

LEGISLATIVE COUNCIL BRIEF

JUDICIAL OFFICERS (EXTENSION OF RETIREMENT AGE) (AMENDMENT) BILL 2019

INTRODUCTION

A At the meeting of the Executive Council on 19 February 2019, the Council ADVISED and the Chief Executive ORDERED that the Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 (the Bill) at **Annex A** should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

Review Conducted by the Judiciary

2. Based on historical and current trends, it is clear that the best legal practitioners for the Judiciary to recruit are those who are highly successful in private practice. Given the significant drop in earnings and the fact that for District Court level judges and above, there can be no return to private practice as a barrister or solicitor after judicial appointment, the timing as to when to join the Judiciary becomes a critical factor for many practitioners. It is the Chief Justice's (CJ) firm belief that an extension of the statutory retirement ages for Judges and Judicial Officers¹ (JJOs) will encourage recruitment of the best legal talents to the Judiciary. Equally important as recruitment is retaining for as long as practicable the benefit of the experience and skills of serving JJOs. The present statutory retirement ages for JJOs are well below what may be regarded by most people as reasonable these days. With the above considerations in mind, CJ set up an internal Working Group in June 2014 chaired by a Permanent Judge (PJ) of the Court of Final Appeal (CFA) to conduct a review of the statutory retirement ages for

¹ "Judges" refer to officers in the grades of Chief Justice (CJ), Court of Final Appeal (CFA); Judge, CFA; Judge of the High Court; and Judge of the District Court. "Judicial Officers" refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate. Special Magistrates are not included in the present exercise as the Judiciary has decided that they would be gradually phased out.

JJOs. The Judiciary has also engaged a consultant (the Consultant) to carry out a consultancy study.

3. In the light of the outcome of the review and the recommendations from the Consultant, the Judiciary has put forward various proposals (the Proposals) to the Government to extend the statutory retirement ages for JJOs and implement related arrangements.

The Proposals

4. The Government supports the Proposals, as set out below, in full –

(A) Statutory retirement ages

- (a) to extend the statutory retirement ages for Judges of the CFA, the Court of Appeal (CA) and the Court of First Instance (CFI) of the High Court from 65 to 70;
- (b) to maintain the statutory retirement ages for Registrar/Senior Deputy Registrars/Deputy Registrars (R/SDR/DR) of the High Court and District Judges at 65;
- (c) to extend the statutory retirement ages for Members of the Lands Tribunal (M/LT), Magistrates and other Judicial Officers at the magistrate level from 60 to 65;
- (d) to retain a two-tier retirement age system, i.e. Judges at the CFI level and above will have a higher retirement age at 70 while JJOs below the CFI level will have a lower retirement age at 65;
- (e) to retain the existing provisions in principle that persons who have attained the statutory retirement ages may be appointed to

be Judges of the CFA and the High Court²;

(B) Early retirement ages

- (f) to raise the statutory early retirement age of Judges of the CFA, the CA and the CFI of the High Court from 60 to 65 correspondingly;
- (g) to introduce a new statutory discretionary early retirement age of 60 for Judges of the CFA, the CA and the CFI of the High Court upon approval of CJ;
- (h) to maintain the statutory early retirement age of R/SDR/DR of the High Court and District Judge at 60;
- (i) to introduce a statutory early retirement age for M/LT, Magistrates and other Judicial Officers at the magistrate level at 60;

(C) Discretionary extension arrangements

- (j) to maintain the existing discretionary extension arrangements beyond the statutory retirement ages for JJOs at all levels of court (i.e. two periods of three years for CFA Judges, and five years in aggregate for other JJOs);
- (k) to provide for discretionary extension of term of office for District Judges with an extension period of not exceeding five years in aggregate³;

² Section 14(2)(b) of the Hong Kong Court of Final Appeal Ordinance (HKCFAO) (Cap. 484) stipulates that a person who has attained the age of 65 years may be appointed to be CJ or a PJ of the CFA for a term of three years which may be extended for one period of three years. Section 11A(3)(a) of the High Court Ordinance (HCO) (Cap. 4) stipulates that a person may be appointed to be a Judge of the High Court (whatever his age and whether or not he has previously held office as such) for a period or periods not exceeding five years. Owing to the limited pool of suitable candidates at this level of court (where recruitment difficulties have been encountered), the Judiciary recommends the retention of these provisions in principle to allow flexibility in the appointment of senior Judges, with suitable adjustment to the age concerned from 65 to 70.

³ District Judges (appointed on or after 1 January 1987) is the only group of JJOs not covered under the existing discretionary extension arrangements.

(D) Transitional arrangements

- (l) to put in place transitional arrangements to allow serving JJOs to choose whether to transfer to the new retirement ages or to remain under the existing retirement ages. In gist, a serving JJO can exercise the option of joining the new retirement arrangements during an option period of two years, or until his existing statutory retirement age/expiry of extension of service, whichever is the earliest. For a JJO who has served a notice of retirement or a notice of resignation as at the implementation date, he will only be eligible for exercising the option if the JJO has successfully applied to CJ for approval to withdraw the notice. Specific transitional arrangements are proposed in light of the special circumstances of the CFA⁴; and

(E) Pension-related matters

- (m) to maintain the existing pension-related arrangements⁵.

⁴ Under section 14(2)(a) of the HKCFAO, the retirement age for CJ and PJs of the CFA may be extended by no more than two periods of three years. In other words, the term of office of Judges of the CFA currently may be extended until he reaches the age of 71. To give effect to the proposed option to transfer to the new retirement age and the proposed discretionary extension arrangement, the Judiciary recommends that section 14(2)(a) be suitably amended to allow the existing discretionary extension arrangement to be applicable to CJ or a PJ who is already over 70 when he exercises the option.

⁵ The existing pension benefits are –

- (a) a JJO's pensionable service shall be deemed to be increased by one month for each completed month of pensionable service in a judicial office that is both after age 50 and after 1 July 1987 in accordance with section 25 of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401);
- (b) upon attaining maximum pension status, a JJO may retire from the pensionable service and be immediately re-employed without a break in service at the same rank on gratuity bearing agreement terms until reaching the statutory retirement age or expiry of extension of service; and
- (c) the factor for the computation of an annual pension on retirement is 1/675 of a JJO's highest pensionable emoluments for each month of his pensionable service in accordance with section 4 of the Pensions Benefits (Judicial Officers) Regulations (Cap. 401A).

5. The following is a summary table setting out the existing and recommended statutory retirement ages, discretionary extension years, early retirement ages and maximum retirement ages –

| Court Level | Statutory Retirement Age | | Discretionary Extension Year | | Early Retirement Age | | | Maximum Retirement Age | |
|---------------------------------|--------------------------|----|------------------------------|--------|----------------------|-----|----|------------------------|----|
| | E | R | E | R | E | R | | E | R |
| | | | | | | D | S | | |
| CFA | 65 | 70 | 6(3+3) | 6(3+3) | 60 | 60* | 65 | 71 | 76 |
| CA | 65 | 70 | 5 | 5 | 60 | 60* | 65 | 70 | 75 |
| CFI | 65 | 70 | 5 | 5 | 60 | 60* | 65 | 70 | 75 |
| High Court - R/SDR/DR | 65 | 65 | 5 | 5 | 60 | 60 | | 70 | 70 |
| District Court - District Judge | 65 | 65 | Nil | 5 | 60 | 60 | | 65 | 70 |
| District Court - M/LT | 60 | 65 | 5 | 5 | Nil | 60 | | 65 | 70 |
| Magistrates' Courts | 60 | 65 | 5 | 5 | Nil | 60 | | 65 | 70 |

E – Existing

R – Recommended

D – Discretionary

S – Statutory

Note 1 – Figures in shade denote changes to the existing arrangements.

Note 2 – Asterisked figures denote discretionary retirement between the ages of 60 and 65 to be approved by CJ.

6. The Government considers the Proposals reasonable and essential to enable the Judiciary to sustain their manpower across different levels of court, which is crucial to the efficient and effective operation of the Judiciary. Our considerations are set out in the ensuing paragraphs.

(A) **Statutory retirement ages**

7. The Government supports the Judiciary's proposals as set out in paragraphs 4(a) to (e) above. The Government shares the Judiciary's view that there is a need to extend the statutory retirement ages for Judges at the CFI level and above from 65 to 70 in light of the persistent recruitment difficulties at the CFI of the High Court level. This will enable the retention of experienced senior Judges, and attract experienced and quality private practitioners to join the Bench. The Government also agrees with the Judiciary that the retirement age for JJOs below the

CFI level be set at 65 to avoid creating career blockages as well as to facilitate the injection of new blood. In essence, the Government echoes what CJ said at the Opening of the Legal Year 2018 that *“extending the retirement age of judges will be of considerable tangible benefit to the community. Not only would judges be able to give the benefit of their experience and skills beyond the present low retirement ages, this will encourage recruitment of the most able persons to join the Judiciary.”*

8. It is noted that most of the overseas jurisdictions under research have retirement ages higher than those in Hong Kong⁶. Although some of these overseas jurisdictions have a uniform retirement age for Judges at all levels of court, a two-tier retirement age system is considered more suitable to the circumstances of the Judiciary in Hong Kong and should accordingly be retained.

(B) Early retirement ages

9. In accordance with section 7(1)(b)(ii) of the Pensions Benefits (Judicial Officers) Ordinance (PB(JO)O) (Cap. 401), the following JJOs who are appointed on or after 1 July 1987 may retire early on or after attaining the age of 60 years –

- (a) CJ and a PJ of the CFA;
- (b) a Judge of the High Court;
- (c) the R/SDR/DR of the High Court; and
- (d) a District Judge.

10. Given that Hong Kong is a small jurisdiction with a limited number of Judges at the CFI level and above, it is likely that the Judiciary will encounter great difficulties in judicial manpower planning and deployment if, on the assumptions that retirement ages for JJOs are extended as recommended, Judges at the CFI level and above may still be able to retire at the existing statutory early retirement age of 60. This would mean a Judge may retire any time within a long period of ten years (i.e. between the ages of 60 and 70). The Government agrees with the Judiciary that this is not conducive to manpower planning and considers

⁶ The United Kingdom and New Zealand have a uniform retirement age of 70; Singapore has a uniform retirement age of 65; and in Australia, the retirement age is 70 for the High Court, the Federal Court and the Federal Circuit Court, and 65 for the Family Court at federal court hierarchy.

it reasonable to maintain the existing five-year interval between the early retirement age and the statutory retirement age.

