

LEGISLATIVE COUNCIL BRIEF

Jury Ordinance (Cap. 3)
Criminal Procedure Ordinance (Cap. 221)
Coroners Ordinance (Cap. 504)

ALLOWANCES TO JURORS (AMENDMENT) ORDER 2008

CRIMINAL PROCEDURE (WITNESSES' ALLOWANCES) (AMENDMENT) RULES 2008

CORONERS (WITNESSES' ALLOWANCES) (AMENDMENT) RULES 2008

INTRODUCTION

At the meeting of the Executive Council on 28 October 2008, the Council ADVISED and the Chief Executive ORDERED that the Allowances to Jurors (Amendment) Order 2008 (Jurors (Amendment) Order) at **Annex A** should be made under section 31 of the Jury Ordinance to increase the rates of allowances for jurors.

2. The Criminal Procedure Rules Committee¹ (Rules Committee) and the Chief Justice (CJ) respectively made the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2008 (Criminal Procedure (Amendment) Rules) at **Annex B** on 27 October 2008 under section 9B of the Criminal Procedure Ordinance, and the Coroners (Witnesses' Allowances) (Amendment) Rules 2008 (Coroners (Amendment) Rules) at **Annex C** on 22 October 2008 under section 54 of the Coroners Ordinance to increase the rates of allowances for witnesses in criminal proceedings

¹ The Rules Committee is established under section 9 of the Criminal Procedure Ordinance to make rules and orders regulating the practice and procedure under the Ordinance. The Committee is chaired by the Chief Judge of the High Court and comprises, among others, a barrister nominated by the Hong Kong Bar Association and a solicitor nominated by The Law Society of Hong Kong.

and coroners' inquests. These two sets of Rules are subject to the approval of the Legislative Council (LegCo).

JUSTIFICATIONS

Existing rates of allowances

(i) Jurors

3. Section 31 of the Jury Ordinance provides that a person who serves as a juror in a criminal or civil case, or a coroner's inquest, shall be paid an allowance at such rate as the Chief Executive in Council (CE in Council) may prescribe. If the CJ or the trial judge so orders, a juror may also be paid an additional allowance not exceeding such rate as the CE in Council may prescribe. The existing rates of both types of allowances are \$280 a day, or part of a day during which a person serves as a juror and are specified in the Allowances to Jurors Order (Cap. 3A).

(ii) Witnesses

4. Section 9B of the Criminal Procedure Ordinance provides that the Rules Committee may, with the approval of the LegCo, make rules providing for the payment of different rates of allowance to different classes of witnesses in criminal proceedings. Accordingly, the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221B) provide that the maximum allowance payable to a professional or an expert witness is \$1,690 for each day (or \$845 for not exceeding four hours) and that for any other witness (ordinary witness) is \$280 for each day (or \$140 for not exceeding four hours).

5. Similarly, section 54 of the Coroners Ordinance provides that the CJ may, with the approval of the LegCo, make rules providing for the payment of different rates of allowance to different classes of witnesses in coroners' inquests. At present, the rates of allowances are specified in the Coroners (Witnesses' Allowances) Rules (Cap. 504E) and are the same as those in criminal proceedings (see paragraph 4 above).

Adjustment mechanism

6. When approving the rates of allowances for jurors and witnesses in October 1993, the Finance Committee (FC) of the LegCo delegated authority to the then Secretary for Treasury (now the Secretary for Financial Services and the Treasury (SFST)) to approve future changes in the rates of allowances for jurors and witnesses made in accordance with the movements of the following indices –

- (a) rates for jurors and ordinary witnesses - to be made in accordance with the movements in the median monthly earnings of employees (MMEE) in Hong Kong; and
- (b) rates for professional and expert witnesses - to be made in accordance with the changes in the mid-point salary of a Medical and Health Officer.

7. The FC also noted the intention of the Administration to review the rates of allowances biennially. The existing rates of allowances for jurors and witnesses were set in 1996 using the MMEE for the first quarter of 1995 and the mid-point salary of a Medical and Health Officer as at 1 April 1995. Since then, there has been no rate adjustment for reasons such as the austerity drive undertaken by the Government then.

