

CHAPTER 8

**THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION**

GENERAL REVENUE ACCOUNT

GOVERNMENT SECRETARIAT

Civil Service Bureau

Interdiction of government officers

**Audit Commission
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INTERDICTION OF GOVERNMENT OFFICERS

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INTERDICTION OF GOVERNMENT OFFICERS

Summary and key findings

A. **Introduction.** As part of the Administration's procedures for taking disciplinary action in respect of misconduct, a government officer may be interdicted from the exercise of powers and functions of his office. According to the relevant regulations and procedures, it is the responsibility of departments to consider the need to interdict their staff from duty at the appropriate time and to seek approval from the appropriate authority for the interdiction. Interdiction cases should be kept under constant review by departments and arrangements should be made to reinstate the officer to duty as soon as circumstances permit. Prolonged interdiction is most undesirable. Audit has recently conducted a review of the administrative arrangements for interdiction of government officers and found that there is scope for improvement in a number of areas (paras. 1.1, 1.5 and 1.9).

B. **Profile and duration of interdiction cases.** In 1999-2000, there were 288 interdiction cases. Officers in the disciplined services accounted for about two-thirds of the interdiction cases. The majority of the interdiction cases (78%) were related to investigations or proceedings of criminal offences. The rest (22%) were connected with disciplinary offences. Of the 116 released interdiction cases, 71% resulted in termination of service. Interdiction pay amounting to \$36 million was incurred and the total number of interdiction days was 56,119. Audit noted that there were many prolonged interdiction cases (paras. 2.1, 2.3 to 2.7 and 2.11).

C. **Withholding of salary during interdiction.** Up to 50% of an interdicted officer's salary may be withheld at the discretion of the interdicting authority. The Civil Service Bureau (CSB) has promulgated in the Procedural Manual on Discipline (PMD) the general guideline that 50% of the salary of an interdicted officer should be withheld. Audit notes that the practice throughout the civil service is that all civil servants, except police officers below the rank of Superintendent in the Hong Kong Police Force (Police Force), have 50% of salary withheld during the period of interdiction as promulgated in the PMD. The Police Force grants full pay to police officers below the rank of Superintendent on interdiction. Audit also notes that interdicted officers are not deployed in active service and there is a mechanism to repay the amounts of salary withheld during the period of interdiction to the officers who are not subsequently removed from the service. Audit considers that the practice of the Police Force is over-generous in comparison with that of the rest of the civil service. If the general practice of withholding 50% of salary during interdiction had been applied to the police officers below the rank of Superintendent, Audit estimated that the potential reduction in interdiction pay in 1999-2000 would have been \$3.53 million (paras. 3.1, 3.14, 3.17 and 3.18).

D. **Stoppage of salary after an officer has been found guilty of offences.** Audit notes that there are different treatments after an officer has been found guilty of offences:

- **Criminal offences.** Under the Public Service (Administration) Order (PS(A)O) and the ordinances of the disciplined services, on conviction of a charge serious enough to warrant dismissal, an officer's salary is stopped pending the decision on the punishment to be imposed; and

- **Disciplinary offences.** Under the PS(A)O, a government officer is dismissed immediately upon an award of the punishment of dismissal in disciplinary proceedings. However, the officer may submit representations to the Chief Executive. Under the ordinances of the disciplined services, an officer may lodge an appeal against the dismissal to the Head of Disciplined Services. In such cases, only up to 50% of his salary is withheld during the appeal period.

Based on the discretion given to the Commissioner of Police as the interdicting authority, police officers below the rank of Superintendent, who had been awarded the punishment of dismissal in disciplinary proceedings, were allowed to receive full pay during the appeal period. The CSB had repeatedly stated in 1980 and 1987 that the long-term solution to this problem was to amend the relevant ordinances of the disciplined services to allow interdiction on no pay following an award of the punishment of dismissal in disciplinary proceedings. However, in 1992, after consultations with the Police Force and the Security Bureau, the CSB agreed to shelve the proposal of amending the ordinances of the disciplinary services to stop the payment of salary to an officer who had submitted an appeal against the award of the punishment of dismissal in disciplinary proceeding. Since 1992, there has been little progress on this matter. In 1999-2000, there were 19 cases of appeal against the punishment of removal from the service awarded to officers in disciplinary proceedings. During the appeal period, the total interdiction pay for these officers amounted to \$4.8 million (paras. 4.2, 4.13 to 4.16).

E. Leave entitlement and leave balances of interdicted officers. Government officers who have been in service for some years usually have an accumulated leave balance on hand. Audit considers that the Administration should, through administrative arrangements, persuade an officer to take his earned leave before interdicting him. Assuming that an interdicted officer used up his leave balance before interdiction, Audit estimated that the potential reduction in interdiction pay in 1999-2000 would have been \$5.5 million (paras. 5.7, 5.8 and 5.10).

F. Granting of annual increments to officers on interdiction. According to the Civil Service Regulations (CSRs), an increment may be granted to an officer whose conduct and diligence in the year under review have been satisfactory. However, it has been the Government's practice to grant annual increments to officers on interdiction. In 1996, the CSB acknowledged this anomaly and undertook to review the relevant CSRs. However, up to 31 July 2000, the proposed amendments to the CSRs to stop granting annual increments to officers on interdiction had not yet been effected. Audit noted that 59 of the 288 interdicted officers in 1999-2000 were granted annual increments during their interdiction. These 59 officers were granted a total of 86 salary points with an annualised monetary value of about \$889,000 (paras. 6.2, 6.6, 6.7 and 6.9).

G. Monitoring of interdiction cases by CSB. The CSB is responsible for the policy issues relating to conduct and discipline in the civil service. However, it does not have a management information system for consolidating all the interdiction cases on a regular basis for detailed analysis of their profile and trend over the years. In Audit's view, the CSB needs to establish complete and accurate information on the duration and details of all interdiction cases in order to take appropriate follow-up action with departments. In view of the anomalies and inconsistencies in the administrative arrangements for handling interdiction cases, Audit considers that there is a need for the CSB to conduct a comprehensive review on the rules and practices for interdiction (paras. 7.1, 7.3 and 7.5).

H. **Audit recommendations.** Audit has made the following major recommendations:

- the Secretary for the Civil Service should:
 - (i) review and streamline the existing disciplinary procedures with a view to speeding up the processing of disciplinary cases to facilitate early release of interdiction cases (second inset of para. 2.15);
 - (ii) regularly review the progress of all interdiction cases and take necessary follow-up action with the Heads of Department concerned on prolonged interdiction cases (third inset of para. 2.15);
 - (iii) closely liaise with the Commissioner of Police with a view to bringing the practice of withholding of salary of interdicted police officers below the rank of Superintendent during interdiction in line with that of the rest of the civil service as soon as possible (first inset of para. 3.23);
 - (iv) in consultation with Heads of Disciplined Service, review the provisions in the ordinances of the disciplined services with a view to imposing stoppage of salary during the period in which an officer appeals against the punishment of removal from the service awarded to him in disciplinary proceedings (para. 4.17);
 - (v) in consultation with Heads of Department, consider the feasibility of introducing the option of persuading an officer, who is being considered to be interdicted, to take his earned leave before putting him on interdiction (para. 5.11);
 - (vi) as soon as possible, take necessary action to cease the practice of granting annual increments to officers on interdiction (para. 6.10); and
 - (vii) conduct a comprehensive review on the rules and practices for interdiction and strengthen the present system of monitoring interdiction cases (first and second insets of para. 7.6); and
- the Commissioner of Police should review the practice of allowing interdicted police officers below the rank of Superintendent to receive full pay during interdiction, having regard to the general guideline of withholding 50% of the salary of interdicted officers as promulgated by the CSB in the PMD, which has been followed by all other departments (para. 3.22).

I. **Response from the Administration.** The Secretary for the Civil Service has said that the audit recommendations are generally agreeable to him. The Commissioner of Police has said that he agrees that there is a need for the Administration to consider ways of reducing the duration of interdiction cases. The Police Force Working Group on Discipline, formed in October 1998, is reviewing the Police Force's disciplinary procedures with a view to streamlining the disciplinary processes. Towards the end of 1999, the Police Force undertook an overall review on the interdiction policy. Consultation within the Police Force on the recommendations is currently in progress.

PART 1: INTRODUCTION

1.1 As part of the Administration's procedures for taking disciplinary action in respect of misconduct, a government officer may be interdicted from the exercise of powers and functions of his office. The term interdiction refers to, and is also commonly known as, suspension from duty.

1.2 The provisions for the conduct and discipline of government officers, including the administrative arrangements for interdiction, are laid down in the Civil Service Regulations (CSRs), the Public Service (Administration) Order (PS(A)O) and the Public Service (Disciplinary) Regulation. Officers of the disciplined services are also subject to the disciplinary provisions in the relevant ordinances, regulations and rules of the disciplined services. Detailed guidelines on interdiction procedures are provided in the Procedural Manual on Discipline (PMD).

1.3 Before 1 July 1997, provisions relating to the administration of the civil service and sets of disciplinary regulations and directions were laid down in the Letters Patent and the Colonial Regulations. On 1 July 1997, the Letters Patent and the Colonial Regulations lapsed. In order to provide continuity of the relevant procedures, the PS(A)O and the Public Service (Disciplinary) Regulation, effective from 1 July 1997, were issued by the Chief Executive of the Hong Kong Special Administrative Region to replace the provisions in the Letters Patent and the Colonial Regulations. The procedures for handling interdiction have remained the same after 30 June 1997.

General principles on interdiction

1.4 According to the PMD, interdiction is not a punishment but a precaution to be taken when it is essential for departmental reasons or in the wider public interest that an officer should cease exercising the powers and functions of his public office, and when alternative duties cannot be found or will be inappropriate. Interdiction of an officer from his duty should not be automatic. Each case should be considered on its merits. When considering whether an officer should be interdicted, departments are required to take into account the following factors:

- (a) nature and gravity of the alleged misconduct or criminal charges;
- (b) sources of the referral for disciplinary action;
- (c) possible conflict between the officer's misconduct and his official duties;
- (d) possibility of recurrence of the same misconduct or offence if the officer is allowed to remain in his office;
- (e) personality, record of conduct and performance, or other particular characteristics of the officer;
- (f) availability of alternative suitable posting;
- (g) manpower and morale of the department;

- (h) conditions of the civil service;
- (i) likely harm or risk posed to the general public; and
- (j) reaction and perception of the general public.

