

立法會
Legislative Council

LC Paper No. LS34/10-11

**Paper for the House Committee Meeting
on 4 March 2011**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 25 February 2011**

Date of tabling in LegCo : 2 March 2011

Amendment to be made by : 30 March 2011 (or 4 May 2011 if extended by resolution)

Legal Aid Ordinance (Cap. 91)

Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2011 (L.N. 35)

Schedules 1 and 2 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) (the Regulations) set out respectively the rules for computing the disposable income and disposable capital of legal aid applicants for assessing their eligibility for legal aid.

2. In computing the disposable income of a person, a deduction is presently allowed under rule 8(1) of Schedule 1 to the Regulations for an amount equivalent to the 35-percentile household expenditure in relation to the applicant and the applicant's dependants, if any. By the Amendment Regulation made by the Chief Executive in Council under section 28 of the Legal Aid Ordinance (Cap. 91) (the Ordinance), the amount of allowable deduction is increased from 35-percentile to 50-percentile household expenditure. Household expenditure means the level of expenditure of households of a particular size, excluding expenditure of rent, as obtained in the 5-yearly Household Expenditure Survey conducted by the Census and Statistics Department.

3. The Amendment Regulation also adds a new rule 14 to Schedule 2 to the Regulations. Under the new rule 14, an amount equivalent to the limit of financial resources specified in section 5(1) of the Ordinance is to be disregarded in the computation of the disposable capital of a legal aid applicant who is of or over 60 years of age. The current amount is \$175,800. Members may wish to note that the Administration originally proposed that the age

requirement for this new rule should be 65. In response to comments from members of the Panel on Administration of Justice and Legal Services (the Panel) and the Legal Aid Services Council, the Administration agreed to lower this age requirement to 60.

4. Members may refer to the LegCo Brief (File Ref: HAB/CR 19/1/48) issued by the Home Affairs Bureau in February 2011 for background and further information.

5. The Amendment Regulation will come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

6. Members may wish to note that according to the LegCo Brief, the Administration will move a motion under section 7(a) of the Ordinance at the Legislative Council meeting to be held on 30 March 2011. The motion seeks to amend sections 5(1) and 5A(b) of the Ordinance to increase the financial eligibility limit of the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme from \$175,800 to \$260,000 and from \$488,400 to \$1,300,000 respectively. A separate report on the motion will be made to the House Committee.

7. After completion of the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants, the Administration reported to the Panel its proposals at its meeting on 29 March 2010. After further discussions with the Panel, the professional bodies and relevant organizations at the Panel meetings on 24 May and 21 July 2010, the Administration reported to the Panel at its meeting on 30 September 2010 that having considered the views expressed by the various stakeholders, the Administration had revised some of its proposals and would introduce legislative amendments to implement them. Members in general welcomed the improvement measures and urged the Administration to implement them as early as practicable so that the public could benefit from the improved measures as soon as possible. At the Panel meeting on 28 February 2011, the Administration further briefed the Panel on the legislative amendments for effecting the improvement measures. Members raised no further queries.

8. The Legal Service Division (LSD) has noted that in section 3(2) of the Amendment Regulation (which amends rule 8(2)(a) of Part II of Schedule 1 to the Regulations), "住戶開支第50個百分值" is used in the English text whereas "第50個百分值住戶開支" is used in the Chinese text. Upon LSD's enquiries, the Administration replied that a motion will be moved to rectify the Chinese text of section 3(2) to maintain consistency in the expressions used.

**Protection of Endangered Species of Animals and Plants Ordinance
(Cap. 586)**

**Protection of Endangered Species of Animals and Plants Ordinance
(Amendment of Schedules 1 and 3) Order 2011 (L.N. 36)**

9. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has been implemented in Hong Kong since 1976 by the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) (PESAPO). CITES requires that import, export or re-export of the species listed in the three Appendices be subject to control -

- (a) Appendix I
Species which are highly endangered and threatened with extinction.
- (b) Appendix II
Species which, unless trade is controlled, could become threatened with extinction.
- (c) Appendix III
Species identified by any parties to CITES as requiring protection from over-exploitation through international trade.

10. PESAPO provides for a licensing requirement for the import, introduction from the sea, export, re-export, possession or control of the species listed in its Schedule 1. Part 2 of Schedule 1 to PESAPO covers the species listed in Appendices I, II and III to CITES and Schedule 3 to PESAPO sets out the relevant parts of CITES instruments that have the force of law in Hong Kong pursuant to sections 4 and 19 of PESAPO. Section 48(1) of PESAPO provides that the Secretary for the Environment may, by order published in the Gazette, amend any Schedule.

11. By this Amendment Order made by the Secretary for the Environment under section 48 of PESAPO, the following provisions of PESAPO are amended:-

- (a) entries relating to #4, #12 and #13 (#12 and #13 are new entries) of section 7 of Part 1 of Schedule 1 to give effect to the latest version of the annotations to the Appendices;
- (b) Part 2 of Schedule 1 to give effect to amendments to the list of endangered species in Appendices I, II and III to CITES made in 2009, 2010 and 2011; and

- (c) Part 1 and Part 2 of Schedule 3 to give effect to the resolutions adopted at the 15th meeting of the Conference of the Parties to CITES.

12. Members may refer to the LegCo Brief (File Ref: EP 86/25/01 (08)) issued by the Environmental Protection Department in February 2011 for background and further information.

13. The Amendment Order will come into operation on 20 May 2011.

14. An information paper on "Proposed Amendments to the Schedules to the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)" (LC Paper No. CB(1)864/10-11(01)) issued by the Environmental Protection Department was circulated to the Panel on Environmental Affairs on 21 December 2010. There has not been any request for discussion of the matter.

15. LSD has noted that in section 4(11) of the Amendment Order (which amends paragraph 22 of Part 2 of Schedule 3 to PESAPO), "unless the Secretariat confirms that it has **no** more recent information" is used (emphasis added). However, it is noted that in paragraph (b) of the recommendations of "*Conf. 9.5 (Rev. CoP15) - Trade with States not party to the Convention*" (which is a revised Resolution of the Conference of the Parties in effect after the 15th meeting held in Doha (Qatar) in March 2010), "unless the Secretariat confirms that it has more recent information" is used. Upon LSD's enquiries, the Administration replied that the finalized version of the relevant paragraph of the revised Resolution should read "unless the Secretariat confirms that it has more recent information". The Administration will move a motion to amend section 4(11) of the Amendment Order accordingly.

Prepared by

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