

Appendix

Legal considerations, in particular Article 100 of the Basic Law

In taking forward the allowance review, the Government will abide by the principles of lawfulness, reasonableness and fairness. As advised by the Department of Justice, the conditions of service of civil servants (those serving in the Government immediately before 1 July 1997 included) may be varied, though not without limits, under the Basic Law (including Article 100) and the Government's contractual arrangement with civil servants.

2. It should be noted that the Memorandum on Conditions of Service (MOCS) issued to all civil servants, including those serving in the Government immediately before 1 July 1997, on appointment includes a standard variation clause, whereby the Government reserves the right to alter any of the officer's terms of appointment and/or conditions of service should the Government consider that to be necessary. Thus, in considering the expression "no less favourable than before" in Article 100 of the Basic Law, it is necessary to consider all the terms of employment before 1 July 1997, including the unilateral variation clause contained in the MOCS.

3. Taking account of the relevant Basic Law provisions and contractual provisions, the policy objective of the proposed change measures to control government expenditure on civil service remuneration and to keep the civil service management system in line with present day circumstances, the scope of the proposals and the likely impact on the concerned officers, the Department of Justice has advised that the change proposals set out in the consultation note are lawful and that the Administration may vary existing terms and conditions of service after consulting staff and giving proper consideration to any representations received.

"Fringe benefit" type of allowances

4. Some colleagues have commented that by describing the allowances under review as fringe benefits, the Government is ignoring the fact that these form part of the conditions of service of the concerned officers. We wish to clarify that the Government is not seeking to change the nature of various allowances provided to individual officers as conditions of service or discretionary benefits, as the case may be, through the current review. For example, there is no dispute that sea passage is a condition of service for eligible officers, and likewise leave passage allowance and some other allowances. The term "fringe benefits" is used to describe those allowances

under review, the payment of which is generally subject to criteria based on individual officers' terms of appointment, rank, salary point and other eligibility rules. It is noted that the term "fringe benefits" also appears in various versions of the Memorandum on Conditions of Service that form part of the contractual arrangement between the Government and civil servants. Such allowances can be distinguished from other allowances the payment of which is generally conditional on job requirements (e.g. various job-related allowances and those allowances which are related to the performance of duties such as shift duty allowance, overtime allowance, etc.).

Rationale in proposing a 15% reduction in the rates of the leave passage allowance (LPA)

5. The proposed reduction in the LPA rates takes account of the enhanced flexibility in the use of the allowance when the allowance turns fully non-accountable. We note that when we started to allow eligible officers to use their LPA for travel-related expenses outside Hong Kong instead of leave air passages only from 1 July 1992, we had retained the then prevailing LPA rates which were pegged to the contract fares under the Air Passage Agreement concluded between the Government and two airline companies or published air fares as the case might be. Now that we propose to allow eligible officers greater flexibility in the use of the LPA, we consider it reasonable to balance this with a moderate reduction in the allowance rates.

The LPA rates have been substantially reduced when the allowance became taxable from the year of assessment 2003-04 and following the downward rate adjustment from 1 April 2004

6. We should clarify that the removal of the previous tax exemption for holiday warrant and passage with effect from 1 April 2003 has resulted from the enactment of the Revenue (No. 2) Ordinance 2003, which applies to all taxpayers and is not targeted at civil servants. As regards the adjustment to the LPA rates effective from 1 April 2004, it was made in accordance with the approved rate adjustment mechanism adopted since 1999.

Whether eligible overseas terms officers may request an air ticket instead if the LPA is insufficient to purchase an air ticket of his entitled class of travel

7. It is our intention to retain the present option for eligible overseas terms officers to request an air ticket instead of receiving LPA.

Future review mechanism of the LPA

8. It is our intention to maintain the current rate adjustment mechanism in future. According to the existing mechanism, LPA rates should be revised annually on 1 April according to changes in package tour prices, as measured by the year-on-year change in such prices in the Hang Seng Consumer Price Index for the 12-month period ending February of the year.

Civil Service Bureau
2 July 2004