1.5 According to the PMD, interdiction should always be for the shortest period possible. Once an officer is interdicted from duty, disciplinary proceedings should take place as quickly as possible. It is the responsibility of departments to consider the need to interdict their staff at the appropriate time and to seek approval from the appropriate authority for the interdiction. Interdiction cases should be kept under constant review by departments and arrangements should be made to reinstate the officer to duty as soon as circumstances permit. Prolonged interdiction is most undesirable.

1.6 According to the provisions in the PS(A)O, an officer may be interdicted from duty:

- under section 13(1)(a), if disciplinary proceedings have been, or are to be, taken against him, which may lead to his removal from the service;
- under section 13(1)(b), if criminal proceedings have been, or are likely to be, instituted against him and conviction may lead to his removal from the service; or
- under section 13(1)(c), if an officer's conduct is under investigation by the department, the Independent Commission Against Corruption or the Hong Kong Police Force (Police Force), and it is contrary to the public interest for him to continue to exercise the powers and functions of his office. An officer may also be interdicted under this regulation if action has been, or is to be, taken against him under section 12 of the PS(A)O on grounds of loss of confidence.

1.7 Section 12 of the PS(A)O provides for an officer's retirement in the public interest, having regard to conditions of the public service, the usefulness of the officer and all the other circumstances of the case. Retirement in the public interest is not a form of disciplinary action or punishment. It is an administrative action. The grounds for requiring an officer to retire in the public interest may include:

- persistent sub-standard performance of duties; and
- loss of confidence in the officer.

Administrative framework

1.8 The Civil Service Bureau (CSB) is responsible for the policy issues relating to conduct and discipline in the civil service. The Public Service Commission (PSC) is responsible for advising the Chief Executive on appointments and promotions, and also issues pertaining to discipline in the civil service. The authority for interdiction of government officers is shown in Table 1 below.

Table 1

The authority for interdiction of government officers

Authority	Officers covered by the authority
(I) Secretary for the Civil Service under the PS(A)O	(i) Category A officers on or above Master Pay Scale (MPS) point 14 and Category B officers on or above MPS point 34 (Note 1) (ii) Officers in the disciplined services not subject to the provisions of the relevant ordinances listed in (III) (i) to (v) below (Note 2)
(II) Heads of Department under the PS(A)O	(i) Category A officers below MPS point 14 (ii) Category B officers below MPS point 34
(III) Heads of Disciplined Service under the provisions of the relevant ordinances (Note 2)	Officers specified in the relevant ordinances: (i) Police Force Ordinance (Cap. 232) Officers in the Hong Kong Police Force below the rank of Superintendent (ii) Prisons Ordinance (Cap. 234) Officers in the Correctional Services Department below the rank of Superintendent (iii) Customs and Excise Service Ordinance (Cap. 342) Officers in the Customs and Excise Department below the rank of Assistant Superintendent (iv) Fire Services Ordinance (Cap. 95) Officers in the Fire Services Department below the designated Senior Officer ranks (v) Government Flying Service Ordinance (Cap. 322) Officers in the Government Flying Service below the designated Senior Officer ranks

Source: CSB's records

Note 1: Category A officers are officers holding established offices and who have been confirmed to the permanent establishment. Category B officers are officers holding non-established offices (including those remunerated on the Model Scale I Pay Scale), or established offices either on month-to-month terms or probationary terms, or offices on agreement terms.

Note 2: The two other disciplined services, i.e. the Immigration Department and the Independent Commission Against Corruption, do not have provisions in their respective ordinances governing the interdiction of their officers. These two disciplined services follow the provisions of the PS(A)O in matters relating to interdiction.

Audit objectives and scope

1.9 Audit has recently conducted a review of interdiction of government officers. The audit focused on the administrative arrangements for interdiction as part of the disciplinary mechanism of the civil service. Audit does not comment on the details, nature and outcome of individual interdiction cases in this report. The audit reveals that there is scope for improving the administrative arrangements for interdiction in a number of areas. Audit has made a number of recommendations to address the issues concerned.

General response from the Administration

1.10 The **Secretary for the Civil Service** has said that the audit recommendations are generally agreeable to him.

1.11 The **Commissioner of Police** has said that he agrees that there is a need for the Administration to consider ways of reducing the duration of interdiction cases. The Police Force Working Group on Discipline, formed in October 1998, is reviewing the Police Force's disciplinary procedures with a view to streamlining the disciplinary processes. Towards the end of 1999, the Police Force undertook an overall review on the interdiction policy. Consultation within the Police Force on the recommendations is currently in progress.

PART 2: PROFILE AND DURATION OF INTERDICTION CASES

Number of interdiction cases

2.1 In 1999-2000, there were 288 interdiction cases. An analysis of the number of interdiction cases for the three years 1997-98 to 1999-2000 indicated that the number of cases had increased. Details are given in Table 2 below.

Table 2
Number of interdiction cases
1997-98 to 1999-2000

	1997-98	1998-99	1999-2000
Cases brought forward from the previous financial year	137	105	129
New cases in the year	130	152	159
Total number of cases in the year	267	257	288
Cases released in the year	162	128	116
Outstanding cases as at 31 March	105	129	172

Source: Records of the CSB and the Treasury

Note: Based on readily available information in the Treasury's Payroll System, Audit could only retrieve full information on interdiction cases for these three financial years.

2.2 There was an increase in the number of new cases from 130 cases in 1997-98 to 159 cases in 1999-2000. On the other hand, there was a decrease in the number of released cases from 162 cases in 1997-98 to 116 cases in 1999-2000. As a result, the number of outstanding cases as at the close of the financial year increased considerably from 105 cases as at 31 March 1998 to 172 cases as at 31 March 2000.

Distribution of interdiction cases by departments

2.3 An analysis of the interdiction cases in 1999-2000 indicated that officers in the disciplined services accounted for about two-thirds of the interdiction cases. The Police Force accounted for 48.3% of the interdiction cases. Table 3 below shows the distribution of the interdiction cases by departments in 1999-2000.

Table 3

Analysis of interdiction cases by departments in 1999-2000

Department	Number of officers interdicted	Percentage
Hong Kong Police Force	139	48.3%
Food and Environmental Hygiene Department (Note 1)	38	13.2%
Correctional Services Department	22	7.6%
Customs and Excise Department	13	4.5%
Hospital Authority (Note 2)	11	3.8%
Immigration Department	7	2.4%
Fire Services Department	7	2.4%
Housing Department	7	2.4%
Water Supplies Department	7	2.4%
Independent Commission Against Corruption	5	1.8%
Other government departments	32	11.2%
Total	288	100.0%

Source: Records of the CSB and the Treasury

Note 1: The Food and Environmental Hygiene Department was set up on 1 January 2000 to take over the responsibility for environmental hygiene services from the then Urban Services Department and the then Regional Services Department, consequent upon their dissolution on the same date.

Note 2: The interdicted officers were government officers working in the Hospital Authority.

Analysis of interdiction cases by nature of offence

2.4 Interdiction cases may involve either criminal offences or disciplinary offences. Disciplinary offences usually arise from an officer's misconduct. These offences included contravention of orders, absence from duty, neglect of duty and conduct calculated to bring the public service into disrepute. Table 4 below shows an analysis of the interdiction cases by nature of offence in 1999-2000.

Table 4**Analysis of interdiction cases by nature of offence
in 1999-2000**

Nature of offence	Number of cases	Percentage
Criminal offences		
Offence against the Prevention of Bribery Ordinance (Cap. 201)	95	33.0%
Theft	24	8.3%
Assault	16	5.6%
Sexual offences	15	5.2%
Use of false instrument	9	3.1%
Forgery	8	2.8%
Robbery/burglary	7	2.4%
Perversion of the course of justice	7	2.4%
Deception	6	2.1%
Murder	4	1.4%
Others (Note)	34	11.8%
Sub-total	225	78.1%
Disciplinary offences	63	21.9%
Total	288	100.0%

Source: Audit's analysis of records of the CSB and the Treasury

Note: These offences included road traffic offences, criminal damage, handling stolen goods and possession of dangerous drugs.

Analysis of outcome of interdiction cases

2.5 If an interdicted officer is found not guilty of the criminal or disciplinary offence, he is normally released from interdiction and reinstated to duty. In some cases, an interdicted officer found not guilty of the criminal or disciplinary offence may be directed to retire in the public interest under section 12 of the PS(A)O when the Head of Department concerned indicates that he has lost his confidence in the officer's integrity to undertake his duties (see paragraph 1.7 above). If an interdicted officer is found guilty of the criminal or disciplinary offence, his service may be terminated (e.g. by dismissal or compulsory retirement). However, such an officer may be reinstated to duty if the offence he has committed is not serious enough for his removal from the civil service, although he may be awarded other types of punishment (e.g. reprimand). In other cases, an interdicted officer may also be released from interdiction for various reasons (e.g. resignation or reinstatement to other non-sensitive posts). An analysis of the outcome of the released interdiction cases for the years 1997-98 to 1999-2000 is given in Table 5 below.

Table 5
Outcome of released interdiction cases
1997-98 to 1999-2000

Outcome	1997-98	1998-99	1999-2000
	(Number)	(Number)	(Number)
Termination of service			
Dismissal (including termination of contract)	51	49	56
Compulsory retirement	15	16	12
Retirement in the public interest	5	1	4
Premature retirement	3	2	2
Resignation	7	6	4
Others (Note)	4	6	4
Sub-total	85 (52%)	80 (62%)	82 (71%)
Reinstatement to duty	77 (48%)	48 (38%)	34 (29%)
Total	162 (100%)	128 (100%)	116 (100%)

Source: Audit's analysis of records of the CSB and the Treasury

Note: These included normal retirement, retirement on medical grounds and death.

2.6 Table 5 above indicates that, for the years 1997-98 to 1999-2000, the outcome of the majority of the released interdiction cases was termination of service. The percentage of such cases rose from 52% in 1997-98 to 71% in 1999-2000.

