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STATUTORY INSTRUMENTS

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**1996 No. 1294**

**HONG KONG**

**The Hong Kong (Overseas Public Servants)  
(Pension Supplements) Order 1996**

<i>Made</i>	- - - -	<i>15th May 1996</i>
<i>Laid before Parliament</i>		<i>29th May 1996</i>
<i>Coming into force</i>	- -	<i>1st July 1996</i>

At the Court at Buckingham Palace, the 15th day of May 1996

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 4 of the Hong Kong (Overseas Public Servants) Act 1996(1) and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Citation and commencement**

1.—(1) This Order may be cited as the Hong Kong (Overseas Public Servants) (Pension Supplements) Order 1996.

(2) This Order shall come into force on 1st July 1996.

**Interpretation**

2.—(1) In this Order (including the Schedule):

“specified officer” means:

- (a) a person who, during his service or a part of his service in Hong Kong, is or was a member of Her Majesty's Overseas Civil Service (hereinafter referred to as “HMOCS”) or Her Majesty's Overseas Judiciary;
- (b) a person who is or was a judge in Hong Kong (that is to say, a judge of the Supreme Court or a judge of the District Court) or magistrate who, during his service in Hong Kong, was informed in writing by or on behalf of the Secretary of State that he would be treated as a member of HMOCS;

- (c) a member of any of the Services listed in the Schedule to the Special Regulations made by the Secretary of State for HMOCS and published in the White Paper *The Reorganisation of the Colonial Service, Colonial 306*, who prior, to 1st October 1954, held a pensionable office on pensionable terms in the service of Hong Kong;
- (d) an expatriate officer who, prior to the 19th July 1956, held a pensionable office on pensionable terms in the service of Hong Kong, being a person who is certified by the Secretary of State:
  - (i) as having been selected or promoted to such office by, or with the approval of, the Secretary of State; or
  - (ii) as having been recruited to such office through the Crown Agents for Overseas Governments and Administrations; or
  - (iii) as having been recruited through other channels to such office in the service of Hong Kong for which a normal channel of recruitment was either through the Colonial Office or the Crown Agents,other than an officer whose application for membership of HMOCS has been refused;

“basic pension” and “basic Hong Kong pension” mean:

- (a) the pension first awarded to a specified officer with effect from the date of his retirement and calculated by reference to his emoluments, or which would have been so awarded had it commenced on that date; or, if the pension is deferred, the amount that would have been awarded as so calculated had the pension commenced on the date of his retirement;
- (b) in the case of a pension in respect of the services of any person other than the pensioner, the pension first awarded,

without in either case, any addition or increases howsoever awarded (whether or not included in the amount of the original award);

“death gratuity” has the meaning ascribed to it in the relevant law;

“Hong Kong” means the Colony of Hong Kong or the Hong Kong Special Administrative Region, and references to service in or of Hong Kong, and the Government of Hong Kong, refer respectively to service in, and the Government of, the Colony or the Special Administrative Region;

“gratuity” means a lump sum paid under a relevant law as a gratuity, together with a reduced pension, in lieu of a full pension, or as a death gratuity; and this Order shall be construed in respect of a death gratuity as if the deceased officer were entitled to the death gratuity and the gratuity were payable at a place appointed by his legal personal representatives;

“pension” means a pension (including an injury pension), whether full, reduced or deferred, which is granted under a relevant law;

“pensioner” means a specified officer, or a dependant of a specified officer, who is in receipt of a pension;

“relevant law” means:

- the Pensions Ordinance<sup>(2)</sup>;
- the Pension Benefits Ordinance<sup>(3)</sup>;
- the Pension Benefits (Judicial Officers) Ordinance<sup>(4)</sup>;
- the Police Officers (Special Cases) Pensions Ordinance<sup>(5)</sup>;

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(2) Laws of Hong Kong, Cap 89.  
(3) Laws of Hong Kong, Cap 99.  
(4) Laws of Hong Kong, Cap 401.  
(5) Laws of Hong Kong, Cap 257.

the Widows and Orphans Pension Ordinance<sup>(6)</sup>;

the Surviving Spouses' and Children's Pensions Ordinance<sup>(7)</sup>,

of Hong Kong (and the regulations made under those ordinances), including any law amending such a law up to the date on which this Order comes into force, and any other law of Hong Kong recognised by the Secretary of State for the purposes of this Order;

“relevant law”, in relation to any pensioner or person entitled to a gratuity means the relevant law under which he is granted, or is entitled to, such benefit.

(2) Where any calculation is to be made under this Order in accordance with the relevant law and that relevant law is amended after the coming into force of this Order by a law other than a law recognised for the purposes of this Order by the Secretary of State, the calculation shall be made in accordance with the relevant law as if it had not been so amended.

(3) Nothing in paragraph (2) applies to the determination of the actual pension income of a pensioner or the determination of an actual gratuity, and in relation to such determination, the definition of relevant law in paragraph (1) shall be read as if the words “up to the date on which this Order comes into force and any other law of Hong Kong recognised by the Secretary of State for the purposes of this Order” were omitted.

