

BRIEF FOR THE LEGISLATIVE COUNCIL

Public Officers Pay Adjustments (2004/2005) Bill

INTRODUCTION

At the meeting of the Executive Council 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 at [Annex A](#);
- (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 Council's approval should be sought for the introduction of the Bill into the Legislative Council after staff consultation on the draft Bill.

PREVIOUS EXECUTIVE COUNCIL DECISION

2. On 25 February 2003, the Council ADVISED and the Chief Executive ORDERED, among others, that –

- (a) we should restore the dollar value of all civil service pay points below Directorate Pay Scale Point 3 (D3) or equivalent to the levels as at 30 June 1997 in cash terms by two adjustments of broadly equal amount to be implemented from 1 January 2004 and 1 January 2005 respectively;
- (b) we should restore the dollar value of all civil service pay points at D3 and above or equivalent to the levels as at 30 June 1997 in cash terms from 1 January 2004;
- (c) we should aim to introduce legislation into the Legislative Council as soon as possible to implement the pay reduction referred to in (a) and (b) above;
- (d) the pay reduction referred to in (a) above should also apply to officers on starting salaries who are offered appointment from

26 February 2003; and

- (e) as the pay and conditions of service of judges and judicial officers are determined separately from the civil service, the Judiciary should be consulted on the pay adjustment for judges and judicial officers before a decision is to be made.

JUSTIFICATIONS

Need for legislation

3. Although it is inherent in the established civil service pay adjustment mechanism that some of the consideration factors for determining the annual civil service pay adjustment may have a positive or negative impact on the size of the pay adjustment, the contractual employment arrangements between the Government and the vast majority of serving civil servants do not contain an express provision authorising the Government to reduce pay. In the context of the 2002 pay adjustment exercise, legal advice is that legislation is the only way to implement with certainty a justified decision on a civil service pay reduction. Accordingly, we have sought the enactment of the Public Officers Pay Adjustment Ordinance to implement the decision to reduce civil service pay from 1 October 2002. According to legal advice, legislation will again be necessary for implementing a further pay reduction decision on serving officers.

4. Following the decision to reduce civil service pay in January 2004 and January 2005 respectively, we have specified in the Memorandum on Conditions of Service (MOCS) and the standard form of appointment letters for issue to new recruits, including those on a delinked starting salary, when making offers of appointment from 26 February 2003 that they will be subject to the pay reductions which are to take effect from 1 January 2004 and 1 January 2005 respectively. Similarly, we shall advise those officers who are promoted to a basic rank on a delinked starting salary on or after 26 February 2003 that the pay reduction decision will apply to them. This notwithstanding, the adjusted reference pay scales applicable to these new recruits and promotees will be subject to the approval of the Legislative Council.

Scope of the legislation

5. To implement the pay reduction decision, the draft Bill should stipulate the following-

- (a) the civil service pay scales and the ICAC pay scale as adjusted on 1 January 2004 and 1 January 2005 respectively in accordance with the pay reduction decision in paragraph 2(a), (b) and (d) above;

- (b) the categories of civil servants and other public officers who will be subject to the pay reduction decision;
- (c) the categories of allowances payable to civil servants and other public officers which will be subject to the pay reduction decision; and
- (d) with regard to the adjustment of the pay of concerned public officers and of the amounts of the allowances payable to public officers which are adjusted in accordance with or by reference to the adjustments to the civil service pay scales/the ICAC pay scale or the adjustments to the relevant salary band, the rate of adjustment applicable to each salary band with effect from 1 January 2004 and 1 January 2005 respectively.

These issues are further examined in paragraphs 6 to 21 below.

(A) Adjusted pay scales

6. In recent annual pay adjustment exercises, the established practice was that we applied a uniform percentage of adjustment to all the pay points in each of the three salary bands¹. For the present pay adjustment exercise, however, this approach is not feasible as the restoration of the dollar amount of each pay point on the civil service pay scales and the ICAC pay scale to the level as at 30 June 1997 in cash terms would result in the application of different adjustment percentages for different pay points in each salary band. For clarity and accuracy, the draft Bill will prescribe the adjusted civil service pay scales² and the adjusted ICAC pay scale² in full.

¹ The three salary bands are:-

- Lower salary band: below Master Pay Scale (MPS) Point 10 (i.e. \$15,270) or equivalent;
- Middle salary band: MPS Points 10-33 (i.e. \$46,810) or equivalent; and
- Upper salary band: above MPS Point 33 (i.e. \$46,810) to General Disciplined Services (Officer) Pay Scale (GDS(O)) Point 38 (i.e. \$93,025) or equivalent.

² There are currently 11 sets of civil service pay scales (such as the Master Pay Scale, the Directorate Pay Scale, the Police Pay Scale, the Model Scale 1 Pay Scale, etc.) and one set of ICAC pay scale.