Analysis of interdiction pay and duration of interdiction cases

2.7 Officers on interdiction are eligible for salary and fringe benefits, including housing and medical benefits. The interdicting authority has the discretion to withhold up to 50% of the salary of an interdicted officer (see paragraph 3.1 below). However, there is no time limit for the period of interdiction or for the period in which an interdicted officer may continue to receive his salary and fringe benefits. Table 6 below shows the total amount of interdiction pay and the duration of interdiction cases for the years 1997-98 to 1999-2000.

Table 6
Total interdiction pay and duration of interdiction cases
1997-98 to 1999-2000

	1997-98	1998-99	1999-2000
(a) Total interdiction pay for the year	\$24 million	\$32 million	\$36 million
(b) Number of interdiction cases	267	257	288
(c) Total number of interdiction days	40,942	47,972	56,119
(d) Average interdiction pay per case during the year [(d) = (a) ÷ (b)]	\$89,888	\$124,514	\$125,000
(e) Average duration of interdiction period falling within the year [(e) = (c) ÷ (b)]	153 days	187 days	195 days

Source: Audit's analysis of records of the CSB and the Treasury

Audit observations on duration of interdiction cases

Number of interdiction cases and amount of interdiction pay

2.8 The number of interdiction cases was only a very small proportion of the civil service establishment (198,605 officers as at 31 March 2000) throughout the three financial years 1997-98 to 1999-2000. However, Audit noted that the amount of interdiction pay and the number of interdiction days had increased considerably in these three years. Table 6 above indicates that the total interdiction pay increased by 50% from \$24 million in 1997-98 to \$36 million in 1999-2000. **The total number of interdiction days increased by 37% from 40,942 in 1997-98 to 56,119 in 1999-2000. In Audit's view, as interdicted officers are not in active service, the staff strength**

of the department concerned is reduced. Each interdiction day is actually a working day lost. It is therefore important not to interdict officers unless there is a real need to do so, and not to let officers remain on interdiction for longer than is absolutely necessary. This is in line with the principles stipulated in the PMD that interdiction should only be resorted to when it is essential to do so, and when alternative duties cannot be found or will be inappropriate, and that interdiction should always be for the shortest period possible (see paragraph 1.5 above).

Average duration of interdiction cases and prolonged interdiction cases

2.9 Item (e) of Table 6 above indicates that there was an increase in the average duration of interdiction cases, based on the number of interdiction days in the particular year, from 153 days in 1997-98 to 195 days in 1999-2000. However, the duration of the interdiction cases counting from the date of inception was much longer. Table 7 below shows the comparative figures.

Table 7
Analysis of the average duration of interdiction cases
1997-98 to 1999-2000

	1997-98	1998-99	1999-2000
	(Days)	(Days)	(Days)
Average duration of interdiction falling within the year	153	187	195
Average duration of all interdiction cases counting from the date of inception	372	330	348
Average duration of released interdiction cases counting from the date of inception	381	310	387

Source: Audit's analysis of records of the CSB and the Treasury

2.10 In 1999-2000, the average duration of all interdiction cases counting from the date of inception was nearly a year (348 days). For released interdiction cases in 1999-2000, the average duration was just over a year (387 days). Audit noted that there were many interdiction cases which lasted for more than a year. Table 8 below is an age analysis of the interdiction cases in 1999-2000.

Table 8

Age analysis of interdiction cases in 1999-2000

Duration	Cases released in 1999-2000		Cases outstanding as at 31 March 2000 (Note)		Total	
	(Number)	(%)	(Number)	(%)	(Number)	(%)
1 year or less	74	64%	120	70%	194	67%
Over 1 year to 2 years	27	23%	36	21%	63	22%
Over 2 years to 3 years	10	9%	13	7%	23	8%
Over 3 years	5	4%	3	2%	8	3%
Total	116	100%	172	100%	288	100%

Note: The duration of the outstanding cases was calculated up to 31 March 2000.

Source: Audit's analysis of records of the CSB and the Treasury

Note: The duration of the outstanding cases was calculated up to 31 March 2000.

2.11 Table 8 above indicates that there were many prolonged interdiction cases. For the 288 interdiction cases in 1999-2000, 94 cases (or 33%) lasted for over one year. Eight interdiction cases lasted for over three years, of which the two longest cases lasted for 8.9 years and 10.9 years. A summary of these eight prolonged interdiction cases is given at Appendix A.

2.12 It is worthy of note that, according to the PMD, interdiction of an officer should always be for the shortest period possible. Interdiction cases should be kept under constant review by departments and arrangements should be made to reinstate the officer to duty as soon as circumstances permit. Prolonged interdiction is most undesirable (see paragraph 1.5 above).

2.13 Audit appreciates that the duration of the interdiction cases may not be under the full control of the Administration as it depends on the time required for the completion of the criminal or disciplinary proceedings. However, in Audit's view, there is a need for the Administration to consider ways of reducing the duration of interdiction cases (e.g. reinstate an officer to alternative duties where appropriate).

Concern of the PSC

2.14 Over the years, the PSC has expressed concern over the delay in processing disciplinary cases and the need to streamline disciplinary procedures. In February 1999, the CSB sought the advice of the PSC on the recommendation to direct the officer in Case 2 at Appendix A, who had been interdicted from duty for nearly eight years at that time, to retire in the public interest. In giving its advice, the PSC remarked that the case had dragged on for too long and suggested that the Administration should consider, where appropriate, how legal loopholes could be plugged and examine how the procedures could be streamlined to speed up the processing of disciplinary cases. Audit concurs with the views of the PSC and considers that there is scope for the Administration to streamline disciplinary procedures in order to speed up the processing of disciplinary cases and to facilitate early release of interdiction cases.

Audit recommendations on duration of interdiction cases

2.15 Audit has *recommended* that the Secretary for the Civil Service should:

- **conduct an overall review on the duration of interdiction cases and analyse the reasons for the long time taken to process prolonged interdiction cases;**
- **review and streamline the existing disciplinary procedures with a view to speeding up the processing of disciplinary cases to facilitate early release of interdiction cases; and**
- **regularly review the progress of all interdiction cases and take necessary follow-up action with the Heads of Department concerned on prolonged interdiction cases.**

Response from the Administration

2.16 The Secretary for the Civil Service agrees with the audit recommendations. He has said that:

- (a) the CSB will take steps to ensure early release of interdiction cases and will also take swift actions on problem cases;
- (b) the authorities for interdiction do not resort to interdiction lightly. It is invoked only when re-deployment of the officer concerned to alternative duties is not possible or inappropriate and where to do otherwise is manifestly not in the public interest. He is always mindful of the need to keep the period of interdiction the shortest possible. However, interdiction cannot be lifted until the outcome of criminal and/or disciplinary proceedings is available;
- (c) he has reviewed and analysed the past cases. Most cases of prolonged interdiction shared one common factor which was beyond the management's control, namely lengthy

criminal proceedings dictated by the time required to complete investigation, court hearings and subsequent appeals. It came about either because of the complexity of the case (such as where a number of criminal charges/a number of officers were involved in the incident) or because of the time taken to handle investigation, appeals and judicial reviews. For disciplinary proceedings, appeals against the level of punishment imposed and rehearings conducted after successful judicial reviews also accounted for the long processing time in some cases;

- (d) he has regularly reviewed the disciplinary procedures to enable the efficient and effective enforcement of disciplinary action whilst complying with the principle of natural justice. As an integral part of the Civil Service Reform launched in 1999, he had carried out a comprehensive review of the disciplinary mechanism under the PS(A)O. As an up-shot of that review, a Secretariat on Civil Service Discipline has been established since April 2000 to process centrally all cases under the PS(A)O. A dedicated pool of officers has been formed to conduct enquiries and procedures have been streamlined to expedite action. Under the new arrangements, he expects that the time taken to complete disciplinary proceedings could be cut by up to three months. In parallel, the various disciplined services have set up their own working groups to look at proposals to further streamline disciplinary procedures;
- (e) as set out in the PMD, departments are expressly required to keep interdiction cases under constant review and to reinstate an interdicted officer to duty as soon as circumstances permit. Departments are also required to report, through a quarterly return to the CSB, the position of all interdiction cases. The CSB reviews the situation on a regular basis and would, in some cases, ask departments to account for the cases where the period of interdiction has taken longer than the nature of the case might otherwise warrant; and
- (f) he will advise Heads of Department to reinforce the established policy that interdiction should only be resorted to in fully justifiable cases in accordance with the promulgated criteria and that the interdiction should be kept under constant review to ensure that the period of interdiction is the shortest possible.

2.17 The **Secretary for Security** agrees that interdiction should only be resorted to when it is essential to do so and that interdiction should always be for the shortest period possible. She supports the audit recommendation that the existing disciplinary procedures should be reviewed and streamlined with a view to speeding up the processing of disciplinary cases.

2.18 The **Commissioner of Police** agrees that there is a need for the Administration to consider ways of reducing the duration of interdiction cases. He has said that the Police Force Working Group on Discipline, formed in October 1998, is reviewing the Police Force's

disciplinary procedures with a view to streamlining the disciplinary processes. Towards the end of 1999, the Police Force undertook an overall review on the interdiction policy. Consultation within the Police Force on the recommendations is currently in progress. He has also said that:

- (a) the Police Force is strongly in favour of and follows strictly the principles that interdiction is not a punishment and should be for the shortest possible period;
- (b) the Police Force strives to regularly review its interdiction policy. Between 1979 and 1999, a number of reviews had brought about changes to the interdiction policy as well as administrative guidelines and procedures;
- (c) the legal power and responsibilities vested in police officers necessitate a comparatively more stringent policy on interdiction in order to guard against any abuse of power and authority by those who are subject to disciplinary or criminal investigation and action;
- (d) the policy and practice in the Police Force are in line with the principles stipulated in the PMD. Police work is unique and there are a very limited number of established posts in which a disciplined officer can be placed, as an alternative to interdiction, where he does not need to exercise constabulary powers or to deal with members of the public;
- (e) following a review by the Police Force in 1997, a monitoring system was introduced to assess the reasons for interdiction and to constantly review individual cases with a view to identifying cases suitable for early reinstatement; and
- (f) the number of new interdiction cases involving police officers has decreased (i.e. 83 in 1997-98, 77 in 1998-99 and 65 in 1999-2000).

