

## **LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE**

### **Disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals**

#### **PURPOSE**

This paper sets out the Administration's proposals on the disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund ("CSPF") Scheme (hereinafter referred to as "CSPF civil servants") and other related proposals.

#### **BACKGROUND**

##### **CSPF Scheme**

2. The CSPF Scheme was set up by the Government as a mandatory provident fund scheme under the Mandatory Provident Fund Schemes Ordinance ("MPFSO") (Cap. 485). Both the Government as an employer and civil servants as employees are required to make mandatory contributions as stipulated under the MPFSO. The Government also makes voluntary contributions in addition to mandatory contributions under the CSPF Scheme.

3. Under the CSPF Scheme, a civil servant's retirement benefits comprise the accrued benefits attributable to his mandatory contributions, the accrued benefits attributable to Government's Mandatory Contribution ("GMC benefits") and those to Government's Voluntary Contribution ("GVC benefits"). While GMC benefits are by law not to be tampered with under any circumstances, GVC benefits are by contract fully vested and payable to a CSPF civil servant when he leaves service upon completion of at least ten years of continuous service since first appointment or under other specified circumstances (e.g. retirement, death, permanent incapacity, etc). GVC benefits may also by contract be forfeited, in whole or in part, if a CSPF civil servant is found guilty of a disciplinary or criminal offence and is punished for the offence.

4. Civil servants appointed on new entry terms on or after 1 June 2000 are eligible to join the CSPF Scheme when they progress onto new permanent terms upon completion of probation and/or agreement. As at 31 March 2008, there were about 4 000 CSPF civil servants (or 2.6% of the civil service workforce) and another 8 800 civil servants on new probation/agreement terms (or 5.7% of the workforce). With the gradual phasing out of civil servants on pensionable terms, we envisage that the service will comprise entirely CSPF civil servants by around 2040/41.

### **Disciplinary punishments**

5. Insofar as staff discipline is concerned, a civil servant who has been found guilty of a disciplinary or criminal offence upon completion of disciplinary proceedings are subject to disciplinary punishments, which comprise two broad categories, namely, removal<sup>1</sup> or non-removal punishments<sup>2</sup>. While all non-removal punishments are applicable to CSPF civil servants, the existing removal punishments which impinge on the provision of pension benefits are not applicable to CSPF civil servants. As the first batch of CSPF civil servants will complete ten years of service by mid-2010 and be fully vested with their GVC benefits when they leave the service, there is a need to put in place before then removal punishments which may impinge on their retirement benefits according to the terms and conditions of the CSPF Scheme<sup>3</sup>, and an appeal mechanism for the civil servants so affected.

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<sup>1</sup> There are three main levels of removal punishments under the Public Service (Administration) Order (“PS(A)O”) and the disciplined services legislation (“DSL”) - (i) Level 1: dismissal (with forfeiture of all pension benefits); (ii) Level 2: compulsory retirement with reduction of up to 25% of pension benefits; and (iii) Level 3: compulsory retirement with pension benefits.

<sup>2</sup> Under the PS(A)O, there are three types of non-removal punishments - (i) reduction in rank; (ii) severe reprimand; and (iii) reprimand, and three types of financial penalties - (i) stoppage or deferment of increments; (ii) reduction in salary; and (iii) fine. The civil servants concerned are also subject to the summary punishment of written warning and verbal warning. Under the DSL, there are similar punishments of reduction in rank, severe reprimand and reprimand, but the presence of warning and financial penalties varies from one DSL to another. Some punishments, e.g. forfeiture of pay, extra duties, etc, are present in some DSL but not the PS(A)O.

<sup>3</sup> As stipulated in the contract terms, where a CSPF civil servant is found guilty of a disciplinary or criminal offence and is given a punishment upon conclusion of disciplinary proceedings, his GVC benefits may be forfeited, either wholly or in part, having regard to the findings and the decision on punishment.