11. The Judiciary further recommends that CJ be provided with the discretionary power to approve early retirement for these senior Judges between the ages of 60 and 65 on exceptional grounds, such as health or family reasons, as some respondents of the consultancy study expressed concerns that Judges may need to retire earlier than 65 owing to health and personal issues. The Government considers it acceptable to introduce a discretionary arrangement so as to cater for the specific needs of individual Judges. As for JJOs below the CFI level, the Judiciary recommends that the five-year interval between the early retirement age and the statutory retirement age be applied.

(C) Discretionary extension arrangements

12. The existing legislative provisions provide for extension of terms of office for JJOs (except for District Judges appointed on or after 1 January 1987). The existing arrangements are –

- (a) the term of office of CJ and a PJ of the CFA may be extended for not more than two periods of three years; and
- (b) the term of office of a Judge of the High Court; the R/SDR/DR of the High Court; a District Judge who was appointed before 1 January 1987⁷; a M/LT; a Magistrate; and other Judicial Officers at the magistrate level may be extended for a specified period or periods not exceeding five years in aggregate.

13. According to the prevailing Judiciary policy, extension of terms of office of JJOs beyond the statutory retirement ages is not automatic and will only be granted on a discretionary basis. The mechanism allows flexibility in retaining JJOs beyond their statutory retirement ages in light of operational needs. The Government agrees with the Judiciary's recommendation to maintain the existing discretionary extension arrangements beyond the statutory retirement ages for JJOs at all levels of court, i.e. two periods of three years for CFA Judges, and five years in aggregate for other JJOs. The Government also agrees with the Judiciary's proposal to provide for discretionary extension of term of office for all District Judges with an extension period of not exceeding five years in aggregate for parity's sake.

⁷ There is no serving District Judge who was appointed before 1 January 1987.

(D) Transitional arrangements

14. To facilitate a smooth implementation, the Judiciary recommends putting in place transitional arrangements⁸ to allow serving JJOs to choose whether to transfer to the new retirement ages or to remain under the existing retirement ages. The Government also notes that the Judiciary has considered the special circumstances of CFA Judges and proposed specific transitional arrangements to cater for them. The Government has no particular comment on these proposals and trusts that the Judiciary has taken into account the views of JJOs and stakeholders in devising the proposed transitional arrangements.

(E) Pension-related matters

15. According to the Judiciary, the availability of pension is one of the important factors in attracting private practitioners to join the Bench. The Judiciary takes the view that any proposed changes to the retirement ages for JJOs should not undermine the existing pension benefits to which they are entitled. The Judiciary considers it essential to maintain the existing arrangements on JJOs' pension benefits.

16. On deferred pensions, at present, where a JJO appointed on or after 1 July 1987 resigns from the service before the age of 60, subject to the completion of a qualifying service of not less than ten years and with the approval of CJ, he will be eligible for a deferred pension when he attains the age of 60. Upon the implementation of the proposed retirement ages as recommended, the Judiciary proposes that the ages for resigned Judges at the CFI level and above to be eligible for deferred pensions be correspondingly adjusted to 65; and that for resigned JJOs below the CFI level be maintained at 60, i.e. five years before the applicable statutory retirement ages of respective groups of JJOs. The Judiciary also recommends that the existing arrangement that the deferred pension payment will be subject to the JJO's completion of a qualifying service of not less than ten years and the approval of CJ be maintained. The Government has no particular comment in this respect.

⁸ Paragraph 4(l) refers.

PROPOSED LEGISLATIVE AMENDMENTS

Need for Legislative Amendments

17. To implement the Proposals, key legislative amendments are required to the following Ordinances –

- (a) High Court Ordinance (HCO) (Cap. 4);
- (b) District Court Ordinance (DCO) (Cap. 336);
- (c) PB(JO)O; and
- (d) Hong Kong Court of Final Appeal Ordinance (HKCFAO) (Cap. 484).

Applicability of the Legislative Exercise

18. We would like to first set out below the applicability of the present legislative exercise to different categories of JJOs.

(A) Judges

19. For Judges at the CFA, the High Court and the District Court, their respective statutory retirement ages are specified in the Ordinances governing the relevant courts (i.e. HKCFAO, HCO and DCO). The statutory retirement ages are therefore applicable to Judges at the District Court and above irrespective of whether they are employed on pensionable or agreement terms.

20. Besides, Judges of the CFA, High Court and District Court have security of tenure⁹. Judges have to provide an undertaking that they will not return to private practice after they have left the Judiciary. The Judiciary considers that it has effectively undertaken to employ Judges until their normal retirement age.

21. As the present legislative amendment exercise seeks to extend the statutory retirement ages of JJOs in various legislation, the proposed amendments will be applicable to all serving Judges of the CFA, High

⁹ Under Article 89 of the Basic Law, a judge may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by CJ and consisting of not fewer than three local judges.

Court and District Court¹⁰.

(B) Judicial Officers

22. As regards Judicial Officers, their statutory retirement ages are not specified in the legislation of the relevant courts. Instead, the retirement ages are only stipulated in the PB(JO)O and are therefore tied to their pension benefits. In other words, only those Judicial Officers who have pensionable service would be covered by the relevant legislation and hence this legislative amendment exercise.

23. In addition, Judicial Officers are not required to provide an undertaking that they will not return to private practice after they have left the Judiciary and they do not have security of tenure.

24. For Judicial Officers (such as Magistrates) first joining the Judiciary, they are normally offered appointment on agreement terms for a few years. Afterwards, on the positive recommendation of the Judicial Officers Recommendation Commission, the Judicial Officer concerned may on application transfer to pensionable terms. They will then be covered by the PB(JO)O. The present legislative amendment exercise will be applicable to all Judicial Officers who have transferred to pensionable terms upon the commencement of the Bill.

25. Moreover, Judicial Officers who have reached maximum pension status may choose to retire and then be immediately re-employed without a break in service on gratuity-bearing agreement terms. Since these Judicial Officers have pensionable service under the PB(JO)O, the present legislative amendment exercise will also be applicable to them.

(C) Others

26. For the avoidance of doubt, the present legislative amendment exercise will not be applicable to deputy JJOs who only work for the Judiciary on a temporary basis.

¹⁰ Except for those Judges who have first been appointed to the CFA and the High Court after they have reached the existing statutory retirement age under section 14(2)(b) of the HKCFAO or section 11A(3)(a) of the HCO before the Bill commences. It is because when they were/are first appointed to the CFA/High Court under the existing law, they had/have already exceeded the existing normal retirement age. As such, they should not be affected by any changes in the normal retirement age proposed in this legislative exercise.

Proposed Arrangements

27. In preparing the Bill, the Judiciary has not only incorporated the Proposals into the Bill as appropriate, but has also developed the necessary details in the Bill. The key details are highlighted in the ensuing paragraphs.

Opting Arrangements

28. The Judiciary's proposed opting arrangements are set out below. The Government considers the proposed arrangements reasonable and have no other views.

General Arrangements

29. As we have indicated in paragraph 4(l) above on transitional arrangements, a relevant serving JJO can exercise the option of joining the new retirement arrangements during an option period of two years, or until the JJO's existing statutory retirement age/expiry of extension of service, whichever is the earliest (Opting Period).

30. The exercise of the option would affect the statutory retirement age and some other related statutory arrangements of the JJO concerned such as the discretionary extension of service. The Judiciary suggests setting out the necessary broad opting arrangements in the legislation¹¹, while leaving the administrative details to a circular to be issued by CJ.

31. More specifically, in line with the policy objectives of encouraging JJOs to work longer, the Judiciary does not consider it necessary for JJOs to seek approval for their opting of the new retirement arrangements. We have therefore suggested in the Bill that all relevant JJOs intending to opt for the new retirement arrangements would only need to send a notice to the Judiciary Administrator within the respective Opting Period. The option takes effect once the notice is delivered to the Judiciary Administrator.

32. For JJOs joining the Judiciary on or after the commencement of the Bill, they will not be invited to opt and they will be subject to the new retirement arrangements automatically.

¹¹ The broad arrangements include who may opt and the Opting Period under different scenarios.

Effect of Opting

33. The opting arrangements are to enable serving JJOs to consider whether they intend to join the new retirement arrangements. A JJO who does not opt during the Opting Period (regardless of whether he may be elevated to a higher position during that period) means that the JJO chooses to adhere to the existing retirement arrangements. As such, the Judiciary proposes that the JJO be subject to the existing retirement regime throughout the JJO's career in the Judiciary, even when the JJO is later elevated to a higher judicial position in the Judiciary after the Opting Period.

34. For example, if a Magistrate who chooses to adhere to the existing arrangements is promoted to become a Principal Magistrate, his statutory retirement age will remain at 60, instead of changing to the new retirement age of 65 for Principal Magistrates. Similarly, if the Magistrate is promoted to become a CFI Judge later, his statutory retirement age will be 65 instead of 70 which is the new retirement age for CFI Judges.

35. As a matter of principle, this effectively means that JJOs would have the option of maintaining their original career path or expected career path when they first joined the Judiciary despite the proposed legislative amendments.

Discretionary Early Retirement

36. As indicated in paragraph 4(g) above, it has been agreed that the Judiciary should introduce a new statutory discretionary early retirement age of 60 for Judges of the CFA, the CA and the CFI of the High Court upon approval of CJ. Such applications would only be approved on exceptional grounds. Possible examples are health or family reasons. This would cater for the specific needs of individual Judges.

37. The Judiciary has proposed to make it clear in the legislative amendments that such applications would only be approved on "exceptional grounds". Moreover, similar to the existing arrangements for statutory early retirement, it would be set out in the legislation that a Judge whose application for discretionary early retirement is approved would be able to receive lump sum and monthly pension immediately upon retirement.

38. CJ is proposed to be given the power to process applications for discretionary early retirement from the Judges. To avoid any conflict of interest, the Judiciary suggests providing a provision in the PB(JO)O for CJ to assign another suitable JJO to process applications that he considers having any actual or apparent conflict of interest. The order of assigning such a suitable JJO would largely follow that adopted for the appointment of the acting CJ as set out in section 5 of the HKCFAO¹². The Government has no other views.

