Administration to consider deleting the inter-departmental posting condition from the conversion proposal. The Subcommittee has also examined in detail the following:

- (a) the arrangements for effecting inter-departmental posting in the event of staff/post mis-match;
- (b) the impact of the inter-departmental posting arrangement on the pace of outsourcing of services now rendered by MOD 1 common grade staff; and
- (c) the general recruitment policy of MOD 1 grades.

Inter-departmental posting arrangements

13. The Administration advises that the inter-department posting condition is part and parcel of the conversion proposal. In order to enhance staff deployment flexibility within the civil service and optimize utilization of MOD 1 staffing resources, MOD 1 common grades staff (i.e. Car Park Attendant II, Ganger, Property Attendant, Ward Attendant, Workman I and Workman II) who opt for and are converted to Category A status will be subject to inter-departmental posting at the discretion of the Administration to fill posts in the same grades. The Administration will give due regard to factors including the work experience, skills and qualifications of the serving MOD 1 staff when arranging inter-departmental transfer. Inter-departmental posting will only be arranged when there is a mis-match between MOD 1 common grade posts and staff (i.e. vacant MOD 1 common grade posts in a B/D and surplus Category A MOD 1 common grade staff of the same grade in another B/D).

14. To deal with such mis-match, the Administration further advises that the Civil Service Bureau (CSB) will operate a clearing house mechanism and centrally co-ordinate the inter-departmental posting as and when the need arises. CSB will adopt a balanced and pragmatic approach and follow the guiding principles set out below for

effecting inter-departmental posting of Category A MOD 1 common grade staff –

- (a) Staff who have tendered a notice of retirement/resignation or have less than five years' remaining service prior to their normal retirement age will not be considered for inter-departmental posting.
- (b) Serving staff appointed to designated work streams will only be considered for inter-departmental posting to the same work stream and not other work streams.
- (c) Due regard will be given, as far as possible, to the location of the new workplace, the requirements of the job, and the work experience, skills and qualifications of the pool of staff available for inter-departmental posting.
- (d) Subject to (a) and (c) above, reference will be made to the "last in, first out" principle in arranging the release of staff when a mis-match situation arises.

This set of guiding principles has already taken into due account the views and sentiments expressed by the staff side as well as the operational requirements of B/Ds. The clearing house will also take into account any relevant special considerations (e.g. medical condition) of concerned MOD 1 common grade staff in assessing their suitability for inter-departmental posting.

15. Upon posting by the clearing house to a new B/D, a Category A MOD 1 common grade staff will come under the management of the receiving B/D. The management of the receiving B/D will not be able, on its own, to post this staff to another B/D at some time in the future. Only the clearing house may do so and subject to the following considerations, namely: that it is satisfied that the B/D concerned has surplus MOD 1 common grade staff; that it is satisfied that a vacancy in the relevant MOD 1 common grade exists in another B/D; that taking into account the job requirements of the vacancy, the afore-mentioned set of guiding principles and any special considerations, the surplus MOD 1 staff is suitable for posting. As such, there is no question of Category A MOD 1 common grade staff being constantly posted from one B/D to another.

16. The Administration advises that staff posted from one B/D to another under the central clearing house mechanism will not normally be allowed to revert to the original department following the inter-departmental posting. If there is a case which warrants exceptional consideration, it will be dealt with on its own merits. By way of example, some factors (not exhaustive) that might be taken into special consideration include -

- (a) the management is satisfied that the staff concerned has already tried his best in taking on new duties in the receiving B/D but remains unable to effectively and fully discharge the duties required of his post, despite the

provision of appropriate training over a period of time; or

- (b) the management is satisfied that there are genuine difficulties beyond the control of the staff concerned (e.g. medical conditions) which have adversely affected his ability to effectively and fully discharge the duties required of his new post.

The Administration advises that it is the responsibility of B/Ds to look after the interest and well being of staff under their management. The receiving B/Ds concerned will make every effort to address job-related difficulties or adaptation problems encountered by Category A MOD 1 common grade staff on inter-departmental posting, e.g. through staff counselling, customized training as appropriate. Arranging a staff to revert to his original B/D may not be the only or the best solution.

17. The Administration will promulgate the guiding principles governing the inter-departmental posting arrangement in a CSB circular.