## PROPOSALS

### Removal punishments for CSPF civil servants

6. In drawing up the removal punishments for CSPF civil servants, our objective is to introduce for these civil servants removal punishments comparable to those in use for their pensionable counterparts, insofar as the legislative/legal framework<sup>4</sup> underpinning the two systems allow. We are mindful, however, that the inherent differences between the two systems make it impracticable to achieve absolute parity for these two groups of civil servants.

7. Based on the removal punishments in use for civil servants on pensionable terms, we **propose** the following three levels of removal punishments for CSPF civil servants –

<b>Level of punishment</b>	<b>CSPF civil servants with ten or more years of service<sup>5</sup></b>
Level 1	Dismissal with forfeiture of full GVC benefits
Level 2	Compulsory retirement with reduced GVC benefits
Level 3	Compulsory retirement with full GVC benefits

8. The removal punishments proposed above are broadly comparable to those for pensionable civil servants –

- (a) *Level 1:* 100% of GVC benefits will be forfeited under this punishment. This is meant to be broadly comparable with dismissal being applied to a pensionable civil servant in which case the civil servant will forfeit his entire pension benefits.
- (b) *Level 2:* The level of forfeiture will be pitched at up to 25% of the GVC benefits at the time of the compulsory retirement of the civil servant concerned. This punishment is meant to be broadly comparable to the pension reduction of up to 25% permissible

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<sup>4</sup> Namely, the pension system underpinned by the Pensions Ordinance (“PO”) (Cap. 89) and the Pension Benefits Ordinance (“PBO”) (Cap. 99), and the CSPF Scheme underpinned by the MPFSO.

<sup>5</sup> A CSPF civil servant will only be eligible for his GVC benefits when leaving the service after completing ten years of continuous service. Levels 2 and 3 punishments – which preserve GVC benefits in part and in whole respectively upon removal – will have no application to CSPF civil servants with less than ten years’ continuous service. As such, only one level of removal punishment (i.e. dismissal without GVC benefits) will be applicable to these civil servants.

under the existing pensions legislation<sup>6</sup>.

- (c) *Level 3*: This punishment only seeks to remove a civil servant from the service. It does not seek to affect his retirement benefits. It is meant to be broadly comparable with compulsory retirement applicable to a pensionable civil servant in which case the civil servant is removed from service with his pension benefits remaining intact.

For punishments under Levels 2 and 3, the GVC benefits concerned or what will remain of them in the case of partial forfeiture will be vested and paid to the civil servant immediately upon his compulsory retirement.

9. Similar to the removal punishments for pensionable civil servants, the punishments proposed above will only be used in cases where serious misconduct/offences (e.g. corruption, blatant abuse of official position, serious criminal offences) are involved and where the circumstances so warrant as considered by the disciplinary/punishment authority.

### **Appeal mechanism for CSPF civil servants**

10. Under the CSPF Scheme, it is provided that a CSPF civil servant who is aggrieved by a decision to forfeit his GVC benefits may make representations to the Chief Executive (“CE”) within a period of 30 calendar days counting from the date of the notification of the decision, and that the CE shall determine the merits of the representations. However, there is currently no provision for such representations to be considered by an independent appeal body.

11. We **propose** to set up an independent appeal panel on a non-statutory basis to advise the CE on appeals on the forfeiture of CSPF benefits. With the establishment of the proposed appeal panel, the CE may refer any representation made to him by CSPF civil servants to this panel, before he may confirm, vary or reverse the decision to which the representation relates. This largely mirrors the arrangements for pensionable civil servants.

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<sup>6</sup> Section 15A(1)(c) of the PO and section 29A(2)(c) of the PBO stipulate that in the case of a reduction in a pension, gratuity or allowance, the amount of the reduction shall not exceed 25% of the pension, gratuity or allowance.

## **Other related proposals**

12. Apart from the introduction of removal punishments for CSPF civil servants and the associated appeal mechanism, we would take this opportunity to introduce a few technical refinements to the civil service disciplinary system.

