

Appendix M

16 September 1994

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

Dear Sir,

**Consultation Exercise on Civil Service
Terms of Appointment and Conditions of Service**

We have been invited by the Administration to advise, under Clause 1(e) of our Terms of Reference, on the proposal to introduce one set of new terms of appointment and conditions of service for future civil service recruits.

BACKGROUND

2. On 25 October 1993, the Administration issued a Consultation Document on Civil Service Terms of Appointment and Conditions of Service. Comments of staff and other interested parties were sought on the introduction of a set of new terms of appointment and conditions of service for all future civil service recruits. The new terms will replace those existing which make a distinction between the local or overseas status of civil service employees.

3. In forwarding the Consultation Document to the Commission on 21 October 1993, the Administration invited us to give our preliminary views on the proposals in general, and on the following issues in particular -

- (a) whether the existing local (or overseas) conditions of service should be adopted as the basis for the uniform set of conditions for new recruits; or
- (b) whether the uniform conditions should be based on the existing local conditions but rationalised to take into account present day circumstances and longer term considerations; and
- (c) on the basis of (b) above, whether the specific proposals in the

Consultation Document relating to conditions of service should be adopted.

4. We discussed the matter at a meeting held on 11 November 1993. In the event, we decided not to express any views on the issues raised since these were the subject of wide ranging consultation and the Administration had indicated that it would seek our formal advice when it came up with firm recommendations following the consultation exercise. The Administration was so informed on 30 November 1993.

CONSULTATION

5. On completion of the initial consultation involving mainly staff and departmental management in February 1994, the Administration sought our advice on the overall approach to the proposals contained in the Consultation Document. We considered the subject again at a meeting held on 3 March 1994. Since the Administration was still examining staff views and would only formulate its final proposals after further staff consultation, we decided once again not to offer any specific comments on the proposals then. However, we made a number of observations which were subsequently conveyed to the Administration on 21 March 1994.

6. A total of 133 written submissions had been received by the Administration following the issue of the Consultation Document. These submissions were mainly from staff and departmental/grade management. In addition, preliminary views had been obtained from Members of the Legislative Council Panel on Public Service and the four major civil service advisory bodies : the Standing Committee on Disciplined Services Salaries and Conditions of Service; the Standing Committee on Directorate Salaries and Conditions of Service; the Public Service Commission and this Commission.

THE ADMINISTRATION'S PROPOSALS

7. In the light of the comments received, the Administration has formulated modified proposals on the new terms and conditions set out in the Consultation Document. A summary of these proposals compiled by the Administration is at the Annex.

STAFF REACTION

8. The Administration has informed major staff councils, Government departments, and the Legislative Council Panel on Public Service of its latest modified proposals. The only comments received are from two of the three staff

Appendix M (Cont'd)

associations represented on the Senior Civil Service Council, i.e., the Hong Kong Chinese Civil Servants Association (HKCCSA) and the Association of Expatriate Civil Servants (AECS). Both reiterated their original position that serving officers should retain their existing benefits and that new recruits should enjoy a new set of conditions of service of no less value than the existing one. No comments have been made by the Senior Non-Expatriate Officers Association, the remaining constituent association of the Senior Civil Service Council. The Administration considers that the modified proposals have ameliorated the original concerns of the Staff Sides.

WAY FORWARD

9. In addition to this Commission, the Administration is seeking advice from the other civil service advisory bodies on its modified proposals. Thereafter, the Administration intends to present the final package to the Chinese side of the Joint Liaison Group for discussion later this year.

COMMISSION'S VIEWS AND RECOMMENDATIONS

Uniform terms of appointment and conditions of service

10. In the Consultation Document, the Administration stated that with the passage of time, the current differences in terms of appointment and conditions of service between local and overseas officers had become less necessary for the purpose of recruiting and retaining staff of a suitable calibre. The Administration therefore proposed that one set of new terms of appointment and conditions of service be introduced for general application.

11. In the ensuing consultation exercise, the Administration noted that there had been overwhelming support from staff and departmental/grade management for this proposal. The four civil service advisory bodies and Members of the Legislative Council Panel on Public Service had also expressed support. On account of this, the Administration is of the view that its earlier proposal for a uniform set of terms of appointment and conditions of service for all future civil service recruits be reaffirmed.