### **Benefits falling within this Order**

3. This Order applies to:

- (a) pensions awarded to specified officers and their dependants under a relevant law;
- (b) a gratuity payable to a specified officer or to which a specified officer is entitled under a relevant law,

and the Order will have effect in respect of payments of such a pension or gratuity due after the coming into force of this Order:

Provided that where the Secretary of State is satisfied that a payment in respect of a pension or a gratuity is or may be made within the area comprising Hong Kong, the People's Republic of China and Macao, and that no corresponding payment (less any sum paid under the law of Hong Kong in tax in respect of such pension or gratuity) is made by or on behalf of the person entitled thereto to a place outside that area, he may declare that this Order shall not apply to that pension or gratuity until he is subsequently satisfied that payments in respect of that pension or gratuity, or such corresponding payments, are made to a place outside that area.

### **Determination of notional Hong Kong pension and actual pension income in sterling**

4.—(1) The provisions of Parts I and II of the Schedule to this Order shall apply for calculating and determining the notional Hong Kong pension of pensioners and the sterling value of such notional pension for the purposes of this Order. If a pensioner is entitled to more than one pension under the relevant laws, a separate calculation and determination shall be made in respect of each pension.

(2) For the purposes of this Order, the actual pension income for any month of a pensioner in respect of a Hong Kong pension is the sum of:

- (a) one twelfth of the sterling value of the basic pension; and
- (b) the sterling value of any increases on the basic pension received in respect of that month under the law of Hong Kong; and

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<sup>(6)</sup> Laws of Hong Kong, Cap 94.

<sup>(7)</sup> Laws of Hong Kong, Cap 79.

- (c) the amount of any pension supplement payable during that month under any regulations made under section 11 of the Pensions (Increase) Act 1971(8), as from time to time in force, in respect of the basic pension,

and pro rata for any part of a month. If any payment is made otherwise than in sterling, the sterling value of the basic pension and any such increase will be determined using the middle rate of exchange of the official exchange market between the Hong Kong dollar and sterling on the fifteenth day of the month in question.

#### **Provision for supplementation of pension**

5. If, in any month, the actual pension income of a pensioner in respect of a Hong Kong pension to which this Order applies is less than the sterling value of the pensioner's notional Hong Kong pension, the pensioner shall be entitled to a supplementary payment in sterling of the difference between the two. Where a pension is payable in respect of only a part of a month, the notional Hong Kong pension shall be calculated on the same basis, and any supplementary payment shall be the difference between the two.

#### **Suspension or variation of payment of pensions**

6. This Order applies only to pensions for the time being in payment and, accordingly:
- (a) no supplementary payment shall be made when a pension is deferred under the relevant law or ceases, or during a period when it is suspended; and
  - (b) in the event of a pension being reduced or otherwise varied in accordance with the relevant law, the notional Hong Kong pension shall be recalculated and redetermined as the same proportion of the notional Hong Kong pension as originally determined as the reduced pension or pension as varied bears to the original basic pension.

#### **Determination of sterling values of notional Hong Kong gratuity and of actual gratuity**

7.—(1) The provisions of Parts I and III of the Schedule to this Order shall apply for calculating and determining the notional Hong Kong gratuity in respect of a specified officer who exercises an option under the relevant law to be paid a gratuity and a reduced pension, the notional Hong Kong gratuity in respect of a death gratuity payable in respect of a specified officer, and the sterling value of such gratuities.

(2) For the purposes of this Order, the actual gratuity of, or payable in respect of, a specified officer will be the sum of the sterling value of the gratuity (and any increases granted under the relevant law), at the exchange rate in force on the day the gratuity is paid, and any supplement payable in respect of the gratuity under any regulations made under section 11 of the Pensions Increase Act 1971.

(3) In the event of there being any change in matters to be taken into account in calculating a notional Hong Kong gratuity between the registration of such gratuity under article 9 of this Order and the payment of the actual gratuity, the notional Hong Kong gratuity will be recalculated and redetermined.

#### **Provision for supplementation of gratuity**

8. If the actual gratuity paid to, or in respect of, a specified officer is less than the sterling value of the notional Hong Kong gratuity of that officer, he shall be entitled to a supplementary payment in sterling of the difference between the two.

### **Registration of notional Hong Kong benefits and provision of information**

9.—(1) In order to qualify for supplementary payments under this Order, a pensioner shall provide the Secretary of State:

- (a) with such information as will enable the Secretary of State to calculate and register that pensioner's notional Hong Kong pension:
  - (i) in the case of a pension awarded before the coming into force of this Order, within six months of its coming into force;
  - (ii) in the case of a pension awarded after the coming into force of this Order, within three months of the grant of such pension,or within such longer period as the Secretary of State may allow;
- (b) with such other information, within such period as the Secretary of State may require, as will enable the Secretary of State to verify the payments made to the pensioner under the law of Hong Kong in respect of his pension, the place of such payments and any corresponding payments, and any changes made in respect of his pension, and to determine the amount of any supplementary payment.

(2) In order to qualify for a supplementary payment under his Order in respect of a gratuity, a specified officer or, as the case may be, his legal personal representatives shall provide the Secretary of State:

- (a) with such information as will enable the Secretary of State to determine whether the Order applies to the gratuity, to calculate and register that officer's notional Hong Kong gratuity and, if any change occurs in the matters taken for calculation of the gratuity since so informing the Secretary of State, of any such change;
- (b) with such other information as will enable the Secretary of State to determine the amount of any supplementary payment.

