

# **Hong Kong (Overseas Public Servants) Bill**

[Bill 1 of 1995/96]

**Research Paper 95/112**

**16 November 1995**



This Paper outlines the provisions of the Hong Kong (Overseas Public Servants) Bill and places it in context.

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## **I Introduction**

Since the 1950s British decolonisation has been accompanied by schemes designed to compensate expatriate civil servants and to secure the value of their pensions. Although Hong Kong is not to be granted independence, the Government felt that similar schemes should be introduced there. The Hong Kong (Overseas Public Servants) Bill is aimed at achieving this.

The Bill would authorise disbursements of relatively modest sums of money from the British Exchequer in order to fulfil responsibilities towards a particular category of public servants, and it does so in line with established precedents.

The Bill provides for Orders in Council which would confer certain powers on the Secretary of State to make payments to defined overseas public servants, including payments to protect the value of their pensions. It also provides for Orders in Council allowing early retirement for them. All of these Orders will be subject to annulment by either House of Parliament.

The Bill's scope covers a corps known as Her Majesty's Overseas Civil Service, which includes those employees of a colonial Government who were appointed by the Secretary of State, rather than the Governor, and who serve on permanent and pensionable terms. The Bill also covers similar members of the judiciary.

The Bill sets out new measures which go beyond the existing provisions on pensions set out in the Joint Declaration and the Basic Law.

The Draft Bill, together with a Draft Explanatory and Financial Memorandum, was deposited in the Library on 3 November 1995 as Deposited Paper 3/2309.

It is anticipated that the Bill will receive its 1st Reading in the House of Commons on 16 November 1995 and be given a 2nd Reading on 23 November 1995.

## II The Bill

The Bill is short, with only eight clauses. It can be thought of as dividing into three parts. First, there is a definition of scope; secondly, there are the substantive provisions; and thirdly, there are details relating to implementation.

### A. Clauses

1. **Clause 1** defines Hong Kong overseas public servants, that is, those persons who fall within the general scope of the Bill. They are defined as those who are or are treated as being members of Her Majesty's Overseas Civil Service (HMOCS) or Her Majesty's Overseas Judiciary and who are on the pensionable establishment of the Hong Kong Government. Members of HMOCS, whether in Hong Kong or elsewhere, are those civil servants working in the colonies on permanent, pensionable terms who were appointed by the Secretary of State rather than the local Governor. They are distinct from those who are engaged locally, although the two groups work side-by-side<sup>1</sup>. This Bill, of course, relates only to those working for the Government of Hong Kong.

2. **Clauses 2, 3 and 4** contain the substance of the Bill.

**Clause 2** deals with those who serve continuously as Hong Kong overseas public servants from 1 May 1993 until 30 June 1996 and then enter the service of the Hong Kong Special Administrative Region<sup>2</sup> Government on 1 July 1997. It provides for Orders in Council under which the Secretary of State may make payments to such persons.

**Clause 3** deals with early retirement for those serving continuously from 1 May 1993 until any point during the final year of British rule.

Under Clause 3(1)(a), early retirement between 1 July 1996 and 30 June 1997 may be permitted by Order in Council for those in service continuously from 1 May 1993 until such retirement. Clause 3(1)(b) provides that such Orders in Council may empower the Secretary of State to make payments to those who retire in this manner.

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<sup>1</sup> HMOCS was established in 1954 under Colonial No 306. Further details are given below.

<sup>2</sup> Hong Kong will be known as the Hong Kong Special Administrative Region (SAR) from 1 July 1997 to signify its status within the People's Republic of China.

Clause 3(2) empowers the Secretary of State to provide advice about alternative employment and other resettlement services to any who retire early between 1 July 1996 and 30 June 1997 following continuous service since 1 May 1993. This applies to those who choose to retire early in accordance with an Order in Council under Clause 3(1) and to those who are obliged to retire early as a result of the constitutional changes in Hong Kong. The resettlement services are expected to include a consultancy which will provide advice on finding alternative employment, writing CVs and the like, and which will hold a database of companies and organisations which may offer suitable opportunities. There may also be some kind of assistance offered with vocational training.