7. Following a review of the starting salaries in the civil service in April 2000, we have introduced additional pay points on selected pay scales. These pay points³ do not have their corresponding dollar amounts as at 30 June 1997. For fairness and for maintaining relativity with the other pay points on the same pay scale, the dollar amount of these pay points will be reduced by the same percentage of adjustment applicable to the pay point which has the nearest dollar amount and which has the corresponding dollar amount as at 30 June 1997.

8. Following the starting salary review in 2000 as mentioned in paragraph 7 above, officers appointed to the basic ranks are remunerated on starting salaries, the amount of which is determined in accordance with the relevant reference pay scales. The reference pay scales were delinked from the civil service pay adjustment in 2001 and 2002 and are essentially the corresponding pay scales which took effect from 1 April 2000. In the light of the decision that the impending pay reductions should also apply to officers on starting salaries who are offered appointment from 26 February 2003, we need to adjust downwards the reference pay scales on 1 January 2004 and 1 January 2005 respectively such that with effect from 1 January 2005, the dollar amounts of the pay points on the reference civil service pay scales/reference ICAC pay scale and the pay points on the adjusted civil service pay scales/the adjusted ICAC pay scale will be aligned.

(B) Categories of officers who will be subject to the pay reduction

Civil servants

Civil servants on civil service pay scales

9. The great majority of civil servants are remunerated in accordance with the pay scales of their respective grade and rank. Following the downward adjustments of the dollar amount of the pay points on the respective pay scales, the salary payable to a civil servant in accordance with a pay point on the relevant civil service pay scale will be reduced accordingly.

Civil servants on personal salaries

10. A small number of civil servants in four ranks (namely Amah II, Carpark Attendant II, Explosives Depot Attendant and Estate Assistant) are on personal salaries, which do not relate to any pay

³ They are Master Pay Scale Point 0, Model Scale 1 Pay Scale Points 0 – 5, Police Pay Scale Point 1a, General Disciplined Services (Officer) Pay Scale Points 1a – 1d, General Disciplined Services (Rank and File) Pay Scale Point 1a, Technician Apprentice Pay Scale Point 0, Craft Apprentice Pay Scale Point 0, ICAC Pay Scale Points 3, 13 and 15.

point on any of the existing civil service pay scales and which are hitherto adjusted in accordance with the rate of adjustment to the relevant civil service salary band. In view of the pay reduction decision, the salaries of these officers should be brought back to the levels as at 30 June 1997 in cash terms by two adjustments of broadly the same amount to be implemented from 1 January 2004 and from 1 January 2005 respectively.

Civil servants accommodated in civil service shadow posts

11. In addition, about 4150 civil servants on secondment to publicly funded organizations are accommodated in shadow posts in the civil service. The salaries of these officers are determined with reference to a point on the civil service pay scales or adjusted in accordance with the rate of adjustment applicable to the relevant civil service salary bands. The draft Bill will cover this category of officers.

Civil servants on delinked starting salaries

12. New recruits to the civil service who were offered appointment on a delinked starting salary before 26 February 2003 and so long as they remain on that delinked starting salary will not be subject to the pay reduction decision. However, once they move from the reference pay scale to the relevant civil service pay scale, they will be paid at the relevant pay point as adjusted from 1 January 2004 and 1 January 2005 respectively. Similarly, civil servants promoted to a basic rank on a delinked starting salary before 26 February 2003⁴ will not be subject to the pay reduction decision.

13. New recruits to the civil service who are offered appointment from 26 February 2003, including those on a delinked starting salary, will be subject to the pay reduction decision. Likewise, civil servants promoted to a basic rank on a delinked starting salary after 26 February 2003⁴ will be subject to the pay reduction decision.

Officers in the Independent Commission Against Corruption

14. The pay reduction decision applies to ICAC officers, who are defined as officers of the Commission appointed under Section 8 of the Independent Commission Against Corruption (Cap.24). These ICAC officers are not civil servants and the majority of them are remunerated in accordance with the ICAC pay scale. In addition,

⁴ Following a review of the starting salaries in 2000, an officer recruited to the assistant/student/training ranks of certain professional grades (e.g. Engineer grade, Surveyor grade, etc.) who is offered an appointment on or after 1 April 2000 is remunerated on the delinked starting salary of the relevant rank until he reaches his first increment. On promotion to an operational rank, the officer will be remunerated on the delinked starting salary of that operational rank until he reaches his first increment.

there are certain ICAC officers engaged in administrative and other functions whose pay is determined and adjusted in accordance with the civil service pay scales or the ICAC pay scale. The draft Bill will cover both types of ICAC officers.

15. New recruits to the ICAC who were offered appointment on a delinked starting salary before 26 February 2003 and so long as they remain on that delinked starting salary will not be subject to the pay reduction decision. Once they move from the reference ICAC pay scale to the ICAC pay scale, they will be paid at the relevant pay point as adjusted from 1 January 2004 and 1 January 2005 respectively.

16. New recruits to the ICAC who are offered appointment from 26 February 2003, including those on a delinked starting salary, will be subject to the pay reduction decision. Likewise, ICAC officers promoted to a basic rank on a delinked starting salary after 26 February 2003 will be subject to the pay reduction decision.