(3) No supplementary payment shall be made under this Order except in respect of a registered notional Hong Kong pension or a registered notional Hong Kong gratuity, and the Secretary of State may withhold any supplementary payment unless he is satisfied that he has been correctly informed of all pertinent information as regards a pension or gratuity and the payments made under the law of Hong Kong in respect of the pension or gratuity.

### **Overpayments**

10.—(1) In any case where an increase to a pension under the law of Hong Kong which may be taken into account in determining any supplementary payment payable under this Order is granted or revised with retrospective effect, such supplementary payment will be revised accordingly with similar effect and any overpayment to the pensioner as a result may be recovered from him by deduction from any supplementary payments subsequently payable or otherwise.

(2) Where any overpayment has not been recovered within three months of notification, no further supplementary payments shall be made to the pensioner until the amount of the overpayment has been recovered.

### **Secretary of State to decide all questions of interpretation of the Order**

11. Any question relating to the interpretation of this Order, including any question as to who is a member of HMOCS, Her Majesty's Overseas Judiciary or otherwise eligible as a specified officer and what shall be deemed to be the salary point and grade as at 1st January 1992 of a grade established or existing before or after that date, may be determined by the Secretary of State.

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*N. H. Nicholls*  
Clerk of the Privy Council

## THE SCHEDULE

### PART I

#### GENERAL PROVISIONS

1. In this Schedule:

“pensionable emoluments” (except in the expression notional Hong Kong pensionable emoluments), “public service”, “other public service” and “Scheduled Government” have the meanings respectively ascribed to them in the relevant law;

“service in the Group” means service under the Government of Hong Kong and under a Scheduled Government or Governments;

“the mixed service formula” means the following calculation:

- (a) determine the pension which would be payable under the relevant law in respect of the notional Hong Kong pensionable emoluments as if the officer’s service had been wholly under the Government of Hong Kong;
- (b) determine:
  - (i) the aggregate amount of the officer’s actual pensionable emoluments during his service under the Government of Hong Kong; and
  - (ii) the aggregate amount of his actual pensionable emoluments throughout his service in the Group;
- (c) the pension payable on the notional Hong Kong pensionable emoluments in respect of the officer’s Hong Kong Service will bear the same proportion to the amount determined in paragraph (a) of this definition as the amount determined in paragraph (b)(i) bears to the amount determined in paragraph (b)(ii);

“relevant Pensions Increase (Review) Order” in respect of any year, means the Order (if any) made under section 59 of the Social Security Pensions Act 1975(9), as from time to time in force, which has effect in respect of that year.

2.—(1) Where, in calculating the sterling value of a specified officer’s notional Hong Kong pension, provision is made in this Schedule for increasing any sum by a percentage increase rate obtained from a Pensions Increase (Review) Order or in accordance with section 1 or an order made under section 2 of the Pensions (Increase) Act 1971 and the calculation is to be made at any time between the officer’s retiring under the age of fifty five years and his attaining that age, no such increase shall be made:

- (a) in respect of any such Order made subsequent to the date of his retirement;
- (b) or, as the case may be, for any period to which the said section 1, or any order made under the said section 2, applies

if that period falls within the period between the officer so retiring and his attaining the age of fifty five, unless the Secretary of State is satisfied that the officer is permanently incapacitated by physical or mental infirmity from engaging in any regular full-time employment. When the officer has attained the age of fifty five, subsequent calculations shall take account of Orders or periods excluded by the foregoing provisions of this paragraph as well as any relevant earlier or future Orders.

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(9) 1975 c. 60.

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(2) Nothing in this paragraph applies to the calculation of the sterling value of a deceased specified officer's notional Hong Kong pension where such calculation is made for the purposes of calculating a dependant's notional Hong Kong pension.

## PART II

### RULES FOR CALCULATING AND DETERMINING A NOTIONAL HONG KONG PENSION AND ITS STERLING VALUE

*Head A: Specified officers who are awarded a pension, or entitled to a deferred pension, under a relevant law on their retirement from the service of Hong Kong before or after the coming into force of this Order and who have no other pensionable public service*

To calculate the sterling value of the officer's notional Hong Kong pension:

- (a) Identify the officer's salary point and allowances appropriate to his substantive grade at the date taken into account to determine his basic pension under the relevant law;
- (b) Determine the salary point and allowances appropriate to the salary point of that grade on 1st January 1992; this will produce the officer's notional Hong Kong pensionable emoluments;
- (c)
  - (i) Calculate, in accordance with the relevant law, the officer's pension on the notional Hong Kong pensionable emoluments; and
  - (ii) If the officer commuted or commutes any part of his Hong Kong pension, or his pension has been or is reduced by an appropriate authority under the relevant law, calculate, in accordance with the relevant law, the reduced pension on the notional Hong Kong pensionable emoluments as if the like proportion had been commuted of, or the like reduction made in, a pension as calculated in paragraph (c)(i) in respect of the notional Hong Kong pensionable emoluments;
- (d) Divide the pension or reduced pension as calculated in paragraph (c)(i) or (c)(ii), as appropriate, by 21; the resulting sum will be denominated in pounds sterling;
- (e) Save as provided in paragraph 2 of Part I of this Schedule, increase the sum obtained at paragraph (d) of this Head in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is payable under paragraph 5 of this Order by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order, as if the sum so obtained were a pension beginning on the 8th April 1991;
- (f) The sum obtained in paragraph (d) of this Head as increased in accordance with paragraph (e), so far as the latter is applicable, is the sterling value of the pensioner's notional Hong Kong pension;
- (g) Divide the sterling value of the pensioner's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

