

**LEGISLATIVE COUNCIL BRIEF**

Legal Aid Ordinance  
(Chapter 91)

**FIVE-YEARLY REVIEW OF THE CRITERIA FOR  
ASSESSING THE FINANCIAL ELIGIBILITY OF  
LEGAL AID APPLICANTS**

**INTRODUCTION**

At the meeting of the Executive Council on 15 February 2011, the Council ADVISED and the Chief Executive ORDERED that –

A

(a) the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2011, at Annex A, should be made; and

B

(b) a resolution to amend sections 5 and 5A of the Legal Aid Ordinance (Cap. 91), at Annex B, should be moved at the Legislative Council (LegCo).

**JUSTIFICATIONS**

2. We consulted the Legal Aid Services Council (LASC) and the Legislative Council Panel on Administration of Justice and Legal Services (AJLS Panel) on the proposals arising from the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants (the five-yearly review). In the light of comments received, we further consulted the LASC and the AJLS Panel. We briefed the AJLS Panel on 30 September 2010 on the Administration's final recommendations pursuant to the five-yearly review as set out below-

- (a) the median monthly household expenditure be used to replace the 35-percentile household expenditure as a deductible component in calculating disposable income of legal aid applicants;
- (b) an amount equivalent to the financial eligibility limit (FEL) of the Ordinary Legal Aid Scheme (OLAS) be disregarded from the savings of the elderly legal aid applicants who have reached the age of 60, irrespective of their employment status, when calculating their disposable capital; and
- (c) the FEL for OLAS be raised from the present \$175,800 to \$260,000 and that for the Supplementary Legal Aid Scheme (SLAS) from \$488,400 to \$1.3 million.

3. In order to implement the improvement measures as set out in paragraphs 2(a) and (b) above, we need to amend the Legal Aid (Assessment of Resources and Contributions) Regulations (the Assessment Regulations) (Cap.91, sub. leg. B). In order to implement the improvement measure as set out in paragraph 2(c) above, we need to move a resolution to amend sections 5 and 5A of the Legal Aid Ordinance at the LegCo in accordance with section 7 of the Legal Aid Ordinance.

## **THE LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) (AMENDMENT) REGULATION 2011**

### ***Median household expenditure as deductible allowance***

4. In accordance with the rules in Schedule 1 to the Assessment Regulations, a personal allowance is deducted in calculating the disposable income of legal aid applicants for assessing their eligibility for legal aid. This is to recognize that applicants should be allowed to keep an amount required for other expenses of households of a particular size. The personal allowance is currently set at a level equivalent to the “35-percentile household expenditure”.

5. The 35-percentile household expenditure was adopted in 2000 to replace the Comprehensive Social Security Assistance rates as the deductible personal allowance. The aim was to reflect more realistically the expenditure level of households of the population that require assistance in funding legal proceedings. The LASC has recommended and we agree to replace the 35-percentile household expenditure as a deductible component in calculating disposable income by median monthly household expenditure.

6. To implement the proposal, Schedule 1 to the Assessment Regulations requires to be amended.

### ***Calculation of financial resources for elderly persons***

7. We recognize that elderly applicants generally lack earning power, and those who are still employed face a genuine prospect of diminishing earnings upon retirement. Elderly applicants are more reluctant to deploy their capital for defending or taking legal action, hence arguably undermining their access to justice. Furthermore, it is not uncommon in overseas legal aid jurisdictions for the financial resources of elderly applicants to be treated differently. There is a case for different treatment of the disposable capital in favour of elderly applicants for OLAS and SLAS.

8. We proposed to the AJLS Panel that the age requirement for elderly persons to be entitled to a disregard in calculating their disposable capital, irrespective of employment status, should be 65. In response to comments from Panel Members and the LASC, we agree that this age requirement be further lowered to 60.

9. To implement the proposal, a new rule has to be added to Schedule 2 to the Assessment Regulations.

## **THE RESOLUTION TO AMEND THE LEGAL AID ORDINANCE**

### ***Relaxing the FELs for OLAS and SLAS***

10. At present, a person whose financial resources do not exceed \$175,800 is financially eligible for legal aid under OLAS. The corresponding limit for SLAS is \$488,400. The two FELs are set out in sections 5 and 5A of the Legal Aid Ordinance respectively.

11. We consulted the LASC and the AJLS Panel on the magnitude of raising the FELs. We had previously proposed that the FEL for SLAS be pitched at \$1 million. Nonetheless, the LASC suggested that the FEL for SLAS should be pitched at \$1.3 million. While the Bar Association proposed that \$3 million should be a more suitable level, LegCo Members generally supported the LASC's view. Furthermore, unlike OLAS, where the scope is much wider, SLAS cases provide a greater assurance of damages and cost recovery. There is more room for raising the FEL without compromising the financial viability of the scheme.

Thus, we have revised the proposed FEL for SLAS from \$1 million to \$1.3 million.

