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10 DOWNING STREET

From the Private Secretary

18 March 1985

Dear Peter,

Treatment of Members of Her Majesty's Overseas Civil Service (HMOCS) in Hong Kong

The Prime Minister has considered the Foreign Secretary's minute of 7 March about pension arrangements for members of Her Majesty's Overseas Civil Service in Hong Kong.

The Prime Minister is not entirely happy with what is proposed and regrets that it appears not to be possible for the present Hong Kong Government to set up an arrangement which would go some way to funding the estimated capitalised value of HMOCS entitlements in 1997 (i.e. £210m.). She notes, however, that it is proposed to review this possibility in 1990.

But, provided all her colleagues are content, the Prime Minister is content to go along with the proposals in the Foreign Secretary's minute.

I am copying this letter to the Private Secretaries to members of OD(K) and to Richard Hatfield (Cabinet Office).

Yours sincerely,

Charles Powell

Charles Powell

Peter Ricketts, Esq.,
Foreign and Commonwealth Office.

CC PC

As there are some 12 years to go - is it not possible for the present Hong Kong govt to set up a substantial fund as part cover for their pensions? MT.

Prime Minister
Agree to the recommendations set out in paragraph 5. The Chancellor has agreed conditionally (see his minute which is flagged)
13/3

PM/85/18

PRIME MINISTER

Treatment of members of Her Majesty's Overseas Civil Service (HMOCS) in Hong Kong

1. On 12 September 1984 OD(K) considered my minute to you on Hong Kong public service pensions. The minute noted that "HMG has long accepted a general political obligation in respect of members of Her Majesty's Overseas Civil Service to protect their pensions after constitutional change and in extremis to take over the payment of them if the successor government defaults". It posed the question whether HMG should, quite apart from the question of HMOCS, accept a contingent liability in the event of default by the SAR government for the whole body of Hong Kong Civil Service pensions, including those of local civil servants.

2. OD(K) concluded that no such general contingent liability should be accepted, and that HMG's responsibilities were to ensure that adequate arrangements for Hong Kong pensions were made in the agreement with the Chinese.

3. We now need to consider if and how the main body of doctrine on HMOCS should be applied to HMOCS officers in Hong Kong. The subject is complex, and the details have therefore been set out in the attached Memorandum, prepared in conjunction with the ODA Pensions Department. Policy on these matters should be settled soon both to help maintain the morale of the Overseas Civil Service in Hong Kong, and because we are under pressure from the Pensioners' Association and in Parliament to give commitments in respect of the treatment of such officers in Hong Kong.

/4.

4. Assurances given in the past to HMOCS have not distinguished between those serving in different places, and I cannot see how we could justify introducing such a distinction now. Moreover since we have accepted that constitutional change in Hong Kong raises comparable problems for HMOCS to those raised in territories becoming independent, we could not justify declining to attempt to set up comparable arrangements to deal with them. However since Hong Kong is well able to afford to finance these arrangements without subsidy from HMG, I consider that our policy should be that these arrangements should be financed before 1997 by the Hong Kong Government and after 1997 by the SAR government. In default of this, there would be pressure on HMG to finance the arrangements themselves. This should be resisted as long as possible, but in the last resort the liabilities are not so large that it would be impossible for HMG to take them on.

Summary of Conclusions

5. My conclusions are that:

(a) we should aim for arrangements whereby HMOCS officers in Hong Kong are eligible for compensation from local revenue. We should proceed to discuss these with the Hong Kong Government. [Estimated maximum cost is a one-off payment of £25 million at current prices and exchange rates.]

(b) We should aim to negotiate safeguards for the sterling value of pensions earned under HMOCS up to 1997, the cost being met by the Hong Kong (SAR) Government. Further study should be given to the nature and timing of such safeguards, and there should be discussion with the Hong Kong Government. [Estimated cost, on worst case assumptions, is £10.5 million per year.]

/(c)

(c) If specifically pressed, Ministers should reaffirm HMG's previous assurances that the Carr-Robertson assurances on payment of advances in lieu of pensions to HMOCS officers in the event of a pensions default apply to HMOCS in Hong Kong as elsewhere. Pressure for similar assurances for local officers should be resisted. [Estimated cost is £10 million per year at current prices and exchange rates, and excluding widows' pensions.]

(d) The question of taking over the pension entitlements of HMOCS officers in Hong Kong, at the expense of the Hong Kong Government, should be reviewed in 1990. [Capitalised value of entitlements in 1997 would be £210 million, at current prices and exchange rates.]