2.19 The **Commissioner of Correctional Services** has said that he will make every effort to monitor each interdiction case with a view to shortening its duration. He has also said that:

- the Correctional Services Department (CSD) sticks to the principle that interdiction is merely a form of administrative measures, rather than punitive ones, to suspend officers from their normal duties by reasons of their involvement in some criminal cases or when investigations are being carried out in regard to any serious misconduct. As interdiction is not automatic, he always looks for alternatives as to whether the officers can be practically deployed to other duties or be asked to take leave. Interdiction is therefore the last resort; and
- the duration of interdiction depends heavily on the complexity of individual cases and the time for investigation.

PART 3: WITHHOLDING OF SALARY DURING INTERDICTION

Provisions for withholding salary

3.1 Section 13(2) of the PS(A)O provides that if an officer is interdicted from duty under sections 13(1)(a) or 13(1)(b) of the PS(A)O, up to 50% of the officer's salary may be withheld during the criminal or disciplinary proceedings. The CSB has promulgated in the PMD that, as a general guideline, 50% of the salary of an interdicted officer should be withheld. In exceptional circumstances, where the officer can provide sufficient proof to support a claim of financial hardship, a lower percentage of his salary, say 25%, may be withheld. Where an officer is interdicted under section 13(1)(c) of the PS(A)O for enquiry into his conduct, he receives his salary in full.

3.2 Section 13(3) of the PS(A)O provides that if disciplinary or criminal proceedings do not result in any punishment, an officer will be entitled to receive the full amount of salary withheld from him during the period of interdiction. If an officer receives a punishment of dismissal, the salary withheld will be forfeited. If an officer receives a punishment other than dismissal, he may be granted such proportion of the salary withheld as the Chief Executive thinks fit. As a general guideline, the officer should not be granted any part of the salary withheld should he be compulsorily retired. However, an officer who has been awarded a punishment other than dismissal or compulsory retirement (e.g. a severe reprimand) may be granted the full amount of the salary withheld.

3.3 **Similar provisions for the withholding of salary during the period of interdiction and the repayment of the salary withheld are included in the ordinances of the five disciplined services (see Table 1 in paragraph 1.8 above).** However, senior officers in the disciplined services are subject to the provisions under the PS(A)O on matters relating to interdiction. For example, the Commissioner of Police is the interdicting authority for police officers below the rank of Superintendent under the Police Force Ordinance. On the other hand, the Secretary for the Civil Service is the interdicting authority for police officers at the rank of Superintendent and above under the PS(A)O (see Table 1 in paragraph 1.8 above). The discretion to withhold an interdicted officer's salary is vested in the interdicting authority.

Development of the practices of withholding of salary

3.4 In the 1950s, the Colonial Regulations gave the Administration the discretion to withhold up to 50% of the salary of officers on interdiction. However, the practice of exercising the discretion had undergone significant changes over the years. According to CSB Circular No. 26/77 of October 1977, a married officer on interdiction would receive 75% of his salary and a single officer would receive 50%. All departments followed this practice, except the Police Force. In January 1978, without the agreement of the CSB, the Police Force started to grant full pay to police officers interdicted under the Police Force Ordinance. The Police Force also raised the questions as to whether, as a matter of principle, an officer's salary should be reduced during interdiction. After deliberations of the relevant issues, the CSB issued CSB Circular No. 8/79 in March 1979 which provided that officers who were interdicted should normally continue to receive full pay. However, in exceptional circumstances, it would be appropriate for an officer to receive less than full pay on interdiction. In such cases, the amount of salary to be withheld would be decided by the interdicting authority and should be reviewed monthly.

3.5 In 1986-87, the CSB started the practice of withholding 50% of the salary of an interdicted officer after he had been charged for an offence which involved misappropriation of government funds or which would bring great disrepute to the civil service. In 1988, following an internal review, the CSB formally adopted this practice. Since then, when disciplinary proceedings have been or are to be taken against an officer, 50% of his salary is withheld during interdiction. For criminal cases, an interdicted officer is granted the full pay up to the date when criminal charges are laid against him. After that date 50% of his salary is withheld. Consideration may be given to withholding only 25% of an officer's salary provided that there is sufficient proof that he will suffer financial hardship.

3.6 **The guideline of withholding 50% of an officer's salary on interdiction was promulgated in the PMD in 1993. Since July 2000, it has been followed by all the interdicting authorities except the Police Force which continues to grant full pay to police officers below the rank of Superintendent on interdiction (Note 1).** This inconsistency in practice has been a matter of contention and the CSB is considering whether the practice of withholding of salary during interdiction under the PS(A)O and the practice under the rules of the disciplined services can be streamlined to obviate the inconsistency.

Discussions between CSB and Police Force

3.7 After the issue of CSB Circular No. 8/79 in March 1979, the Police Force has continued to grant full pay to interdicted police officers who are below the rank of Superintendent.

3.8 In 1998, two police officers of the Superintendent grade were charged with criminal offences. They were interdicted by the CSB under section 13(1)(b) of the PS(A)O with 50% of their salaries withheld. The Police Force informed the CSB that interdiction of police officers on half pay was at variance with the practice in the Police Force, which allowed interdicted police officers to receive full pay. This issue was a point of concern to some officers in the Police Force. The Police Force considered that interdiction on half pay was a prejudgement of the outcome of the criminal proceedings and a punitive measure inflicted on the two officers concerned.

3.9 In February 1999, the CSB informed the Police Force that:

- the rationale for withholding a portion of the pay of interdicted officers was that interdicted officers were not deployed in active duties and their conduct and integrity were in doubt for one reason or another. As an interdicted officer was not doing the work which would lead to an award of remuneration due to him, it was only fair that he should not be given the full pay. This should not be viewed as a prejudgement of the outcome of the criminal proceedings;

Note 1: *For the CSD, up to June 2000, full pay was granted to officers below the rank of Superintendent on interdiction. Since July 2000, the CSD has taken the CSB's advice to uniformly withhold 50% of the salary of these officers during the period of interdiction.*

- to safeguard the interest of the interdicted officer who was finally proved innocent, he would be paid the full amount of the withheld salary on acquittal. In addition, in case that an officer experienced financial hardship while under interdiction, there was a provision to withhold only 25% of his salary as laid down in the PMD; and
- the rule of interdicting an officer and withholding his salary or a part of his salary as provided under section 13 of the PS(A)O was applied to all officers governed by the PS(A)O, including police officers of the Superintendent grade. The officers covered by the PS(A)O should constitute a much larger group of civil servants compared with those governed by the Police Force Ordinance. The withholding of salary was applied quite uniformly to all these officers without exception.

3.10 The CSB also advised the Police Force that, notwithstanding the guidelines promulgated in the PMD, the Police Force had been paying full salary to officers interdicted from duty under the Police Force Ordinance. The CSB considered that allowing interdicted officers to receive full pay would generate the undesirable side effect of making it attractive to them to try to lengthen the period of interdiction, particularly for those officers who had committed acts that they expected would lead to dismissal. There were many recent appeal cases from interdicted officers which might show such a trend.

3.11 In April 1999, the Police Force advised the CSB that it acknowledged the guidelines provided in the PMD and noted that the current practice of the CSB was to withhold 50% of the salary of an interdicted officer. However, the Police Force pointed out that the Commissioner of Police was empowered to make administrative decisions in respect of all interdicted officers falling within the purview of the Police Force Ordinance. The Commissioner had chosen to adopt a policy whereby all officers interdicted from duty under the Police Force Ordinance would be paid 100% salary until such time as they were criminally convicted or removed from the Police Force through other means. This policy was based upon the principle of natural justice, and the Commissioner had taken into account the following factors:

- the withholding of salary was considered to be punitive;
- an interdicted officer was deemed to be innocent until proven guilty. Therefore, he should not be penalised financially until the time he was found guilty; and
- an interdicted officer was a member of the Police Force and the Commissioner remained responsible for his welfare. Any action taken to reduce an officer's salary before he was found guilty of a criminal or disciplinary offence would have a significant impact on the morale of the officer as well as the Police Force as a whole.

3.12 The Police Force also advised the CSB that it understood the concern of the CSB over the possibility that police officers who retained full pay while on interdiction for a lengthy period might attempt to extend the period of interdiction for as long as possible. The Police Force agreed that this might happen. However, the Police Force considered that:

- such isolated incidents should not compromise the position of maintaining a responsible and fair attitude towards all police officers; and
- interdicted officers on 50% pay who faced likely criminal conviction or were liable to removal from the Police Force for other reasons were also likely to prolong the process of interdiction as far as possible.

3.13 In August 1999, the CSB informed the Police Force that:

- interdicted officers were not deployed in active service and their conduct and integrity were in serious doubt;
- the civil service should maintain the highest standard of integrity. From the staff management angle, it was not unreasonable that the Administration should take a hard line against those officers interdicted from duty at the time of the commencement of disciplinary proceedings or when they were charged with a criminal offence (which implied the existence of a prima facie case to proceed) and subsequently convicted;
- interdicted officers would be repaid the full amount of the salary withheld from them if the proceedings against them did not result in the punishment of removal from office; and
- provision had been made for officers, who could provide sufficient documentary proof to support a claim of financial hardship, to have a lower percentage of salary withheld.

Therefore, the CSB did not consider that withholding the salary of interdicted officers would violate the principle of natural justice. The CSB maintained its position and the two police officers of the Superintendent grade were interdicted from duty on half pay during the criminal proceedings.

Audit observations on withholding of salary during interdiction

Different practices of withholding of salary

3.14 Audit notes that there are different regulations that empower different interdicting authorities to exercise their discretion whether to withhold, and to what extent, the salary of an interdicted officer (see Table 1 in paragraph 1.8 above). Audit notes that, since July 2000, the practice throughout the civil service has been that all civil servants, except police officers below the

rank of Superintendent, have 50% of salary withheld during the period of interdiction as promulgated in the PMD. The Police Force continues to grant full pay to police officers below the rank of Superintendent on interdiction.

3.15 The discretion exercised by different interdicting authorities has given rise to different practices of withholding of salary in the following ways:

- different practices are being applied to officers in different departments despite similar provisions on the issue of withholding of salary in the PS(A)O and the ordinances of the disciplined services;
- different practices are being applied to officers in the same department (e.g. police officers below the rank of Superintendent are subject to the Police Force Ordinance, but civilian officers in the Police Force are subject to the PS(A)O); and
- different practices are being applied to different ranks of officers in the same disciplined service (e.g. in the Police Force, police officers below the rank of Superintendent are subject to the Police Force Ordinance, but those of the rank of Superintendent and above are subject to the PS(A)O).