12. We support this proposal which is a step in the right direction in the development of the civil service.

New permanent and pensionable terms

13. In the Consultation Document, the Administration proposed that with effect from a date to be announced, all new recruits should normally be appointed

on the new permanent and pensionable (P&P) terms and that local candidates proficient in the Chinese language would continue to be given preference for appointment.

14. There were no unfavourable comments on these proposals during the consultation exercise. The Administration is of the view that these proposals should be reaffirmed, to which we see no objection.

New agreement terms

15. In the Consultation Document, the Administration proposed that new agreement terms should be offered where there was a need for professional expertise for a specific period of time and/or where suitable candidates were not attracted to the P&P terms. Such recruits need not be locals although preference would be given to them. Since such appointment was for a fixed duration, Chinese language proficiency would not be mandatory across-the-board but on a job-related basis.

16. In the ensuing consultation exercise, the Administration noted no unfavourable comments. It therefore proposes that this proposal be re-affirmed, which we support.

Definition of a 'local'

17. In the Consultation Document, the Administration sought views on the definition of a 'local' and suggested that for this purpose the definition must be consistent with existing laws, including the Bill of Rights, and the Basic Law.

18. In the ensuing consultation exercise, the Administration noted overall support for this approach. The majority of staff who had suggested a definition considered that a 'local' should be defined as a permanent resident of, or have right of abode in, Hong Kong.

19. On this basis, the Administration proposes that a 'local' be defined as a permanent resident under the Immigration Ordinance for the time being, and that this definition be changed accordingly as and when the Immigration Ordinance is amended to align with the Basic Law.

20. We see merits in this practical approach which also accords with our earlier observation that a 'local' be clearly defined and that the definition should be agreed with the Chinese and be consistent with the Basic Law. We support this proposal.

Appendix M (Cont'd)

Chinese language proficiency

21. In the Consultation Document, the Administration stated that recruits appointed on new P&P terms would have to be proficient in the Chinese language, viz, proficiency in oral Cantonese which is the spoken language of the majority of Hong Kong citizens and comprehension of written Chinese. The Administration proposed that the proficiency level should normally be pitched at a pass in a Chinese subject in the Hong Kong Certificate of Education Examination. However, Heads of Department (Hod) and Heads of Grade (HoG) might in consultation with Civil Service Branch specify a different level of proficiency in respect of a particular rank or grade, having regard to its job nature. Candidates who had not received formal education in Chinese would be required to pass a basic Chinese language proficiency test.

22. In the ensuing consultation exercise, the Administration noted that there was overall support for some sort of proficiency standard in the Chinese language to be set for appointment to new P&P terms. In addition, many staff also stressed the importance of giving HoD/HoG the flexibility to set their own standards.

23. On account of this, the Administration proposes that the following arrangements set out in the Consultation Document be re-affirmed -

- (a) for appointment to new P&P terms, on which an officer can normally serve until retirement, a norm should be set at a pass in a Chinese subject in the Certificate of Education Examination but with an alternative of a pass in a basic Chinese language proficiency test for those having no formal education in Chinese; and
- (b) for appointment to new agreement terms, which are for fixed periods only, there should be no across-the-board requirement for Chinese language proficiency. It will be required only on a job-related basis.

24. The Administration further proposes that for jobs which require a higher language standard (Chinese or English), the HoD/HoG may stipulate accordingly. On the other hand, for grades which have recruitment difficulties, the HoD/HoG may exercise flexibility to lower the language requirements.

25. We endorse in principle the above arrangements. On the question of the basic Chinese language proficiency test for those having no formal education in Chinese, we have been assured that the standard will be such as to enable the officers concerned to handle simple communication in Chinese at the working level competently.

New conditions of service

General principles

26. In the Consultation Document, the Administration sought views on -

- (a) whether the new conditions of service should be the same as the existing local conditions of service, or whether they should be a modernised version of the existing local conditions of service taking into account present day circumstances.
- (b) whether the new conditions of service should be applied to serving agreement officers upon renewal of agreement. The Consultation Document proposed that they should, save for housing.

27. As regards (a), the Administration noted, in the ensuing consultation exercise, that staff associations generally considered that the proposed new conditions of service were inferior to the existing local conditions. They were concerned that the Administration should not take this opportunity to reduce conditions of service; and that it might be divisive for existing and future staff to serve on different conditions of service. Some also pointed out that a change in conditions of service would cause hardship to serving agreement officers who were drawing certain benefits.