Revised rates of allowances

8. The Judiciary Administration (JA) conducted another review earlier this year. Taking into account the movements in the MMEE from the first quarter of 1995 to the second quarter of 2008; and the mid-point salary of a Medical and Health Officer from 1 April 1995 to 1 April 2008, and the need to maintain the real value of the rates of allowances to minimise any financial loss suffered by members of the public serving as jurors in courts or testifying as witnesses, JA proposes and SFST approves the following increases in the rates of allowances –

Type of Allowances	Existing Rates	Changes in MMEE/ mid-point salary of a Medical and Health Officer	Revised Rates
(a) Allowance for jurors	\$280 a day or part of a day	+28.0%	\$360 a day or part of a day
(b) Additional allowance for jurors	\$280* a day or part of a day	+28.0%	\$360* a day or part of a day
(c) Allowance for ordinary witnesses	\$280* a day	+28.0%	\$360* a day
	\$140* not exceeding four hours	+28.0%	\$180* not exceeding four hours
(d) Allowance for professional and expert witnesses	\$1,690* a day	+28.4%	\$2,170* a day
	\$845* not exceeding four hours	+28.4%	\$1,085* not exceeding four hours

**Maximum rates of allowances*

THE AMENDMENT ORDER/RULES

9. The main provisions of the amendment order/rules for revising the rates of allowances for jurors and witnesses are -

(a) *Jurors (Amendment) Order*

Section 2 increases the rate of allowance and the maximum rate of additional allowance for jurors specified in the Allowances to Jurors Order. The existing section 2 of the Allowances to Jurors Order being amended is at **Annex D**;

(b) *Criminal Procedure (Amendment) Rules*

Rules 2, 3 and 4 respectively increase the maximum rates of allowances for professional witnesses, expert witnesses and ordinary witnesses in criminal cases specified in the Criminal Procedure (Witnesses' Allowances) Rules. The existing rules 3, 4 and 5 of the Criminal Procedure (Witnesses' Allowances) Rules being amended are at **Annex E**; and

E

(c) *Coroners (Amendment) Rules*

Rules 2, 3 and 4 respectively increase the maximum rates of allowances for professional witnesses, expert witnesses and ordinary witnesses in coroners' inquests specified in the Coroners (Witnesses' Allowances) Rules. The existing rules 3, 4 and 5 of the Coroners (Witnesses' Allowances) Rules being amended are at **Annex F**.

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LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows –

Jurors (Amendment) Order

Publication in the Gazette 7 November 2008

Tabling in the LegCo 12 November 2008
(for negative vetting)

Criminal Procedure (Amendment) Rules

Coroners (Amendment) Rules

Introduction into LegCo 3 December 2008

IMPLICATIONS OF THE PROPOSAL

11. The JA estimates that the revised rates of allowances for jurors and witnesses will entail an additional expenditure of about \$1.7 million per annum. The amendment order/rules are in conformity with the Basic Law, including the provisions concerning human rights and will not affect the binding effect of the Jury Ordinance, the Criminal Procedure Ordinance and the Coroners Ordinance. They have no economic, civil service, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

12. The JA issued an information paper on the proposals to increase the rates of allowances for jurors and witnesses to the LegCo Administration of Justice and Legal Service Panel on 23 May 2008, based on the MMEE for the fourth quarter of 2007 and the mid-point salary of a Medical and Health Officer as at 1 April 2007. The Panel did not raise any comments on the proposals at its meeting on 26 May 2008. The proposed rates of allowances have since been updated in the light of the updated MMEE for the second quarter of 2008 and the updated mid-point salary of a Medical and Health Officer as at 1 April 2008 during the preparation of the amendment order/rules.

PUBLICITY

13. A press release will be issued and a spokesman would be available to handle media enquiries.

BACKGROUND

14. The JA conducted a review of the allowances for jurors, and witnesses in criminal cases and coroners' inquests earlier this year. Following the review, the JA proposes to increase the rates of allowances in accordance with the movements of the MMEE from the first quarter of 1995 to the second quarter of 2008; and the mid-point salary of Medical

and Health Officer from 1 April 1995 to 1 April 2008 in order to maintain the real value of the allowances.

ENQUIRIES

15. Any enquiry on this brief should be directed to Mr Arthur Au, Assistant Director of Administration, at 2810 3946 or Mr Arthur Ng, Deputy Judiciary Administrator (Operations), at 2825 4211.

