

LEGISLATIVE COUNCIL BRIEF

Municipal Services Appeals Board Ordinance (Chapter 220)

MUNICIPAL SERVICES APPEALS BOARD (WITNESSES' ALLOWANCES) REGULATION

INTRODUCTION

A At the meeting of the Executive Council on 5 June 2001, the Council ADVISED and the Chief Executive ORDERED that the Municipal Services Appeals Board (Witnesses' Allowances) Regulation (the Regulation), at Annex A, should be made under section 20 of the Municipal Services Appeals Board Ordinance, to provide for the payment of allowances to witnesses summoned to appear before the Municipal Services Appeals Board (the MSAB) to give evidence or to produce documents.

BACKGROUND AND ARGUMENT

B 2. The Municipal Services Appeals Board Ordinance (the MSAB Ordinance) provides for the establishment, and the powers and procedure of the MSAB in respect of the appeals made to it. The MSAB Ordinance provides that the Chief Executive in Council may make regulations providing, among other things, for the payment of allowances for expenses to witnesses summoned under this Ordinance. Relevant extract of the MSAB Ordinance is at Annex B.

3. Owing to the lack of regulation providing for the payment of witnesses' allowances, no such allowances can be paid to witnesses summoned to the hearings to give evidence under the MSAB Ordinance. This is unfair to the witnesses who have devoted their time or incurred expenses to attend the appeal hearings. We therefore propose that regulation should be made under the MSAB Ordinance to facilitate the payment of witnesses' allowances in respect of the appeals to the MSAB.

4. In line with the practice adopted in relevant appeals boards, we propose that the rates of the witnesses' allowances payable under the MSAB Ordinance should follow those for the same purpose adopted by the courts as provided under the Criminal Procedure (Witnesses' Allowances) Rules, which is currently set at a maximum of \$1,690 per day for a professional/expert witness and \$280 per day for an ordinary witness. We also propose to exclude public officers summoned to appear before the MSAB to give evidence during the

course of their duties from receiving the witnesses' allowances. We have consulted the Chairman of the MSAB who expressed agreement to the proposals.

THE REGULATION

5. The provisions of the Regulation include –
- (a) Regulation 1 provides that the Regulation shall come into operation on a day to be appointed by the Director of Administration.
 - (b) Regulation 2 excludes public officers who are summoned to appear before the Board in the course of their duties from receiving witnesses' allowances.
 - (c) Regulation 3 sets out the application arrangements for witnesses' allowances.
 - (d) Regulation 4 provides that the rates of the witnesses' allowances should be the same as that provided under the Criminal Procedure (Witnesses' Allowances) Rules.
 - (e) Regulation 5 provides that any allowance shall be claimed within three months from the date on which it was allowed.

PUBLIC CONSULTATION

6. As the recommendation aims to facilitate the payment of witnesses' allowances which involves no change in policy, no prior public consultation is considered necessary.

BASIC LAW IMPLICATIONS

7. The Department of Justice advises that the Regulation does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

8. The Department of Justice advises that the Regulation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

9. The Regulation will not affect the current binding effect of the MSAB Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

10. We assess that the amount of witnesses' allowances to be paid out under the MSAB Ordinance is unlikely to be significant. Such expenditure will be absorbed by the Director of Administration's existing resources.

LEGISLATIVE TIMETABLE

11. The legislative timetable as approved by the Executive Council is as follows -

Publication in the Gazette	8 June 2001
Tabling at the Legislative Council	13 June 2001

PUBLICITY

12. A press release will be issued and a spokesman will be made available to answer media enquiries.

ENQUIRIES

13. For enquiries on this brief, please contact Ms Maggie Wong, Assistant Director of Administration at 2810 3503.

Administration Wing
Chief Secretary for Administration's Office
7 June 2001

**MUNICIPAL SERVICES APPEALS BOARD (WITNESSES'
ALLOWANCES) REGULATION**

(Made by the Chief Executive in Council under section 20 of the
Municipal Services Appeals Board
Ordinance (Cap. 220))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Director of Administration by notice published in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires -
" witness" 證人) means a witness summoned under the Ordinance but does not include a public officer acting in the course of his duties.

**3. Application for payment of witnesses'
allowances**

(1) Subject to subsection (2), where a witness attends the hearing of an appeal to give evidence (including professional or expert evidence) or to produce documents, the witness may apply -

- (a) in writing to the Secretary; or
- (b) orally to the Board during the hearing of the appeal,

for payment of an allowance referred to in section 4.

(2) An application under subsection (1) shall be made within 14 days beginning with the day on which the witness attends the hearing of an appeal, and in the case where he attends the hearing in respect of the same appeal for more than one day, the last of those days.

4. Allowances for witnesses

(1) The Board may, upon an application under section 3 or on its own motion, allow in respect of a witness a professional witness allowance, expert witness allowance or loss allowance, as the case may be, not exceeding the

professional witness allowance, expert witness allowance or loss allowance that a magistrate may allow under the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg.) in respect of a witness who attends to give evidence in criminal proceedings.

(2) The expenses of allowances allowed under this Regulation shall be a charge on the general revenue.

5. Allowance to be claimed within 3 months

Any sum allowed under this Regulation shall cease to be payable unless claimed within 3 months from the date on which it was allowed.

Clerk to the Executive Council

COUNCIL CHAMBER

2001

Explanatory Note

This Regulation provides for the payment of allowances to witnesses summoned to appear before the Municipal Services Appeals Board to give evidence or to produce documents.

**BLIS ON
INTERNET**

Section of Enactment



Chapter: 220 Title: MUNICIPAL SERVICES Gazette Number: L.N. 320 of
APPEALS BOARD 1999
ORDINANCE

Section: **20** Heading: **Regulations** Version Date: 01/01/2000

The Chief Executive in Council may make regulations-

- (a) prescribing anything required or permitted by this Ordinance to be prescribed by regulations;
- (b) providing for the practice and procedure applying to proceedings before the Board; (Amended 78 of 1999 s. 7)
- (c) providing for the payment of allowances for expenses to witnesses summoned under this Ordinance;
- (d) generally for the better carrying out of this Ordinance.

(Enacted 1990. Amended 59 of 1999 s. 3)
