

20 July 1994

The Right Honourable Christopher Patten  
Governor of Hong Kong  
Government House  
Hong Kong

Dear Sir,

### **FLEXIBLE CONTRACT TERMS**

We have been invited by the Administration to advise, under clause 1(a) of our Terms of Reference, on its proposal to introduce flexible contract terms of employment to non-Public Service Commission posts in the civil service.

### **BACKGROUND**

2. At present, civil servants are employed on one of the following terms : permanent and pensionable; agreement; temporary; non civil service appointment and consultant. As distinct from permanent and pensionable (P&P) terms on which the majority of civil servants are employed, agreement terms provide Heads of Department (HoD)/Heads of Grade (HoG) with some flexibility to offer short term appointment to suitable candidates in prescribed circumstances. Currently about 2,600 civil servants (both local and overseas) are employed on agreement terms.

3. Operational experience, however, indicates that agreement terms do not provide sufficient flexibility to enable departments to respond quickly to service needs. The principal constraints identified by the Administration are as follows -

#### **(a) Use of agreement**

Employment on agreement terms is only allowed in exceptional circumstances, such as serious recruitment difficulties or unavailability of local expertise, and is subject to the advice of the Public Service Commission (PSC).

Appendix L (Cont'd)

(b) Terms of employment

There is no flexibility over the remuneration package. The only difference between agreement and P&P terms is that agreement officers receive a 25% lump sum gratuity at the end of the agreement instead of pension to which P&P staff are entitled.

(c) Length of agreement

For administrative convenience, and to facilitate calculation of leave and passage entitlement, the standard length of agreement is 2½ years for local officers below D4 and overseas officers below MPS 34, or 3 years for overseas officers on MPS 34 and above and local officers on D4 and above.

(d) Tenure

Established practices have generated expectation among agreement staff that their agreement will be renewed except in certain circumstances such as if the posts are abolished or if performance has been poor. It will not be easy to impose new conditions on existing agreement staff, eg, to remove their expectation for promotion, or introduce changes to existing agreements to make them more flexible. Any attempt to do so will be seen by staff as diminution of their existing terms of employment and will be met with resistance.

(e) Termination

In many cases the same elaborate disciplinary procedures apply as for P&P staff.

4. On account of the above, the Administration is of the view that flexible terms of employment should be introduced in the civil service to enable departments to respond swiftly to changes in the interests of service needs. Indeed this was the main thrust of Chapter V of the Consultation Document on Civil Service Terms of Appointment and Conditions of Service issued by the Government in October 1993, on which the Central Staff Councils and this Commission have earlier been consulted.

## THE ADMINISTRATION'S PROPOSALS

5. The Administration proposes the introduction of flexible contract terms (FCT) of employment in the civil service, under certain circumstances, as an alternative to the P&P and agreement terms. Initially, FCT will be applied only in non-PSC posts. There are no immediate plans to extend its application to PSC posts.

6. The main features of the FCT are as follows -

### Application criteria

6.1 The FCT is to be introduced where -

- (a) management flexibility is needed to cover short or fixed-term manpower requirement (eg, processing of BNO passports); or
- (b) there is proven recruitment and retention difficulty due to factors such as unpopular job nature (eg, psychiatric centres) and remote location (eg, offices on outlying islands); or
- (c) the P&P terms of employment or the agreement terms have failed to attract suitable candidates.

### Terms and conditions

6.2 As a general rule, employment terms for FCT staff should not be more favourable than those on P&P or agreement terms. Terms proposed for FCT staff include -

(a) Length of contract

This may be between one and five years. Staff employed for less than one year will be treated as temporary staff and will not be given a contract gratuity.

Appendix L (Cont'd)

(b) **Remuneration**

This will be largely cash-based, and is fixed for the duration of the contract, except for the annual salary adjustment for the civil service as a whole. The pay offered is normally set at an appropriate point in the relevant pay scale, plus the appropriate elements of fringe benefits available to staff at that rank. Incremental credit for experience may be granted on the same basis as for P&P officers in the same rank, according to established guidelines. FCT staff will not be eligible for housing benefits, education allowances or school passages. No encashment of leave will be allowed and the gratuity will not exceed 25%.