**Clause 4** concerns pensions. It is intended to guard against the negative impact on the value of pensions which would follow should there be a substantial devaluation of the Hong Kong dollar against sterling after the transfer.

Clause 4(1) provides for an Order in Council allowing the Secretary of State to make payments supplementary to pensions and gratuities paid to the relevant persons by the Hong Kong or Hong Kong SAR Governments. Those persons are any who have at any time been Hong Kong overseas public servants or who have been on the pensionable establishment of the Hong Kong Government in certain other defined categories<sup>3</sup>, or their dependants.

**3. Clauses 5, 6 and 7** set out the procedures for implementation.

**Clause 5** provides for Orders in Council under the Act to establish any manner of determining the amount of payments to be made, without necessary reference to precedent. It also provides that Orders in Council under Clauses 2 and 3 (relating to payments to those who continue in service under the Hong Kong SAR and to those who take early retirement) may authorise the Secretary of State to satisfy any UK tax liability incurred by beneficiaries of payments. It is intended that this authorisation will be given.

**Clause 6** allows for Orders in Council under the Act to make different provisions in relation to different cases, to specify exempted cases and to contain incidental or supplementary provisions.

Clause 6(4) stipulates that Orders in Council under the Act shall be subject to annulment by resolution of either House of Parliament.

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<sup>3</sup> The other categories are defined in the Schedule to Colonial No 306 and include members of various Colonial Services, plus others employed in 'specified circumstances'.

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**Clause 7** provides that any expenditure by the Secretary of State shall be met out of funds provided by Parliament.

**Clause 8** gives the citation of the Act as the Hong Kong (Overseas Public Servants) Act 1996.

### **B. Cost**

According to the Draft Explanatory and Financial Memorandum accompanying the draft Bill, the financial implications will be as follows.

Clauses 2 and 3(1) (payments to those who continue in service after 1 July 1997 and to those who take early retirement under the suggested Order in Council) are likely to benefit around 500 persons. This is estimated at 1994/95 prices to represent a total cost of £45m. It is proposed to offer two options for payment: a single discounted lump sum, or five instalments over the financial years 1996/97 to 2001/02.

Clause 3(2) (resettlement services) is expected to relate to around 300 persons. The assistance will cost up to £2,500 per person, or £750,000 in total.

Clause 4 (protection of pensions) could cover up to 2,000 pensions. The maximum liability is estimated at £130m over 50 years. However, this protection may not in fact become necessary.

All these expenses, plus tax liability, will be met by the Secretary of State from money provided by Parliament. The scheme will be administered by the Overseas Development Administration as part of its existing overseas superannuation functions, with minimal additional workload.



### III Background

The schemes set out in the draft Bill form part of the 'tidying up' process as the UK prepares to hand responsibility for Hong Kong over to China.

Similar provision for compensation and pension protection has commonly been made in the past when British sovereignty over colonies has ended. It is regarded as an obligation to the members of HMOCS and was first recognised in the early 1950s.

As the process of decolonisation gathered pace in the post-War years, the Government recognised a need to provide some kind of reassurance to its overseas corps and a sense of what the future would hold for it, partly from a sense of indebtedness to those individuals and partly in order to secure the continued functioning of an established civil service after independence. A White Paper of 1954<sup>4</sup> established the HMOCS status for expatriate civil servants and gave the following account of the continuing responsibility:

6. Her Majesty's Government in the United Kingdom recognise that they have a special obligation towards those officers of the Colonial Service who hold their present posts as a result of having been selected for them by the Secretary of State. So long as Her Majesty's Government retains responsibility for the Government of the territory in which they are serving the necessary safeguards are provided by the Colonial Regulations or the constitutional instruments. Should the territory in whose public service they are employed attain self-government, these officers are entitled to expect that the following conditions will be observed:

