

**DISCIPLINED SERVICES LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 2009**

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A BILL

To

Amend various enactments relating to the disciplined services of the Government—

- (a) to extend the provisions on punishments that may be imposed so that, on removal from office of certain public officers employed in those services, their beneficial interests attributable to the voluntary contributions made by the Government under the civil service provident fund scheme (together with any investment income, profits or losses) may be reduced or forfeited;
- (b) to include certain former public officers who have retired from those services, with their beneficial interests attributable to the voluntary contributions made by the Government under the civil service provident fund scheme paid to them, as beneficiaries under their respective disciplined services welfare funds;
- (c) to provide for the compulsory retirement of traffic warden grade officers who are found guilty of a disciplinary offence and to make minor textual amendments for achieving consistency in certain provisions on punishments that may be imposed on them; and
- (d) to revise the date from which pay and allowance may cease to be payable to police officers who are found guilty of a criminal offence by a court.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for the Civil Service by notice published in the Gazette.

PART 2

AMENDMENTS RELATING TO PUNISHMENTS IMPINGING ON RETIREMENT BENEFITS OF PUBLIC OFFICERS EMPLOYED IN DISCIPLINED SERVICES

Fire Services Ordinance

3. Interpretation

Section 2 of the Fire Services Ordinance (Cap. 95) is amended by adding—

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“retirement benefits” (退休福利), in relation to a person, means—

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99); or
- (c) the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;”.

4. Punishment of subordinate officers and members of other ranks for offences against discipline

(1) The Third Schedule is amended, in Part I, in paragraph (1)(a)(i), by adding “without retirement benefits” after “dismissal”.

(2) The Third Schedule is amended, in Part I, in paragraph (1)(a)(ia), by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits;”.

(3) The Third Schedule is amended, in Part II, in paragraph (a)(i), by adding “without retirement benefits” after “dismissal”.

(4) The Third Schedule is amended, in Part II, in paragraph (a)(ia), by adding “with full retirement benefits or reduced retirement benefits or without retirement benefits” after “compulsory retirement”.

Police Force Ordinance

5. Interpretation

Section 3 of the Police Force Ordinance (Cap. 232) is amended by adding—

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“provident fund benefits” (公積金利益), in relation to a person, means the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;

“retirement benefits” (退休福利), in relation to a person, means—

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99); or
- (c) the provident fund benefits of that person;”.

6. Summary dismissal

Section 31(2) is amended by repealing everything after “declare” and substituting—

“that—

- (a) a police officer dismissed under subsection (1) is—
 - (i) for the purposes only of the Pensions Ordinance (Cap. 89), deemed to have retired from the public service in accordance with section 6(1)(d) of that Ordinance; or
 - (ii) for the purposes only of the Pension Benefits Ordinance (Cap. 99), deemed to have retired from the public service in accordance with section 11(1)(g) of that Ordinance; or

- (b) the provident fund benefits of a police officer dismissed under subsection (1) are to be vested in that officer.”.

7. Conviction of police officer

Section 37(5) is amended by repealing “, compulsorily retired” and substituting “without retirement benefits, compulsorily retired with full retirement benefits or reduced retirement benefits or without retirement benefits”.

Police (Discipline) Regulations

8. Punishment of junior police officers

(1) Regulation 13(1)(g) of the Police (Discipline) Regulations (Cap. 232 sub. leg. A) is amended by repealing “pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

(2) Regulation 13(1)(h) is amended by adding “without retirement benefits” after “dismissal”.

(3) Regulation 13(4)(b) is amended by adding “without retirement benefits” after “dismissed”.

9. Commissioner may report to Chief Executive

(1) Regulation 27(1) is amended by repealing “such that dismissal or compulsory retirement with pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “are such that dismissal without retirement benefits, or compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits”.

(2) Regulation 27(3)(a) is amended by repealing “dismiss the inspector” and substituting “order that the inspector be dismissed without retirement benefits”.

(3) Regulation 27(3)(b) is amended by repealing “dismiss the inspector” and substituting “order that the inspector be dismissed without retirement benefits”.