(c) **Termination**

Either side may terminate the contract with one month's notice. Staff whose contracts are terminated on disciplinary grounds will forfeit their accrued benefits. A simpler code of conduct and disciplinary procedures will apply to FCT staff.

(d) **Terms and conditions**

Staff employed on FCT may have a wider and more flexible range of duties. They should have no expectation for promotion nor do they have any right to permanent employment. Individuals may be invited to transfer to permanent terms at management's discretion, subject to satisfactory performance and the availability of permanent posts.

**Checks and balances**

6.3 To guard against possible abuse, checks and balances are proposed to be exercised through -

- (a) approval of FCT proposals for individual grades and ranks including specific terms and conditions by the Secretary for the Civil Service; and
- (b) ensuring that the total cost of a flexible contract does not exceed the maximum cost of the existing civil service remuneration package. Where this is not possible, the Standing Commission will need to be consulted and the approval of the Finance Committee of the Legislative Council will have to be obtained.

7. The Administration further proposes that for staff management reasons, all FCT staff should be employed as civil servants, even though their terms of employment and conditions of service may not be the same as civil servants on P&P or agreement terms. Legal advice to the Administration is that FCT staff may be exempted from the application of certain Government Regulations provided that such exclusions are set out in their Memorandum on Conditions of Service. Serving officers do not have an automatic right to transfer to FCT but may apply to do so subject to decision by management. Successful candidates will have to resign and be re-appointed on FCT with a nominal one-day break in service.

**Implementation plan**

8. The Administration proposes to introduce the FCT initially in the Clerical and Secretarial Grades which have experienced high turnover rates. Individual HoD/HoG may, having regard to their own circumstances, introduce FCT as appropriate. So far over 20 departments have expressed interest in the FCT.

Appendix L (Cont'd)

**COMMISSION'S VIEWS AND RECOMMENDATIONS**

**Need for FCT**

9. As stated by the Administration, new flexible contract terms of employment are required because the existing agreement terms have failed to provide the degree of flexibility essential to enabling HoD/HoG to employ staff to meet the changing needs of their service. In the opinion of the Administration, it will not be easy to introduce changes to existing agreements to make them more flexible since any attempt to do so will be seen by staff as diminution of their existing terms of employment and will be met with resistance. While we appreciate the difficulties faced by the Administration, we consider that the co-existence of agreement terms and FCT in future will inevitably bring about the question of why changes could not be made to existing agreement terms and of whether the FCT would in effect be used to replace agreement terms despite the Administration's assurance that this would not be the case. There is therefore a presentational issue, with potential staff-relations consequences, inherent in the current proposal which has not been addressed by the Administration.

10. That aside, we agree with the Administration that flexible contract terms of employment are indeed needed to cope with the present-day demands on the public service. In the course of our earlier deliberations on the Consultation Document on Common Terms of Appointment and Conditions of Service referred to in paragraph 4 above, we noted the Administration's proposal to introduce flexible contract terms of employment in the civil service. We considered then that this would be a reasonable arrangement to enable the Government to recruit candidates, who might not otherwise be prepared to join the civil service, with the necessary expertise. We also felt that such contracts should be finite and terminated when the need for the expertise had been satisfied. It is clear that the main features of the FCT outlined in paragraphs 6.1 to 6.3 above are generally in line with our expectation. We therefore support the Administration's proposals, including the confinement of FCT to non-PSC posts at this stage.

**Terms and conditions**

11. We agree with the Administration that as a general rule the terms of employment for FCT staff should not be more favourable than those for their counterparts on P&P or agreement terms. On the proposed remuneration package set out in paragraph 6.2(b) above, we note that FCT staff will not be provided with housing benefits, education allowances and school passages. While this will result in FCT staff being provided with an inferior package of fringe benefits, we see no reason to disagree if the Administration considers that this will be adequate to attract FCT staff of the right calibre. The Administration may, however, need to

keep the proposed remuneration package under review and make adjustments where appropriate in the light of recruitment results.