28. On the other hand, the Administration noted that the civil service advisory bodies had supported the introduction of uniform conditions of service based on the existing local conditions of service, rationalised, where appropriate, to take into account present day circumstances and special requirements. However, having regard to the contentious nature of some of the proposals, the advisory bodies had stressed the need for thorough consultation and urged the Administration to pay due regard to the views of staff and to consider adjustments to its proposals where practicable in order to achieve staff acceptance.

29. On account of these suggestions and comments, the Administration proposes that its original proposal of modernising the existing local conditions of service be re-affirmed. However, taking into account the concerns expressed by staff, particularly serving agreement officers, the Administration has modified some of its original proposals. The Administration is of the view that the modified proposals should be more acceptable to staff. Our views and recommendations on these proposals are set out in paragraphs 33 to 55 below.

30. We see no objection to the Administration's approach in the formulation of the new set of conditions of service, particularly having regard to

Appendix M (Cont'd)

our earlier observation that it was logical to base the new conditions of service on the existing local conditions rationalised to meet present day needs and circumstances, with due regard to private sector practice. We also endorse the Administration's proposal to modify some of its original proposals to ameliorate staff concerns.

31. As regards (b), we have earlier commented that the legal implications of whether the new conditions of service should be applied to serving agreement officers upon renewal of agreement should be given careful consideration by the Administration. In response, the Administration has confirmed that the legal position is that new terms and conditions can be applied to serving agreement officers on renewal of agreement; there is no legal obligation on the part of Government to offer the same terms and conditions from one contract to another. However, as a reasonable employer, the Government should consult the staff on the proposed changes before implementation. This has been done by the Administration through the consultation exercise.

32. The Consultation Document also proposed that the new conditions of service, save for housing, should be applied to serving agreement officers upon renewal of agreement. Following consultation, the Administration has come up with further concessions for serving agreement officers in respect of other conditions of service besides housing. The proposed new conditions of service and concessionary arrangements for serving agreement officers are discussed in the following paragraphs.

Leave

33. At present, all leave earning rates are expressed in calendar days but where the leave taken is 12 days or less, leave deduction is on a working day basis. For all officers other than those eligible for annual leave, the leave earning rates represent the number of days of leave earned for every 365 days of service rendered (ie, leave is outside a year). For those who are eligible for annual leave, the leave earning rates represent the number of days of leave which may be taken within a year. To simplify the administration of leave, the Administration proposed in the Consultation Document to standardise all leave earning rates and express them in working days within a year. In addition, the Administration proposed that the leave accumulation limits be reduced to a maximum of two years' entitlement:

34. The new leave earning rates and accumulation limits proposed are as follows -

Appendix M (Cont'd)

| | <u>Leave earning rates</u> (working days) | <u>Accumulation limits</u> (working days) |
|------------|--|--|
| Mod 1 | 14(21) | 28(42) |
| MPS 1-13 | 21(27) | 42(54) |
| MPS 14-D10 | 27(34) | 54(68) |

* figures in brackets are the rates/limits for those with 10 or more years of service

35. The proposed leave earning rates are converted from the existing leave rates which are expressed in calendar days outside a year, in accordance with the conversion formula set out in the Consultation Document. The new rates allow officers, generally speaking, to enjoy the same period of absence from duty as they do under the existing arrangements, except that those taking their leave in one stretch will benefit from a longer period of leave of absence. This is because officers on the current leave terms are subject to a 12-day rule whereby all intervening Saturdays, Sundays and public holidays will count as leave when an officer takes leave in excess of 12 days. The proposed leave accumulation limits, on the other hand, are lower than the existing entitlements for serving officers.

36. Following consultation, the Administration proposes that serving local officers below D4 level should be allowed to retain in a 'sinking balance' their accrued leave in excess of the proposed ceiling of two years' entitlement. For overseas officers, and local officers at D4 and above who enjoy 'overseas addition' of leave, they should take their accrued leave before transfer to the new terms. Under justified circumstances, they will also be allowed to defer the excess leave and take it at the end of their service. This arrangement is modelled on that for overseas officers transferring to local terms.