- (1) So long as they remain in their existing employment, the Government of the territory concerned shall not alter their terms of service so as to make them less favourable than those on which the officers are already serving.
- (2) The pensions and other benefits for which they or their dependents may be qualified under existing laws and regulations shall be similarly safeguarded.
- (3) They shall continue to be regarded by Her Majesty's Government in the United Kingdom as members of Her Majesty's Service and as such to be eligible for consideration for transfer or promotion to any posts which the Secretary of State may be requested to fill in other territories.
- (4) The government by which they are employed will not unreasonably withhold consent to their accepting any such transfer or promotion and will preserve their existing pension rights on transfer.

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<sup>4</sup> *Reorganisation of the Colonial Service*, Colonial No 306.

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- (5) They will be given adequate notice of any intention to terminate their employment in consequence of constitutional changes and Her Majesty's Government in the United Kingdom will endeavour to find them alternative employment should they so desire.
- (6) In the event of premature retirement resulting from constitutional changes they will receive compensation from the government of the territory concerned.

7. Her Majesty's Government in the United Kingdom accordingly make known their intention, if and when a territory attains self-government, to ensure the observance of these conditions by securing their embodiment in a formal agreement, to be entered into between Her Majesty's Government in the United Kingdom and the government of the territory. The agreement will also provide for the continuing payment of pensions already awarded to officers and their dependents.<sup>5</sup>

Typically, these measures were established through agreements with the incoming Governments of the newly independent states, which would accept a financial obligation towards retired HMOCS members. This was detailed in a White Paper of 1960<sup>6</sup>, which pointed out that some contribution had usually been made to defray the burden on the new Governments and stated that for future situations of decolonisation the British Government would share the cost equally with those Governments<sup>7</sup>. The Governments of the newly independent former colonies were often extremely poor, particularly so in Africa and the Caribbean. In practice they found it hard, or unacceptable, to have to make the required payments, and the British Government tended to make up the shortfall, either directly or through the aid budget. However, in the case of Hong Kong, which is not to become independent but is still to pass out of British colonial status, it was considered neither reasonable nor feasible to expect the Chinese Government to accept responsibility for the mostly British pensioners involved. The Chinese Government has shown very great sensitivity over the financial reserves of Hong Kong. Hence separate provision was considered appropriate, in the form of an Act of Parliament.

A proposed package of benefits was discussed with the Association of Members of Her Majesty's Overseas Civil Service in Hong Kong in March 1994 and its suggested changes were taken into consideration before the finalisation of the package and the drafting of the Bill<sup>8</sup>.

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<sup>5</sup> p4.

<sup>6</sup> *Service with Overseas Governments*, Cmnd 1193.

<sup>7</sup> Paragraph 9 (e) and final two sentences.

<sup>8</sup> HC Deb 17 May 1994, c430W.

## IV Existing Provisions

The great majority of Hong Kong civil servants will not benefit from the provisions of the Bill. The Bill covers HMOCS and its judicial counterpart, which comprise almost exclusively expatriate Britons. The locally employed, mostly Chinese civil servants, who make up the bulk of Hong Kong's civil service, are not covered by the Bill. However, there is provision for all Hong Kong Government pensioners in the Joint Declaration and the Basic Law.

Annex I to the Joint Declaration<sup>9</sup> states that

the Hong Kong Special Administrative Region Government shall pay to such persons [public servants] who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.<sup>10</sup>

Article 102 of the Basic Law, China's constitutional framework for the Hong Kong SAR, repeats these provisions.

All pensioners of the Hong Kong Government, whether in HMOCS or locally recruited, will thus continue to have their pensions paid by the Government of the Hong Kong SAR after 1 July 1997. To this end, the Hong Kong Government is establishing a pension reserve fund of some HK\$7bn in order to protect existing statutory pension safeguards and the undertakings in the Joint Declaration. This was discussed in the Sino-British Joint Liaison Group and agreed between the two sides. The pension support scheme envisaged in Clause 4 of the Bill will apply solely in circumstances which exceed these provisions, and reflects the recognition by the Secretary of State of a specific responsibility towards those pensioners appointed by him.