(4) Regulation 27(3)(ba) is amended by repealing “such pension, gratuity or other benefits as he may determine” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

10. Powers of punishment

(1) The Schedule is amended, in the entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, in column (2), in paragraph 4(a), by adding “without retirement benefits” before “, with”.

(2) The Schedule is amended, in the entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, in column (2), in paragraph 4(c), by repealing “pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

(3) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 4(a), by adding “without retirement benefits” before “, with”.

(4) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 4(c), by repealing “pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

(5) The Schedule is amended, in the entry relating to Chief Executive, in column (3), in paragraph 2, by adding “without retirement benefits” after “Dismissal”.

(6) The Schedule is amended, in the entry relating to Chief Executive, in column (3), in paragraph 3, by repealing “pension, gratuity or other allowances, without such benefits or with reduced benefits” and substituting “full retirement benefits or reduced retirement benefits or without retirement benefits”.

Prisons Ordinance

11. Interpretation

Section 2 of the Prisons Ordinance (Cap. 234) is amended by adding—
““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“retirement benefits” (退休福利), in relation to a person, means—

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99); or

- (c) the part of that person's beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;”.

12. Power to make rules

(1) Section 25(1)(*dc*)(i) is amended by adding “without retirement benefits” after “dismissal”.

(2) Section 25(1)(*dc*)(*ia*) is amended by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits;”.

Prison Rules

13. Punishment of officers (other than Assistant Officers) and other persons

(1) Rule 254(*b*)(ii) of the Prison Rules (Cap. 234 sub. leg. A) is amended by adding “without retirement benefits” after “dismissal”.

(2) Rule 254(*b*)(iii) is amended by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits;”.

Government Flying Service Ordinance

14. Interpretation

Section 2(1) of the Government Flying Service Ordinance (Cap. 322) is amended by adding—

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“retirement benefits” (退休福利), in relation to a person, means—

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99); or

- (c) the part of that person's beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;".

Government Flying Service (Discipline) Regulation

15. Punishment of members for disciplinary offence

(1) Section 17(2)(b) of the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) is amended by adding "without retirement benefits" after "dismissal".

(2) Section 17(2)(c) is amended by repealing everything after "compulsory retirement" and substituting "with full retirement benefits or reduced retirement benefits or without retirement benefits."

Customs and Excise Service Ordinance

16. Interpretation

Section 2 of the Customs and Excise Service Ordinance (Cap. 342) is amended by adding—

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“retirement benefits” (退休福利), in relation to a person, means—

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99); or
- (c) the part of that person's beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;".

Customs and Excise Service (Discipline) Rules

17. Punishment of inspectors for disciplinary offence

(1) Rule 15(b)(ii) of the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) is amended by adding “without retirement benefits” after “dismissal”.

(2) Rule 15(b)(iii) is amended by repealing everything after “compulsory retirement” and substituting “with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

Traffic Wardens (Discipline) Regulations

18. Interpretation

Regulation 2 of the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) is amended by adding—

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“government regulations” (政府規例) means the administrative rules known as the Government Regulations and any other administrative rules or instruments regulating the public service;

“retirement benefits” (退休福利), in relation to a person, means—

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99); or
- (c) the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;”.

19. Punishment

Regulation 12(3)(b) is amended by adding “without retirement benefits” after “dismissed”.

20. Powers of punishment

(1) The Schedule is amended, in the entry relating to Senior Police Officer, in column (2), in paragraph 4(*a*), by repealing “; or” and substituting “without retirement benefits;”.

(2) The Schedule is amended, in the entry relating to Senior Police Officer, in column (3), in paragraph 2(*a*), by repealing “dismissal and reduction in rank before dismissal; or” and substituting “dismissal without retirement benefits and reduction in rank before dismissal;”.

(3) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 2(*a*), by repealing “; or” and substituting “without retirement benefits;”.

(4) The Schedule is amended, in the entry relating to Commissioner of Police, in column (3), in paragraph 2(*a*), by repealing “dismissal and reduction in rank before dismissal; or” and substituting “dismissal without retirement benefits and reduction in rank before dismissal;”.