(e) Members of HMOCS who remain in pensionable service in Hong Kong after 1997 should relinquish their HMOCS status. A decision should be taken later whether and how the <u>benefits</u> of this status should be retained for pensionable service in Hong Kong after 1997.

(f) The decisions on recommendations (a) to (e) above should form the basis of official responses, here and in Hong Kong, to enquiries about the position of HMOCS.

6. I should be grateful to know if you and the other addressees of this minute agree with these recommendations. I hope that it may be possible to reach agreement without the need for a meeting of OD(K). It would be useful to know whether colleagues saw difficulties with the line set out above by 13 March, since Ministers are likely to be pressed on this subject again during the Lords' Committee

/stage

stage (on 14 March) of the Hong Kong Bill.

7. I am copying this minute to our colleagues on OD(K) and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
7 March 1985

HONG KONG : HER MAJE^cTY'S OVERSEAS CIVIL SERVICE (HMOCS)

HMG'S SPECIAL RE^sPONSIBILITIES FOR HMOCS

1. Senior colonial service appointements have always been filled under the patronage of the Secretary of State, mostly by British officers. The process of decolonisation obliged HMG to consider what special responsibilities it had for such "overseas officers". In a 1954 White Paper HMG announced the reconstitution of overseas ^fficers into a unified body known as Her Majesty's Overseas Civil Service (HMOCS). This White Paper also pledged that HMG would seek certain safeguards for these officers from the governments of overseas territories proceeding to self-government. Other protective measures have since been added to give the following package:

(a) Conditions of service after constitutional change are protected by a 'no detriment' provision;

(b) officers may retire voluntarily at constitutional change, with compensation for loss of career;

(c) pensions are protected against an erosion of their sterling value by an exchange rate safeguard; against inflation by coverage under British public sector pension increase arrangements (these operate before as well as after constitutional change); and against default by undertakings that HMG would step in with loan advances in lieu of pensions.

2. In practice the pension protection in (c) has generally been subsumed by HMG's decision in 1970 to take over the pensions of overseas officers, bearing the cost of pre-independence service itself and recouping the cost of post-independence service from the overseas Government. This followed defaults by Tanganyika and Aden and the threat of default by Kenya. The policy was based partly on a sense of obligation to the officers concerned and partly on aid grounds. The then dependencies were excluded. Hong Kong was regarded as a special case among the dependencies because its future

was uncertain and because its wealth meant that it would not qualify for help on aid grounds. Some 35,000 pensioners are covered by the arrangements, which are administered by the ODA, at a cost in 1984-85 of some £82 million. (The ODA also administer 8,000 pensions earned in service in India, Pakistan and Burma, most of which were taken over in the 1940s and 1950s against reimbursement by the Indian Government).

HMOCS IN HONG KONG

3. There are currently some 700 members of HMOCS in Hong Kong. There are approximately 100 other pensionable overseas officers who may be eligible for HMOCS status but have not as far applied for it. There are also some 2400 overseas officers on contract terms: however, the Hong Kong Government is considering making a proposal that it should no longer entertain further applications from these officers to convert to pensionable terms except that they will offer a once and for all option to convert to some 580 overseas police officers who were eligible for appointment on pensionable terms. A preliminary estimate is that perhaps a further 300 officers may as a result of these factors become members of HMOCS. The resulting total, approximately 1000, will decline through retirement, Hong Kong having halted overseas recruitment on pensionable terms with effect from the date of the signing of the agreement. Some 1730 Hong Kong pensioners count as overseas officers (including 440 drawing dependants' pensions). Payments to them by Hong Kong are running at an annual rate of £10.5 million.

4. These serving officers and pensioners naturally expect that the protective measures listed above will also be applied to them. Many have served in other dependent territories and are familiar with compensation schemes and pension take-over arrangements; a number will already know from the ODA that pensions they have earned elsewhere are covered by the take-over programme.

5. The factors which bear on HMOCS compensation and pensions from Hong Kong differ in two important respects from those which have applied elsewhere. First, there is no case on aid grounds for relieving the Hong Kong/SAR government of the financial responsibility for these benfits. Among other things this limits

HMG's influence on the way the benefits are handled. Secondly, the anxiety about whether public service pensions will be secure under Chinese sovereignty extends to local officers as well as members of HMOCS. HMG will therefore face pressure - as it has not done elsewhere - to look after local officers as well.