12. To implement the proposal, a resolution has to be moved to amend sections 5 and 5A of the Legal Aid Ordinance at the LegCo in accordance with section 7 of the Legal Aid Ordinance.

## **LEGISLATIVE TIMETABLE**

13. The legislative timetable will be –

<u>For the improvement measures set out in paragraphs 2(a) and (b) above</u> Publication in the Gazette	25 February 2011
--	------------------

Tabling at the LegCo	2 March 2011
----------------------	--------------

<u>For the improvement measure set out in paragraph 2(c) above</u> Giving notice to move a resolution at LegCo	2 March 2011
--	--------------

Moving the resolution at LegCo	30 March 2011
--------------------------------	---------------

14. The improvement measures are to come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

## **IMPLICATIONS OF THE PROPOSAL**

15. The proposed legislative amendments will not affect the current binding effect of the Legal Aid Ordinance and the Assessment Regulation. The recommendations are in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, environmental or sustainability implications.

### ***Financial implications***

16. It is not possible to make any meaningful forecast about the likely increase in caseload due to the aggregate or individual effects of the proposals to relax the FELs, adopt the median monthly household expenditure as one of the deductible components, and disregard a portion of elderly applicants' capital. Changes in the number of legal aid applications and hence the caseload does not have a direct correlation with the FELs/financial resources of applicants. It is

because the need for litigation would neither arise automatically nor increase proportionately once more people become eligible for legal aid. As a rough indication, we estimate that for every 5% increase in caseload of OLAS, the financial implications will amount to about \$25 million per year on a full-year basis. The actual change in caseload will be closely kept in view. As for the proposed increase in the FEL applicable to the SLAS, we trust that further raising the limit to \$1.3 million will not undermine the self-financing capability of SLAS in any material manner. However, in the unlikely event that the SLAS becomes insolvent, the Government may need to provide financial support. The Government last made a capital injection of \$27 million to the SLAS fund in 1995 when the scope of SLAS was extended to cover certain claims arising from professional negligence.

17. The Legal Aid Department (LAD) will absorb any additional financial implications arising from the implementation of the proposals. Where necessary, we will seek new resources in accordance with the established resource allocation mechanism to meet the additional costs, if any, having regard to the actual caseload after implementation.

### ***Civil service implications***

18. With implementation of the recommendations, it is anticipated that there will be an increase in workload for processing and monitoring the increased applications. LAD will create/redeploy 11 non-directorate civil service posts to cope with the additional workload.

## **PUBLIC CONSULTATION**

19. We have consulted the LASC and the AJLS Panel on the proposals. The AJLS Panel noted the Administration's final recommendations as set out in paragraph 2 above at its meeting on 30 September 2010. At the Panel meeting on 22 November 2010, the Panel enquired progress of the legislative amendments and urged the Administration to expedite the introduction of the amendments to implement the recommendations arising from the five-yearly review.

## **PUBLICITY**

20. A press release will be issued. A spokesperson will be available to answer media and public enquiries.

## **BACKGROUND**

21. At present, applicants with financial resources not exceeding \$175,800 are eligible for OLAS. Applicants with financial resources above \$175,800 but not exceeding \$488,400 are eligible for SLAS, under which legal aid is available to applicants for claims involving personal injury and death, or medical, dental and legal professional negligence, where the claim for damages exceeds or is likely to exceed \$60,000 (also covers claims under Employees' Compensation Ordinance irrespective of the amount claimed).

22. In response to the calls from the community, and having considered the views expressed by the AJLS Panel, the legal profession and relevant stakeholders, we propose to implement the package of improvement measures as set out in paragraph 2 above which aim at bringing about improved eligibility criteria for legal aid applicants.

## **ENQUIRIES**

23. In case of enquiries about this Brief, please contact Miss Christine CHOW, Principal Assistant Secretary (Civic Affairs) 2, at 2835 1233.

Home Affairs Bureau  
February 2011

# **LEGISLATIVE COUNCIL BRIEF**

Legal Aid Ordinance  
(Chapter 91)

## **FIVE-YEARLY REVIEW OF THE CRITERIA FOR ASSESSING THE FINANCIAL ELIGIBILITY OF LEGAL AID APPLICANTS**

### **ANNEXES**

- Annex A - Legal Aid (Assessment of Resources and Contributions)  
(Amendment) Regulation 2011
  
- Annex B - Resolution to amend sections 5 and 5A of the Legal Aid  
Ordinance

**Legal Aid (Assessment of Resources and Contributions)  
(Amendment) Regulation 2011**

(Made by the Chief Executive in Council under section 28 of the Legal Aid Ordinance (Cap. 91))

**1. Commencement**

This Regulation comes into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

**2. Legal Aid (Assessment of Resources and Contributions) Regulations amended**

The Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) are amended as set out in sections 3 and 4.