39. CJ may also submit an application for discretionary early retirement. For the same reason of avoiding any conflict of interest, the Judiciary considers it prudent to invite somebody else to approve CJ's application, if any. The Judiciary suggests inviting the Chief Executive to be the approving authority. The Government considers the proposed arrangement reasonable.

Preservation of Earlier Retirement Arrangements

40. Serving or retired JJOs and/or their family members may be receiving/will receive pension on the basis of different arrangements of the existing PB(JO)O applicable to JJOs appointed to the Judiciary (including any of their previous pensionable service in the Government) at different points in time. To ensure that the legal basis for the granting of pension to these JJOs and/or their family members is not affected by this legislative exercise, it would be prudent to preserve all these existing legislative provisions.

OTHER OPTIONS

41. The Government must amend the legislation to enable the Judiciary to implement the Proposals. There are no other options.

¹² Under section 5 of the HKCFAO, where CJ is ill or absent for any cause, the Chief Executive shall –

- (a) appoint the next most senior PJ who is eligible to be appointed as CJ to act as CJ. The seniority shall be determined in accordance with the order of precedence prescribed in section 11 of the Ordinance; and
- (b) if there is no PJ who is eligible to be appointed as CJ, the Chief Executive may appoint the next most senior PJ even though he is not so eligible to act as CJ. The seniority is also determined in accordance with section 11 of the Ordinance.

THE BILL

42. The main provisions of the Bill are set out as follows –

- (a) **Clauses 3, 4, 10, 20 and 21** amend the HCO, PB(JO)O and HKCFAO to extend the retirement age for judges of the CFA and the High Court from 65 to 70 and that for M/LT, Magistrates and other Judicial Officers at the magistrate level (other than special magistrates) from 60 to 65;
- (b) **Clauses 5, 11 and 22** amend the HCO, PB(JO)O and HKCFAO to provide for the transitional arrangements for Judges of the High Court, Judicial Officers as well as Judges of the CFA currently on extended terms beyond the existing statutory retirement age who opt for the new retirement arrangements. Their term will first be extended to the date immediately before the new retirement age. After that, their terms may be further extended pursuant to the relevant provisions in the respective Ordinances as if their terms of office had not been extended previously;
- (c) **Clause 6** amends the DCO to provide that for District Judges who are subject to the new arrangements, their terms of office may be extended for a specified period or periods not exceeding five years in aggregate;
- (d) **Clause 9** adds a new section 5A to the PB(JO)O to provide, amongst others, that JJOs are subject to the new retirement arrangements if they join the Judiciary after the Bill commences or if they are the relevant serving JJOs and have opted for the new arrangements, etc.;
- (e) **Clause 17** adds the new sections 11A, 11B and 11C to the PB(JO)O. Section 11A sets out the relevant categories of JJOs who may opt. Section 11B specifies the respective Opting Period for different types of JJOs. Section 11C provides that the detailed new retirement arrangements (called “retirement age (extension) arrangements” in the Bill) would be set out in a Circular to be issued by CJ; and
- (f) **Clause 18** adds the new sections 12A and 12B to the PB(JO)O to introduce the new statutory discretionary early retirement age of 60 for Judges of the CFA and the High Court; and for CJ to

delegate the power to approve JJOs' applications for discretionary early retirement if CJ considers that there is any actual or apparent conflict of interest. **Clauses 12 and 13** amend sections 7 and 8 of the PB(JO)O to provide for pension payments for JJOs upon their discretionary early retirement.

B The existing provisions being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

43. The legislative timetable will be –

| | |
|--|----------------|
| Publication in the Gazette | 1 March 2019 |
| First Reading and commencement of Second Reading debate in LegCo | 20 March 2019 |
| Resumption of Second Reading debate, committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

Financial Implications

44. The Consultant has worked out two scenarios to assess the financial implications of the above recommendations. Assuming all JJOs leave the Judiciary upon reaching the new statutory retirement ages, it is estimated that the financial implication will range from a decrease of \$101.48 million (-1.62%) if all JJOs opt for 0% lump sum pension gratuity to an increase of \$206.22 million (+4.39%) if all JJOs opt for 50% lump sum pension gratuity. Assuming all JJOs leave the Judiciary after serving the maximum period of discretionary extension of service upon reaching the new statutory retirement ages, it is estimated that the financial implication will range from an increase of \$35.20 million (+0.53%) if all JJOs opt for 0% lump sum pension gratuity to an increase of \$288.56 million (+5.57%) if all JJOs opt for 50% lump sum pension gratuity.

Other Implications

45. The Bill will have no staffing implications on the Judiciary as any additional workload arising from the implementation of the Bill will be absorbed with their existing manpower resources. The legislative proposals are in conformity with the Basic Law, including the provisions concerning human rights, and have no productivity, economic, environmental, sustainability or gender implications. The legislative proposals will have some positive family impact as both the extended retirement arrangements and the early retirement arrangements will provide greater flexibility for JJOs to retire later or earlier for family or other reasons. The extended statutory retirement age will also facilitate some families to enhance their financial capabilities.

46. The amendments proposed in the Bill will not affect the current binding effect of the existing provisions of the relevant Ordinances.

PUBLIC CONSULTATION

47. In the course of the consultancy study, the Consultant gauged views from relevant stakeholders from within and outside the Judiciary¹³. The Government has consulted the Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee) on the Proposals. The Judicial Committee renders full support for the Proposals. In view of the limited pool of potential candidates, particularly for appointment to the CFI and above, the Judicial Committee considers that the Proposals are pragmatic and should be instrumental in attracting talents to join the Bench, including those who are at a later stage of their career in private practice. The Judicial Committee also considers that the Proposals will

¹³ A questionnaire survey was conducted from March to May 2016. The target respondents covered all 164 serving JJOs at the material time. Apart from serving JJOs, other stakeholder groups who may be affected by changes of JJOs' statutory retirement ages, if any, were also invited to participate in the questionnaire survey, including 21 JJOs retired in the past three years, 117 Deputy JJOs/Recorders sat in the past three years, 1 421 barristers and 8 677 solicitors in private practice, and 565 government lawyers.

After completing the questionnaire survey, the Consultant conducted eight sessions of focus group discussion in September 2016 with 32 serving JJOs, seven Deputy JJOs/Recorders, eight barristers, four solicitors and 15 government lawyers. Three face-to-face interviews were also conducted with interviewees nominated by the Hong Kong Bar Association, the Law Society of Hong Kong and the Department of Justice.

at the same time help retain experienced JJOs, thereby strengthening manpower support for the Judiciary. The Judicial Committee hopes that the Proposals can be implemented as soon as practicable.

48. The Judiciary has also consulted various stakeholders including the Hong Kong Bar Association and the Law Society of Hong Kong on the Proposals. They support the Proposals. The LegCo Panel on Administration of Justice and Legal Services was also consulted on the Proposals on 18 July 2018. The Panel indicated support.

PUBLICITY

49. A press release will be issued on 1 March 2019. A spokesperson will be available to answer media and public enquiries.

ENQUIRIES

50. Any enquiry on this brief should be directed to Ms Vivian Cheung, Assistant Director of Administration, at 2810 3946 or Ms Wendy Cheung, Assistant Judiciary Administrator (Development), at 2867 5201.

Administration Wing
Chief Secretary for Administration's Office

Judiciary Administration

27 February 2019

Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019

Contents

| Clause | | Page |
|---|--|------|
| Part 1 | | |
| Preliminary | | |
| 1. | Short title | 1 |
| 2. | Enactments amended | 1 |
| Part 2 | | |
| Amendments to High Court Ordinance | | |
| 3. | Section 11AA added..... | 3 |
| | 11AA. Interpretation of this section and sections 11A and 11B..... | 3 |
| 4. | Section 11A amended (term of office of judges)..... | 3 |
| 5. | Section 11B added..... | 6 |
| | 11B. Transitional provisions relating to retirement age (extension) arrangement | 6 |
| Part 3 | | |
| Amendments to District Court Ordinance | | |
| 6. | Section 11A amended (term of office of District Judges)..... | 8 |
| Part 4 | | |

| Clause | | Page |
|---|---|------|
| Amendments to Pension Benefits (Judicial Officers) Ordinance | | |
| 7. | Section 2 amended (interpretation)..... | 12 |
| 8. | Section 3 amended (application)..... | 13 |
| 9. | Section 5A added..... | 14 |
| | 5A. Officers subject to retirement age (extension) arrangement | 14 |
| 10. | Section 6 amended (normal retirement age) | 15 |
| 11. | Section 6A added..... | 19 |
| | 6A. Transitional provisions relating to retirement age (extension) arrangement for certain officers..... | 19 |
| 12. | Section 7 amended (circumstances in which pension may be granted)..... | 19 |
| 13. | Section 8 amended (time of pension payments) | 24 |
| 14. | Section 9 heading amended (application regarding previous pensionable service) | 25 |
| 15. | Section 10 heading amended (option of person already retired) | 25 |
| 16. | Section 11 heading amended (deemed application/option) | 25 |
| 17. | Sections 11A, 11B and 11C added | 25 |
| | 11A. Specified officers may opt for retirement age (extension) arrangement | 25 |
| | 11B. Notice for opting for retirement age (extension) | |

| Clause | Page |
|--|------|
| arrangement..... | 26 |
| 11C. Circular on retirement age (extension) arrangement..... | 27 |
| 18. Sections 12A and 12B added..... | 27 |
| 12A. Discretionary early retirement..... | 27 |
| 12B. Delegation by Chief Justice in relation to application under section 12A | 28 |
| 19. Section 29 amended (power not to grant, or to cancel or reduce, pension)..... | 29 |

Part 5

Amendments to Hong Kong Court of Final Appeal Ordinance

| | |
|--|----|
| 20. Section 13A added..... | 30 |
| 13A. Meaning of <i>retirement age</i> etc..... | 30 |
| 21. Section 14 amended (tenure of office)..... | 31 |
| 22. Section 14A added..... | 33 |
| 14A. Transitional provisions relating to retirement age (extension) arrangement | 33 |
| 23. Section 15 amended (continuing powers of judges)..... | 34 |

A BILL

To

Amend the High Court Ordinance, the District Court Ordinance, the Pension Benefits (Judicial Officers) Ordinance and the Hong Kong Court of Final Appeal Ordinance to provide for the extension of retirement age, extension of terms of office and related arrangements for certain judicial officers; to introduce a discretionary early retirement arrangement for certain judicial officers; and to provide for transitional and related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance 2019.