6. The 1954 White paper undertakings about terms of employment after self-government for members of HMOCS who serve beyond independence are partly discharged in the case of Hong kong by Section IV of Annex 1 of the draft agreement, which includes a 'no detriment' provision in respect of all public service which precedes the resumption of sovereignty. Pension rights under Hong Kong legislation (which makes no distinction between local officers and HMOCS) are similarly safeguarded. Given these measures, five further questions arise in respect of HMOCS.

SHOULD THERE BE A COMPENSATION SCHEME FOR HMOCS OFFICERS AFFECTED BY CONSTITUTIONAL CHANGE IN HONG KONG, AND IF SO WHO SHOULD FINANCE IT?

7. There is a good argument for proceeding now to devise compensation arrangements for Hong Kong. They may need to be used in the fairly near future if the Hong Kong Government introduce further arrangements for localisation, for example in the senior ranks of the Administrative Service and the Police Force. Progress here would also help to reassure staff that HMG was responding to their concerns, and might lessen the pressure in other, more difficult areas. It is therefore recommended that we should aim to establish suitable compensation arrangements, and that officials should enter into discussions with the Hong Kong Government.

8. It is considered that Hong Kong is well able to afford to meet the costs of this and that any pressure for HMG to do so should be resisted The maximum cost is estimated at a one off payment of £25 million at current prices and exchange rates. It would be likely to be spread over a number of years.

SHOULD ARRANGEMENTS BE INTRODUCED TO SAFEGUARD THE STERLING VALUE OF PENSIONS EARNED FROM HMOCS SERVICE UP TO 1997?

9. The standard arrangement enables the pension to be freely

remitted overseas at the rate against sterling in force at independence. The burdens thus imposed on the successor governments - in effect to pay sterling pensions - have been largely removed by the pensions take-over programmes.

10. The sterling value of Hong Kong pensions is at risk now, so there is pressure from pensioners' associations to introduce a sterling safeguard immediately. The pressure will intensify as 1997 approaches if HMG makes no move to take over the pensions concerned. Given that this is part of the standard package for HMOCS it is not open to HMG to argue that such a safeguard is unnecessary or unjustified. On worst case assumptions, i.e. if the Hong Kong dollar became worthless, the cost to HMG would be the sterling value of pensions and increases paid by Hong Kong, which is currently £10.5 million per year. Our aim should therefore be to enter into arrangements whereby the Hong Kong (later the SAR) Government accept this obligation. (It should be recognised that, if we failed to achieve this aim, there would be pressure on HMG to meet this obligation, and in the last resort, since HMG has met it elsewhere, such pressure would be very difficult to resist. If it did become necessary for HMG to meet the obligation, it could do so by manipulating the pension supplement payable from UK funds, for which HMOCS pensioners are already eligible. Nevertheless such pressure should be strongly resisted.) It is recommended that officials should study further how such a scheme might operate, and that we should start discussions with the Hong Kong government about it. In the meantime the public line should be that we are aware of the precedents, and that our aim will be to see comparable arrangements made for HMOCS officers in Hong Kong.

SHOULD MINISTERS BE READY TO REAFFIRM THE EARLIER UNDERTAKING TO THE EFFECT THAT HMG WOULD PAY LOAN ADVANCES IN LIEU OF PENSIONS TO HMOCS IN THE EVENT OF A PENSIONS DEFAULT BY THE SAR GOVERNMENT AFTER 1997?

11. In 1964, in response to anxieties about the security of pensions payable to overseas officers by independent government, the Secretary for Technical Cooperation, the then Mr Robert Carr, gave an assurance to Sir James Robertson, president of the Overseas Service Pensioners' Assocation (OSPA), that HMG would not stand aside in the event of a default. This assurance was reaffirmed in

1968 by Sir Reginald Prentice, the Minister for Overseas Development, who told the House of Commons that the assurance "does not amount to a formal commitment to pay loan advances [in lieu of pensions] if there has been a default, but it has been understood since by OSPA and by the British Government that this would in effect happen if there was a default".

12. The "Carr-Robertson" Assurance has become a fundamental part of HMOCS lore. Since 1943, HMG has intervened on 12 occasions with loan advances in lieu of pensions: Shanghai, Burma, Pakistan, Aden, Tanganyika, Zanzibar, Malaysia, Nigeria, Uganda, Somalia, the East African Community and Rhodesia (for "loyal Rhodesian" public servants). In most of these cases, pensions had fallen into arrears through domestic upheaval or civil war. Eight of the loan advance schemes postdate the Carr-Robertson Assurance. We have not yet been asked specifically about the assurance in relation to Hong Kong though the general question of default crops up frequently. We have parried enquiries about default by pointing to the draft agreement, but we recognise that a direct question about the Carr-Robertson Assurance (which is bound to come) will require a direct answer. Given the statement on record, the weight of precedent and the fact that some thousands of pensions yet to be taken over from territories other than Hong Kong are understood to be protected by the Assurance, it is certain that there would be an outcry if Ministers were to repudiate it. Nor is it easy to see how a retreat from the Assurance could be defended.

