

BRIEF FOR THE LEGISLATIVE COUNCIL

Public Officers Pay Adjustments (2004/2005) Bill

INTRODUCTION

At the meeting of the Executive Council on 13 May 2003, the Council ADVISED and the Chief Executive ORDERED that the Public Officers Pay Adjustments (2004/2005) Bill, at [Annex A](#), should be introduced into the Legislative Council.

JUSTIFICATIONS

Previous Executive Council Decision

2. On 8 April 2003, the Council ADVISED and the Chief Executive ORDERED that –
 - (a) agreement in principle should be given to the draft Public Officers Pay Adjustments (2004/2005) Bill;
 - (b) we should not apply the pay reduction for civil servants which are to take effect from 1 January 2004 and 1 January 2005 respectively to judges and judicial officers in the draft Bill;
 - (c) we should consult staff on the draft Bill; and
 - (d) the Chief Executive in Council's approval for the introduction of the Bill into the Legislative Council should be sought after staff consultation on the draft Bill.

Staff Consultation

3. Following the decision of the Chief Executive in Council referred to in paragraph 2 above, we have consulted the staff sides of the four central consultative councils and the four major service-wide staff unions on the draft Bill. The feedback from staff representatives is set out in paragraphs 4 to 7 below.

4. The staff side of the Senior Civil Service Council (SCSC) enquired about the implications of the pending judicial review cases

regarding the lawfulness of the Public Officers Pay Adjustment Ordinance on the current legislative exercise. Referring to the proposal recently submitted by the Chief Justice (CJ) to the Administration on a new system for the determination of judicial remuneration in Hong Kong, the SCSC staff side opined that a consistent approach should be adopted for the handling of adjustments to civil service pay and judicial pay. They suggested that the Administration should consider withholding the current legislative exercise pending a decision by the Administration on the CJ's proposal.

5. In addition, the Hong Kong Chinese Civil Servants' Association (HKCCSA) commented that the Administration should seek the enactment of a piece of general enabling legislation, instead of another piece of one-off legislation as in the case of the 2002 pay adjustment exercise, to implement the impending civil service pay reductions and to cater for both upward and downward pay adjustments in future. Apart from the above general comments, the SCSC staff side did not have any specific drafting comments on the draft Bill.

6. The staff side of the Police Force Council (PFC) has commented that in the absence of any pay trend survey for 2002-03, the decision on a civil service pay reduction for 2004 and 2005 was made outside the established civil service pay adjustment mechanism and would thus be subject to challenge by individual civil servants. They also opined that the Government should avoid resorting to another piece of one-off legislation to implement a civil service pay reduction. It further requested that the Administration should take account of the outcome of the judicial review cases in taking forward the current legislative exercise. On the content of the draft Bill, the PFC staff side opined that Clause 14¹ would be capable of connoting the following:

- (a) that it empowers the Government to make pay adjustment after 1 January 2005 simply by administrative measures without resorting to legislation and/or without consulting the staff sides;
- (b) that it gives an indication/intention that the Government will make further pay adjustments; and/or
- (c) that it gives an indication that the Government reserves the right to make pay adjustment after 1 January 2005 in such manner as it sees fit.

7. The staff sides of the Model Scale 1 Staff Consultative Council and the Disciplined Services Consultative Council, and the four major service-wide staff unions have not submitted any specific drafting

¹ Clause 14 of the draft Bill stipulates: "The adjustments made by this Ordinance to the pay and the amounts of any allowances payable to public officers do not prohibit any adjustment being made to the pay or the amounts of the allowances being made after 1 January 2005."

comments on the draft Bill.

The Administration's Comments on Feedback from Staff Representatives

8. On the implications of the outcome of the judicial review cases on the legislative exercise, legal advice is that the Administration is not precluded from introducing a bill into the Legislative Council, pending the judgment of the Court of First Instance (CFI), but that it would be prudent to defer the resumption of the second reading debate until after the delivery of the CFI judgment. We shall take full account of the court judgment in taking forward the legislative exercise.

9. At its meeting held on 8 April 2003, the Chief Executive in Council agreed that similar to the approach adopted for the 2002 civil service pay adjustment exercise, when a new institutional structure, mechanism and methodology for the determination and revision from time to time of the pay and conditions of service for judges and judicial officers are in place, an assessment would be made within that structure as to whether the previous pay reduction implemented with effect from 1 October 2002 and the pay reduction proposed for implementation on civil servants with effect from 1 January 2004 and 1 January 2005 should also be applied to judges and judicial officers and if so, as from what date. Meanwhile, the pay reductions proposed for civil servants for implementation with effect from 1 January 2004 and 1 January 2005 respectively will not be applied to judges and judicial officers in the draft legislation.