*Head B: Specified officers who are awarded a pension, or entitled to a deferred pension, under a relevant law on their retirement from the service of Hong Kong before or after the coming into force of this Order and who have other pensionable service under a Scheduled Government*

To calculate the sterling value of the officer's notional Hong Kong pension:

- (a) Identify the officer's salary point and allowances appropriate to his substantive grade at the date taken into account to determine his basic Hong Kong pension under the relevant law;



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- (b) Determine the salary point and allowances appropriate to the salary point at that grade on 1st January 1992; this will produce the officer's notional Hong Kong pensionable emoluments;
- (c) Determine the maximum pension payable having regard to the two-thirds rule under the relevant law on the notional Hong Kong pensionable emoluments and convert the maximum pension into sterling at the rate of Hong Kong dollars 21 to the pound sterling;
- (d) Determine the pension payable on the officer's notional Hong Kong pensionable emoluments, having regard to the two-thirds rule, as if the officer's service had been wholly under the Government of Hong Kong; this produces the sum required for stage (a) of the application of the mixed service formula;
- (e) Apply the remainder of the mixed service formula to the sum determined at paragraph (d) of this Head;
- (f) Convert the sum produced at paragraph (e) of this Head into sterling at the rate of Hong Kong dollars 21 to the pound sterling;
- (g) Identify the percentage increase rate as provided in the relevant pensions increase legislation which would be appropriate to apply to determine the value (in sterling) in accordance with that legislation of the officer's other pensions as at the 8th April 1991, and:
  - (i) if the officer's date of retirement was before the 8th April 1991, increase the sum of those other pensions as granted at the date of retirement by the appropriate percentage increase rate;
  - (ii) if the officer's date of retirement was on or after the 8th April 1991, reduce the sum of those other pensions as granted at the date of retirement by the appropriate percentage increase rate;
- (h) Add the sum produced at paragraph (g) of this Head to that produced at paragraph (f);
- (i) If the sum produced at paragraph (h) of this Head is less than the sterling sum produced at paragraph (c), carry forward the sum produced at paragraph (f); if the sum produced at paragraph (h) is greater than the sterling sum produced at paragraph (c), deduct the sum produced at paragraph (g) from that produced at paragraph (c) and carry the resulting sum forward;
- (j) If the officer commuted or commutes any part of his Hong Kong pension, or his Hong Kong pension is or has been reduced by an appropriate authority under the relevant law, calculate, in accordance with the relevant law, the reduced pension as if the like proportion of the sum carried forward at paragraph (i) had been commuted or the like reduction made in such sum;
- (k) Save as provided in paragraph 2 of Part I of this Schedule, increase the sum obtained at paragraph (i) or paragraph (j) of this Head, as appropriate, in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is payable under paragraph 5 of this Order by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order as if the sum so obtained were a pension beginning on the 8th April 1991;
- (l) The sum obtained at paragraph (i) or paragraph (j) of this Head, as appropriate, as increased in accordance with paragraph (k), so far as the latter is applicable, is the sterling value of the officer's notional Hong Kong pension;
- (m) Divide the sterling value of the officer's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

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**Interpretation of Head B: In paragraph (g) of this Head:**

“pensions increase legislation” means section 1 of the Pensions (Increase) Act 1971, orders made under section 2 of that Act and any order made under section 59 of the Social Security Pensions Act 1975;

“other pensions” means pensions in respect of other public service, and in determining the amount of such other pensions for the purposes of paragraph (g):

- (a) no account shall be taken of any reduction by way of commutation of pension or otherwise; and
- (b) in the case of a pension in respect of service under the Government of the United Kingdom, the amount shall be that produced by multiplying the actual pension by 4/3rds.

*Head C: Specified officers who retire before the coming into force of this Order from United Kingdom service who, on such retirement, are awarded a pension under a relevant law of Hong Kong in respect of their service in Hong Kong*

1. Subject to item 2 of this Head, to calculate the sterling value of an officer’s notional Hong Kong pension:

- (a) Identify the officer’s highest rate of salary on retirement from his service under the Government of the United Kingdom, or, if it is greater and is taken into account to calculate his United Kingdom pension, his highest pensionable salary for the year which is so taken into account;
- (b) Calculate in months the officer’s total length of pensionable service in Hong Kong in accordance with the relevant law;
- (c) Identify the officer’s pension earning rate under the relevant law;
- (d) Multiply the figures obtained at paragraphs (a) and (b) and divide by the figure obtained at paragraph (c);

$$\frac{(a) \times (b)}{(c)} = (d)$$

- (e) Multiply by 4/3rds the actual pension (excluding that part enhanced by the purchase of added years but including any enhancement under flexible added early retirement or ill-health arrangements) awarded to the officer at the time of his retirement under United Kingdom law;
- (f) Add the sum obtained at paragraph (e) to the sum obtained at paragraph (d) i.e. (e)+(d)=(f);
- (g) Multiply the sum obtained at paragraph (a) by 2/3rds;
- (h) If the sum obtained at paragraph (f) is less than that obtained at paragraph (g), carry the former sum forward; if the sum obtained at paragraph (f) is greater than that obtained at paragraph (g), carry the latter sum forward;
- (i) Subtract the sum obtained at paragraph (e) from whichever sum is carried forward at paragraph (h); the result is the sterling value of the officer’s unreduced notional Hong Kong pension;
- (j) If the officer commuted any part of his actual Hong Kong pension, or his pension has been or is reduced by an appropriate authority under the relevant law, the unreduced notional Hong Kong pension established at paragraph (i) is reduced in like proportion;
- (k) Save as provided in paragraph 2 of Part I of this Schedule, increase the sum obtained at paragraph (i) or paragraph (j) of this Head, as appropriate, as if that sum were a pension of the same amount beginning on the same date as that used to determine the entitlement of the officer to a pension supplement under regulations made under section 11 of the