Administration Wing
Chief Secretary for Administration's Office

Judiciary Administration

5 November 2008

**ALLOWANCES TO JURORS (AMENDMENT)
ORDER 2008**

(Made by the Chief Executive in Council under
section 31 of the Jury Ordinance (Cap. 3))

1. Commencement

This Order shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Allowances to jurors

(1) Section 2(1) of the Allowances to Jurors Order (Cap. 3 sub. leg. A) is amended by repealing “\$280” and substituting “\$360”.

(2) Section 2(2) is amended by repealing “\$280” and substituting “\$360”.

Clerk to the Executive Council

COUNCIL CHAMBER

28 October 2008

Explanatory Note

This Order amends the Allowances to Jurors Order (Cap. 3 sub. leg. A) to increase the rate of allowance that shall be paid to a juror, and the maximum rate of additional allowance that may be paid to a juror, in criminal or civil cases or in inquests under the Coroners Ordinance (Cap. 504).

**CRIMINAL PROCEDURE (WITNESSES'
ALLOWANCES)(AMENDMENT)
RULES 2008**

(Made by the Criminal Procedure Rules Committee under section 9B of the Criminal Procedure Ordinance (Cap. 221) subject to the approval of the Legislative Council)

1. Commencement

These Rules shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Allowances for professional witnesses

(1) Rule 3(1) of the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) is amended by repealing "\$1,690" and substituting "\$2,170".

(2) Rule 3(2) is amended by repealing "\$845" and substituting "\$1,085".

3. Allowances for expert witnesses

(1) Rule 4(1) is amended by repealing "\$1,690" and substituting "\$2,170".

(2) Rule 4(2) is amended by repealing "\$845" and substituting "\$1,085".

4. Allowances for loss of remuneration or expenses incurred

(1) Rule 5(1) is amended by repealing "\$280" and substituting "\$360".

(2) Rule 5(2) is amended by repealing "\$140" and substituting "\$180".

Made this 27th day of October 2008.

Explanatory Note

These Rules amend the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) to increase the maximum rates of allowances that may be allowed in respect of the following classes of witnesses in criminal proceedings before any court –

- (a) a witness practising any of the specified professions and attending to give professional evidence;
- (b) an expert witness attending to give expert evidence;
- (c) a witness attending to give evidence (other than professional or expert evidence).

**CORONERS (WITNESSES' ALLOWANCES)
(AMENDMENT) RULES 2008**

(Made by the Chief Justice under section 54 of the Coroners Ordinance
(Cap. 504) subject to the approval of the Legislative Council)

1. Commencement

These Rules shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Allowances for professional witnesses

(1) Rule 3(1) of the Coroners (Witnesses' Allowances) Rules (Cap. 504 sub. leg. E) is amended by repealing "\$1,690" and substituting "\$2,170".

(2) Rule 3(2) is amended by repealing "\$845" and substituting "\$1,085".

3. Allowances for expert witnesses

(1) Rule 4(1) is amended by repealing "\$1,690" and substituting "\$2,170".

(2) Rule 4(2) is amended by repealing "\$845" and substituting "\$1,085".

4. Allowances for loss of remuneration or expenses incurred

(1) Rule 5(1) is amended by repealing "\$280" and substituting "\$360".

(2) Rule 5(2) is amended by repealing "\$140" and substituting "\$180".

Chief Justice

22nd October 2008

Explanatory Note

These Rules amend the Coroners (Witnesses' Allowances) Rules (Cap. 504 sub. leg. E) to increase the maximum rates of allowances that may be allowed in respect of the following classes of witnesses at inquests under the Coroners Ordinance (Cap. 504) –

- (a) a witness practising any of the specified professions and attending to give professional evidence;
- (b) an expert witness attending to give expert evidence;
- (c) a witness attending to give evidence (other than professional or expert evidence).

Annex D

Chapter:	3A	Title:	ALLOWANCES TO JURORS ORDER	Gazette Number:
Section:	2	Heading:	Allowances to jurors	Version Date: 30/06/1997

(1) The allowance payable under section 31(1) of the Ordinance to a person who serves as a juror shall be \$280 in respect of each day during the whole or part of which he serves as a juror.

(2) The rate of allowance which may be paid under section 31(2) of the Ordinance to a person who serves as a juror shall not exceed \$280 in respect of each day during the whole or part of which he serves as a juror.

