

For discussion
on 26 June 2001

**Panel on Administration of Justice and Legal Services
of the Legislative Council**

**Legal Aid Services Council's Proposed Amendments
to the Legal Aid Services Council Ordinance and
other relevant Ordinances**

Purpose

The paper informs Members of the Administration's response to the various legislative amendment proposals put forward by the Legal Aid Services Council.

Background

2. Pursuant to a review of its operation, the Legal Aid Services Council ("LASC") put forward to the Administration in October 2000 some proposed legislative amendments. Since then, the Administration has met with the Chairman and members of LASC and reached a broad consensus on the way forward.

Role of the LASC

3. The LASC was established in September 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to, inter alia, advise the Chief Executive on legal aid policy, and to oversee the administration of the legal aid services provided by the Legal Aid Department ("LAD") and the funding requirements. It is therefore intended to be an advisory and supervisory body overseeing the provision of legal aid services. It is not a body charged with executive functions.

LASC's Proposals and the Administration's Response

4. LASC's proposed legislative amendments can be broadly categorised into two types : (a) amendments to enhance the powers of the LASC; and (b) amendments to address the operational difficulties encountered by the LASC.

5. Having regard to the intended role of the LASC and the existing provisions under the LASC Ordinance, the Administration informed Members of the LASC that -

- (a) five of their proposals can be implemented under the existing legislative framework and do not necessitate amendment to the LASC Ordinance. These include appointment of committees; networking with legal aid bodies in other jurisdiction; producing and distributing publicity materials; obtaining information relevant for the consideration of issues regarding delivery of legal aid services; and doing things incidental to the carrying out of its functions.
- (b) five of their proposals will be taken forward at the earliest opportunity or revisited as necessary. These include powers to appoint LASC's own staff; enter into contract or take on lease; power for the Chief Executive to permit submission of LASC's annual report at a later date; and changing the quorum for LASC meetings; and
- (c) one of their proposals goes beyond the role envisaged for the Council. This relates to the LASC acting as trustee.

6. The gist of the LASC's proposals and the Administration and the LASC's views thereon is at the Annex.

Way Forward

7. To facilitate its work, the Administration and the LASC agreed to the following —

(a) Appointment of committees and quorum for Council meetings

8. The LASC could, where considered necessary, continue to appoint committees, working parties or groups to look into specific issues and these committees will refer their findings to the full Council for decision.

9. The Administration notes that the LASC has on certain occasions encountered difficulty in obtaining a quorum for a full Council meeting. The Administration is clearly aware of the fact that the composition and the quorum for Council meeting are interrelated and have been carefully devised. Hence, changes to the latter should only be made after its possible implications have been carefully assessed. The Administration also notes that the LASC has appointed committees, working parties or groups on an ad hoc basis to study specific issues, such as the monitoring of assigned out cases.

10. In the light of the Council's intention to operate, where appropriate, through a system of committees, working parties or groups, it may not be necessary for the full Council to meet as frequently or have as long meetings as at present. We could nevertheless revisit the need for changing the quorum, as and when necessary, taking into account its impact on the composition of the Council.

(b) Appointment of LASC's own staff, entering into contract and taking on lease

11. The LASC has recently completed a review of its current staffing arrangement and concluded that it would not be desirable to introduce any changes to the arrangement for staffing its secretariat with civil servants. Separately, the Administration also understands that the LASC does not have any practical problem with the existing arrangement for the Government Property Agency taking on lease on their behalf. Members of the LASC and the Administration therefore agreed that there was no need for introducing provisions to enable the LASC to appoint its own staff, enter into contract and take on lease at this juncture, and that we would revisit the issue as necessary.

(c) Producing and distributing publicity materials

12. The Administration supports LASC's initiative to launch publicity programme to promote public awareness of the legal aid system and to foster a greater understanding of legal aid services. It is noted that since the LASC is not inhibited under the existing provisions from producing and/or distributing publicity materials for free, the LASC should proceed forthwith if it so wishes.

(d) Disclosure of information on individual legal aid cases

13. The Administration appreciates that the LASC may need information about actual cases handled by the LAD so as to facilitate its discussion of practical issues regarding the delivery of legal aid services. The Administration is also conscious of the Government's privacy obligations and the LAD's professional obligations to their clients. To meet both objectives, we have formalised an arrangement whereby the LAD will, upon request by the LASC, provide information, including the personal data of the legal aid client, on individual cases subject to obtaining the consent of the relevant data subject or provider of the information. In instances where consent could not be obtained, information would be provided to the LASC with the personal data of the data subject concealed. Where the requested information were to touch upon privileged information of legal aid cases, the LAD would disclose the same if consent from the client could be obtained and that the disclosure would not have a prejudicial effect on the proceedings to which the information relate. The arrangement could meet LASC's objective, and specific provisions in the LASC Ordinance and consequential secrecy safeguard provisions should not after all be necessary.