PART 3

AMENDMENTS RELATING TO BENEFICIARIES UNDER DISCIPLINED SERVICES WELFARE FUNDS

Fire Services Ordinance

21. Definitions: Part IV

Section 18 of the Fire Services Ordinance (Cap. 95) is amended, in the definition of “former Fire Services employee”, in paragraph (*a*), by repealing “on a pension, gratuity or other allowance” and substituting “with retirement benefits”.

Police Force Ordinance

22. Definitions: Part IV

(1) Section 39(1) of the Police Force Ordinance (Cap. 232) is amended, in the definition of “former civilian officer”, in paragraph (*a*), by repealing “on a pension, gratuity or other allowance” and substituting “with retirement benefits”.

(2) Section 39(1) is amended, in the definition of “former police officer”, in paragraph (*a*), by repealing everything after “retired” and substituting “from service as a police officer with retirement benefits; or”.

Prisons Ordinance

23. Definitions: Part III

Section 24C of the Prisons Ordinance (Cap. 234) is amended, in the definition of “former Correctional Services employee”, in paragraph (a), by repealing “on a pension, gratuity or other allowance” and substituting “with retirement benefits”.

Government Flying Service Ordinance

24. Control of the fund

(1) Section 16(a)(ii) of the Government Flying Service Ordinance (Cap. 322) is amended by adding “with retirement benefits” after “retired”.

(2) Section 16(a)(v) is amended by adding “with retirement benefits” after “retired”.

Immigration Service Ordinance

25. Definitions: Part IV

(1) Section 15 of the Immigration Service Ordinance (Cap. 331) is amended, in the definition of “former member of the Service”, in paragraph (a), by repealing “on a pension, gratuity or other allowance; or” and substituting—

“with any of the following retirement benefits—

- (i) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap. 89);
- (ii) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap. 99);
- (iii) the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits; or”.

(2) Section 15 is amended by adding—

““civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;”.

Customs and Excise Service Ordinance

26. Definitions: Part IV

Section 18 of the Customs and Excise Service Ordinance (Cap. 342) is amended, in the definition of “former member of the Service”, in paragraph (a), by repealing “on a pension, gratuity or other allowance” and substituting “with retirement benefits”.

PART 4

AMENDMENTS RELATING TO COMPULSORY RETIREMENT OF AND OTHER PUNISHMENTS THAT MAY BE IMPOSED ON TRAFFIC WARDEN GRADE OFFICERS FOUND GUILTY OF A DISCIPLINARY OFFENCE

Traffic Wardens (Discipline) Regulations

27. Punishment

(1) Regulation 12(1)(c) of the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) is amended by repealing “or”.

(2) Regulation 12(1)(d) is amended by repealing the full stop and substituting a semicolon.

(3) Regulation 12(1) is amended by adding—

- “(e) reduction in rank;
- (f) an order to resign forthwith without salary in lieu of notice;
- (g) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits; or
- (h) dismissal without retirement benefits.”.

28. Powers of punishment

(1) The Schedule is amended, in the entry relating to Senior Police Officer, in column (2), in paragraph 4(b), by repealing the full stop and substituting “; or”.

(2) The Schedule is amended, in the entry relating to Senior Police Officer, in column (2), in paragraph 4, by adding—

- “(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

(3) The Schedule is amended, in the entry relating to Senior Police Officer, in column (3), in paragraph 2(b), by repealing the full stop and substituting “; or”.

(4) The Schedule is amended, in the entry relating to Senior Police Officer, in column (3), in paragraph 2, by adding—

“(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

(5) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 2(b), by repealing the full stop and substituting “; or”.

(6) The Schedule is amended, in the entry relating to Commissioner of Police, in column (2), in paragraph 2, by adding—

“(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

(7) The Schedule is amended, in the entry relating to Commissioner of Police, in column (3), in paragraph 2(b), by repealing the full stop and substituting “; or”.

(8) The Schedule is amended, in the entry relating to Commissioner of Police, in column (3), in paragraph 2, by adding—

“(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.”.