**3. Schedule 1 amended**

- (1) Schedule 1, Part II, rule 8(1)—

**Repeal**

“35-percentile”

**Substitute**

“50-percentile”.

- (2) Schedule 1, Part II, rule 8(2)—

**Repeal subparagraph (a)****Substitute**

“(a) the expression *50-percentile household expenditure* (住戶開支第 50 個百分值) means the level of expenditure of households of a particular size, excluding expenditure for rent, as obtained in the 5-yearly Household Expenditure Survey conducted by the Census and

Statistics Department, so that 50% of the households of that size have household expenditure below that level and 50% of the households have household expenditure above that level;”.

- (3) Schedule 1, Part II, rule 8(2)—

**Repeal subparagraph (b).**

- (4) Schedule 1, Part II, rule 8(2)(c)(i)—

**Repeal**

“35-percentile”

**Substitute**

“50-percentile”.

- (5) Schedule 1, Part II, rule 9(2)—

**Repeal**

“35-percentile”

**Substitute**

“50-percentile”.

- (6) Schedule 1, Part II, rule 9(4)(b)—

**Repeal**

“35-percentile”

**Substitute**

“50-percentile”.

- (7) Schedule 1, Part II, rule 9(5)—

**Repeal**

everything after “this rule,” and before “(calculated in accordance with rule 8(2))”

**Substitute**



*“50-percentile household expenditure differential (住戶開支第 50 個百分值差額) means the difference in amount between the 50-percentile household expenditure”.*

4. **Schedule 2 amended (Rules for computing disposable capital)**

- (1) Schedule 2, rule 12(b), Chinese text—

**Repeal**

“著”

**Substitute**

“着”.

- (2) Schedule 2, after rule 13—

**Add**

“14. If the person concerned is of or over 60 years of age, in computing the amount of the disposable capital of the person, an amount equivalent to that specified in section 5(1) of the Ordinance in respect of financial resources is to be disregarded.”.

**Explanatory Note**

- This Regulation amends the rules for computing the disposable income and disposable capital of a person applying for legal aid. The rules are set out in the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B).
2. In computing the disposable income of a person, there is an existing rule which allows a deduction for household expenditure with reference to the periodic Household Expenditure Survey conducted by the Census and Statistics Department. Under this rule, an amount equivalent to the 35-percentile household expenditure is not to be taken into account in relation to the person and the person's dependants (if any). The Regulation increases the amount of allowable deduction by adjusting the existing reference level (i.e. 35-percentile) to a higher one (i.e. 50-percentile).
3. The Regulation also adds a new rule in computing the disposable capital of a person. The new rule provides a concession to a person who is of or over 60 years of age. Under the new rule, an amount is to be deducted that is equivalent to the limit of financial resources for a person to be eligible for ordinary legal aid when calculating the disposable capital.

Clerk to the Executive Council

COUNCIL CHAMBER

2011

---

## Resolution of the Legislative Council

1

**Legal Aid Ordinance****Resolution of the Legislative Council**

Resolution made and passed by the Legislative Council under section 7(a) of the Legal Aid Ordinance (Cap. 91) on 2011.

Resolved that —

- (a) the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule; and
- (b) this Resolution is to come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

## Resolution of the Legislative Council

Schedule

2

**Schedule****Amendments to Legal Aid Ordinance (Cap. 91)**

1. **Section 5 amended (Persons eligible for legal aid)**  
Section 5(1)—  
**Repeal**  
“\$175,800”  
**Substitute**  
“\$260,000”.
2. **Section 5A amended (Supplementary legal aid)**  
Section 5A(b)—  
  - (a) **Repeal**  
“\$175,800”  
**Substitute**  
“\$260,000”;

Schedule

Resolution of the Legislative Council

3

- 
- (b) **Repeal**  
"\$488,400"  
**Substitute**  
"\$1,300,000".

Resolution of the Legislative Council

Explanatory Note  
Paragraph 1

4

**Explanatory Note**

A person is eligible for legal aid if the person's financial resources do not exceed the limits specified in the Legal Aid Ordinance (Cap. 91). This Resolution increases those limits.

Clerk to the Legislative Council

2011

---

**Legal Aid Ordinance**

**Resolution**

(Under section 7(a) of the Legal Aid Ordinance (Cap. 91))

**Resolved that —**

- (a) the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule; and
- (b) this Resolution is to come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

**Schedule**

**Amendments to Legal Aid Ordinance (Cap. 91)**

1. **Section 5 amended (Persons eligible for legal aid)**  
Section 5(1)—  
**Repeal**  
“\$175,800”  
**Substitute**  
“\$260,000”.
2. **Section 5A amended (Supplementary legal aid)**  
Section 5A(b)—
  - (a) **Repeal**  
“\$175,800”  
**Substitute**  
“\$260,000”;
  - (b) **Repeal**  
“\$488,400”  
**Substitute**  
“\$1,300,000”.