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Pensions (Increase) Act 1971, or such date as would have been used as if the officer had been entitled to a pension supplement, as follows:

- (i) in respect of any period to which section 1 or section 2 of that Act applies, in accordance, as appropriate, with the provisions of the said section 1 or any order to give effect to the said section 2; and
  - (ii) in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is to be made under paragraph 5 of this Order, by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order;
- (l) The sum obtained at paragraph (k) of this Head is the sterling value of the officer's notional Hong Kong pension;
  - (m) Divide the sterling value of the officer's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

2. Where the officer is in receipt of an overseas government service pension in addition to a service pension under the law of Hong Kong, the foregoing provisions of this Head shall have effect as if the following paragraph were inserted immediately following paragraph (e):

“(ee) Add to the sum obtained at paragraph (e) the annual unreduced pension, as originally calculated, of any other overseas government service pension granted to the officer;”

and thereafter in this Head references to paragraph (e) shall be read as references to paragraph (ee).

3. In this Head, “overseas government service pension” means a pension in respect of other public service not being service under the Government of the United Kingdom.

*Head D: Specified officers who retire on or after the coming into force of this Order from United Kingdom service who, on such retirement, are awarded a pension under a relevant law of Hong Kong in respect of their service in Hong Kong*

To calculate the sterling value of an officer's notional Hong Kong pension:

- (a) Determine the sum to be carried forward as prescribed in paragraphs (a) to (i) of HeadC;
- (b) If the officer commutes any part of his actual Hong Kong pension, or his pension has been or is reduced by an appropriate authority under the relevant law, the unreduced notional Hong Kong pension established at paragraph (a) of this Head is reduced in like proportion;
- (c) Save as provided in paragraph 2 of Part I of this Schedule, increase the sum obtained at paragraph (a) or (b) of this Head, as appropriate, as if that sum were a pension of the same amount beginning on the same date as that used to determine the entitlement of the officer to a pension supplement under regulations made under section 11 of the Pensions (Increase) Act 1971, or such date as would have been used as if the officer had been entitled to such a pension supplement, in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is to be made under paragraph 5 of this Order, by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order;
- (d) The sum obtained at paragraph (c) of this Head is the sterling value of the officer's notional Hong Kong pension;
- (e) Divide the sterling value of the officer's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

*Head E: Specified officers who, having resigned from United Kingdom service before the coming into force of this Order with a preserved pension entitlement under United Kingdom law, are, after*

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*the coming into force of this Order, awarded a deferred pension under a relevant law of Hong Kong in respect of their service in Hong Kong*

To calculate the sterling value of an officer's notional Hong Kong pension:

- (a) Determine the sum to be carried forward as prescribed in paragraphs (a) to (h) of Head C;
- (b) Subtract the sum obtained at paragraph (e) of Head C from whichever sum is carried forward at paragraph (h) of that Head;
- (c) Increase the sum obtained at paragraph (b) of this Head, as if that sum were a pension of the same amount beginning on the same date as that used to determine the entitlement of the officer to a pension supplement under regulations made under section 11 of the Pensions (Increase) Act 1971, or such date as would have been used as if the officer had been entitled to such a pension supplement, in April of each year up to the date on which his deferred pension is awarded under the relevant law of Hong Kong by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order; the result is the unreduced notional Hong Kong pension;
- (d) If the officer commutes any part of his actual Hong Kong pension, or his pension has been or is reduced by an appropriate authority under the relevant law, the unreduced notional Hong Kong pension established at paragraph (c) of this Head is reduced in like proportion;
- (e) Increase the sum obtained at paragraph (c) or (d), as appropriate, as if that sum were a pension of the same amount beginning on the date of the award of the deferred Hong Kong pension, in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is to be made under paragraph 5 of this Order, by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order; the sum obtained is the sterling value of the officer's notional Hong Kong pension;
- (f) Divide the sterling value of the officer's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

*Head F: Specified officers who retired before the coming into force of this Order from the service of a Scheduled Government (other than the Government of the United Kingdom) who, on such retirement, are awarded a pension or entitled to a deferred pension under a relevant law of Hong Kong in respect of their service in Hong Kong*

To calculate the sterling value of an officer's notional Hong Kong pension:

- (a) Identify the officer's basic Hong Kong pension (unreduced or reduced as appropriate) in Hong Kong dollars as awarded under the relevant law;
- (b) Convert the sum obtained at paragraph (a) into sterling at the following rate of exchange:
  - (i) if the officer retired on or before 30th June 1976, at Hong Kong dollars 8.8137 to the pound sterling;
  - (ii) if the officer retired after 30th June 1976, at the rate of exchange on his last day of service before his retirement;
- (c) Save as provided by paragraph 2 of Part I of this Schedule, increase the sum obtained at paragraph (b) of this Head as if that sum were a pension beginning on the same date as that used to determine the entitlement of the officer to a pension supplement under regulations made under section 11 of the Pensions (Increase) Act 1971, or such date as would have been used as if the officer had been entitled to such a pension supplement, as follows:
  - (i) in respect of any period to which section 1 or section 2 of that Act applies, in accordance, as appropriate, with the provisions of the said section 1 or any order made to give effect to the said section 2; and

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- (ii) in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is to be made under paragraph 5 of this Order, by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order.
- (d) The sum obtained at paragraph (b) of this Head as increased in accordance with paragraph (c), so far as the latter is applicable, is the sterling value of the pensioner's notional Hong Kong pension;
- (e) Divide the sterling value of the pensioner's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

*Head G: Specified officers who retired before the coming into force of this Order from other public service in Hong Kong who, on retirement, are awarded a pension, or entitled to a deferred pension, under a relevant law in respect of their service in Hong Kong*

To calculate the sterling value of the officer's notional Hong Kong pension:

- (a) Identify the officer's salary point and allowances appropriate to his substantive grade at the date taken into account to determine his basic Hong Kong pension under the relevant law;
- (b) Determine the salary point and allowances appropriate to the salary point at that grade on 1st January 1992; this will produce the officer's notional Hong Kong pensionable emoluments;
- (c)
  - (i) Apply the mixed service formula to the notional Hong Kong pensionable emoluments to determine the pension that would be payable under the relevant law on those emoluments in respect of the officer's Hong Kong service; and
  - (ii) If the officer commuted any part of his Hong Kong pension, or his Hong Kong pension has been or is reduced by an appropriate authority under the relevant law, calculate, in accordance with the relevant law, the reduced pension as if the like proportion of the pension determined in accordance with paragraph (c)(i) had been commuted or the like reduction made in such pension;
- (d) Divide the pension or reduced pension as calculated in paragraph (c)(i) or (c)(ii), as appropriate, by 21; the resulting sum will be denominated in pounds sterling;
- (e) Save as provided in paragraph 2 of Part I of this Schedule, increase the sum obtained at paragraph (d) of this Head in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is payable under paragraph 5 of this Order by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order as if the sum so obtained were a pension beginning on the 8th April 1991;
- (f) The sum obtained at paragraph (d) of this Head as increased in accordance with paragraph (e), so far as the latter is applicable, is the sterling value of the pensioner's notional Hong Kong pension;
- (g) Divide the sterling value of the pensioner's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

*Head H: Specified officers who are entitled to a pension under the Police Officers (Special Cases) Pensions Ordinance*

To calculate the sterling value of an officer's notional Hong Kong pension:

- (a) Identify the officer's basic pension as awarded under the relevant law;
- (b) Increase the sum obtained at paragraph (a) as if that sum were a pension beginning on the same date as that used to determine the entitlement of the officer to a pension supplement

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under regulations made under section 11 of the Pensions (Increase) Act 1971, or such date as would have been used as if the officer had been entitled to such a pension supplement, as follows:

- (i) in respect of any period to which section 1 or section 2 of that Act applies, in accordance, as appropriate, with the provisions of the said section 1 or any order made to give effect to the said section 2: and
  - (ii) in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is to be made under paragraph 5 of this Order, by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order;
- (c) The sum obtained at paragraph (a) of this Head as increased in accordance with paragraph (b) is the sterling value of the pensioner's notional Hong Kong pension;
  - (d) Divide the sterling value of the pensioner's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

*Head I: Spouses and children who, being dependants of specified officers who die in service or after being granted a pension in respect of their service in Hong Kong, have been or are themselves granted a pension under the Surviving Spouses' and Children's Pensions Ordinance*

1. To calculate the sterling value of a spouse's notional Hong Kong pension:
  - (a) Identify the officer's salary point and allowances appropriate to his substantive grade at the date of his death in service or retirement, as the case may be;
  - (b) Determine the salary point and allowances appropriate to the salary point of that grade on 1st January 1992; this will produce the officer's notional Hong Kong pensionable emoluments;
  - (c) Calculate the pension which would be payable using the notional Hong Kong pensionable emoluments in accordance with the following formula:

$$\frac{A \times B}{C} = \frac{D}{2}$$

where

A are the officer's notional Hong Kong emoluments;

B:

- (i) are the total number of months of the officer's contributory service, but where the pension earning rate is 600, ignoring the number of months in excess of 400 and where the pension earning rate is 675, ignoring the number of months in excess of 450; or
- (ii) is the minimum period (in months) prescribed by section 7 of the Surviving Spouses' and Children's Pensions Ordinance,

whichever is the greater;

C is the officer's pension earning rate; and

$$\frac{D}{2}$$

is the sum to be taken for the remainder of the calculation.