2. Enactments amended

- (1) The High Court Ordinance (Cap. 4) is amended as set out in Part 2.
- (2) The District Court Ordinance (Cap. 336) is amended as set out in Part 3.
- (3) The Pension Benefits (Judicial Officers) Ordinance (Cap. 401) is amended as set out in Part 4.

- (4) The Hong Kong Court of Final Appeal Ordinance (Cap. 484) is amended as set out in Part 5.
-

Part 2

Amendments to High Court Ordinance

3. Section 11AA added

After section 11—

Add

“11AA. Interpretation of this section and sections 11A and 11B

In this section and sections 11A and 11B—

Circular (《通告》) means a Circular issued by the Chief Justice on the details of the retirement age (extension) arrangement for judicial officers engaged on terms that do not attract pension benefits under the Pension Benefits (Judicial Officers) Ordinance (Cap. 401);

judge of the High Court (高等法院法官) means a judge of the High Court (other than a judge appointed under section 8, a recorder and a deputy judge);

retirement age (extension) arrangement (退休年齡(延展)安排) means the arrangements in relation to the extension of the ages of retirement and terms of office for judicial officers as provided by the amendments contained in the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance 2019 (of 2019).”.

4. Section 11A amended (term of office of judges)

- (1) Section 11A(1), English text—

Repeal

“shall”

Substitute

“must”.

- (2) Section 11A(1), English text—

Repeal

“retiring”

Substitute

“retirement”.

- (3) Section 11A(2), English text—

Repeal

“retiring” (wherever appearing)

Substitute

“retirement”.

- (4) Section 11A(2), Chinese text—

Repeal

everything after “年齡，”

Substitute

“但如在其未屆退休年齡時，已有法律程序在其席前展開，則該法官可於已屆退休年齡後，在情況所需的期間內繼續留任，以使該法官能就該等法律程序宣告判決或作出任何其他事情。”

- (5) Section 11A(3)—

Repeal paragraph (a)

Substitute

- “(a) a person who has attained the age of 70 years may be appointed to be a judge of the High Court (whether or not the person has previously held office as such) for a specified period or periods not exceeding 5 years in the aggregate by the Chief Executive acting in accordance

with the recommendation of the Judicial Officers Recommendation Commission; and”.

- (6) Section 11A(3)(b)—

Repeal

“Governor”

Substitute

“Chief Executive”.

- (7) Section 11A(3)(b)—

Repeal

“Judicial Service Commission”

Substitute

“Judicial Officers Recommendation Commission”.

- (8) Section 11A(3), English text—

Repeal

“shall accordingly”

Substitute

“is accordingly to”.

- (9) Section 11A(3), English text—

Repeal

“retiring”

Substitute

“retirement”.

- (10) Section 11A(4)—

Repeal

“Governor”

Substitute

“Chief Executive”.

(11) Section 11A—

Repeal subsection (5)

Substitute

“(5) In this section—

retirement age (退休年齡), for a judge of the High Court, means—

- (a) unless paragraph (b) applies—the age of 70 years;
- (b) if the judge could have opted for the retirement age (extension) arrangement pursuant to section 11A of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) or the Circular, and has not so opted—the age of 65 years.”.

5. Section 11B added

Part II, after section 11A—

Add

“11B. Transitional provisions relating to retirement age (extension) arrangement

(1) In this section—

specified judge (指明法官) means a judge of the High Court—

- (a) whose term of office has been extended under section 11A(3)(b) before the commencement date of the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance 2019 (of 2019); and
- (b) who has opted for the retirement age (extension) arrangement pursuant to section 11A of the

Pension Benefits (Judicial Officers) Ordinance (Cap. 401) or the Circular.

- (2) If, but for this section, the extended term of office of a specified judge would have expired before the judge attains the age of 70 years, the judge’s term of office is extended to the date immediately before the judge attains the age of 70 years.
- (3) When a specified judge attains the age of 70 years, the judge’s term of office may be further extended under section 11A(3)(b) for a specified period or periods not exceeding 5 years in the aggregate, as if the judge’s term of office had not previously been extended.”.

Part 3**Amendments to District Court Ordinance****6. Section 11A amended (term of office of District Judges)**

- (1) Section 11A(1), English text—

Repeal

“shall”

Substitute

“must”.

- (2) Section 11A(1), English text—

Repeal

“retiring”

Substitute

“retirement”.

- (3) Section 11A(1), Chinese text—

Repeal

“到達”

Substitute

“年屆”.

- (4) Section 11A(2), English text—

Repeal

“retiring” (wherever appearing)

Substitute

“retirement”.

- (5) Section 11A(2), Chinese text—

Repeal

everything after “某法官”

Substitute

“已屆退休年齡，但如在其未屆退休年齡時，已有法律程序在其席前展開，則該法官可於已屆退休年齡後，在情況所需的期間內繼續留任，以使該法官能就該等法律程序宣告判決或作出任何其他事情。”

- (6) After section 11A(2)—

Add

“(2A) Subsection (3) applies to a judge—

- (a) who is subject to the retirement age (extension) arrangement under section 5A of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401); or
- (b) who, pursuant to the Circular, has opted for the retirement age (extension) arrangement.”.

- (7) Section 11A(3)—

Repeal

“who was appointed to be such judge before 1 January 1987”.

- (8) Section 11A(3)—

Repeal

“Judicial Service Commission”

Substitute

“Judicial Officers Recommendation Commission”.

- (9) Section 11A(3), English text—

Repeal

“shall accordingly”

Substitute

“is accordingly to”.

- (10) Section 11A(3), English text—

Repeal

“retiring”

Substitute

“retirement”.

- (11) Section 11A(3), Chinese text—

Repeal

“到達”

Substitute

“屆”.

- (12) Section 11A—

Repeal subsection (5)

Substitute

“(5) In this section—

Circular (《通告》) means a Circular issued by the Chief Justice on the details of the retirement age (extension) arrangement for judicial officers engaged on terms that do not attract pension benefits under the Pension Benefits (Judicial Officers) Ordinance (Cap. 401);

judge (法官) means a District Judge;

retirement age (退休年齡) means the age of 65 years;

retirement age (extension) arrangement (退休年齡(延展)安排) means the arrangements in relation to the extension of the ages of retirement and terms of office for judicial officers as provided by the amendments contained in the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance 2019 (of 2019).”.

Part 4

Amendments to Pension Benefits (Judicial Officers) Ordinance

7. Section 2 amended (interpretation)

- (1) Section 2(1), before the definition of *additional pension*—

Add

“2019 Ordinance (《2019 年條例》) means the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance 2019 (of 2019);”.

- (2) Section 2(1)—

Add in alphabetical order

“Cap. 4 (《第 4 章》) means the High Court Ordinance (Cap. 4);

Cap. 336 (《第 336 章》) means the District Court Ordinance (Cap. 336);

Cap. 484 (《第 484 章》) means the Hong Kong Court of Final Appeal Ordinance (Cap. 484);

High Court Judge (高等法院法官) means a judge of the High Court but does not include—

- (a) a judge appointed under section 8 of Cap. 4; or
- (b) a recorder or a deputy judge of the Court of First Instance appointed under section 6A or 10, as the case may be, of Cap. 4;

non-pensionable terms (不可享有退休金的條款) means the terms of appointment to service under the Government that do not attract pension benefits under this Ordinance;

pensionable terms (可享有退休金的條款) means the terms of appointment to service under the Government that attract pension benefits under this Ordinance;

permanent judge (常任法官) has the meaning given by section 2(1) of Cap. 484;

retirement age (extension) arrangement (退休年齡(延展)安排) means the arrangements in relation to the extension of the ages of retirement and terms of office for officers as provided by the amendments contained in the 2019 Ordinance;”.

8. Section 3 amended (application)

- (1) Section 3(1)(a), English text—

Repeal

“who is”.

- (2) Section 3(1)(a), after “1 July 1987”—

Add

“on pensionable terms”.

- (3) Section 3(1)(a)—

Repeal

“, on terms which attract pension benefits under this Ordinance”.

- (4) Section 3(2), English text—

Repeal

“shall”

Substitute

“must”.

- (5) Section 3(2), English text—

Repeal

“in respect of”

Substitute

“for”.

9. Section 5A added

After section 5—

Add

“5A. Officers subject to retirement age (extension) arrangement

- (1) An officer is subject to the retirement age (extension) arrangement if—
- (a) the officer has opted for that arrangement by delivering a notice in accordance with section 11B;
 - (b) subject to subsection (2), the officer is first appointed on pensionable terms on or after the commencement date of the 2019 Ordinance (*commencement date*); or
 - (c) the officer is re-appointed on pensionable terms on or after the commencement date following a break in service with the Judiciary.
- (2) An officer first appointed on pensionable terms on or after the commencement date is not subject to the retirement age (extension) arrangement if—
- (a) the officer was the Chief Justice, a permanent judge, a High Court Judge or a District Judge as at the commencement date;

- (b) immediately before the officer’s appointment on pensionable terms (*pensionable appointment*), the officer was engaged on non-pensionable terms; and
- (c) the officer, while engaged on non-pensionable terms, could have opted for the retirement age (extension) arrangement pursuant to the Circular in relation to the officer’s pensionable appointment, and has not so opted.

- (3) An officer subject to the retirement age (extension) arrangement under subsection (1) remains subject to that arrangement throughout the officer’s continuous service with the Judiciary, regardless of any change in the judicial office held by the officer during the service.

- (4) In this section—

Circular (《通告》) means a Circular issued by the Chief Justice on the details of the retirement age (extension) arrangement for officers engaged on non-pensionable terms.”.

10. Section 6 amended (normal retirement age)

- (1) Section 6(1), English text—

Repeal

“of—”

Substitute

“is—”.

- (2) Section 6(1)(a)—

Repeal

“the Chief Justice or a permanent judge of the Court of Final Appeal is when he attains the age of 65 years”

Substitute

“for the Chief Justice or a permanent judge—the retirement age as defined in section 13A of Cap. 484”.

- (3) Section 6(1)(a)—

Repeal

“the Hong Kong Court of Final Appeal Ordinance (Cap. 484)”

Substitute

“Cap. 484”.

- (4) Section 6(1)(a), English text—

Repeal

“shall be”

Substitute

“is to be”.