12. We welcome the flexibility given to HoD/HoG to offer a higher entry salary point to FCT staff in recognition of special expertise or experience possessed, subject to the maximum point of the relevant salary scale not being exceeded. This flexibility should, however, be exercised with care and with due regard to established pay principles in such matters as, for example, incremental credit for experience/higher qualifications etc, in order not to give rise to service-wide implications. Due consideration must also be given to the possible effect on the morale of non-FCT staff serving in the same grade or rank.

13. To guard against possible abuse, we endorse the Administration's intention to provide checks and balances to control and monitor the operation of the FCT. However, we do not see the need for elaborate control and consider the proposed mechanism set out in paragraph 6.3 above, making the Secretary for the Civil Service the ultimate authority for approving FCT proposals and limiting the cost of FCT to not more than the maximum cost of the existing civil service remuneration, as providing adequate safeguard.

14. We also endorse the other proposals by the Administration dealing with the exemption of FCT staff from certain Government Regulations; implementation of a simpler set of procedures for the discipline, dismissal and termination of FCT staff. This brings us to an important point of principle : whether FCT staff should be employed as civil servants. The Administration's position is that they should, for staff management reasons, as referred to in paragraph 7 above. We have our doubts. Indeed, to forestall future misunderstanding and legal disputes that might arise from their status vis-a-vis civil servants employed on P&P terms, we consider that FCT staff should be employed as non-civil servants with all their terms and conditions clearly spelt out in their employment contracts.

#### **FCT for Clerical and Secretarial Grades**

15. The Administration proposes to introduce FCT initially to the Clerical and Secretarial Grades where turnover rates have been high. This will involve the following recruitment ranks for the Clerical and Secretarial Grades : Office Assistant; Clerical Assistant; Clerical Officer II; Typist and Personal Secretary II. We support in principle the proposed terms and conditions for FCT clerical and secretarial staff which have been drawn up having regard to the considerations set out in paragraph 6 above. Indeed we consider the discretion given to HoD/HoG to base the exact amount of gratuity payable on performance, within the prescribed

Appendix L (Cont'd)

limit, innovative and in line with private sector practice of recognising good performance with financial awards. As a related issue, we note that for the clerical and secretarial grades, a maximum of 15% gratuity is to be granted. We are of the opinion that this may be on the low side but we have been assured by the Administration that this will be sufficient to attract the right candidates. We suggest that the Administration should keep this limit and other terms and conditions under regular review.

**Staff consultation**

16. We note that the Administration will consult the staff unions concerned before implementation of FCT for the Clerical and Secretarial Grades. We consider this imperative because while flexible employment terms were mentioned as a possibility in the Consultation Document on Civil Service Terms of Appointment and Conditions of Service and in the context of the Human Resource Management Review, the Administration has not so far presented any detailed proposals to staff for consultation purposes. The Administration should, therefore, explain clearly the rationale behind the current proposal so as to dispel any possible misunderstanding that the FCT is another covert attempt by the Administration to reduce civil service benefits, or as a first step towards departmentalisation of the Clerical and Secretarial Grades, which we understand has been an emotive subject among staff.

**CONCLUSION**

17. In conclusion, we support the Administration's proposal to introduce, under certain circumstances, flexible contract terms of employment to non-Public Service Commission posts in the civil service. Specifically, we support -

- (a) that flexible contract terms be allowed in circumstances described in paragraph 6.1 above;
- (b) that the terms and conditions set out in paragraph 6.2 above be adopted by the Administration as the basis for designing flexible contract terms for individual grades/ranks;
- (c) the checks and balances referred to in paragraph 6.3 above; and
- (d) that the proposed flexible contract terms for the Clerical and Secretarial Grades be introduced.



18. We further recommend that the Administration should -
- (a) address the potential staff-relations problems inherent in the proposal referred to in paragraph 9 above; and
  - (b) consider employing Flexible Contract Terms staff as non-civil servants as referred to in paragraph 14 above.

Yours faithfully,

(Sidney Gordon)  
Chairman  
For and on behalf of  
Members of the Standing Commission