PART 5

AMENDMENT RELATING TO STOPPAGE OF PAY AND ALLOWANCE ON CONVICTION OF POLICE OFFICERS

Police Force Ordinance

29. Conviction of police officer

Section 37(4) of the Police Force Ordinance (Cap. 232) is amended by repealing “following” and substituting “with effect from”.

PART 6

TRANSITIONAL PROVISIONS

30. Transitional provisions

(1) If, after the commencement of Parts 2 and 4, any public officer who is found guilty of or pleads guilty to any misconduct or offence for which that officer is punishable under any enactment amended by this Ordinance, that officer is to be punished in accordance with that enactment as amended by this Ordinance even though the misconduct or offence was committed before the commencement.

(2) If, after the commencement of Part 5, a court in criminal proceedings finds that a charge against any police officer in respect of a criminal offence has been proved, pay and allowance may cease to be payable to that officer in accordance with section 37(4) of the Police Force Ordinance (Cap. 232) as amended by this Ordinance even though the criminal offence was committed before the commencement.

Explanatory Memorandum

The main object of this Bill is to amend the disciplined services legislation so that certain provisions which apply to public officers employed in the disciplined services of the Government who are appointed on pensionable terms would also apply to certain public officers employed in the disciplined services of the Government who are members of the Civil Service Provident Fund Scheme (“CSPF officers”).

2. In particular, Part 2 deals with amendments made to the provisions on punishment which impinge on retirement benefits in—

- (a) the Fire Services Ordinance (Cap. 95) (clauses 3 and 4);
- (b) the Police Force Ordinance (Cap. 232) (clauses 5 to 7);
- (c) the Police (Discipline) Regulations (Cap. 232 sub. leg. A) (clauses 8 to 10);
- (d) the Prisons Ordinance (Cap. 234) (clauses 11 and 12);
- (e) the Prison Rules (Cap. 234 sub. leg. A) (clause 13);
- (f) the Government Flying Service Ordinance (Cap. 322) (clause 14);
- (g) the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) (clause 15);
- (h) the Customs and Excise Service Ordinance (Cap. 342) (clause 16);
- (i) the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) (clause 17); and
- (j) the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (clauses 18 to 20).

3. The effect of the amendments in Part 2 is mainly that, like officers appointed on pensionable terms whose pensions may be forfeited or reduced on dismissal or compulsory retirement, CSPF officers may also be subject to the following punishment on removal from office—

- (a) in the case of dismissal, their retirement benefits (being the part of their beneficial interests attributable to the voluntary contributions made by the Government as employer in respect of those CSPF officers, together with any investment income, profits or losses) will not be payable to them; or
- (b) in the case of compulsory retirement, their retirement benefits may be granted to them in full, reduced or forfeited.

4. Part 3 seeks to include certain former CSPF officers who have retired from the disciplined services of the Government, with their retirement benefits paid to them, as beneficiaries of their respective disciplined services welfare funds by amending the relevant provisions in—

- (a) the Fire Services Ordinance (Cap. 95) (clause 21);
- (b) the Police Force Ordinance (Cap. 232) (clause 22);
- (c) the Prisons Ordinance (Cap. 234) (clause 23);
- (d) the Government Flying Service Ordinance (Cap. 322) (clause 24);
- (e) the Immigration Service Ordinance (Cap. 331) (clause 25); and
- (f) the Customs and Excise Service Ordinance (Cap. 342) (clause 26).

5. Part 4 amends the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (clauses 27 and 28)—

- (a) to provide that traffic warden grade officers who are found guilty of a disciplinary offence may be compulsorily retired; and
- (b) to make minor textual amendments for achieving consistency in certain provisions on punishments that may be imposed on those officers.

6. Part 5 contains an amendment to the Police Force Ordinance (Cap. 232) which seeks to bring the provision on stoppage of pay and allowance on conviction of police officers in line with the practice currently adopted in relation to other public officers (clause 29). The effect of the amendment is that pay and allowance may cease to be payable to a convicted officer with effect from the date on which that officer is found guilty of a criminal offence by a court, instead of the date following that of the finding.

7. Clause 30 in Part 6 deals with transitional provisions.