Such pensioners may be considered more vulnerable to future fluctuations of the exchange rate of the Hong Kong dollar, as a result of their being more likely to claim their pensions in pounds sterling. Hong Kong Government pensions are payable in Hong Kong dollars. However, British pensioners resident in the UK can opt to have their pensions paid by the

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<sup>9</sup> Cmnd 9543. The Annex, entitled the *Elaboration by the Government of The People's Republic of China of its Basic Policies Regarding Hong Kong*, has the same binding force as the rest of the Joint Declaration, under Article 7 thereof.

<sup>10</sup> Part IV.

Crown Agents in pounds sterling at the prevailing rate of exchange<sup>11</sup>. The Bill seeks to offer protection in the event of a substantial decline in the value of the Hong Kong dollar and hence in the sterling value of the pensions. This of course does not entail comprehensive support of the value of the pensions in real terms.

The proportion of HMOCS members in Hong Kong's civil service has been in decline for many years, and the trend towards localisation has been particularly pronounced since the early 1980s<sup>12</sup>. There has been a conscious attempt to strengthen the local civil service corps, and in particular to move away from the dominance of high level appointments by expatriate Britons. Although the number of expatriates continued to grow between the 1950s and the 1980s, this was in a context of expansion in the service as a whole and the proportion of expatriates fell by more than 50%.

Overseas recruitment is now undertaken only when no suitable local candidate can be found and is only on contract terms. Since 1985 all new administrative officers have been local appointees, but the overseas bias of the past is still evident in the concentration of expatriates in the higher grades. In 1994, of the 189,000 civil servants of all grades in Hong Kong, around 1.1% were overseas appointees, while in 1990 the figure for the Directorate Grade (around 1,200 posts) was 40.3%. The members of HMOCS in Hong Kong are now concentrated in the police force and the legal services.

There are currently about 41,000 Hong Kong Government pensioners and this is estimated to reach 51,000 by the time of the handover<sup>13</sup>. Although these are predominantly Hong Kong Chinese, they include a greater proportion of members of HMOCS as a result of their having been recruited before the localisation policy took effect.

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<sup>11</sup> HC Deb 30 March 1993, c123W.

<sup>12</sup> Sources for this section are N Miners, *The Government and Politics of Hong Kong*, 5th ed, 1991, pp93-5, and Hong Kong Government factsheet, *Hong Kong: The Facts. The Civil Service*, May 1994.

<sup>13</sup> HC Deb 24 February 1994, c308W & HC Deb 14 April 1993, c583W.

## V Summary

The Hong Kong (Overseas Public Servants) Bill is a relatively straightforward piece of legislation aimed at creating similar conditions for members of HMOCS in Hong Kong as have applied in the past when colonies have passed out of British sovereignty. It does not have any implications for the vast majority of Hong Kong's civil servants.

## **Appendix : Documentation**

*Hong Kong: Our Work Together.* Address by the Governor of Hong Kong, the Rt Hon Chris Patten, at the opening of the 1995/96 session of the Legislative Council, 11 October 1995.

Debate on a motion for the adjournment on developments in China and Hong Kong, HC Deb 27 April 1995, cc993-1076.

*Hong Kong: The Current Issues*, Research Paper 95/52, 26 April 1995.

*Annual Report on Hong Kong for 1994*, Cm 2788, 21 March 1995.

*British Nationality (Hong Kong) Act 1990. Third annual report of the Governor of Hong Kong to the Home Secretary for the period 7 November 1993 to 6 November 1994*, HC 203 1994-95, 23 February 1995.

*The Government and Politics of Hong Kong*, N Miners, 5th ed, 1991.

*The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, adopted 4 April 1990.

*The Sino-British Joint Declaration on the Question of Hong Kong*, Cmnd 9543, 19 December 1984.