- (d) Divide the sum obtained at paragraph (c) by 21; the resulting sum will be denominated in pounds sterling;
- (e) Increase the sum obtained at paragraph (d) in April of each year up to the date on which a calculation is to be made to determine whether a supplementary payment is payable under paragraph 5 of this Order by the appropriate percentage increase rate obtained from

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- the relevant Pensions Increase (Review) Order as if the sum so obtained were a pension beginning on the 8th April 1991;
- (f) The sum obtained at paragraph (d) of this Head as increased in accordance with paragraph (e) is the sterling value of the spouse's notional Hong Kong pension;
  - (g) Divide the sterling value of the spouse's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.
2. To calculate the sterling value of the notional Hong Kong pension in respect of the child dependant or children dependants of an officer:
- (a) where a pension is payable under the relevant law in respect of a child or children of pensionable age when the parent is in receipt of a pension under the relevant law:
    - (i) and there is only one such child, determine the sum representing one quarter of the basic rate, or, if the child is not being cared for by the parent, one third of the basic rate;
    - (ii) and there are two or more such children, determine the sum representing one half of the basic rate;
  - (b) where such pension is payable but the parent is no longer living or in receipt of a pension:
    - (i) and there is only one such child, determine the sum representing one third of the basic rate;
    - (ii) and there are two or more such children, determine the sum representing two thirds of the basic rate.
  - (c) Apply the rules at paragraph 1(d), (e), (f) and (g) of this Head to obtain the monthly rate of the sterling value of the child or children's notional Hong Kong pension.
  - (d) Where there are two or more eligible children the sum obtained at paragraph 2(c) of this Head is the total sum applicable for all the children, and the provisions of paragraph 5 of the Order will apply as if the references to a pensioner were references to the children who are pensioners and the reference to the pensioner's notional Hong Kong pension were a reference to the sum applicable as determined in accordance with paragraphs 2(a), (b) and (c) of this Head.

*Interpretation of Head H2:*

2. In this paragraph,  
“basic rate” means the sum obtained at  
 $\frac{D}{2}$   
in paragraph 1(c) above.

*Head J: Widows and children who, being dependants of specified officers who die in service or after being granted a pension in respect of their service in Hong Kong, have been or are themselves granted a pension under the Widows and Orphans Pension Ordinance*

To calculate the sterling value of the pensioner's notional Hong Kong pension:

- (a) Determine the amount (if any) of the pensioner's basic Hong Kong pension which is awarded in Hong Kong dollars;
- (b) Convert the sum obtained at paragraph (a) into sterling at the following rate of exchange:
  - (i) if the pension is one for which the last day of service for which it was awarded is 30th June 1976 or earlier, at Hong Kong dollars 8.8137 to the pound sterling;

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- (ii) the middle rate in the official exchange rate market on the last day of such service when that day is later than 30th June 1976;
- (c) If the basic pension was awarded:
  - (i) solely in sterling, carry that sum forward;
  - (ii) solely in Hong Kong dollars, carry forward the sterling sum obtained from paragraph (b);
  - (iii) partly in sterling and partly in Hong Kong dollars, add the sterling part to the sum obtained from paragraph (b) and carry forward the total sum;
- (d) Increase the sum carried forward at paragraph (c) up to the date on which a calculation is to be made to determine whether a supplementary payment is to be made under paragraph 5 of this Order, as if that sum were a contributory derivative pension to which the Overseas Service (Pensions Supplement) Regulations 1995(10) applies;
- (e) The sum carried forward at paragraph (c) of this Head as increased in accordance with paragraph (d) is the sterling value of the pensioner's notional Hong Kong pension;
- (f) Divide the sterling value of the pensioner's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.

*Head K: Dependants of specified officers who are awarded a pension under, and in the circumstances prescribed in, section 18 of the Pensions Ordinance, section 19 of the Pension Benefit Ordinance or section 20 of the Pension Benefit (Judicial Officers) Ordinance*

To calculate the sterling value of the pensioner's notional Hong Kong pension:

- (a) Identify the officer's salary point and allowances appropriate to his substantive grade at the time of the relevant injury;
- (b) Determine the salary point and allowances appropriate to the salary point of that grade on 1st January 1992; this will produce the officer's notional Hong Kong pensionable emoluments;
- (c) Apply the provisions of paragraph (e) of Head A to the officer's notional pensionable emoluments;
- (d) Apply the provisions of the relevant law taken by the appropriate authority in granting the dependant's pension to the sum obtained at paragraph (c) of this Head as if that sum were the officer's annual pensionable emoluments;
- (e) Divide the sum obtained at paragraph (d) by 21; the resulting sum will be denominated in pounds sterling and is the sterling value of the pensioner's notional Hong Kong pension;
- (f) Divide the sterling value of the pensioner's notional Hong Kong pension by 12 to obtain the monthly rate of such sterling value.



## PART III

### RULES FOR CALCULATING AND DETERMINING A NOTIONAL HONG KONG GRATUITY AND ITS STERLING VALUE

*Head L: Specified officers who retire from the service of the Government of Hong Kong with no other pensionable public service and who elect to commute part of their Hong Kong pension for a gratuity*

To calculate the sterling value of an officer's notional Hong Kong gratuity:

- (a) Calculate the officer's unreduced notional Hong Kong pension in accordance with HeadA, paragraphs (a), (b), (c) (i), (d) and (e);
- (b) Apply the provisions of the relevant law to the unreduced notional Hong Kong pension to calculate the gratuity in accordance with the option exercised by the officer as if it were the pension to be taken for the purpose under the relevant law;
- (c) The sum obtained at paragraph (b) of this Head is the sterling value of the officer's notional Hong Kong gratuity.