- (5) Section 6(1)—

Repeal paragraph (aa)

Substitute

“(aa) for a High Court Judge—the retirement age as defined in section 11A of Cap. 4;

(ab) for a District Judge—the retirement age as defined in section 11A of Cap. 336;”.

- (6) Section 6(1)(b), English text, before “the Registrar”—

Add

“for”.

- (7) Section 6(1)(b)—

Repeal

“is when he attains the age of 65 years; or”

Substitute

“—the age of 65 years;”.

- (8) After section 6(1)(b)—

Add

“(ba) for a special magistrate—the age of 60 years; or”.

- (9) Section 6(1)—

Repeal paragraph (c)

Substitute

“(c) for an officer not referred to in the preceding paragraphs—

(i) if subject to the retirement age (extension) arrangement—the age of 65 years;

(ii) otherwise—the age of 60 years.”.

- (10) Section 6(2)—

Repeal

“or (aa), shall”

Substitute

“, (aa) or (ab), must”.

- (11) Section 6(3)—

Repeal

“or (aa)”

Substitute

“, (aa) or (ab)”.

- (12) Section 6(4)—

Repeal

“or (aa)”

Substitute

“, (aa) or (ab)”.

(13) Section 6(4)—

Repeal

everything after “enable”

Substitute

“the officer to deliver judgement or to do any other thing in relation to proceedings that were commenced before the officer before—

- (a) the officer’s normal retirement age; or
- (b) the end of the continued service approved under subsection (3) or provided for in section 6A.”.

(14) Section 6(5)—

Repeal

everything after “service under”

Substitute

“—

- (a) subsection (3) or (4) or section 6A;
 - (b) section 11A(2) or (3)(b) or 11B of Cap. 4;
 - (c) section 11A(2) or (3) of Cap. 336; or
 - (d) section 14(2) or 14A of Cap. 484,
- the continued service is to be regarded as pensionable service.”.

(15) Section 6(5), Chinese text—

Repeal

“凡人員”

Substitute

“凡某人員”.

(16) Section 6—

Repeal subsection (6).**11. Section 6A added**

After section 6—

Add**“6A. Transitional provisions relating to retirement age (extension) arrangement for certain officers****(1) In this section—**

specified officer (指明人員) means an officer referred to in section 6(1)(c)—

- (a) whose service was approved for continuation under section 6(3) before the commencement date of the 2019 Ordinance; and
- (b) who has opted for the retirement age (extension) arrangement in accordance with section 11B.

(2) If, but for this section, the approved continued service of a specified officer would have ended before the officer attains the age of 65 years, the officer’s approved continued service is extended to the date immediately before the officer attains the age of 65 years.

(3) When a specified officer attains the age of 65 years, the officer’s service may be further approved for continuation under section 6(3) for an aggregate of 5 years plus accrued leave, as if the officer’s service had not previously been approved for continuation.”.

12. Section 7 amended (circumstances in which pension may be granted)**(1) Section 7(1), English text—****Repeal**

“shall be granted in respect of”

Substitute

“is to be granted for”.

- (2) Section 7(1)(a)—

Repeal

everything after “completion of”

Substitute

“the specified period of qualifying service;”.

- (3) Section 7(1)(b)—

Repeal

“qualifying service of not less than the relevant period specified in paragraph (a)”

Substitute

“the specified period of qualifying service”.

- (4) Section 7(1)(b)(ii)—

Repeal

“age of 60 years”

Substitute

“specified age”.

- (5) After section 7(1)(b)—

Add

“(ba) subject to section 29(2), on the officer’s discretionary early retirement approved under section 12A and after completion of the specified period of qualifying service;”.

- (6) Section 7(1)(d), English text—

Repeal

“judge of the High Court or District Court”

Substitute

“High Court Judge or a District Judge”.

- (7) Section 7(1)(d), Chinese text—

Repeal

everything after “該人員”

Substitute

“已完成不少於 2 年的符合領取退休金利益資格的服務期後，在其職位被取消時退休；”.

- (8) Section 7(1)(da), English text—

Repeal

“of the Court of Final Appeal”.

- (9) Section 7(1)(da)—

Repeal

“the Hong Kong Court of Final Appeal Ordinance (Cap. 484)”

Substitute

“Cap. 484”.

- (10) Section 7(1)(da)—

Repeal

“qualifying service of not less than the relevant period as specified in paragraph (a)”

Substitute

“the specified period of qualifying service”.

- (11) Section 7(1)(e), English text—

Repeal

“judge of the High Court or District Court”

Substitute

“High Court Judge or a District Judge”.

- (12) Section 7(1)(e)—

Repeal

“qualifying service of not less than the relevant period specified in paragraph (a)”

Substitute

“the specified period of qualifying service”.

- (13) Section 7(1)(f), English text—

Repeal

“judge of the High Court or District Court”

Substitute

“High Court Judge or a District Judge”.

- (14) Section 7(1)(f)—

Repeal

“qualifying service of not less than the relevant period specified in paragraph (a)”

Substitute

“the specified period of qualifying service”.

- (15) Section 7(1)(g), English text—

Repeal

“judge of the High Court or District Court”

Substitute

“High Court Judge or a District Judge”.

- (16) Section 7(1)(g), Chinese text—

Repeal

everything after “該人員”

Substitute

“已完成不少於 2 年的符合領取退休金利益資格的服務期後，遭迫令退休而退休，而該迫令退休是為便利改善司法機構的組織，藉以提高工作效率或更符合經濟效益者；”.

- (17) Section 7(1)(i)—

Repeal

“qualifying service of not less than the relevant period specified in paragraph (a)”

Substitute

“the specified period of qualifying service”.

- (18) Section 7(2) and (3), English text—

Repeal

“shall”

Substitute

“is to”.

- (19) After section 7(3)—

Add

“(4) In this section—

specified age (指明年齡) means—

- (a) for the Chief Justice, a permanent judge or a High Court Judge—
 - (i) if subject to the retirement age (extension) arrangement—the age of 65 years;
 - (ii) otherwise—the age of 60 years; and
- (b) for any other officer—the age of 60 years;

specified period (指明期間) means—

- (a) for an officer appointed before the age of 50 years—a period of not less than 10 years; or
- (b) for an officer appointed on or after the age of 50 years—a period of not less than 5 years.”.

13. Section 8 amended (time of pension payments)

- (1) Section 8(1)(a)(ii)—

Repeal

“age of 60 years”

Substitute

“specified age”.

- (2) Section 8(2), English text—

Repeal

“shall”

Substitute

“is to”.

- (3) After section 8(2)—

Add

“(3) In this section—

specified age (指明年齡) means—

- (a) for the Chief Justice, a permanent judge or a High Court Judge—
 - (i) if subject to the retirement age (extension) arrangement—the age of 65 years;
 - (ii) otherwise—the age of 60 years; and
- (b) for any other officer—the age of 60 years.”.

14. Section 9 heading amended (application regarding previous pensionable service)

Section 9, heading—

Repeal

“previous pensionable service”

Substitute

“service attracting pension under Pensions Ordinance”.

15. Section 10 heading amended (option of person already retired)

Section 10, heading, after “retired”—

Add

“regarding service attracting pension under Pensions Ordinance”.

16. Section 11 heading amended (deemed application/option)

Section 11, heading, after “option”—

Add

“regarding service attracting pension under Pensions Ordinance”.

17. Sections 11A, 11B and 11C added

After section 11—

Add

“11A. Specified officers may opt for retirement age (extension) arrangement

- (1) A specified officer may opt for the retirement age (extension) arrangement if—

- (a) the officer was appointed on pensionable terms before the commencement date of the 2019 Ordinance (*commencement date*); and
- (b) on the commencement date—
 - (i) the officer has not yet attained the normal retirement age under section 6 as in force immediately before that date; or
 - (ii) the officer's existing term of office has not yet expired.

(2) In this section—

specified officer (指明人員) means—

- (a) the Chief Justice or a permanent judge (other than one appointed under section 14(2)(b) of Cap. 484);
- (b) a High Court Judge (other than one appointed under section 11A(3)(a) of Cap. 4);
- (c) a District Judge; or
- (d) an officer other than the Chief Justice, a permanent judge, a High Court Judge, a District Judge or a special magistrate.

11B. Notice for opting for retirement age (extension) arrangement

- (1) An officer may opt for the retirement age (extension) arrangement by delivering a written notice in the specified form to the Judiciary Administrator.
- (2) The officer is subject to the retirement age (extension) arrangement only when the notice is delivered to the Judiciary Administrator before the earliest of the following times—

- (a) the expiry of 2 years from the commencement date of the 2019 Ordinance (*commencement date*);
- (b) the officer attaining the normal retirement age under section 6 as in force immediately before the commencement date;
- (c) if the officer's term of office is extended under section 14(2)(a) of Cap. 484 or section 11A(3)(b) of Cap. 4—the expiration of the officer's extended term of service;
- (d) if the officer's service is approved for continuation under section 6(3)—the end of the officer's continued service;
- (e) if the officer has submitted a notice for resignation or retirement—the effective date of resignation or retirement specified in the notice.

(3) Once delivered, the notice is irrevocable.

11C. Circular on retirement age (extension) arrangement

The Chief Justice may issue a Circular providing details of the retirement age (extension) arrangement.”.

18. Sections 12A and 12B added

After section 12—

Add

“12A. Discretionary early retirement

- (1) The Chief Justice, a permanent judge or a High Court Judge who is subject to the retirement age (extension) arrangement may, at any time, apply to retire during the period—

- (a) beginning on the date when the judge attains the age of 60 years; and
- (b) ending on the date immediately before the judge attains the age of 65 years.
- (2) An application under subsection (1) must be made—
 - (a) for an application by the Chief Justice—to the Chief Executive; or
 - (b) for an application by a permanent judge or a High Court Judge—to the Chief Justice.
- (3) The Chief Executive or the Chief Justice, as the case may be, may approve an application under subsection (1) in exceptional circumstances.

12B. Delegation by Chief Justice in relation to application under section 12A

- (1) If the Chief Justice considers that there is a conflict of interest in relation to the Chief Justice exercising the power to approve an application under section 12A, the Chief Justice must delegate the power to—
 - (a) firstly, among the permanent judges who are eligible to be appointed as the Chief Justice and are not subject to any conflict of interest, the most senior judge;
 - (b) secondly, if there is no judge to whom the power may be delegated under paragraph (a)—among the permanent judges who are not eligible to be appointed as the Chief Justice and are not subject to any conflict of interest, the most senior judge; and
 - (c) thirdly, if there is no judge to whom the power may be delegated under paragraph (b)—any other

officer who is considered suitable by the Chief Justice and is not subject to any conflict of interest.