3.16 Audit considers that it is undesirable to have different practices among different departments. In this connection, Audit noted that, in March 1999, a dismissed officer of a works department lodged a complaint against the Government for withholding 50% of his salary during the period of his interdiction from early 1997 to early 1998 under the PS(A)O. He claimed that some police officers interdicted from duty under similar circumstances were allowed to receive full pay. He applied for legal aid to seek a judicial review on the withholding of 50% of his salary during the period of interdiction. However, his application was declined by the Director of Legal Aid in August 1999.

3.17 **In Audit's view, it is important that all Heads of Department follow the CSB's policy guidelines on the exercise of discretion of withholding salary to ensure that there is consistency in practice for the entire civil service. Audit notes that interdicted officers are not deployed in active service. There is also a mechanism to repay the amounts of salary withheld during the period of interdiction to the officers who are not subsequently removed from the service. In addition, there are provisions that empower the interdicting authorities to withhold a lower percentage of salary for officers who can provide sufficient documentary proof that they are in financial hardship. Audit considers that the practice of the Police Force is over-generous in comparison with that of the rest of the civil service.**

Potential reduction in interdiction pay

3.18 In 1999-2000, the total interdiction pay for officers of the Police Force was \$21.7 million. If the general practice of withholding 50% of salary during interdiction had been applied to the police officers below the rank of Superintendent, Audit estimated that the potential reduction in interdiction pay would have been \$3.53 million. Table 9 below shows the details of Audit's estimation.

Table 9

**Estimation of potential reduction in interdiction pay
if the Police Force had withheld 50% of the salary
of interdicted police officers below the rank of Superintendent in 1999-2000**

	(\$ million)
(a) Total interdiction pay in 1999-2000	21.70
(b) Portion of total interdiction pay subject to withholding of salary (Note 1)	11.96
(c) Reduction in interdiction pay if the practice of withholding 50% of salary had been applied [(c) = (b) × 50%]	5.98
(d) Less: Repayment of salaries withheld from those officers who were not subsequently dismissed or compulsorily retired [(d) = (c) × 41% (Note 2)]	(2.45)

(e) Net reduction in interdiction pay [(e) = (c) – (d)]	<u>3.53</u>

Source: Audit's analysis of records of the CSB and the Treasury

Note 1: This amount excluded payments to police officers who were interdicted for enquiry into their conduct. Under such circumstances, the officers would be on full pay (see paragraph 3.1 above).

Note 2: The 41% factor was the percentage of interdicted officers who were not subsequently dismissed or compulsorily retired in 1999-2000 [(116 - 56 - 12) ÷ 116 × 100% — see Table 5 in paragraph 2.5 above].

Maximum level for withholding of salary

3.19 Audit notes that the level of salary to be withheld during interdiction is limited to 50%. In October 1996, the PSC advised the CSB that it had taken a long time for disciplinary cases to conclude and some officers were removed from service after years of interdiction. The PSC suggested that the CSB should review whether, for prolonged interdiction cases, the interdicted officer's salary should be reduced, at certain stage, to less than 50%. Upon receiving the PSC's advice, the CSB had conducted a review. After consideration, the CSB did not support the suggestion of withholding more than 50% of the salary of an officer during interdiction for prolonged cases.

Time limit for interdicted officers to receive pay

3.20 Audit notes that many interdicted officers are on full pay for over one year and there is no time limit indicating when an interdicted officer shall cease to receive pay. On the other hand, there is a time limit for officers on sick leave to receive full or half pay. According to CSR 1275:

- officers with four or more years of service may be granted a maximum of 182 days of sick leave on full pay and a further 182 days on half pay, less any paid sick leave taken in the preceding four years; and
- officers with less than four years of service may be granted up to 91 days of sick leave on full pay and 91 days on half pay.

CSB's views

3.21 In response to Audit's enquiries as to whether there is a need to raise the maximum level for withholding of salary to more than 50% and to set a time limit for interdicted officers to receive pay, the Secretary for the Civil Service has said that the CSB has re-examined the issues in the light of present-day circumstances. He does not see the need to change the existing arrangements. The Secretary has also said that:

- interdiction is an administrative measure taken unilaterally by management (hence the officer should not be made to suffer financial hardship against his will). The accused officer is presumed innocent until and unless his criminal or disciplinary offence is proven. It will be against the principle of natural justice if the officer's salary is stopped before conviction;
- on the other hand, he recognised that the officer under interdiction does not provide any active service to the public and that once charged, there is prima facie evidence that the officer's integrity is in doubt. The arrangements provided for under the PS(A)O strike a reasonable balance between the various factors mentioned in the first inset above;
- upon the advice of the PSC, he had in 1997 reviewed whether the percentage of salary withheld should be more than 50% for cases of prolonged interdiction. After deliberations, he concluded that the proposal would not be fair to the interdicted officer based on the considerations mentioned in the first and second insets above and the following factors:
 - (i) the duration of interdiction depends largely on the time required for criminal or disciplinary proceedings over which the officer has no control; and
 - (ii) it is tantamount to a form of punishment before the outcome of a criminal or disciplinary proceedings is known; and

- sick leave with full or half pay is a fringe benefit to an employee whose entitlement to it is mutually entered into upon appointment. Interdiction, on the other hand, is an administrative measure imposed on the officer by management, and the length of time undertaken to complete disciplinary or criminal proceedings is out of the hand of the officer.

Audit recommendations on withholding of salary during interdiction

3.22 **Audit has recommended that the Commissioner of Police should review the practice of allowing interdicted police officers below the rank of Superintendent to receive full pay during interdiction, having regard to:**

- **the general guideline of withholding 50% of the salary of interdicted officers as promulgated by the CSB in the PMD, which has been followed by all other departments; and**
- **the provisions in the Police Force Ordinance for the withholding of salary during interdiction.**

3.23 **Audit has recommended that the Secretary for the Civil Service should:**

- **closely liaise with the Commissioner of Police with a view to bringing the practice of withholding of salary of interdicted police officers below the rank of Superintendent during interdiction in line with that of the rest of the civil service as soon as possible; and**
- **as the policy secretary for discipline matters in the civil service, issue detailed guidelines on interdiction to all Heads of Department to ensure consistency in practice and compliance throughout the civil service.**

Response from the Administration

3.24 **The Secretary for the Civil Service** agrees to review regularly the practices in the civil service of withholding of salary during interdiction. He has said that the Commissioner of Police has undertaken to examine the issue as part of the ongoing review of his interdiction policy. The Secretary has also said that the PMD has already provided, for general compliance, detailed guidelines on how to handle interdiction cases. All departments including the disciplined services are expected to follow except where provisions in the relevant legislation expressly provide for different arrangements. However, having regard to the specific operational requirements of individual departments, a Head of Department may exercise discretion over cases under his jurisdiction in so far as:

- there are legitimate management grounds to allow some degree of exceptions to the rule; and

- the relevant legislation contains express enabling provision for the relevant Head of Department to adopt such an approach.

3.25 The **Secretary for Security** and the **Commissioner of Police** have said that the Police Force is currently reviewing the practice of allowing interdicted police officers to receive their full pay as an integral part of the ongoing review on interdiction policy in the Police Force. The Commissioner of Police has also said that:

- (a) he exercises his statutory powers and sets his policy in accordance with the law, the principle of natural justice and his duty of care to all officers and their families;
- (b) the Police Force, being the principal law enforcement agency, has a much wider public interface in comparison with the rest of the civil service. Police officers are comparatively more susceptible to complaints and criminal allegations, such as corruption, or serious misconduct associated with the nature of police duties;
- (c) given the complexity in certain investigations by the Independent Commission Against Corruption and the Police Force, the time taken for an interdicted officer to be criminally charged or released (not to say convicted/acquitted) is a cause for concern. The length of these investigations is not under the control of the officers. About 20% of the cases required over 6 to 24 months to complete the investigations;
- (d) the role of a police officer in the society is unique. The potential for “conflict of interest” is always a danger and he will not allow officers to take up other employment whilst under interdiction;
- (e) the repayment of salary upon reinstatement could be undesirable as irreparable damage may already have been caused through the withholding of an officer’s salary (e.g. the officer may have to sell his property purchased under government housing schemes or suspend his children’s overseas education). Associated problems of potential indebtedness as a result of the withholding of salary cannot be disregarded; and
- (f) the withholding of salary may pose undue financial hardship upon the officer and his family. The possible extent of damage caused by withholding of salary is potentially very serious and the issue must not be looked at solely from a monetary viewpoint.

3.26 The **Secretary for the Treasury** has said that she welcomes the audit recommendations which call for greater financial accountability on public expenditure. In particular, she agrees that the different practices of withholding salaries of interdicted officers by different interdicting authorities are undesirable and likely to be subject to challenge by officers concerned for unfair treatment. She understands that the Commissioner of Police is reviewing the practice in the Police Force as part of the ongoing review on interdiction policy. She would welcome early completion of the review and action to rectify the inconsistency.

PART 4: STOPPAGE OF SALARY AFTER AN OFFICER HAS BEEN FOUND GUILTY OF OFFENCES

Provisions for stoppage of salary

Criminal offences

4.1 According to section 13(2)(b) of the PS(A)O, if an officer is interdicted from duty under criminal proceedings (i.e. section 13(1)(b) of the PS(A)O), upon his conviction of a criminal offence serious enough to warrant dismissal, his salary will be stopped on the date of conviction pending the decision of the Chief Executive on the punishment to be imposed on him under the PS(A)O. **For an officer who appeals against the conviction of a criminal offence serious enough to warrant dismissal, his salary is stopped during the appeal period. There are similar provisions for the stoppage of salary upon the criminal conviction of an interdicted officer in the ordinances of the disciplined services.**

Disciplinary offences

4.2 Under the PS(A)O, a government officer is dismissed immediately upon an award of the punishment of dismissal in disciplinary proceedings. However, the officer may submit representations to the Chief Executive.