(L.N. 205 of 1978; L.N. 129 of 1984; L.N. 481 of 1993; L.N. 61 of 1996)

Annex E

Chapter: 221B Title: CRIMINAL PROCEDURE Gazette
(WITNESSES' Number:
ALLOWANCES) RULES
Rule: 3 Heading: **Allowances for** Version Date: 30/06/1997
professional witnesses

(1) The court may allow in respect of a witness practising as a member of the legal or medical profession or as a dentist or veterinary surgeon for attending to give professional evidence, whether in one or more cases, a professional witness allowance not exceeding \$1690 for each day he is necessarily absent from his place of residence or practice to attend for such purpose.

(2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which he is necessarily absent from his place of residence or practice to attend for such purpose does not exceed 4 hours, his professional witness allowance shall not exceed \$845.

(L.N. 474 of 1993; L.N. 49 of 1996)

Chapter: 221B Title: CRIMINAL PROCEDURE Gazette
(WITNESSES' Number:
ALLOWANCES) RULES
Rule: 4 Heading: **Allowances for expert** Version Date: 30/06/1997
witnesses

(1) The court may allow in respect of an expert witness for attending to give expert evidence, whether in one or more cases, an expert witness allowance not exceeding \$1690 for each day the witness is necessarily absent from his place of residence, business or employment to attend for such purpose.

(2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which he is necessarily absent from his place of residence, business or employment to attend for such purpose does not exceed 4 hours, his expert witness allowance shall not exceed \$845.

(L.N. 474 of 1993; L.N. 49 of 1996)

Chapter: 221B Title: CRIMINAL PROCEDURE Gazette
(WITNESSES' Number:
ALLOWANCES) RULES
Rule: 5 Heading: **Allowances for loss of remuneration or expenses
incurred** Version Date: 30/06/1997

(1) The court may allow in respect of a witness who attends to give evidence (other than professional or expert evidence), whether in one or more cases, and thereby loses remuneration or necessarily incurs expense (other than expense on account of lodging or subsistence) to which he would not otherwise have been subject, a loss allowance not exceeding \$280 for each day of attendance, in respect of that loss or expense.

(2) If the period during which the witness is necessarily absent from his place of residence, business or employment to attend to give evidence does not exceed 4 hours, his loss allowance shall not exceed \$140.

(L.N. 238 of 1978; L.N. 403 of 1983; L.N. 474 of 1993; L.N. 49 of 1996)

Annex F

Chapter: 504E Title: CORONERS Gazette L.N. 211 of
(WITNESSES' Number: 1998
ALLOWANCES) RULES

Rule: 3 Heading: **Allowances for professional witnesses** Version Date: 04/05/1998

(1) A coroner may allow in respect of a witness practising as a member of the legal or medical profession or as a dentist or veterinary surgeon for attending to give professional evidence, whether in one or more cases, a professional witness allowance not exceeding \$1690 for each day he is necessarily absent from his place of residence or practice to attend for such purpose.

(2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which he is necessarily absent from his place of residence or practice to attend for such purpose does not exceed 4 hours, his professional witness allowance shall not exceed \$845.

Chapter: 504E Title: CORONERS Gazette L.N. 211 of
(WITNESSES' Number: 1998
ALLOWANCES) RULES

Rule: 4 Heading: **Allowances for expert witnesses** Version Date: 04/05/1998

(1) A coroner may allow in respect of an expert witness for attending to give expert evidence, whether in one or more cases, an expert witness allowance not exceeding \$1690 for each day the witness is necessarily absent from his place of residence, business or employment to attend for such purpose.

(2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which he is necessarily absent from his place of residence, business or employment to attend for such purpose does not exceed 4 hours, his expert witness allowance shall not exceed \$845.

Chapter: 504E Title: CORONERS Gazette L.N. 211 of
(WITNESSES' Number: 1998
ALLOWANCES) RULES
Rule: 5 Heading: **Allowances for loss of** Version Date: 04/05/1998
remuneration or expenses
incurred

(1) A coroner may allow in respect of a witness who attends to give evidence (other than professional or expert evidence), whether in one or more cases, and thereby loses remuneration or necessarily incurs expense (other than expense on account of lodging or subsistence) to which he would not otherwise have been subject, a loss allowance not exceeding \$280 for each day of attendance, in respect of that loss or expense.

(2) If the period during which the witness is necessarily absent from his place of residence, business or employment to attend to give evidence does not exceed 4 hours, his loss allowance shall not exceed \$140.