- (2) The seniority of a permanent judge is to be determined in accordance with the order of precedence prescribed in section 11(b) of Cap. 484 with the judge having the highest precedence being regarded as the most senior judge.

- (3) In this section—

conflict of interest (利益衝突) means an actual or apparent conflict of interest.”.

19. Section 29 amended (power not to grant, or to cancel or reduce, pension)

Section 29(2)—

Repeal

“(k) or (j)”

Substitute

“(ba), (j) or (k)”.

Part 5

Amendments to Hong Kong Court of Final Appeal Ordinance

20. Section 13A added

After section 13—

Add

“13A. Meaning of *retirement age* etc.

(1) In sections 14 and 15—

retirement age (退休年齡), for the Chief Justice or a permanent judge, means—

- (a) unless paragraph (b) applies—the age of 70 years;
- (b) if the Chief Justice or the permanent judge could have opted for the retirement age (extension) arrangement pursuant to section 11A of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) or the Circular, and has not so opted—the age of 65 years.

(2) In this section and section 14A—

Circular (《通告》) means a Circular issued by the Chief Justice on the details of the retirement age (extension) arrangement for judicial officers engaged on terms that do not attract pension benefits under the Pension Benefits (Judicial Officers) Ordinance (Cap. 401);

retirement age (extension) arrangement (退休年齡(延展)安排) means the arrangements in relation to the extension of the ages of retirement and terms of office for judicial officers as provided by the amendments contained in the

Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance 2019 (of 2019).”.

21. Section 14 amended (tenure of office)

(1) Section 14, English text, heading—

Repeal

“Tenure”

Substitute

“Term”.

(2) Section 14(1), English text—

Repeal

“shall”

Substitute

“must”.

(3) Section 14(1), English text—

Repeal

“retiring”

Substitute

“retirement”.

(4) Section 14(1), Chinese text—

Repeal

“到達”

Substitute

“年屆”.

(5) Section 14(2)(a), English text—

Repeal

“shall accordingly”

Substitute

“is accordingly to”.

- (6) Section 14(2)(a), English text—

Repeal

“retiring”

Substitute

“retirement”.

- (7) Section 14(2)(a), Chinese text—

Repeal

“達”

Substitute

“屆”.

- (8) Section 14(2)(b)—

Repeal

“65”

Substitute

“70”.

- (9) Section 14(3), English text—

Repeal

“shall be no retiring”

Substitute

“is no retirement”.

- (10) Section 14(4), English text—

Repeal

“shall”

Substitute

“is to”.

- (11) Section 14(6), English text—

Repeal

“shall”

Substitute

“must”.

- (12) Section 14(10), English text—

Repeal

“shall in any case”

Substitute

“in any case is to”.

- (13) Section 14—

Repeal subsection (11).**22. Section 14A added**

After section 14—

Add**“14A. Transitional provisions relating to retirement age (extension) arrangement**

- (1) In this section—

specified judge (指明法官) means the Chief Justice or a permanent judge—

- (a) whose term of office has been extended under section 14(2)(a) before the commencement date of the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance 2019 (of 2019) (
- commencement date*
-); and

- (b) who has opted for the retirement age (extension) arrangement pursuant to section 11A of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) or the Circular.
- (2) If, but for this section, the term of office of a specified judge, as extended before the commencement date, would have expired before the judge attains the age of 70 years, the judge's term of office is extended to the date immediately before the judge attains the age of 70 years.
- (3) A specified judge's term of office may be further extended under section 14(2)(a) for not more than 2 periods of 3 years, as if the judge's term of office had not previously been extended—
 - (a) if the judge's term of office is extended under subsection (2)—when the judge attains the age of 70 years; or
 - (b) if the judge's term of office, as extended before the commencement date, expires after the judge attains the age of 70 years—when the judge's extended term of office expires.”.

23. Section 15 amended (continuing powers of judges)

- (1) Section 15, English text—

Repeal

“retiring”

Substitute

“retirement”.

- (2) Section 15, Chinese text—

Repeal

“達” (wherever appearing)

Substitute

“屆”.

Explanatory Memorandum

The main objects of this Bill are—

- (a) to extend the normal retirement age for certain judicial officers;
 - (b) to provide for a mechanism under which certain judicial officers may opt for the arrangement relating to the extension of the ages of retirement and terms of office (*retirement age (extension) arrangement*);
 - (c) to correspondingly adjust the voluntary early retirement age for certain judicial officers as a result of the extension of the normal retirement age;
 - (d) to introduce a new discretionary early retirement arrangement for certain judicial officers; and
 - (e) to provide for transitional and related matters.
2. Part 1 sets out the short title.
3. Part 2 amends the High Court Ordinance (Cap. 4) (*Cap. 4*) to extend the retirement age for a judge of the High Court (*HCI*) from 65 to 70. Transitional arrangements are also provided for a HCI who is serving on extended term under section 11A(3)(b) of Cap. 4 and has opted for the retirement age (extension) arrangement.
4. Part 3 amends the District Court Ordinance (Cap. 336) to provide that for District Judges who are subject to the retirement age (extension) arrangement under section 5A of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) (*Cap. 401*) or have opted for the retirement age (extension) arrangement, their terms of office may be extended for a specified period or periods not exceeding 5 years in the aggregate.
5. Part 4 amends Cap. 401—

- (a) to set out the judicial officers subject to the retirement age (extension) arrangement in the new section 5A of Cap. 401 (see clause 9);
 - (b) to extend the normal retirement age for the Chief Justice (*CJ*), permanent judges (*PJ*) and HCJs from 65 to 70, and that for other officers (other than special magistrates) whose normal retirement age are 60, to 65 (see clause 10);
 - (c) to provide for transitional arrangements for specified judicial officers whose services are approved for continuation under section 6(3) of Cap. 401 and have opted for the retirement age (extension) arrangement (see clause 11);
 - (d) to include the “discretionary early retirement” in section 7 of Cap. 401 as one of the circumstances under which pension may be granted (see clause 12);
 - (e) to provide for a mechanism under which certain specified judicial officers may opt for the retirement age (extension) arrangement and for the issue by the Chief Justice of a Circular providing details of the arrangement (see new sections 11A to 11C of Cap. 401 added by clause 17);
 - (f) to introduce a discretionary early retirement arrangement for the CJ, PJs and HCJs (see new section 12A of Cap. 401 added by clause 18); and
 - (g) to include a delegation provision for the CJ to delegate the power to process an application for discretionary early retirement if the CJ considers that there is an actual or apparent conflict of interest (see new section 12B of Cap. 401 added by clause 18).
6. Part 5 amends the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (*Cap. 484*) to extend the retirement age for the CJ and

PJs from 65 to 70. Transitional arrangements are also provided for the CJ or PJs serving on extended term under section 14(2)(a) of Cap. 484 and have opted for the retirement age (extension) arrangement.

11A. Term of office of judges

- (1) A judge of the High Court shall vacate his office when he attains the retiring age.
- (2) Notwithstanding the fact that he has attained the retiring age, a person holding the office of a judge of the High Court may continue in office for so long after attaining the retiring age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.
- (3) Notwithstanding subsection (1)—
 - (a) a person may be appointed to be a judge of the High Court (whatever his age and whether or not he has previously held office as such) for a specified period or periods not exceeding 5 years in the aggregate by the Governor acting in accordance with the recommendation of the Judicial Service Commission; and
 - (b) the term of office of a judge of the High Court (other than a person appointed to be a judge under paragraph (a)) may be extended for a specified period or periods not exceeding 5 years in the aggregate by the Governor acting in accordance with the recommendation of the Judicial Service Commission,

and in any such case the judge shall accordingly be regarded as having attained the retiring age at the expiration of the specified period or periods.
- (4) A judge of the High Court may at any time resign his office by notice in writing addressed to the Governor.
- (5) In this section—

judge of the High Court (高等法院法官) means a judge of the High Court other than a judge appointed under section 8(1) or (2), a recorder and a deputy judge;

retiring age (退休年齡) means the age of 65 years.

(Added 26 of 1997 s. 3. Amended 25 of 1998 s. 2)

11A. Term of office of District Judges

- (1) A judge shall vacate his office when he attains the retiring age.
- (2) Notwithstanding the fact that he has attained the retiring age, a person holding the office of a judge may continue in office for so long after attaining the retiring age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.
- (3) Notwithstanding subsection (1), the term of office of a judge who was appointed to be such judge before 1 January 1987 may be extended for a specified period or periods not exceeding 5 years in the aggregate by the Chief Executive acting in accordance with the recommendation of the Judicial Service Commission, and in any such case the judge shall accordingly be regarded as having attained the retiring age at the expiration of the specified period or periods. (*Amended 25 of 1998 s. 2*)
- (4) A judge may at any time resign his office by notice in writing addressed to the Chief Executive. (*Amended 25 of 1998 s. 2*)
- (5) In this section—

judge (法官) means a District Judge;

retiring age (退休年齡) means—

- (a) in relation to a judge who was appointed to be such judge before 1 January 1987, the age of 60 years; and
- (b) in relation to a judge who was appointed to be such judge on or after 1 January 1987, the age of 65 years.