4.3 Under the ordinances of the five disciplined services mentioned in Table 1 in paragraph 1.8 above, if disciplinary proceedings against an officer result in the award of punishment, the officer may lodge an appeal to the Head of Disciplined Services. In such cases, the punishment will be suspended until the appeal is disposed of or abandoned. **For an officer who appeals against the decision of disciplinary proceedings, only up to 50% of his salary is withheld during the appeal period. The percentage of salary to be withheld is at the discretion of the Heads of Disciplined Service (see paragraph 3.3 above). The existing practice is that:**

- **the Police Force grants full pay to interdicted police officers below the rank of Superintendent who appeal against the award of the punishment of dismissal in disciplinary proceedings during the appeal period; and**
- **the other disciplined services only grant half pay to interdicted officers who appeal against the award of the punishment of dismissal in disciplinary proceeding during the appeal period and who are below the rank specified in the relevant ordinances (see Table 1 in paragraph 1.8 above).**

The background to the existing practice of stoppage of salary in disciplinary proceedings of the disciplined services is described in paragraphs 4.4 to 4.11 below.

Stoppage of salary in disciplinary proceedings of disciplined services

4.4 **In October 1980, the CSD sought the advice of the CSB on the level of salary to be paid to an officer during the period in which he appealed against the punishment of dismissal, following a disciplinary proceeding. It was the practice of the CSD to give full pay to officers during this period.** The CSD informed the CSB that the practice had been abused by many officers who lodged appeals to the higher authorities as a means of obtaining extra salary during the period pending the outcome of the appeal. The CSD informed the CSB that, by analogy, payments of salaries to officers who had been convicted of criminal offences were stopped, pending the decision on the punishment to be imposed on them. The CSD opined that an officer who had already been awarded a punishment of dismissal should be interdicted from duty on no pay.

4.5 In November 1980, the CSB advised the CSD that, under the Prisons Ordinance, any punishment awarded to an officer in the disciplinary proceedings shall be suspended pending the outcome of the appeal. **The provisions of the Prisons Ordinance did not seem to allow the interdiction of such an officer on less than half pay. The CSB stated that the long-term solution to this problem would be to amend the Prisons Ordinance to allow interdiction on no pay following an award of dismissal in cases of disciplinary offences. In the short term, the CSB suggested that the CSD should put such officers to work or interdict them from duty on half pay.** The CSB considered that this should have a deterrent effect on those officers who lodged appeals in order to receive interdiction pay.

4.6 In November 1984, the CSD again sought the advice of the CSB. The CSD drew the attention of the CSB to the case of a CSD officer whose appeal against the punishment of dismissal awarded to him in the disciplinary proceedings was rejected. In that case, the CSB determined that the effective date of dismissal of the officer was the date on which the original award of dismissal had been made. The CSD considered that this would result in an over-payment of salary to the officer as he was deemed to have been dismissed during the appeal period. The CSB then sought legal advice on the effective date of dismissal under such circumstances. **The legal advice, obtained in January 1985, confirmed that if an appeal was dismissed, the effective date of the officer's dismissal from the service was the date on which the dismissal was first awarded. Subsequent action to recover the salary paid to the officer during the period of appeal would not be appropriate.**

4.7 The CSD considered that the situation was most unsatisfactory. In view of the fact that appeals of this nature took an average period of two months to decide, the Government was actually paying a dismissed officer (on not less than half pay) for two months. The CSD informed the CSB that:

- there was no justification for paying such officers because this practice would no doubt encourage the lodging of more appeals;
- it would be more appropriate to handle the matter along the lines of stoppage of salary on conviction of a criminal offence serious enough to warrant dismissal; and

- the CSD intended to tackle the problem by proposing an amendment to the Prisons Ordinance that would allow interdiction without pay following an award of dismissal in cases of disciplinary offences.

4.8 In December 1985, in order to get around the anomaly of paying a “dismissed” officer and to more expeditiously deal with appeals against the award of dismissal, the CSD proposed to the Security Bureau to amend the Prisons Ordinance so that the CSD could be empowered to withhold in full the salary of an officer who lodged an appeal against an award of dismissal following a disciplinary proceeding.

4.9 In May 1986, the CSB said that it agreed with the CSD’s proposal. The CSB considered that the implications to the respective ordinances for other disciplined services should also be looked into. The CSB then consulted the Customs and Excise Department (C&ED) whether similar problems had been encountered. In August 1986, after seeking legal advice, the C&ED advised the CSB that the Customs and Excise Service Ordinance should remain unchanged.

4.10 In May 1987 the CSB, after reviewing the disciplinary case of a junior police officer, informed the Police Force that the long-term solution was to amend the relevant ordinances to allow interdiction on no pay following an award of dismissal in disciplinary proceedings. In the short term, the CSB advised that those officers who put in an appeal following the award of dismissal should be put on half pay during that period of interdiction.

4.11 In 1989, the Police Force advised the CSB that it had considered a proposal of amending section 37(4) of the Police Force Ordinance to grant no pay to an officer who had submitted an appeal against the award of dismissal in disciplinary proceedings, and concluded that the system was equitable and that no change should be made. As the proposal also concerned other departments, more discussions were held. In 1992, the Security Bureau advised the CSB that it had reconsidered the proposal and came to the view that the proposal should not be pursued for the following reasons:

- the allegation of spurious appeals was not serious enough to warrant a change in legislation;
- even if the number of appeals were large, efforts should be directed towards shortening the time in considering each appeal, if the concern was financial implications; and
- it was the majority view that the proposal would be against natural justice.

The CSB had no objection to the Security Bureau’s views and agreed to shelve the proposal.

4.12 At present, the Police Force still grants full pay to interdicted police officers below the rank of Superintendent who appeal against the award of the punishment of dismissal in disciplinary proceedings during the appeal period. The other disciplined services only allow

interdicted officers specified in the relevant ordinances (see Table 1 in paragraph 1.8 above) to receive half pay.

Audit observations on stoppage of salary after an officer has been found guilty of offences

Criminal offences — stoppage of salary upon conviction of criminal offences

4.13 Under the PS(A)O and the ordinances of the disciplined services, on conviction of a criminal charge serious enough to warrant dismissal, an officer is subject to stoppage of salary pending the decision on the punishment to be imposed on him by the Chief Executive. The common provision is that the stoppage of salary takes effect **on the date of conviction**. However, Audit notes that in the Police Force Ordinance, it is provided that the stoppage of salary shall take effect **on the day following the date of conviction (i.e. one day later)**. In Audit's view, there is a need to amend the Police Force Ordinance so that it follows the common provision in the PS(A)O and the ordinances of the other four disciplined services (i.e. the CSD, the C&ED, the Fire Services Department and the Government Flying Service).

Disciplinary offences — payment of salary after an officer has been found guilty of disciplinary offences

4.14 Under the ordinances of the disciplined services, for an officer who appeals against the award of the punishment of dismissal in disciplinary proceedings, only up to 50% of his salary is withheld. Based on the discretion given to the Commissioner of Police as the interdicting authority, police officers below the rank of Superintendent, who had been awarded the punishment of dismissal in disciplinary proceedings, were allowed to receive full pay during the appeal period. In many cases the appeal period lasted for over six months. **According to the legal advice of January 1985 (see paragraph 4.6 above), if the appeal is dismissed, the effective date of dismissal should be the date on which the award of punishment was first made. In Audit's view, the practice of paying an officer a salary after his dismissal is unsatisfactory. Having regard to the stoppage of salary upon criminal conviction of an officer, Audit considers that the differences in treatment of officers receiving part or full salary during the appeal period in disciplinary proceedings warrant a review by the CSB and the disciplined services.**

4.15 As pointed out by the CSD in 1980, the practice of giving full pay to officers during the period of their appeal against dismissal might be exploited by officers who lodged appeals for the purpose of getting more interdiction pay. **The CSB had repeatedly stated in 1980 and 1987 that the long-term solution to this problem was to amend the relevant ordinances of the disciplined services to allow interdiction on no pay following an award of dismissal in disciplinary proceedings. However, in 1992, after consultation with the Police Force and the Security Bureau, the CSB agreed to shelve the proposal of amending the ordinances of the disciplinary services to stop the payment of salary to an officer who had submitted an appeal against the award of dismissal in disciplinary proceeding. Since 1992, there has been little progress on this matter. Audit considers that the CSB should take positive action to liaise with the Heads of Disciplined Service with a view to resolving this problem.**

Financial implications

4.16 Audit's analysis of all the interdiction cases in 1999-2000 indicated that there were 19 cases of appeal against the punishment of removal from the service which had been awarded to

officers in disciplinary proceedings. **Seventeen of the 19 cases involved police officers who were given full pay during the appeal period. The other two cases involved two officers of the CSD who were given half pay.** During the appeal period, the total interdiction pay for these officers amounted to \$4.8 million as shown in Table 10 below.

Table 10

**Interdiction pay during the appeal period for cases
in which the appellants had been awarded the
punishment of removal from the service in disciplinary proceedings**

	Number of cases	Amount of interdiction pay (\$ million)	Average duration of the appeal period (Days)
Appeal cases completed in 1999-2000			
Appeal allowed (Note 1)	1	0.11	119
Appeal dismissed and appellant was:			
– dismissed	9	1.22	209
– compulsorily retired	2	0.42	229
– ordered to resign	1	0.08	94
	—	—	
Sub-total	13	1.83	
Outstanding appeal cases as at 31 March 2000			
Officers awarded the punishment of:			
– dismissal	2	1.02 (Note 2)	370 (Note 3)
– compulsory retirement	4	1.95 (Note 2)	336 (Note 3)
	—	—	
Total	19	4.80	

Source: Audit's analysis of records of the CSB and the Treasury

Note 1: The officer's appeal against the punishment was allowed and the punishment was suspended for 12 months.

Note 2: Interdiction pay was calculated up to 31 March 2000.

Note 3: The average number of days was calculated up to 31 March 2000.

Audit recommendation on stoppage of salary after an officer has been found guilty of offences

4.17 **Audit has recommended that the Secretary for the Civil Service should, in consultation with Heads of Disciplined Service, review the provisions in the ordinances of the disciplined services with a view to imposing stoppage of salary during the period in which an officer appeals against the punishment of removal from the service awarded to him in disciplinary proceedings.**

Response from the Administration

4.18 **The Secretary for the Civil Service** agrees with the audit recommendation. He has said that:

- the Security Bureau and the relevant disciplined services had examined the proposal to amend the relevant provisions in the ordinances of the disciplined services to the effect that any interdicted officer on appeal against the punishment of dismissal or compulsory retirement should have his salary withheld in full. In 1992, they came to the view that the proposal should not be pursued. Their major considerations were that spurious appeals were not of a degree serious enough to warrant a change in legislation and efforts should be directed towards shortening the time in considering appeals; and
- he has no objection to re-visiting the proposal in collaboration with the Security Bureau and the disciplined services having regard to the present-day circumstances.