(e) Annual reports

14. The Administration notes the practical difficulty of the LASC in meeting the current statutory deadline for submission of the annual report at a date no later than six months after the end of financial year. We shall take forward LASC's suggestion at the earliest opportunity.

Conclusion

15. The proposals outlined in paragraphs 7 to 14 above are practical ways to address the issues identified in the LASC's review of its operation. The Administration will continue to work closely with the LASC in discharging its role in supervising the administration of legal aid services and advising on legal aid policy.

Administration Wing
Chief Secretary for Administration's Office
June 2001

Administration's responses to LASC's legislative proposals

LASC's proposed legislative amendments	Administration's responses
(A) Amendments to enhance LASC's powers	
<p>Section 3 be amended by adding : "The Council may :-</p> <p>(a) appoint such committees as it considers necessary for securing the efficient discharge of its functions and may delegate to any such committee any of its powers and duties : Provided that no delegation made hereunder shall preclude the Council from exercising or performing at any time any of the powers and duties so delegated.</p>	<ul style="list-style-type: none"> - LASC can and has appointed working parties or groups to study specific issues such as the monitoring of assigned out cases of the Legal Aid Department ("LAD"). - No express provision is necessary.
<p>(b) appoint such persons as may be necessary for the efficient carrying out of its duties and functions under this Ordinance;</p>	<ul style="list-style-type: none"> - LASC reviewed the current staffing arrangement of its secretariat by civil servants in August last year and concluded that it would not be desirable to alter the present arrangements. - We could revisit the issue as necessary.
<p>(c) enter into, assign or accept the assignment of, and vary or rescind any contract or obligation;</p>	<p>We could revisit the issue as necessary.</p>
<p>(d) acquire, take on lease, purchase, hold and enjoy any property, and sell, let or otherwise dispose of the same;</p>	<ul style="list-style-type: none"> - LASC's office is now accommodated in premises taken on lease by the Government Property Agency ("GPA"). The Council has not encountered any practical problem with such an arrangement. - We could revisit the issue as necessary.

LASC's proposed legislative amendments	Administration's responses
<p>(e) promote, control, become a member of, take part, act as agent for, manage, superintend or otherwise assist any association or institution which has, either wholly or in part, objects which are the same as or similar to those of the Council;</p>	<ul style="list-style-type: none">- Existing provision does not preclude the LASC from establishing contact with legal aid bodies in other jurisdictions. No express provision is therefore necessary.- As an independent body rendering advice to the Administration on legal aid service in Hong Kong, empowering LASC to become a member of another institution may run the risk of compromising its independent status. We do not consider it appropriate to introduce the proposed amendment.
<p>(f) publish periodicals, booklets and other written material, and produce or sponsor the production of documentary films and other audio-visual material, and distribute the same by sale or by loan, hire or otherwise with or without charge as the Council thinks fit;</p>	<ul style="list-style-type: none">- We appreciate that LASC may launch publicity programme to promote public awareness of legal aid and to foster understanding of legal aid services, and support such initiatives. LASC is allowed under the existing law to produce and distribute publicity materials for free. No express provision is necessary.
<p>(g) act as trustees of such trusts as may further such objects or as may be otherwise considered desirable, either gratuitously or otherwise; and</p>	<p>LASC is not a financially independent body. This amendment is neither necessary nor appropriate.</p>
<p>(h) do all such things as are calculated to facilitate, or as are incidental or conducive to, the better carrying out of the objects of the Council;</p>	<p>LASC is already able to do things incidental to carrying out of its functions. Express provision is not necessary.</p>
<p>The expenses of the Council and the salary or benefits payable to any person appointed under subsection (b) are to be paid out of monies appropriated for that purpose by the Legislative Council.”</p>	<p>The expenses of LASC are already paid out of monies appropriated by the Legislative Council. Express provision is not necessary.</p>