Public Officers who are not civil servants or ICAC officers

17. In addition to civil service appointments and appointments to the ICAC, bureaux/departments make various non-civil service appointments on different terms of employment. Examples are members of the auxiliary forces, undergraduate/graduate trainees in the Department of Justice and works departments, and temporary teachers. The pay reduction decision applies to officers on such appointments if their pay is –

- (a) determined in accordance with or by reference to, directly or indirectly, a point on the civil service pay scales or the ICAC pay scale;
- (b) adjusted in accordance with or by reference to, directly or indirectly, adjustments to the civil service pay scales or the ICAC pay scale; or
- (c) determined and adjusted in accordance with or by reference to a point on the civil service pay scales or the ICAC pay scale.

Director of Audit

18. Under section 4(A) of the Audit Ordinance (Cap.122), the Chief Executive may, from time to time, increase the rate of salary of the Director of Audit by order published in the Gazette. In view of the pay reduction decision, the salary of the Director of Audit should be brought back to the level it was at on 30 June 1997 from 1 January 2004. Legal advice is that given section 4(A) of the Audit Ordinance, it is necessary to provide a statutory reduction of the salary of the Director of Audit.

The Judiciary

19. We have consulted the Judiciary on the adjustment for judicial pay having regard to the civil service pay reductions which are to take effect from 1 January 2004 and 1 January 2005 respectively. The Chief Executive in Council noted that the Administration is awaiting a proposal from the Chief Justice on the appropriate system for the determination of judicial remuneration for Hong Kong having regard to the experience in a number of overseas jurisdictions. In view of this, it has been decided that similar to the approach adopted for the 2002 civil service pay adjustment exercise, when the 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 will effect from 1 October 2002 and this 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 reduction proposed for civil servants with effect from 1 January 2004 and 1 January 2005 respectively will not be applied to judges and judicial officers in the draft legislation.

(C) Allowances which will be subject to the pay reduction

20. In the civil service, duty-related allowances are paid for the performance of additional duties which are not otherwise compensated by regular pay. Duty-related allowances are also paid to certain public officers who are not civil servants. These allowances are determined and adjusted in different ways. The pay reduction decision covers the following types of allowance –

- (a) allowances which are determined in accordance with or by reference to, directly or indirectly, a point on the civil service pay scales or the ICAC pay scale (e.g. Hardship Allowance (Dangerous Duties) is set at 9.3% of MPS 1); and
- (b) allowances which are adjusted in accordance with or by reference to, directly or indirectly, adjustments to the civil service pay scales or the ICAC pay scale (e.g. the Consolidated Overtime Allowance payable to the domestic staff in the official residences of the Chief Executive, the Chief Justice, the Chief Secretary for Administration, the Financial Secretary and the Secretary for Justice is adjusted annually in line with the adjustments made to the lower salary band of the civil service).

(D) Rates of adjustment applicable to each salary band

21. As mentioned in paragraphs 17 and 20 above, the salary payable to certain public officers and the amounts of certain allowances payable to public officers are adjusted in accordance with or by reference to the adjustments to the civil service pay scales/the ICAC pay scale or the adjustments to the relevant salary band. To facilitate the adjustment of these salaries and of the amounts of the concerned allowances, the draft Bill will prescribe the rate of adjustment applicable to each salary band with effect from 1 January 2004 and 1 January 2005 respectively.

THE BILL

22. The key provisions of the draft 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. The Bill also does not apply to judicial officers.
- (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](#) applies the adjustments made by Clause 4 to other civil servants whose pay is determined in accordance with or by reference to the civil service pay scales or adjusted in accordance with or by reference to adjustments made in respect of such scales.
- (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 determined or determined and adjusted 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.
- (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.

LEGISLATIVE TIMETABLE

23. We will consult staff until 28 April 2003 on the draft Bill. We intend to introduce the Bill, subject to the approval of the Chief Executive in Council, into the Legislative Council as soon as possible following the staff consultation.

24. It should be noted that there are pending judicial review cases before the court on the lawfulness of the Public Officers Pay Adjustment Ordinance. The court hearing for one of the cases has been scheduled for 6 – 9 May 2003. We have been advised that

pending the conclusion of these cases, the Administration is not precluded from discussing with staff the draft legislation for implementing the pay reduction. We have been further advised that the Administration is not precluded from introducing a bill into the Legislative Council, pending the judgment of the court, but that it would be prudent to defer the resumption of the second reading debate until after the judgment is given.

IMPLICATIONS OF THE PROPOSAL

25. The Department of Justice has advised that the draft Bill is consistent with the Basic Law, including the provisions concerning human rights. As the draft 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](#).

BINDING EFFECT OF THE LEGISLATION

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

PUBLICITY

27. A press release will be issued in the afternoon on 8 April 2003 and a spokesman will be available to answer media enquiries. The Secretary for the Civil Service will write to all civil servants on the same day informing them of this development. We will also proceed with staff consultation on the draft Bill.

SUBJECT OFFICERS

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

Civil Service Bureau
8 April 2003