4.19 **The Secretary for Security** has said that in the light of Audit's observations, she has no objection to the CSB carrying out a review of the subject in consultation with the Heads of Disciplined Service.

4.20 **The Commissioner of Police** has said that, as part of the ongoing review of interdiction policy, he is considering the option of withholding 50% of the salary of a police officer who appeals against the punishment of dismissal in disciplinary proceedings. On the issue of the effective dates of stoppage of salary following criminal conviction, the Commissioner agrees that legal advice will need to be sought and if necessary legislation will have to be amended.

4.21 **The Secretary for the Treasury** has said that the payment of salaries during interdiction and paying officers appealing against the decision of disciplinary proceedings during the appeal period have an impact on the personal emolument requirements of the departments concerned. Since the Police Force is operating on a one-line vote arrangement, it could directly benefit from the reduced salary requirement in adopting the audit recommendations.

**PART 5: LEAVE ENTITLEMENT AND LEAVE
BALANCES OF INTERDICTED OFFICERS**

Leave entitlement of government officers

5.1 Government officers are entitled to vacation leave at various leave earning rates depending on their terms of appointment, years of service and salary level. Table 11 below shows the leave earning rates and accumulation limits of vacation leave for the majority of government officers.

Table 11

Earning rates and accumulation limits of vacation leave for government officers

	Earning rate for a year of resident service	Accumulation limit
	(Days)	(Days)
Model Scale I officers		
(i) With less than 10 years of service	14	45
(ii) With 10 or more years of service	22	90
Officers below MPS point 14 or equivalent (except Model Scale I officers)		
(i) With less than 10 years of service	22	60
(ii) With 10 or more years of service	31	120
Officers on MPS point 14 and above or equivalent		
(i) With less than 10 years of service	31	120
(ii) With 10 or more years of service	40.5	180

Source: CSRs

Note: Government officers recruited on or after 1 June 2000 are provided with a new fringe benefits package with lower earning rates and accumulation limits of vacation leave.

Leave entitlement and leave balances of interdicted officers

5.2 According to CSR 1151(1), an officer earns vacation leave for each day of his resident service. If no resident service is rendered, leave should not be earned. For example, CSR 1103(1)(b) provides that the period during which vacation leave is taken does not count as resident service for leave earning purposes.

5.3 During the period of interdiction, an officer renders no active service. However, until 1991, an interdicted officer might continue to earn leave irrespective of the amount of salary he was receiving. At that time, both the Colonial Regulations and the CSRs were silent on an officer's leave entitlement during the period of interdiction. The rationale was that since interdiction was a unilateral act on the Government's part to temporarily suspend an officer from his duty pending a final decision on whether he should be subject to disciplinary action/punishment, the officer should continue to receive all fringe benefits attached to his terms and conditions of service, including his entitlement to earn leave. If an officer was dismissed or compulsorily retired after a period of interdiction, all his leave balance, including leave earned before interdiction and during that period, would be forfeited.

5.4 In 1990, an officer who had earned some five months of leave during his four and a half years of interdiction was recommended to be retired in the public interest. In processing this case, the then Governor remarked that it was ridiculous that an interdicted officer should earn leave. He also remarked that no leave should be earned if there was legal authority not to grant it, and that the rules had to be changed if the Administration lacked the authority.

5.5 The CSB subsequently conducted a review on the policy on leave entitlement during the period of interdiction. It was decided that an officer, because he was not in active service, should not be entitled to earn leave during the period of interdiction. However, the Secretary for the Civil Service might, having regard to individual circumstances, grant an interdicted officer leave, or part of the leave, that he would have earned had he not been interdicted. In May 1991, the above new policy was announced via CSB Circular No. 14/91 with corresponding amendments made to the CSRs.

5.6 The PMD provides that, where no criminal or disciplinary proceedings have been instituted against an interdicted officer after investigation, or if the officer has not been found guilty of criminal or disciplinary charges laid against him, approval should normally be granted for leave to be earned as if the officer had not been interdicted.

Audit observations on leave entitlement and leave balances of interdicted officers

Leave balances of interdicted officers

5.7 Government officers are allowed to accumulate vacation leave up to the limits permissible by the CSRs (see Table 11 in paragraph 5.1 above). Officers who have been in service for some years, including those officers on interdiction, usually have an accumulated leave balance on hand.

5.8 According to the PMD, interdiction should not be imposed unless alternative duties cannot be found or will be inappropriate, and should always be for the shortest period possible. **Based on these principles, Audit considers that the Administration should, through administrative arrangements, persuade an officer to take his earned leave before interdicting him. This is a viable option when it is essential for departmental reasons or in the wider public interest that he should cease exercising the powers and functions of his public office. From the officer's point of view, instead of being interdicted from duty, taking his earned leave during the criminal or disciplinary proceedings may be a more dignified alternative. Furthermore, the officer will not have to worry about part of his salary being withheld during the leave period.**

5.9 Audit noted that the CSB had explored the possibility of directing an officer to take leave. However, in the absence of enabling provisions in the CSRs, the CSB subsequently did not pursue this idea. Audit also noted that in some recent disciplinary cases, several senior officers, before they were interdicted, were on leave during the period of investigation.

Potential reduction in duration of interdiction and interdiction pay

5.10 Audit considers that by persuading an officer to take his earned leave before interdiction, the duration of interdiction and the amount of interdiction pay can be considerably reduced. Officers who have been in the service for some years usually have some leave balance on hand. According to Table 6 in paragraph 2.7 above, the interdiction pay for 288 officers in 1999-2000 was \$36 million with an average interdiction period of 195 days falling within 1999-2000. Assuming that an interdicted officer had, on average, a leave balance of 30 days and used up the leave balance before interdiction, Audit estimated that the potential reduction in interdiction pay would have been \$5.5 million. Details of Audit's estimation are shown in Table 12 below.

Table 12

**Estimation of potential reduction in interdiction pay
by persuading officers to take leave before interdiction**

(a)	Total interdiction pay in 1999-2000	\$36 million
(b)	Average duration of interdiction period falling within 1999-2000	195 days
(c)	Estimated reduction in interdiction period by persuading officers to take leave	30 days
(d)	Estimated reduction in interdiction pay [(d) = (a) ÷ (b) × (c)]	\$5.5 million

Source: Audit's analysis of records of the CSB and the Treasury

Audit recommendation on leave entitlement and leave balances of interdicted officers

5.11 Audit has *recommended* that the Secretary for the Civil Service should, in consultation with Heads of Department, consider the feasibility of introducing the option of persuading an officer, who is being considered to be interdicted, to take his earned leave before putting him on interdiction.

Response from the Administration

5.12 The Secretary for the Civil Service agrees with the audit recommendation. He agrees to allow an officer, if he so chooses voluntarily, to take his earned leave prior to putting him on interdiction in so far as this is operationally feasible.

5.13 The Commissioner of Police has said that:

- the audit recommendation aims to achieve the dual purpose of suspending the duties of an officer who is being considered to be interdicted, whilst not withholding any portion of his salary. It should be noted that a police officer on leave and in possession of his police warrant card continues to be able to exercise his powers, which may be undesirable and not be in the public interest; and
- there is also a considerable public interest implication associated with this audit recommendation given the unique position and extensive powers that are vested in a police officer. This issue needs to be examined carefully and from more than a simple monetary perspective.

PART 6: GRANTING OF ANNUAL INCREMENTS TO OFFICERS ON INTERDICTION

Salary scale and annual increment

6.1 A government officer is remunerated according to a salary scale which consists of a number of salary points. On appointment, an officer is usually paid at the minimum point of the salary scale and is eligible for an annual increment until he reaches the maximum point of the salary scale.

6.2 CSR 451(1) provides that an officer may be granted an increment only if his conduct (including fidelity, obedience to orders and propriety) and diligence (meaning steady application, attentiveness to duties and industry) in the year under review have been satisfactory. CSR 452 provides for stoppage and deferment of increment. The CSRs are silent on whether an officer should or should not be granted increments during the period of interdiction. However, it has been the Government's practice to grant annual increments to officers on interdiction.

Discussions between PSC and CSB

6.3 In March 1995, the C&ED sought the advice of the PSC on whether the passage over the efficiency bar (Note 2) of two officers should be withheld as they had been interdicted from duty in connection with criminal offences. Arising from this, the PSC sought the policy clarification of the CSB on whether an officer who was on interdiction should continue to be granted his annual increment. The PSC's initial view was that it was doubtful whether the granting of such increments was justified given the serious doubts on an officer's conduct and diligence leading to the need to interdict him from duty.

6.4 In June 1995, the CSB replied to the PSC that the Government was not provided with the authority in either the Colonial Regulations or the CSRs to withhold the annual increment of an officer on interdiction. CSRs 451 and 452 referred to an officer's conduct and diligence at work and were not associated with any disciplinary or criminal offences. When an officer was interdicted from duty, it was usually because he was suspected to have committed an offence which had yet to be established. It would be inequitable, without having proven his guilt, to presume that the quality of his performance prior to or during the period of interdiction was unsatisfactory to the extent that his annual increment should be totally withheld. The CSB concluded that there were major obstacles, both in principle and technicality, in withholding the granting of annual increments to officers on interdiction.

6.5 In September 1995, the PSC expressed the view that the granting of annual increments was not automatic. An annual increment was granted to an officer in recognition of a year of

Note 2: *Individual ranks in certain grades have designated intermediate pay points on their pay scales called "efficiency bars". A decision must be taken by the management to certify that an officer is performing capably and efficiently before allowing him to pass an efficiency bar and progress further on the pay scale. The efficiency bar system is historical and is applied mainly to ranks with long pay scales. The efficiency bar system was abolished in October 2000.*

satisfactory service. The PSC found it difficult to understand that if an officer was interdicted, his conduct and diligence at work were not called into question (and hence the need to withhold his annual increment). In November 1995, the CSB agreed to take into account the observations made by the PSC when regulations on the granting of increments were next reviewed.