(*Added 26 of 1997 s. 4*)

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

additional pension (額外退休金) means an additional pension granted under section 15 or 17;

authorized increase (特准增加額) has the same meaning as in the Pensions (Increase) Ordinance (Cap. 305);

child (子女) in relation to an officer— (*Amended 28 of 2004 s. 35*)

(a) includes—

(i) an illegitimate child, a step-child and a child adopted by the officer; and

(ii) a child of the officer adopted by another person under an adopted order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that paragraph; and

(b) subject to paragraph (a)(ii), does not include a child of the officer adopted by another person; (*Replaced 3 of 1993 s. 61. Amended 28 of 2004 s. 35*)

commuted pension gratuity (經折算的退休酬金) means the commuted pension gratuity referred to in section 26(1);

compensation scheme (補償計劃) means a compensation scheme approved under section 13;

death gratuity (死亡恩恤金) means a death gratuity payable under section 21;

deferred pension (延付退休金) means a pension granted to an officer but the payment of which is deferred under section 8(1) (a);

dependant pension (受養人退休金) means a pension granted under section 20 to a dependant of a deceased officer;

designated officer (指定人員) means an officer appointed under section 32(1);

established office (設定職位) has the same meaning as in the Pension Benefits Ordinance (Cap. 99);

highest pensionable emoluments (最高可供計算退休的薪酬) means the highest annual pensionable emoluments determined

in accordance with the regulations;

non-established office (非設定職位) means an office in the public service which is not an established office;

normal retirement age (正常退休年齡) means the retirement age specified in section 6;

notional highest pensionable emoluments (理論上最高可供計算退休金的薪酬) means the highest pensionable emoluments enjoyed or drawn by an officer during his service which are deemed for the purposes of this Ordinance to be increased in value by the same percentage as the authorized increase since the date when he left the service up to the earlier date he attains his retirement age or the date of his death;

officer (人員) means an officer holding a judicial office as defined in the Public Service Commission Ordinance (Cap. 93);

other public service (其他公職、其他公職服務) means public service not under the Government;

pension (退休金) means any pension or deferred pension (other than an additional pension or a dependant pension) granted, payable or paid under this Ordinance;

pension benefits (退休金利益) means any pension, additional pension, dependant pension, death gratuity, commuted pension gratuity, short service gratuity or other benefits granted, payable or paid under this Ordinance;

pensionable emoluments (可供計算退休金的薪酬) means—

- (a) in respect of service of an officer under the Government, the emoluments specified in section 23(1)(a), (b), (c) or (d) and (2), and where provided includes pensionable emoluments enjoyed or drawn by him and his notional pensionable emoluments; and
- (b) in respect of an officer in other public service, the emoluments referred to in section 23(1)(e); (*Amended 4 of 1993 s. 29*)

pensionable emoluments enjoyed or drawn (享有或支取的可供計算退休金的薪酬) includes the pensionable emoluments that an officer on leave without salary would have enjoyed or drawn if he had been on duty on full pensionable emoluments;

pensionable service (可供計算退休金的服務期、可供計算退休金的服務) means service which may be taken into account in computing pension benefits;

pensioner (領取退休金的人) means a person to whom a pension has been granted, payable or paid;

personal allowance (個人津貼) means a special addition to a salary granted personally to the holder for the time being of an office if it is granted subject to the condition that it shall be taken into account in computing pension;

public service (公職、公職服務) and ***service*** (任職、服務、服務期) mean—

- (a) with respect to an officer appointed on or after the date on which Schedule 4 to the Adaptation of Laws (No. 10) Ordinance 1999 (26 of 1999) comes into operation—
 - (i) service in a civil capacity under the Government;
 - (ii) any other service that the Chief Executive has determined to be public service for the purposes of this Ordinance; (*Replaced 26 of 1999 s. 3*)
- (b) with respect to an officer appointed before the date on which Schedule 4 to the Adaptation of Laws (No. 10) Ordinance 1999 (26 of 1999) comes into operation—
 - (i) service in a civil capacity under the Government or under the government of any country or territory in the Commonwealth;
 - (ii) service in a civil capacity under the East Africa High Commission, the East African Common Services Organization, the East African Posts and Telecommunications Administration, the East African Railways and Harbours Administration, the East African Community, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation, the East African Railways Corporation or any of their successor authorities;
 - (iii) service which was, before the date on which Schedule 4 to the Adaptation of Laws (No. 10) Ordinance 1999 (26 of 1999) comes into operation, pensionable—
 - (A) under the Oversea Superannuation Scheme of the United Kingdom;
 - (B) under any Acts of the United Kingdom relating to the superannuation of teachers in the United Kingdom;
 - (C) under a local authority in the United Kingdom; or
 - (D) under the National Health Service of the United Kingdom;

- (iv) any other service that the Chief Executive has determined to be public service for the purposes of this Ordinance;
- (v) except for the purposes of computation of a pension or gratuity and of section 22, service in respect of which a pension could, before the date on which Schedule 4 to the Adaptation of Laws (No. 10) Ordinance 1999 (26 of 1999) comes into operation, have been granted under the Governors' Pensions Act 1957 of the United Kingdom (1957 c. 62 U.K.) or the Governors' Pensions Scheme 1979 or any Act of the United Kingdom or Scheme amending or replacing that Act or Scheme;
- (vi) service as the holder of the office of President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for Eastern Africa or the Court of Appeal for East Africa;
- (vii) service in a civil capacity in the service of the Interim Commission for the West Indies;
- (viii) pensionable service with the British Telecommunication and the Post Office, United Kingdom of Great Britain and Northern Ireland;
(Replaced 26 of 1999 s. 3)

(c)-(h) (Repealed 26 of 1999 s. 3)

qualifying service (符合領取退休金利益資格的服務期) means the period of service calculated as qualifying service in accordance with the regulations;

reduced pension (經扣減的退休金) means the reduced pension referred to in section 26(1);

retirement (退休) means retirement from the public service;

salary (薪金) means the substantive salary attached to any established or non-established office in the service;

short service gratuity (短期服務酬金) means a short service gratuity granted to an officer under section 36;

spouse (配偶) means the person to whom an officer is, by reason of the form of marriage contracted, lawfully married;

the regulations (規例) means regulations made under this Ordinance;

wife (妻子), in relation to an officer, means—

- (a) the lawful wife of the officer married to him by a Christian marriage or its civil equivalent;

- (b) where there is no such wife and the officer is Chinese the kit fat or tin fong wife; or
 - (c) where there is no wife under paragraph (a) or (b) and polygamy lawfully subsists, the principal wife recognized as such by the personal law of the officer,
- and **widow** (遺孀) shall be construed accordingly.

(Amended E.R. 5 of 2018)

- (2) For the avoidance of doubt it is hereby declared that, where a person has been confirmed in an established office and is afterward appointed to another established office, then, unless the terms of the appointment otherwise require, the last mentioned office is, for the purposes of this Ordinance, an office in which he has been confirmed.

3. Application

- (1) Subject to an exemption under section 37, this Ordinance only applies to—
 - (a) an officer who is appointed or re-appointed to service under the Government on or after 1 July 1987, whether on transfer from other public service or otherwise, on terms which attract pension benefits under this Ordinance;
 - (b) an officer whose application under section 9 is approved;
 - (c) a person who has exercised an option under section 10; and
 - (d) an officer or person who, under section 11, is deemed to have applied under section 9 or exercised an option under section 10.
- (2) A person shall not derive any pension, gratuity or other allowance under the Pensions Ordinance (Cap. 89) and pension benefits under the Pension Benefits Ordinance (Cap. 99) and this Ordinance in respect of the same period of service.

6. Normal retirement age

- (1) The normal retirement age of—

- (a) the Chief Justice or a permanent judge of the Court of Final Appeal is when he attains the age of 65 years unless he is appointed under section 14(2)(b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) in which case his age at the expiration of his term of 3 years shall be regarded as the normal retirement age; (*Added 79 of 1995 s. 50. Amended 10 of 2005 s. 182*)
 - (aa) a judge of the High Court or a District Judge is the retiring age specified in section 11A of the High Court Ordinance (Cap. 4) or section 11A of the District Court Ordinance (Cap. 336), as the case may be; (*Replaced 26 of 1997 s. 5*)
 - (b) the Registrar of the High Court or a Senior Deputy Registrar or Deputy Registrar of the High Court is when he attains the age of 65 years; or (*Amended 10 of 2005 s. 182*)
 - (c) an officer not referred to in paragraph (a) or (b) is when he attains the age of 60 years.
- (2) Subject to subsections (3) and (4), an officer, other than one referred to in subsection (1)(a) or (aa), shall not continue in service after his normal retirement age.
 - (3) The Chief Executive may approve the continued service of an officer, other than one referred to in subsection (1)(a) or (aa), for an aggregate of 5 years plus accrued leave after he attains his normal retirement age. (*Amended 26 of 1999 s. 3*)
 - (4) An officer, other than one referred to in subsection (1)(a) or (aa), may continue in office for as long as necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before his normal retirement age or before the end of continued service approved under subsection (3) or before the expiration of any extension granted under section 14(1)(a) or (b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). (*Amended 26 of 1997 s. 5*)
 - (5) Where, after his normal retirement age, an officer continues in service under subsection (3) or (4) or under section 11A(2) or (3)(b) of the High Court Ordinance (Cap. 4) or section 11A(2) or (3) of the District Court Ordinance (Cap. 336) or under section 14(2)(a) or (b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the continued service shall be considered pensionable service. (*Amended 26 of 1997 s. 5*)

- (6) In this section, ***judge of the High Court*** (高等法院法官) means a judge of the High Court other than a judge appointed under section 8(1) or (2) of the High Court Ordinance (Cap. 4) or a recorder or a deputy judge of the Court of First Instance appointed under section 6A or 10(1), as the case may be, of that Ordinance. (*Added 26 of 1997 s. 5*)

(Amended 79 of 1995 s. 50; 25 of 1998 s. 2)

7. Circumstances in which pension may be granted

- (1) Except as provided in this Ordinance, a pension shall be granted in respect of an officer's pensionable service—
- (a) subject to section 29(2), on his retirement on or after attaining his normal retirement age, and after completion of qualifying service of not less than—
 - (i) 10 years in the case of an officer appointed before his attaining the age of 50 years; and
 - (ii) 5 years in the case of an officer appointed on or after his attaining the age of 50 years;
 - (b) subject to section 29(2), on his voluntary early retirement after completion of qualifying service of not less than the relevant period specified in paragraph (a)— (*Amended 4 of 1993 s. 30*)
 - (i) in the case of an officer appointed before 1 July 1987, on or after his attaining the age of 55 years; and
 - (ii) in the case of an officer appointed on or after 1 July 1987, on or after his attaining the age of 60 years;
 - (c) in a case where he is transferred to other public service—
 - (i) on his retirement on or after attaining the age at which he is permitted by the law or regulations of the service in which he was last employed to retire on pension; or
 - (ii) on his retirement in any other circumstances in which he is permitted by the law or regulations of the service in which he was last employed to retire on pension or gratuity, but this subparagraph does not apply in the case of a female judicial officer who retires because she has or is about to be married;