10. The CJ has submitted to the Administration on 23 April 2003 a set of proposals which includes a proposed new review body to determine judicial pay as well as a proposal to enact legislation to prohibit any reduction to judicial pay. In view of the time required for careful examination of the CJ's proposals and the need to take forward the legislative exercise for the Public Officers Pay Adjustment (2004/05) Bill as soon as possible, the Chief Executive in Council has decided that we should proceed on the basis that judges and judicial officers will be excluded from the scope of application of the Bill.

11. On the proposal that we should seek the enactment of a piece of general enabling legislation rather than a piece of one-off legislation to implement the pay reduction decision, we are of the view that we should proceed with the Bill as drafted given the need to have the pay reduction legislation in place before 1 January 2004. This Bill is modelled on the Public Officers Pay Adjustment Ordinance for the 2002 pay adjustment exercise. The Administration has separately undertaken to develop an improved civil service pay adjustment mechanism which would comprise, among others, an effective means for implementing both upward and downward pay adjustments. We would consider, as part of that exercise, whether such means would

need to be provided in law and, if so, whether general enabling legislation would be preferable for the purpose.

12. We do not share the comment of the PFC staff side that the pay reduction decision was made in departure from the established civil service pay adjustment mechanism. In making the pay reduction decision, the Administration had taken account of all relevant factors under the established civil service pay adjustment mechanism, including the feedback of a wide cross-section of staff collected by the Secretary for the Civil Service (SCS) through various channels. The decision and its implementation by legislation reflected the consensus reached earlier between the SCS and staff representatives. The Administration had also explained publicly that due to public criticisms about certain shortcomings of the methodology of the pay trend survey, it would not be appropriate to conduct a pay trend survey for 2002-03 based on the existing methodology.

13. On the PFC staff side's suggestion of deleting Clause 14 of the draft Bill, we should clarify that the purpose of that provision is to underline the one-off nature of the legislation and that the implementation of civil service pay adjustments by legislation is not a permanent feature of the civil service pay system. As mentioned in paragraph 11 above, the Administration is committed to developing an improved civil service pay adjustment mechanism within 2004. As part of that exercise, we shall consider the detailed legislative approach to provide for an effective means to implement both upward and downward pay adjustments. In the light of the foregoing, the Chief Executive in Council has decided that Clause 14 of the Bill should be retained.

THE BILL

14. The key provisions of the Bill at [Annex A](#) are set out below –

- (a) [Clause 2](#) defines the terms used in the Bill.
- (b) [Clause 3](#) provides that the Bill does not apply to officers on delinked starting salaries appointed pursuant to an offer of employment made to them before 26 February 2003, or to officers promoted to a basic rank on delinked starting salaries before that date, so long as they remain on those salaries.
- (c) [Clause 4](#) adjusts the civil service pay scales by reducing the rates of pay pertaining to all pay points on those scales, on 1 January 2004 and 1 January 2005 as appropriate, to the amounts specified in Schedule 1 in respect of each date. Pay is payable to civil servants in accordance with the adjusted

scales on and from the respective dates.

- (d) Clause 5 makes similar adjustments to the rates of pay payable to civil servants on personal salaries.
- (e) Clause 6 adjusts the pay scales applicable to civil servants who are serving in the Hospital Authority (HA) by reducing the rates of pay pertaining to all pay points on those scales, on 1 January 2004 and 1 January 2005 as appropriate, to the amounts specified in Schedule 3 in respect of each date. Pay is payable to these civil servants in accordance with the adjusted scales on and from the respective dates.
- (f) Clause 7 makes adjustments to the reference civil service pay scales to bring these scales into line with the corresponding civil service pay scales on 1 January 2005.
- (g) Clause 8 makes adjustments to the ICAC pay scale by reducing the levels of pay pertaining to all pay points on the ICAC pay scale, on 1 January 2004 and 1 January 2005 as appropriate, to the amounts specified in Schedule 5 in respect of each date. Pay is payable to ICAC officers in accordance with the adjusted scale on and from the respective dates.
- (h) Clause 9 applies the adjustments made by Clauses 4 and 8 to other ICAC officers whose pay is determined and adjusted in accordance with a point on a civil service pay scale or the ICAC pay scale.
- (i) Clause 10 makes adjustments to the reference ICAC pay scale to bring it into line with the ICAC pay scale on 1 January 2005.
- (j) Clause 11 applies the adjustments made by Clauses 4 and 8 to other public officers whose pay is determinable or determinable and adjustable in accordance with or by reference to the civil service pay scales or the ICAC pay scale or adjustable in accordance with or by reference to adjustments made in respect of such scales.
- (k) Clause 12 reduces the salary of the Director of Audit to the level it was at on 30 June 1997.
- (l) Clause 13 makes corresponding adjustments to the amounts of the allowances payable to public officers where the amounts of those allowances are determined in accordance with or by reference to the civil service pay scales or the ICAC pay scale or adjusted in accordance with or by reference to adjustments