6.6 In October 1996, in examining a number of disciplinary cases involving the interdiction of government officers, the PSC reopened the issue and commented that an officer on interdiction should not be granted an annual increment because his conduct was at stake and he was not suitable to undertake the duties of a government officer. It followed that he did not fulfil the requirements for earning an increment. At a meeting held in December 1996 between the PSC and the CSB, the CSB agreed that, in principle, an annual increment should be earned by good performance and conduct and should not be granted automatically. However, the PS(A)O and the CSRs did not cover the subject of the granting of increments to officers on interdiction. The CSB was reviewing the PMD together with a number of related subjects on a wider basis. The CSB acknowledged the anomaly regarding the granting of annual increments to officers on interdiction and undertook to review the relevant CSRs.

Proposed amendments to CSRs

6.7 Following an internal review in 1997, the CSB prepared a proposal to amend CSR 451 to include a provision that an officer on interdiction might not be granted an increment during his period of interdiction except with the approval of the Secretary for the Civil Service. In November 1997, the CSB sought advice from the Department of Justice on whether the proposed amendments were in order. The Department of Justice advised that the granting of an increment was not as of right but was subject to conduct and diligence in accordance with CSR 451. As an officer who was on interdiction could not be assessed on his conduct and diligence, it appeared justified to amend CSR 451 so as to withhold the granting of increment to an officer on interdiction. However, up to 31 July 2000, the proposed amendments to the CSRs to withhold the granting of annual increments to officers on interdiction had not yet been effected.

Audit observations on granting of annual increments to officers on interdiction

6.8 **Audit considers that an annual increment should not be granted automatically but should be earned by a year of satisfactory service. In Audit's view, annual increments should not be granted to officers on interdiction because they render no active service during the interdiction period. Audit noted that the PSC first drew the attention of the CSB to the granting of annual increments to officers on interdiction in March 1995 (see paragraph 6.3 above) and raised the issue again in October 1996 (see paragraph 6.6 above). The CSB finally agreed in December 1996 to the principle that increments should not be granted to officers on interdiction. However, up to 31 July 2000, the practice of granting annual increments to officers on interdiction still continued. Audit noted that, in June 2000 the CSB, as part of the**

Civil Service Reform, issued CSB Circular No. 13/2000 announcing amendments to the CSRs on the granting, stoppage and deferment of increments and the abolition of efficiency bars. However, the proposed withholding of annual increments to officers on interdiction was not included in this CSB circular. **Audit considers that the CSB should take prompt action to rectify the anomaly of granting annual increments to officers on interdiction.**

Financial implications

6.9 **Audit's analysis indicated that 59 of the 288 interdicted officers in 1999-2000 were granted annual increments during their interdiction. The other officers were not granted annual increments during their interdiction because either they were already at the maximum points of their respective salary scales, or their period of interdiction had ended before their annual incremental dates. These 59 officers were granted a total of 86 salary points as annual increments during their interdiction. Among them, 20 officers were granted more than one increment and one of them was granted six increments during his interdiction. The annualised monetary value of these 86 salary points was about \$889,000. The additional amount of salary paid to the 59 officers as a result of the granting of annual increments during interdiction was about \$315,000 in 1999-2000.**

Audit recommendation on granting of annual increments to officers on interdiction

6.10 **Audit has *recommended* that the Secretary for the Civil Service should, as soon as possible, take necessary action to cease the practice of granting annual increments to officers on interdiction.**

Response from the Administration

6.11 **The Secretary for the Civil Service agrees with the audit recommendation. He has said that in keeping with the CSB's stance that increments should be earned rather than awarded as of right, he has, in the context of the Civil Service Reform, decided to cease the practice of granting increments to officers on interdiction. He will amend the PMD and expects to implement the new arrangements in the last quarter of 2000.**

PART 7: MONITORING OF INTERDICTION CASES BY CSB

The monitoring role of CSB

7.1 The CSB is responsible for the policy issues relating to conduct and discipline in the civil service. The Secretary for the Civil Service and Heads of Department are vested with the authority for interdicting certain categories of officers under the PS(A)O. The heads of five disciplined services are vested with the authority for interdicting officers specified in the relevant ordinances (see Table 1 in paragraph 1.8 above).

7.2 In promulgating the rules and practices concerning interdiction, the CSB has, over the years, issued the PMD and relevant CSB circulars for compliance by departments. The CSB monitors the overall situation of interdiction cases by requesting Heads of Department (including Heads of Disciplined Service) to submit quarterly returns on interdiction cases. Based on the information of the quarterly returns, the CSB compiles a quarterly statistical summary for all the interdiction cases.

Audit observations on monitoring of interdiction cases by CSB

Management information on interdiction cases

7.3 At present, the CSB only requests departments to provide in the quarterly returns information on interdiction cases that are still outstanding as at the end of the quarter. However, the quarterly returns do not contain information about interdiction cases that have been released during the quarter. Information about the total amount of salary paid to an individual interdicted officer is not required to be included in the returns. As a result, the statistical summary compiled by the CSB from the quarterly returns focuses only on outstanding interdiction cases in all departments. **The CSB does not have a management information system for consolidating all the interdiction cases on a regular basis for detailed analysis of their profile and trend over the years.** In Audit's view, the CSB needs to establish complete and accurate information on the duration and details of all interdiction cases in order to take appropriate follow-up action with departments.

7.4 In analysing the interdiction cases, Audit made use of the Treasury's Payroll System to generate listings of interdiction cases and the relevant details, including the duration and salary payments during the interdiction period. The extracted information was classified by financial years and departments for matching with the information contained in the quarterly returns submitted by departments to the CSB. This proved to be a useful and efficient way for identifying all interdiction cases for detailed analysis. With the aid of the computer generated information from the Payroll System, Audit was able to produce detailed analyses of interdiction cases for the years 1997-98 to 1999-2000 as presented in Part 2 above. **Audit considers that these analyses**

provide useful management information for monitoring the profile and trend of interdiction cases. In this regard, Audit considers that the CSB should also make use of the Payroll System to obtain the necessary information and compile detailed analyses of interdiction cases for monitoring purposes.

Anomalies and inconsistencies in administrative arrangements

7.5 Audit noted a number of anomalies and inconsistencies in the administrative arrangements for handling interdiction cases in the following areas:

- duration of interdiction cases (see paragraphs 2.8 to 2.14 above);
- withholding of salary during interdiction (see paragraphs 3.14 to 3.21 above);
- stoppage of salary after an officer has been found guilty of offences (see paragraphs 4.13 to 4.16 above);
- leave entitlement and leave balances of interdicted officers (see paragraphs 5.7 to 5.10 above); and
- granting of annual increments to officers on interdiction (see paragraphs 6.8 and 6.9 above).

On the basis of the above audit observations, Audit considers that there is a need for the CSB to conduct a comprehensive review on the rules and practices for interdiction.

Audit recommendations on monitoring of interdiction cases by CSB

7.6 **Audit has *recommended* that the Secretary for the Civil Service should:**

- **conduct a comprehensive review on the rules and practices for interdiction with a view to:**
 - (i) **rectifying the anomalies and inconsistencies in practices; and**

- (ii) **implementing sound and robust administrative arrangements so as to ensure compliance by departments;**

- **strengthen the present system of monitoring interdiction cases by requesting departments to submit quarterly returns on all interdiction cases, including the released cases; and**

- **conduct detailed analyses of all interdiction cases on a regular basis to monitor the profile and trend of interdiction cases.**

Response from the Administration

7.7 The **Secretary for the Civil Service** agrees with the audit recommendations. He has said that:

- the CSB will continue to keep the arrangements under regular review and give suitable guidance to Heads of Department where appropriate to ensure that the established policies and criteria are strictly followed;

- the CSB will refine the format of quarterly returns to include added data that would allow earlier detection of potentially problematic cases; and

- the CSB will develop a management information system to capture information on interdiction cases for the purpose of easing retrieval of data that would facilitate effective monitoring of progress made in each case, early identification of problems and any subsequent review of practices and policies by management.

Appendix A
(paragraph 2.11 refers)

**A summary of the eight prolonged interdiction cases
as at 31 March 2000**

Case	Interdiction period		Duration (Years)	Salary paid during interdiction (\$'000)	Remarks
	From	To			
1	May 1989	Still under interdiction	10.9	1,151	The officer was convicted of an offence in another country overseas and was imprisoned there in mid-1993. His salary had been stopped since mid-1993. His appeal in that country was in progress.
2	April 1991	March 2000	8.9	2,863	The officer was convicted of an offence in mid-1993. His appeal was allowed in early 1995. Disciplinary proceedings could not commence because the officer claimed he was medically unfit for the hearings. In early 2000, the officer was directed to retire in the public interest.
3	October 1993	March 2000	6.4	1,555	The officer was charged with criminal offences in late 1993 and mid-1996. He was convicted of one offence in early 1997. In early 2000, he was directed to retire in the public interest.
4	February 1995	Still under interdiction	5.1	3,216	The officer was convicted of an offence in mid-1995. The conviction was quashed in early 1996. He was awarded the punishment of compulsory retirement. A judicial review quashed the punishment. Disciplinary hearing resumed and was in progress.
5	June 1995	February 2000	4.7	1,422	The officer was acquitted of criminal charges in late 1996. He was awarded the punishment of compulsory retirement after disciplinary proceedings.
6	September 1995	March 2000	4.5	1,043	The officer was acquitted of criminal charges in early 1996. He was awarded the punishment of dismissal after disciplinary proceedings.
7	September 1995	March 2000	4.5	1,103	The officer was acquitted of criminal charges in early 1996. He was awarded the punishment of dismissal after disciplinary proceedings.
8	February 1997	Still under interdiction	3.1	809	The officer was found guilty of disciplinary offences and dismissed in mid-1997. A judicial review in early 1999 quashed the punishment. Disciplinary hearing resumed and was in progress.

Source: *Records of the CSB and the Treasury*

Appendix B

Acronyms and abbreviations

C&ED	Customs and Excise Department
CSB	Civil Service Bureau
CSD	Correctional Services Department
CSRs	Civil Service Regulations
MPS	Master Pay Scale
Police Force	Hong Kong Police Force
PMD	Procedural Manual on Discipline
PS(A)O	Public Service (Administration) Order
PSC	Public Service Commission