13. It is therefore recommended that Ministers should, if asked a direct question, confirm that the assurance applies to HMOCS officers anywhere, including Hong Kong. (The contingent liability is quantified in para 14 below). Pressure from local officers for similar undertakings, which would probably arise, would have to be resisted on the grounds that HMG has historically accepted a special obligation to members of HMOCS and that its reaffirmation of this has no implications for the pensions of local officers.

SHOULD HMG GO BEYOND THE CARR-ROBERTSON ASSURANCE AND SEEK TO TAKE OVER THE PENSION ENTITLEMENTS OF HONG KONG HMOCS OFFICERS? IF SO, ON WHAT TERMS?

14. If Ministers accept that HMG would have to take responsibility for the pensions of HMOCS in Hong Kong in the event of a default the question arises whether we should initiate a formal take-over of the pensions at or before 1997. This would be on lines which have become standard elsewhere, but with the important difference that Hong Kong, which is not aid-worthy, would meet the cost. (The question arises irrespective of whether or not it proves necessary to reaffirm the Carr-Robertson Assurance). The main argument for taking over responsibility is financial - to extinguish the contingent liability. The money at stake is not inconsiderable. Excluding widows' benefits, for which no estimate is currently available, expenditure on pensions would be approximately £10 million pa (at 1984-85 prices and exchange rates) at the turn of the century. The trend would be downwards, but the liability would not be finally extinguished until 2040. HMG would have to finance this itself if the SAR Government defaulted. The risk would be avoided by arranging for responsibility to pass to HMG before Chinese sovereignty is resumed: the Hong Kong Government would finance the pensions by handing over capitalised values of the entitlements (if necessary in a phased programme). As at 1997, these would be in the region of £210 million at 1984-85 prices and exchange rates.

15. The Hong Kong Government is strongly opposed to a take-over because of the divisive effect this would have on the public service. It would also be difficult to persuade the Legislative Council to approve the £210m representing the capitalised value of the pensions. Moreover, action on HMOCS pensions by HMG would inevitably undermine our reassurances on the credibility of the Agreement; indeed there is a case for leaving responsiblity for these pensions with the SAR Government as a mark of our faith in the Agreement. The balance of argument is therefore against early action, but the question should be looked at again, perhaps in about 1990.

SHOULD HMOCS OFFICERS WHO REMAIN IN SERVICE AFTER 1997 CONTINUE TO BE REGARDED BY HMG AS MEMBERS OF HMOCS? IF NOT SHOULD OTHER ARRANGEMENTS BE INTRODUCED TO MAINTAIN THE BENEFITS NORMALLY ASSOCIATED WITH MEMBERSHIP OF HMOCS?

16. The main benefits of HMOCS status that would be relevant to

continuing pensionable service in Hong Kong after 1997 are:

(a) eligibility to fill posts in other dependent territories; and

(b) eligibility of pensions earned in post-1997 service for British inflation-proofing (para 1) and for the application of exchange rate safe-guards negotiated for pre-1997 service (para 10).

17. The Chinese would certainly not accept the maintenance of HMOCS status after 1997, which, since its members are servants of the Crown, would appear to be at variance with the statement in the Joint Declaration that foreign nationals shall be employed only in their individual capacities and shall be responsible to the SAR Government. HMG could however easily cover unilaterally the question of transfer to other dependent territories (such as they are in and after 1997).

18. The retention of the benefits in para 16(b) is more difficult. This would be in line with previous practice to encourage officers to stay on after constitutional change. However, our policy should be to try to ensure that such benefits were paid for by the SAR government, otherwise the cost would fall to HMG; and it would be inconsistent for HMG to make such commitments to expatriate officers who were no longer in Crown Service while denying the same benefits to local officers for the Crown Service before 1997. There seems no alternative to deferring a decision on the retention of these benefits until we are better able to assess the case for helping the SAR Government to retain the services of pensionable officers after 1997, and to assess whether or not the SAR Government would be willing to meet the cost. A decision is therefore probably impossible before the 1990s.

Hong Kong

Future Pt 17

- 7 MAR 1985