

LegCo Panel on Public Service
Follow up to meeting on 18 March 2002

III. Civil Service Pay

Required Information

The Administration has advised the Panel that in the event of a decision on a civil service pay reduction for 2002-03, the Administration intends to implement it by legislation from a prospective date, presumably 1 October 2002. In this connection, Members requested for the following information :

- (a) Legal grounds for the Administration to alter civil servants' terms of employment unilaterally;
- (b) Full justifications for the Administration's proposal to implement civil service pay reduction by legislation, having regard to the fact that civil service pay increase in previous years had not been implemented by legislation;
- (c) Full justifications for the Administration's proposal to implement civil service pay reduction from a prospective date, having regard to the fact that civil service pay increase in previous years had retrospective effect and was effective from 1 April but not 1 October of the years concerned;
- (d) The legal advice obtained by the Administration on the issue; and
- (e) The Administration's response to the queries raised by a member of the Panel on whether the "executive orders" issued by the Chief Executive under Article 48(4) of the Basic Law have legal effect and if the answer is in the affirmative, whether it is necessary to implement civil service pay reduction by legislation.

The Administration's response

The employment arrangements for a civil servant are governed by the provisions set out in the letter of appointment and the memorandum on conditions of service (MOCS) attached to the offer letter. The standard MOCS applicable to civil servants provides that the Government reserves the right to alter any of the officer's terms of appointment, and/or conditions of service set out in the MOCS or letter of appointment should the Government at any time consider this to be necessary. Insofar as a pay reduction is concerned, legal advice is that it would be prudent to implement such a reduction, if finally decided, by legislation to put the matter beyond doubt and to ensure smooth implementation.

2. It is the Administration's intention to implement a civil service pay reduction, if finally decided, from a prospective date. We consider it reasonable, in the eventuality of a pay reduction, to allow time for affected staff to make appropriate financial arrangements before the reduction takes effect. Also, we do not consider it appropriate for the Government to seek to recover from the affected staff moneys properly payable to them under their terms of service at the date that the services were provided and which were already paid to the staff.

3. On the question of whether an "executive order" issued by the Chief Executive under Article 48(4) of the Basic Law has legal effect, we confirm that this is the case. This view is supported by the ruling of the Court of First Instance in the AECS case (AECS v Chief Executive of Hong Kong [1998] 2 HKC 138) that the Public Service (Administration) Order lawfully prescribes legal procedures for the maintenance of Hong Kong's previous system of recruitment and discipline in the public service.

4. The Administration's position is that where there is a genuine need to legislate in order to implement a new policy proposal, we shall do so rather than resorting to administrative measures. As explained above, we have been advised by our lawyers that if having regard to the usual considerations under the existing civil service pay adjustment mechanism, the Administration decides to reduce civil service pay, it would be prudent to implement such a reduction by legislation so as to put the matter beyond doubt. The legislative approach has the merit of certainty and would ensure smooth implementation of the pay cut.