### *Fine*

13. Payment of a fine is an existing financial penalty. As a general guideline, a fine is imposable in conjunction with certain kinds of disciplinary punishment (namely compulsory retirement with pension benefits, severe reprimand and reprimand) to achieve an intermediary punitive effect between two tiers of punishments and to reflect more precisely the gravity of the misconduct concerned. The fine under the Public Service (Administration) Order (“PS(A)O”) is currently capped at an amount equivalent to two salary increments for 12 months, which equals approximately one month’s salary. Under the disciplined services legislation (“DSL”), a fine or like penalty (i.e. forfeiture of pay) is salary-based and generally capped at one month’s salary.

14. An increment-based fine would, depending on the pay scales and pay points of individual civil servants, translate into different percentages of monthly salary. For instance, a fine equivalent to two increments for 12 months would mean some 1.4 months’ salary to a civil servant remunerated on Master Pay Scale Point 2 (the lower end of the pay scale with monthly salary at \$9,565 from 1 April 2008), but 0.8 month’s salary to a civil servant remunerated on Master Pay Scale Point 45 (the upper end of the pay scale with monthly salary at \$80,485 from 1 April 2008). This is not in line with the principle of equity. It is also difficult for staff to understand how the amount of fine is calculated.

15. To address the equity problem and to make the basis of the fine more readily comprehensible to staff, we **propose** to change the calculation of fine under the PS(A)O from an increment-based approach to a salary-based approach, and cap the fine at an amount equivalent to one month’s salary.

### *Stoppage of salary/allowance upon criminal conviction*

16. At present, the payment of salary and/or allowance of a civil servant in the Police disciplined service grades during interdiction will be stopped on the date following the date the civil servant is found guilty by a court in criminal proceedings if the gravity of the offence so warrants. For the rest of the civil service (including the other disciplined services), the stoppage of salary and/or allowance is effective from the date the civil servant

is convicted of a criminal offence.

17. We **propose** that the service-wide arrangement on the stoppage of salary and/or allowance upon criminal conviction, i.e. effective from the date of conviction, should also be applied to civil servants in the Police disciplined service grades.

#### *Departmental welfare fund of the disciplined services*

18. At present, the description of former member/employee of the disciplined services as beneficiaries of their respective departmental welfare funds under the law covers only civil servants who have retired on a pension, gratuity or other allowance basis. We **propose** that the description be amended such that CSPF civil servants of the disciplined services will be accorded the same status as their pensionable counterparts under their respective departmental welfare funds.

### **VIEWS OF PUBLIC SERVICE COMMISSION**

19. We have consulted the Public Service Commission on the Administration's proposals mentioned above. The Commission generally supports the proposals.

### **VIEWS OF STAFF SIDE**

20. We have consulted the staff side, whose comments have been incorporated where appropriate into the proposals set out above.

### **IMPLEMENTATION**

21. Implementation of the proposals in paragraphs 6 to 11 and paragraphs 16 to 18 above will necessitate, among others, amendments to the relevant DSL<sup>7</sup>. We plan to introduce the relevant amendment bill into the Legislative Council before the end of this year. Our target is to bring the legislative amendments, together with the requisite amendments to other

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<sup>7</sup> The *primary legislation* concerned includes Fire Services Ordinance (Cap. 95), Police Force Ordinance (Cap. 232), Prisons Ordinance (Cap. 234), Government Flying Service Ordinance (Cap. 322), Immigration Service Ordinance (Cap. 331) and Customs and Excise Service Ordinance (Cap. 342)). As regards *subsidiary legislation*, they are Police (Discipline) Regulations (Cap. 232A), Prison Rules (Cap. 234A), Government Flying Service (Discipline) Regulation (Cap. 322A), Customs and Excise Service (Discipline) Rules (Cap. 342B) and Traffic Wardens (Discipline) Regulations (Cap. 374J).

instruments such as the PS(A)O and relevant Civil Service Bureau circulars, into effect before mid-2010.

## **ADVICE SOUGHT**

22. Members are invited to note our plan to introduce an amendment bill to implement the proposals set out in this paper, and offer any comments they may have on the proposals.

Civil Service Bureau  
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