*Head M: Specified officers who retire from the service of the Government of Hong Kong with other pensionable service under a Scheduled Government and who elect to commute part of their Hong Kong pension for a gratuity*

To calculate the sterling value of an officer's notional Hong Kong gratuity:

- (a) Calculate the officer's unreduced notional Hong Kong pension in accordance with HeadB, paragraphs (a) to (i) and (k);
- (b) Apply the provisions of the relevant law to the unreduced notional Hong Kong pension to calculate the gratuity in accordance with the option exercised by the officer as if it were the pension to be taken for the purpose under the relevant law;
- (c) The sum obtained at paragraph (b) of this Head is the sterling value of the officer's notional Hong Kong gratuity.

*Head N: Specified officers who retire from the service of the United Kingdom Government and elect to commute part of their Hong Kong pension for a gratuity*

To calculate the sterling value of an officer's notional Hong Kong gratuity:

- (a) Determine the sterling value of the officer's unreduced notional Hong Kong pension in the manner prescribed in Head D or Head E, as the case may be;
- (b) Apply the provisions of the relevant law appropriate to the calculation of the gratuity for which the officer has elected to the sterling value of the unreduced notional Hong Kong pension as determined under paragraph (a) of this Head to produce a sterling sum; such sterling sum is the sterling value of an officer's notional Hong Kong gratuity.

*Head O: Death Gratuity*

To calculate the sterling value of an officer's notional Hong Kong gratuity in the case of a death gratuity:

- (a) Identify the officer's salary point and allowances appropriate to his substantive grade at the date of his death or, if he died after retirement, at the date of his retirement;
- (b) Determine the salary point and allowances appropriate to that grade on 1st January 1992; this will produce the officer's notional Hong Kong pensionable emoluments;

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- (c) Then identify—
- (i) where a death gratuity is payable in respect of an officer who dies in service, the amount equivalent to the officer's notional pensionable emoluments as obtained at paragraph (b) of this Head or the maximum commutable pension gratuity as determined by paragraph (b) of Head L, whichever is the greater;
  - (ii) where a death gratuity is payable in respect of an officer who is eligible for a deferred pension, but who dies before the receipt of the pension, the amount equivalent to the maximum commutable pension gratuity as determined by paragraph (b) of Head L;
  - (iii) where a death gratuity is payable in respect of a pensioner who dies after retirement, the amount equivalent to the officer's notional pensionable emoluments at the date of his retirement as obtained at paragraph (b) of this Head or the maximum commutable pension gratuity as determined by paragraph (b) of Head L, whichever is the greater;
- (d) Divide the figure identified at paragraph (c) of this Head by 21 to convert into sterling;
- (e) In the case of a death gratuity to which paragraph (c)(i) or (c)(ii) applies, increase the sum obtained at paragraph (d) in April of each year up to the date on which the officer died by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order as if the sum so obtained were a pension beginning on the 8th April 1991. This produces the sterling value of the notional death gratuity;
- (f) In the case of a death gratuity to which paragraph (c) (iii) applies—
- (i) where the officer retired before 1st January 1992, the sum obtained at (d), less the deductions specified in paragraph (g), will be the sterling value of the notional death gratuity;
  - (ii) where the officer retired on or after 1st January 1992, increase the sum obtained at paragraph (d) in April of each year up to the date on which the officer died by the appropriate percentage increase rate obtained from the relevant Pensions Increase (Review) Order as if the sum so obtained were a pension beginning on the 8th April 1991. The resulting amount less the deductions specified in paragraph (g), will be the sterling value of the notional death gratuity;
- (g) The deductions are the sterling value of any pension benefits or gratuity (other than any payment on account of an injury pension or gratuity) paid to the pensioner, any supplement paid in respect of the officer's pension or gratuity (other than an injury payment or gratuity) under regulations made under section 11 of the Pensions (Increase) Act 1971, and any payments made under this Order.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides for the making of certain supplementary payments to overseas public servants and their dependants if their income from Hong Kong service or dependant's pensions, or if the value of pensionable officers' gratuities, is reduced as a consequence of a significant fall in the exchange rate between the Hong Kong dollar and the pound sterling.

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The Order applies to pensions awarded, whether before or after the commencement of the Order, under the four Hong Kong ordinances applicable to service or injury pensions and the two further ordinances applicable to dependants' pensions and to gratuities payable after the Order comes into force. The Ordinances are defined in article 2 as "relevant laws".

In the case of public servants pensions and pensions based on the extent of an officer's public service, the amounts protected by this Order are designed to be broadly comparable with pensions and gratuities paid to United Kingdom public servants. This is provided for by articles 4 and 7 and the various Heads in the Schedule, the latter of which prescribe rules for determining sterling values of a "notional Hong Kong pension" and a "notional Hong Kong gratuity". The rules provide for updating the sterling value of the notional Hong Kong pension or gratuity in line with the United Kingdom Retail Price Index. Articles 5 and 8 provide that if the actual monthly income of a pensioner, or the actual amount of a relevant gratuity, falls below the notional pension or gratuity, the pensioner or person entitled to the gratuity will be entitled to a supplementary payment in sterling of the difference between the two.

The rules for determining the notional pensions and gratuities in the Heads of the Schedule take account of the different circumstances in which pensions and gratuities may be awarded under Hong Kong law, whether on retirement after pensionable service solely in Hong Kong or after mixed service with other public services.