made in respect of such scales.

- (m) Clause 14 provides that the Bill does not prohibit adjustments made after 1 January 2005 to the pay or the amounts of allowances payable to public officers.
- (n) Clause 15 varies the contracts of employment of public officers so that the contracts expressly authorize the adjustments made by the Bill.

15. The Bill closely resembles the draft Bill which was agreed in principle by the Chief Executive in Council on 8 April 2003, save a number of drafting changes. The major ones are highlighted below –

- (a) We have deleted Clause 6(1) of the draft Bill, which was originally intended to cover civil servants working in the Vocational Training Council (VTC). As civil servants working in VTC are all remunerated on civil service pay scales (namely, the Master Pay Scale, the Model Scale 1 Pay Scale and the Directorate Pay Scale), they are already covered by Clause 4(2) of the Bill. It is unnecessary to separately provide for them in the Bill;
- (b) We have modified Clause 6(2) of the draft Bill, which was originally intended to cover civil servants working in the Hospital Authority (HA). These civil servants are remunerated on four sets of HA pay scales, namely: the HA General Pay Scale, the HA Management Pay Scale, the HA Training Pay Scale and the HA Model Pay Scale. While most pay points on the HA pay scales have equivalent civil service pay points, some of the pay points on the HA Management Pay Scale do not have equivalent points on the civil service pay scales. Hitherto, the pay of civil servants working in HA has been adjusted in accordance with the relevant adjustment percentages for the relevant civil service salary bands. Clause 6(2) of the draft Bill would have covered these civil servants had we decided on a specified adjustment percentage for each salary band with effect from 1.1.2004 and 1.1.2005 as in previous years. As the matter stands, the Government has decided to restore the value of all pay points on all civil service pay scales to the levels as at 30 June 1997 and that all civil servants should be subject to such reductions. In order to faithfully implement this decision and for clarity, the Bill should set out the adjusted amounts of each pay point on each of the HA pay scales for application to the civil servants working in HA. Consequential amendments have been made to other parts of the Bill to include a reference to the HA pay scales applicable to civil servants working in HA; and

- (c) We have revised the figure of “\$124,305” (which corresponds to the pay of the highest pay point for Directorate Pay Scale Point 2) in item 5 of both Part 1 and Part 2 of Schedule 6 as “\$128,365” (which corresponds to the pay of the lowest pay point for Directorate Pay Scale Point 3 (D3)) to reflect more precisely the policy intention that the adjustment rates set out for item 5 should apply to the salary band of D3 and above or equivalent. As a consequential amendment, we have similarly revised the figure of “\$124,305” referred to in item 4 of both Part 1 and Part 2 of the Schedule as “\$128,365”.

LEGISLATIVE TIMETABLE

16. The legislative timetable is as follows –

Publication in the Gazette	16 May 2003
First Reading and commencement of Second Reading debate	21 May 2003
Resumption of Second Reading debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

17. The Department of Justice has advised that the Bill is consistent with the Basic Law, including the provisions concerning human rights. As the Bill seeks to implement the decision on the 2003 Civil Service Pay Adjustment, the financial and civil service implications as well as the economic implications are the same as those set out in the Legislative Council Brief issued on 25 February 2003. Relevant extract is at [Annex B](#).

18. The Bill does not contain any express binding effect provision, but it will bind the SARG by necessary implications.

PUBLICITY

19. A press release will be issued in the afternoon on 13 May 2003 and a spokesman will be available to answer media enquiries. The SCS will write to all civil servants on the same day informing them of this development.

SUBJECT OFFICER

20. Enquiries on this brief should be addressed to Mr. Eddie Mak, Principal Assistant Secretary for the Civil Service (tel: 2810 3112).

Civil Service Bureau
13 May 2003