Estimated number of serving MOD 1 staff who will be subject to the inter-departmental posting arrangement upon conversion to Category A status

18. The Subcommittee has examined the estimated number of serving MOD 1 staff who will be subject to the inter-departmental posting arrangement upon conversion to Category A status. The Administration advises that inter-departmental posting for concerned MOD 1 common grade staff (i.e. those who have opted for Category A status following the enactment of the Order) will be arranged only when there is a mis-match between MOD 1 common grade posts and staff. No such mis-match is envisaged in 2008-09 and 2009-10 based on the manpower projections from B/Ds. Further down the road, it is difficult to predict whether and if so, when such mis-match may arise.

19. The Administration has estimated on a hypothetical basis that even if the vast majority of serving MOD 1 common grade staff opt for Category A status, a maximum of no more than around 4 080 would be subject to the inter-departmental posting arrangement if and when the need arises.

Impact of the inter-departmental posting arrangement on the pace of outsourcing of services now rendered by MOD 1 common grade staff

20. Regarding the impact of the inter-departmental posting arrangement on the pace of outsourcing of services now rendered by MOD 1 common grade staff, the Administration advises that the Government's established policy is to deliver public services in the most cost-effective and efficient manner, and to use capabilities in the private sector where appropriate. When drawing up large-scale outsourcing proposals which would have impact on serving civil servants, B/Ds will consult the civil servants concerned through staff forums, meetings, departmental consultative committees, etc. The Administration's stance is that no serving civil servant would be made redundant due to outsourcing. Where necessary, affected staff would be redeployed within the

civil service or managed through natural wastage.

21. The proposed inter-departmental posting arrangement for MOD 1 common grade staff who decide to opt for Category A status (upon the enactment of the Order) is not designed to speed up the pace of outsourcing. It is intended to enhance staff deployment flexibility within the civil service and optimize utilization of MOD 1 staffing resources in the event of any mis-match between MOD 1 common grade posts and staff in the future.

The recruitment policy of MOD 1 grades

22. The Subcommittee has taken the opportunity to review the recruitment policy of MOD 1 grade. The Administration advises that there are 11 MOD 1 grades. In-service recruitment for nine MOD 1 grades, namely Car Park Attendant II, Ganger, Gardener, Property Attendant, Supplies Attendant, Ward Attendant, Workman I, Workman II and Workshop Attendant, is permitted if the concerned Heads of Department/Heads of Grade consider that there is an operational need to fill any vacancies in these grades. Subject to CSB's prior approval, open recruitment is permitted for these nine MOD 1 grades. The requirement to seek CSB's prior approval is partly because some grades are in a state of obsolescence (e.g. Gardener and Workshop Attendant) and partly because some grades (e.g. Property Attendant, Workman I and Workman II) can recruit suitable personnel from within the civil service. In deciding whether or not to allow open recruitment for these grades, CSB will consider a host of factors, including long-term manpower position of the grade, whether the operational need to fill identified vacancies is justified and whether in-service recruitment may identify sufficient suitable candidates, etc. Open recruitment for the Explosives Depot Attendant grade, which is under the purview of the Director of Civil Engineering and Development, is permitted without prior approval from CSB. As for the Barber grade, the current grade members are all engaged by the Hospital Authority (not a government department). There is no service need for the grade in B/Ds.

Staff consultation

23. On staff consultation, the Administration advises that the Government has consulted the Staff Side of MOD 1 SCC through the established consultative machinery. CSB has issued a letter to individual MOD 1 staff which explains the details and implications of the conversion proposal. B/Ds which employ a large number of MOD 1 staff are also requested to brief the affected staff.

Option period

24. On the proposal to lengthen the duration of the option period, the Administration advises that taking into account the views expressed by members and the staff associations/unions, the option period would be extended from three months to around six months to allow more time for MOD 1 staff to consider before making a

decision. To cater for the need of staff who wish to convert to Category A status early, conversion would take effect on 1 October 2008 for those who return their option forms on or before 30 September 2008; and on 1 January 2009 for those who return their option forms from 1 October 2008 to 31 December 2008. The Staff Side of the MOD 1 SCC is in support of the extended option period.

25. The Subcommittee notes that staff who do not take up the conversion option within the specified period of time will remain on Category B status. Their terms and conditions of service would remain unchanged.