LASC's proposed legislative amendments	Administration's responses
(B) Amendments relating to LASC's need for information about actual cases handled by LAD	
<p><i>The following amendments are proposed to facilitate LASC's discussion of issues relating to the delivery of legal aid services:</i></p> <p><u>Functions of the Council</u></p> <p>Section 4 is amended by adding – “(3A) The Council may consult with the Department on operational matters having regard to any issues that have arisen in practice. The Director of Legal Aid may refuse to disclose material to the Council if the disclosure of the material may have a prejudicial effect on the proceedings to which the material relates and he certifies that it will have that effect.”</p> <p><u>Secrecy Requirement</u></p> <p>(1) Except in the performance of his duties under this Ordinance, a person who has been appointed under or who is employed in carrying out the provisions of this Ordinance –</p> <ul style="list-style-type: none">(a) must preserve and aid in preserving secrecy with regard to the affairs of any client of a legal aid scheme that come to his knowledge in performing his duties under this Ordinance,(b) must not communicate any matter referred to in paragraph (a) to any person other than the person to whom the matter relates or his executor or the authorized representative of the person or executor;(c) must not permit or allow any person to have access to the records in the possession, custody or control of the Council relating matters referred to in paragraph (a).	<p>We appreciate that LASC may need information about actual cases handled by LAD to facilitate its discussion of practical issues regarding the delivery of legal aid services. We understand that LASC has not so far experienced real difficulty in obtaining information from LAD on individual cases. To address the need of LASC, we have formalised the arrangement for LAD to provide information to LASC under certain circumstances.</p>

LASC's proposed legislative amendments	Administration's responses
<p>(2) A client of a legal aid scheme is any person who –</p> <ul style="list-style-type: none">(i) has applied for legal aid,(ii) is a legally aided person, or(iii) having applied for legal aid, was rejected. <p>(3) A member of the Council and a person employed in carrying out the provisions of this Ordinance must, before acting under this Ordinance, take and subscribe to an oath or make an affirmation undertaking to maintain secrecy as to any relevant material that may come into the member's or person's possession or knowledge as a result of being a member or being so employed.</p> <p>(4) A person required to take an oath or make an affirmation under this section cannot be required to produce in any court any document or to divulge any information that is protected by the secrecy provision in subsection (1)(a). A certificate under the hand of the Chairman of the Council is sufficient evidence of the fact that the information or document is protected by the secrecy provision in subsection (1)(a).</p> <p>(5) A person required to take an oath or make an affirmation under this section may permit the Director of Audit or an officer of that department duly authorized in that behalf to have such access to any records or documents as may be necessary for the performance of official duties. The Director of Audit and any authorized officer is taken to be a person employed in the carrying out of the provisions of this Ordinance for the purposes of this section.</p>	

LASC’s proposed legislative amendments	Administration’s responses
<p><u>Offences relating to breach of secrecy</u></p> <p>A person who –</p> <ul style="list-style-type: none">(a) acts under this Ordinance without taking an oath or making an affirmation of secrecy as required under section 5A;(b) acts contrary to the requirements of section 5A; or(c) aids, abets or incites another person to act contrary to section 5A, is guilty of an offence and liable to a penalty at level 5. <p><u>Consequential amendments</u></p> <p>Section 24 of the Legal Aid Ordinance (Cap. 91) is amended by adding –</p> <p>“(4A) Subsection (4) does not prevent the Director from disclosing information to the Legal Aid Services Council to perform its duties under the Legal Aid Services Council Ordinance (Cap. 489).”</p> <p>The Personal Data (Privacy) Ordinance (Cap. 486) is amended by adding –</p> <p>“62A. Certain data passed between the Director of Legal Aid and the Legal Aid Services Council exempt.</p> <p>If material is passed between the Director of Legal Aid and the Legal Aid Services Council to comply with the Legal Aid Services Council Ordinance (Cap. 489) which material contains data that would otherwise be subject to this Ordinance, the data is exempt from the requirements of this Ordinance. ”.</p>	

LASC's proposed legislative amendments	Administration's responses
(C) Other amendments to address operational difficulties	
<p><i>The following amendment is to reduce the existing quorum of six members and the chairman to five members plus the chairman. The five members should include two members not from the legal sector, two lawyer members and the Director of Legal Aid or his representative: -</i></p> <p>Section 9(2) is amended by repealing “at least 6 other members” and substituting “5 other members, of whom 2 are members appointed under section 5(1)(b), another 2 members appointed under section 5(1)(c) and 1 member appointed under section 5(1)(d) or his representative”.</p>	<p>We note that LASC has on certain occasions encountered difficulty in obtaining a quorum for a full Council meeting. To address this practical problem, LASC could continue its arrangement of having committees, working parties or groups to look into specific issues and report their findings to the full Council for decision. With this arrangement, it may not be necessary for the full Council to meet as frequently or to have as long meeting as at present. We could however revisit the issue of changing the quorum taking into account its impact upon the composition.</p>
<p><i>The following amendment is to allow the Chief Executive extend the time for LASC's submission of its annual report:</i></p> <p>Section 12(1) is amended by adding “or such further time as the Chief Executive permits” after “Chief Executive”.</p>	<p>We note the practical difficulty of LASC in meeting the current statutory deadline for the submission of the annual report i.e. six months after the end of the financial year. We shall take forward LASC's suggestion at the earliest opportunity.</p>