37. We would like to mention that the standardisation of leave earning rates as proposed in paragraph 33 above has had the support of this Commission. In October 1992, the Administration proposed, inter alia, to change the basis of leave calculation from calendar days outside a year to working days within a year in order to simplify leave administration, and to reduce the leave accumulation limits for new recruits and serving overseas officers to a maximum of two years' entitlement, while retaining the present leave accumulation limits for serving officers. Of these proposals, we supported only the proposal to change the basis of leave calculation from calendar days to working days. We did not support the leave accumulation proposal as it would not, in our opinion, resolve the problem of over generous leave provisions for the civil service, a matter of some concern to us. We subsequently requested the Administration to carry out a review of this

Appendix M (Cont'd)

issue with a view to bringing leave provisions in the civil service more in line with the practice of steady and good employers in the private sector.

38. The Administration has made no attempt in the current exercise to rationalise leave entitlement on the grounds that the major objective of the current exercise is not to reduce benefits but to remove differences in local and overseas terms and conditions. In the Administration's opinion, any reduction in leave entitlement would result in very strong negative reaction from staff, making implementation of the new terms and conditions difficult.

39. We accept, albeit with reluctance, the Administration's explanation and the new leave arrangements outlined in paragraphs 34 and 36 above. This notwithstanding, we would like to reiterate our concern about the over generous leave provisions for the civil service and to urge that this issue be reviewed again by the Administration, perhaps as a separate exercise. In addition, we would like to make two observations. First, it is for the Standing Committee on Directorate Salaries and Conditions of Service to comment on the suitability of leave arrangements proposed for staff at the directorate level, since this is a matter within the Standing Committee's jurisdiction. Secondly, consistent with the Administration's intention to simplify leave administration, the Administration should consider changing the basis of leave earning rates for serving officers from calendar days outside a year to working days within a year, irrespective of whether they wish to opt for the new terms, provided that their existing entitlements will not be affected. This will obviate the need to operate two different leave administration systems after the implementation of the new terms and conditions of service.

Leave travel allowance

40. Leave passages were originally provided for overseas officers and dependent family members to enable them to return to their home country. The provision was later extended to local directorate officers largely on parity grounds. Within the specified scale of provision, there is flexibility to use the passage allowance to cover the costs of accommodation, car hire, package tours and airport departure tax.

41. Leave passages have become more common in the private sector, mainly at the senior levels. It was for this reason that the Administration proposed in the Consultation Document to retain this provision for directorate officers. To reflect the flexible way in which leave passages may now be used, the Administration proposed that leave passages be retitled to "leave travel allowance". The rate of the allowance would be based on the return air fares as specified in the contract between Government and the airlines. The allowance

would be fully accountable and could be used in the same way as the current leave passage allowance. The scale of provision is as follows -

| | |
|----------|--------------------------------|
| D7 - D10 | First class, annually |
| D4 - D6 | Economy class, annually |
| D1 - D3 | Economy class, every two years |

42. We offer no comment on the above matters which fall within the province of the Standing Committee on Directorate Salaries and Conditions of Service.

43. In the Consultation Document, the Administration proposed that passages to Hong Kong and baggage allowances should be provided for officers recruited directly from overseas to enable them to take up appointment in Hong Kong. However, no passages or baggage allowances would be provided to them on completion or termination of employment. During the consultation period, there were strong staff reactions towards this proposal. As a result, the Administration now proposes that, as a concession, officers recruited directly from overseas should be provided with passages and baggage allowances on completion or termination of employment, in addition to pre-appointment passages and baggage allowances. Furthermore, serving overseas agreement officers on transfer to the new terms should also be granted sea baggage allowance on finally leaving the service. The amount of their sea baggage allowance would be calculated on the basis of their total length of service, including the period of service prior to their transfer to the new terms. However, upon transfer to the new terms, serving overseas agreement officers would no longer be eligible for final sea passages.

44. We see no objection to these proposals.

Housing

45. In the Consultation Document, the Administration proposed that officers on new P&P terms would be eligible only for Home Financing Allowance (HFA) or Home Purchase Allowance (HPA), depending on their rank, to purchase a permanent home in Hong Kong. Once they had joined the HFA/HPA scheme, the amount of allowance would be fixed for ten years. They would also be eligible for a downpayment loan.

46. As for officers on new agreement terms at MPS 34 or above, the Consultation Document proposed that a rent allowance equivalent in amount to the HFA would be granted to them to lease accommodation. In addition, they could opt to join the HFA scheme any time during the agreement if they so wished, in