Improvement to the terms and conditions of employment for MOD 1 staff

26. The Subcommittee has examined why the Administration has refused to improve the terms and conditions of employment for those MOD 1 Staff who opt to change to Category A status. The Administration's view is that in the absence of any major change in the duties and skills required of MOD 1 staff, there is no justification to alter the terms and conditions of employment for MOD 1 staff, which have been improved over the years. For example, the differences in salaries and incremental points between grades in the MOD 1 Pay Scale and the Master Pay Scale have been narrowed, the conditioned working hours for MOD 1 staff have been reduced from 48 hours net per week to 45 hours net per week in 1988. The Standing Commission on Civil Service Salaries and Conditions of Service is also in support of the arrangements of the conversion proposal.

27. The Administration further advises that the leave earning rates for MOD 1 staff and officers on Master Pay Scale below Salary Point 14, who have 10 or more years of service appointed on local terms before 1 January 1999, are 22 days and 31 days a year respectively. However, MOD 1 staff and staff on Master Pay Scale below Salary Point 14, who are appointed on or after 1 June 2000, enjoy the same leave earning rate i.e. 14 days a year for officers with less than 10 years' service or 18 days a year for officers with 10 or more years of service. The Administration advises that since the duties and skills required of MOD 1 staff have not changed, and the recent Pay Level Survey shows that the leave benefit of MOD 1 staff in the civil service is comparable to that of their counterparts performing similar jobs in the private sector, there is no justification to change the existing leave earning rate for MOD 1 staff upon conversion to Category A status.

28. The Staff Side of MOD 1 SCC, including all its constituent staff unions, expressed support for the Order and the implementation of the conversion proposal, so that individual MOD 1 staff could make their own choice on whether to opt for conversion.

Conclusion

29. The Subcommittee is pleased to note the undertakings given by the Administration that no serving civil servant would be made redundant due to

outsourcing. In considering that the maximum number of MOD 1 common grade staff who would be subject to inter-departmental posting is in the region of 4 000, and that the Administration has undertaken to consider allowing staff posted from one B/D to another under the central clearing house mechanism to revert to the original department under exceptional circumstance and refraining from constantly posting Category A MOD 1 common grade staff from one B/D to another, the majority of the members of the Subcommittee are in support of the Order.

30. The Subcommittee however notes that Mr LEE Cheuk-yan may consider repealing the Order at the Council meeting to be held on 25 June 2008.

Advice sought

31. The House Committee is invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
12 June 2008

**Subcommittee on Pension Benefits Ordinance
(Established Offices) (Amendment) (No. 2) Order 2008**

Membership list

Chairman	Hon KWONG Chi-kin
Members	Hon LEE Cheuk-yan Hon CHAN Yuen-han, SBS, JP Hon SIN Chung-kai, SBS, JP Hon TAM Yiu-chung, GBS, JP Hon LI Fung-ying, BBS, JP Hon Audrey EU Yuet-mee, SC, JP (Total: 7 Members)
Clerk	Mr Andy LAU
Legal Adviser	Miss Winnie LO
Date	15 May 2008

**Subcommittee on Pension Benefits Ordinance
(Established Offices) (Amendment) (No. 2) Order 2008**

List of parties which have submitted views to the Subcommittee

1. Agriculture, Fisheries and Conservation Department Staff Association
2. Environmental Hygiene, Leisure and Cultural Services Staff Association
3. Government Electrical & Mechanical Works Supervisors, Craftsmen & Workmen Association
4. Government Employees Association
5. Government Mod 1 Staff General Union
6. Government Municipal Staff General Union
7. Government Park and Playground Keepers Union
8. Government Property Attendants Association
9. Government Staff Union
10. Hong Kong Chinese Civil Servants' Association
11. Hong Kong Civil Servants General Union Negotiation Committee
12. Hong Kong Federation of Civil Service Unions
13. Hong Kong Food and Environmental Hygiene Department Employees Association
14. Hong Kong Government Water Supplies Department Employees Union
15. Hong Kong Leisure and Cultural Services Department Employees General Union
16. Hong Kong Leisure Services Staff General Union
17. Hong Kong Police Force Model Scale 1 Staff Association
18. Model Scale 1 Staff Consultative Council (Staff Side)
19. The Federation of Hong Kong & Kowloon Labour Unions