- (d) for an officer other than a judge of the High Court or District Court, on his retirement on the abolition of his office, and after completion of qualifying service of not less than 2 years; (*Amended 25 of 1998 s. 2*)
- (da) in the case of the Chief Justice or a permanent judge of the Court of Final Appeal, on retirement after removal from office under section 14 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), whether or not he has completed qualifying service of not less than the relevant period as specified in paragraph (a); (*Added 79 of 1995 s. 50*)
- (e) in the case of a judge of the High Court or District Court, on retirement after removal from office under Article 89 of the Basic Law, whether or not he has completed qualifying service of not less than the relevant period specified in paragraph (a); (*Amended 25 of 1998 s. 2*)
- (f) in the case of an officer other than a judge of the High Court or District Court and subject to section 31(1)(a), on his compulsory retirement in exercise of disciplinary powers of punishment by the Chief Executive, whether or not he has completed qualifying service of not less than the relevant period specified in paragraph (a); (*Amended 45 of 1993 s. 12; 25 of 1998 s. 2*)
- (g) for an officer other than a judge of the High Court or District Court, on his compulsory retirement for the purpose of facilitating improvement in the organization of the judiciary, by which greater efficiency or economy may be effected, and after completion of qualifying service of not less than 2 years; (*Amended 25 of 1998 s. 2*)
- (h) on his retirement on medical evidence that satisfies the Chief Executive that the officer is incapable by reason of an infirmity of mind or body of discharging the duties of his office and that the infirmity is likely to be permanent;
- (i) on his retirement in accordance with a compensation scheme, whether or not he has completed qualifying service of not less than the relevant period specified in paragraph (a);
- (j) subject to section 29(2), on his resignation from the judiciary, with the approval of the Chief Justice, after completion of qualifying service of not less than 10 years; or

(k) subject to section 29(2), on his retirement on or after attaining the maximum pension specified in section 22.
(Amended 4 of 1993 s. 30)

(2) Unless otherwise directed by the Chief Executive, a pension granted to an officer to whom subsection (1)(da), (e), (f) or (j) applies shall be a deferred pension. (Amended 79 of 1995 s. 50)

(3) Retirement under subsection (1)(a), (b) or (k), or resignation under subsection (1)(j), shall take place after the officer has served a period of service, which may be specified by the Chief Justice, after the officer has notified the Chief Justice of his intention to retire or resign.

(Amended 26 of 1999 s. 3)

8. Time of pension payments

(1) Subject to section 28, commencement of pension payments to an officer shall—

(a) in case he is an officer to whom section 7(1)(da), (e), (f) or (j) applies— (Amended 79 of 1995 s. 50)

(i) where he is an officer appointed before 1 July 1987, be deferred until he attains the age of 55 years; or

(ii) where he is an officer appointed on or after 1 July 1987, be deferred until he attains the age of 60 years,

or, where the Chief Executive so directs, be deferred until a date earlier than referred to in subparagraph (i) or (ii), as specified in the direction; (Amended 26 of 1999 s. 3)

(b) where the pension is granted under a compensation scheme, be on the retirement of the officer under section 7(1)(i) as prescribed in the compensation scheme; and

(c) in any other case, be as soon as possible after the retirement of the officer.

(2) A pension shall be paid in monthly instalments, or less frequently if so requested by the recipient. (Amended 4 of 1993 s. 31)

9. Application regarding previous pensionable service

(1) In subsections (2) to (9), **officer** (人員) means an officer who is subject to the Pensions Ordinance (Cap. 89).

- (2) An officer may apply to the Chief Justice under a Circular to be issued under this section by the Chief Justice, to have all of his service attracting pension under the Pensions Ordinance (Cap. 89) to be taken into account as pensionable service under this Ordinance.
- (3) Within 3 months after receiving an application under subsection (2), the Chief Justice may, having regard to the circumstances of the particular case, reject the application if he considers that approval of the application would prejudice the interests of the judicial service.
- (4) Unless rejected by the Chief Justice under subsection (3), an application under subsection (2) shall be deemed to be approved.
- (5) Where the Chief Justice rejects an application he shall inform the officer in writing of the rejection and the reasons for it.
- (6) An officer whose application is rejected may, within 30 days after the notification to him of the rejection, or a longer period that the Chief Executive may permit, petition the Chief Executive against the rejection and the Chief Executive may either confirm the rejection or approve the application.
(Amended 26 of 1999 s. 3)
- (7) An officer in respect of whom 90% only of his substantive salary is taken as a pensionable emolument under the Pensions Ordinance (Cap. 89) may apply, at the same time as he applies under subsection (2) under the Circular referred to in subsection (2), that 100% of his substantive salary shall be taken into account as a pensionable emolument under this Ordinance.
- (8) An application under subsection (7) shall be deemed to be approved if the application under subsection (2) is approved and shall be deemed to be rejected if the application under subsection (2) is rejected.
- (9) An application approved under this section is irrevocable.
- (10) A person who, before becoming an officer on transfer from the public service, was subject to the Pension Benefits Ordinance (Cap. 99) shall have all of his service attracting pension under that Ordinance taken into account as pensionable service under this Ordinance.

10. Option of person already retired

- (1) A person who was an officer immediately before his retirement on or after 1 July 1987 under the Pensions Ordinance (Cap. 89) may at his option, to be exercised under a Circular to be issued under this section by the Chief Justice, require that all of his service attracting pension under that Ordinance shall be taken into account as pensionable service under this Ordinance.
- (2) A person who exercises an option under this section shall be deemed to have retired under this Ordinance.
- (3) An option exercised under this section is irrevocable.

11. Deemed application/option

- (1) An officer who was eligible to apply under section 9(2) but who died on or after 1 July 1987 and before the expiry of the period within which he may have applied under the Circular, shall be deemed to have so applied and his application shall be deemed to be approved.
- (2) A person who was eligible to exercise an option under section 10 but who died on or after 1 July 1987 and before the expiry of the period within which he could have exercised it under the Circular, shall be deemed to have exercised that option if the beneficiary of the pension agrees.

29. Power not to grant, or to cancel or reduce, pension

- (1) After taking into consideration the advice of the Judicial Officers Recommendation Commission, and subject to section 32, a designated officer may— (*Amended 79 of 1995 s. 50*)
 - (a) refuse to grant a pension to an officer if it is shown to the designated officer that the officer wilfully suppressed facts that are material to the grant of a pension; or
 - (b) cancel or reduce a pension granted to an officer if it is shown to the designated officer that the pension was obtained by the wilful suppression by the officer of facts, or that it was granted in ignorance of facts, which were such that had they been known before the retirement of the officer the pension would not have been granted in full or in part.
- (2) After taking into consideration the advice of the Judicial Officers Recommendation Commission and subject to section 32, a designated officer may— (*Amended 79 of 1995 s. 50*)
 - (a) refuse to grant a pension; or
 - (b) cancel or reduce a pension granted,

to an officer to whom section 7(1)(a), (b), (k) or (j) applies, if it is shown to the designated officer that—

- (i) the officer retired during any disciplinary proceedings brought against him, or resigned from the service to avoid disciplinary proceedings; and
 - (ii) had the proceedings been completed or taken place they would in the opinion of the Judicial Officers Recommendation Commission have led to the dismissal of the officer from the service or compulsory retirement in the exercise of disciplinary powers of punishment with a reduction of the pension benefits granted to him.
(Amended 79 of 1995 s. 50)
- (3) A cancellation or reduction of pension under subsection (1)(b) or (2)(b) shall be effective as from a date the designated officer shall determine, and in the case of a reduction of pension the reduction shall be by an amount, not exceeding 25% of the pension, as the designated officer shall determine.
- (4) Where a designated officer refuses to grant a pension to a person or officer, a pension shall not be granted to the person or officer.

14. Tenure of office

- (1) The Chief Justice and permanent judges shall vacate their offices when they attain the retiring age.
- (2) Notwithstanding subsection (1)—
 - (a) subject to paragraph (b) the terms of office of the Chief Justice and of permanent judges may be extended for not more than 2 periods of 3 years by the Chief Executive acting, in the case of the Chief Justice, in accordance with the recommendation of the Judicial Officers Recommendation Commission and, in the case of permanent judges, in accordance with the recommendation of the Chief Justice and in any such case the Chief Justice or permanent judge, as the case may be, shall accordingly be regarded as having attained the retiring age at the expiration of that extended period;
(Amended 10 of 2005 s. 156)
 - (b) a person who has attained the age of 65 years may be appointed to be the Chief Justice or to be a permanent judge for a term of 3 years and that term may be extended for one period of 3 years by the Chief Executive acting, in the case of the Chief Justice, in accordance with the recommendation of the Judicial Officers Recommendation Commission and, in the case of a permanent judge, in accordance with the recommendation of the Chief Justice. *(Amended 10 of 2005 s. 156)*
 - (c) *(Repealed 10 of 2005 s. 156)*
- (3) There shall be no retiring age for a non-permanent judge.
- (4) A non-permanent judge shall hold office for a term of 3 years but that term may be extended for one or more periods of 3 years by the Chief Executive acting in accordance with the recommendation of the Chief Justice.
- (5) A judge may at any time resign his office by notice in writing addressed to the Chief Executive.

- (6) A judge may be removed from office only for inability to discharge his duties (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (7), (8) or (9).
- (7) The Chief Justice may be removed only by the Chief Executive, on the recommendation of a tribunal of judges appointed by the Chief Executive and consisting of not fewer than 5 members each one of whom is either a permanent judge or a non-permanent Hong Kong judge.
- (8) A permanent or non-permanent judge may be removed only by the Chief Executive, on the recommendation of a tribunal of judges appointed by the Chief Justice and consisting of not fewer than 3 members each one of whom is either a permanent judge or a non-permanent Hong Kong judge.
- (9) If the question of removing a judge from office is being investigated by a tribunal the Chief Executive may suspend the judge from performing the functions of his office.
- (10) Any such suspension may at any time be revoked by the Chief Executive and shall in any case cease to have effect if the tribunal recommends that the judge ought not to be removed from office.
- (11) In this section and section 15 *retiring age* (退休年齡) means the age of 65 years.

(Amended 120 of 1997 s. 4)

15. Continuing powers of judges

Notwithstanding the fact that he has attained the retiring age or that his term of office has for any reason expired, a judge may continue to sit as and perform all the functions of a member of the Court for as long as may be necessary to enable the Court to deliver judgment or do any other thing in relation to proceedings that were commenced, before he attained that age or before his term of office expired, in the Court of which he was then sitting as a member.