

**For information on
21 December 2010**

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

**Progress of Work on the Five-yearly Review and
the Criminal Legal Aid Fees Review**

PURPOSE

At the last Panel meeting on 22 November 2010, the Administration was requested to critically review the legislative proposals for implementing the five-yearly review (“5-yearly review”) on the criteria for assessing the financial eligibility limits (“FEL”) of legal aid applicants, and the review of the structure and rates of the criminal legal aid fees (“the criminal legal aid fees review”) with a view to advancing the timetables.

2. This paper briefs Members on the revised time-table on the preparation of legislative amendments to implement recommendations arising from these reviews.

FIVE-YEARLY REVIEW

3. The Administration reported to this Panel at the meeting on 30 September 2010 that having considered the views expressed by the various stakeholders on the findings of the five-yearly review on the criteria used to assess the FELs of legal aid applicants, the following package of improvement measures will be implemented-

- (a) the median monthly household expenditure be used to replace the 35-percentile household expenditure as a deductible component in calculating disposable income;
- (b) the FEL for the Ordinary Legal Aid Scheme (“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; and

- (c) an amount equivalent to the FEL of 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.

4. Pursuant to the suggestions from the AJLS Panel and the two legal professional bodies, the Administration has come up with the following working time-table on the legislative amendment exercise to implement the recommendations arising from the five-yearly review-

	Timing	Action
1.	December 2010 – January 2011	<p>Drafting of legislative amendments to put in place the proposals for implementing the 5-yearly review –</p> <p>(a) Adoption of the median household expenditure</p> <p>Rules 8 and 9 of Part II (Deductions in computing disposable income) of the Legal Aid (Assessment of Resources and Contributions) Regulations – Schedule 1, to be amended by –</p> <ul style="list-style-type: none"> - Replacing “35-percentile household expenditure” under rules 8(1), 8(2)(a), 8(2)(c)(i), 9(2), 9(4)(b) and 9(5) with “50-percentile household expenditure”. <p>(b) Raise the FELs for OLAS and SLAS</p> <p>In accordance with section 7 of the Legal Aid Ordinance, move a resolution in LegCo to adjust the FEL upward by –</p> <ul style="list-style-type: none"> - Repealing “\$175,800” in section 5(1) and section 5A(b) of the Ordinance and substitute it by “\$260,000”; and - Repealing “\$488,400” in section 5A(b) of the Ordinance and substitute it by “\$1,300,000”.

	Timing	Action
		<p>(c) Disregard of savings of elderly applicants</p> <p>To introduce a new provision after rule 13 of the Legal Aid (Assessment of Resources and Contributions) Regulations – Schedule 2, such that in computing the amount of disposable capital of a person concerned who has reached the age of 60, there shall be disregarded from the savings of the elderly legal aid applicant, irrespective of his employment status, an amount equivalent to the FEL of OLAS, when calculating his disposable capital.</p>
2.	February 2011	The Administration to brief the AJLS Panel on the detailed legislative amendment rules.
3.	March 2011	<p>The Administration to submit the legislative amendment rules to LegCo for consideration and approval-</p> <ul style="list-style-type: none"> - For items 1(a) and (c), the Administration aims to gazette the legislative amendments and table the amendments at LegCo for negative vetting; - For item 1(b), the Administration aims to move a motion at LegCo for resolution by LegCo.
4.	April/May 2011	Subject to discussions by the LegCo House Committee, and the resolution by LegCo, the amendment rules are expected to be put into effect in April/May 2011.

CRIMINAL LEGAL AID FEES REVIEW

5. The Legal Aid Department (“LAD”) assigns counsel and solicitors from the Legal Aid Panel as defence lawyers in criminal legal aid cases. The prescribed fees payable to assigned lawyers and the fee assessment mechanism are governed by Rule 21 of the Legal Aid in Criminal Cases Rules (“the rules”), a subsidiary legislation of the Criminal Procedure Ordinance.

6. As reported previously to this Panel, the Administration has reached an agreement with the two legal professional bodies on the review of the criminal legal aid fee structure and the fee levels.

7. We are now working on the legislative amendments to reflect the agreed changes, as follows-

(a) Preparation or pre-trial work

Under the current system, solicitors and counsel are paid a “flat” fee for pre-trial preparation, irrespective of the time spent. Under the proposed system, pre-trial work will be remunerated according to the time required.

(b) Rationalization of fee items

At present, where a conference has taken place among the assigned lawyers and the legally aided defendant, the counsel, but not the solicitor, is eligible for a “conference fee”. Under the proposed structure, conference fee will also be payable to solicitors on hourly basis.

(c) Enhanced transparency for the fee setting and re-determination basis

At present, the fee payable to an assigned lawyer is assessed after the work is done and the case concluded. Under the proposed system, the classification of a particular case and hence the rates, as well as the required preparation time will be assessed beforehand and marked on the brief when making the assignment. Assigned lawyers will be allowed to view the bundle before accepting assignments whenever circumstances permit. Such measures are designed to enhance the transparency of the fee system.

(d) New fees for solicitors

For instructing solicitors, the revised rates (simplified as hourly rate) will be enhanced to \$620, \$730 and \$990 for District Court, Court of First Instance and Court of Appeal respectively.

8. We have come up with the following updated working time-table on the legislative amendment exercise to implement the recommendations arising from the criminal legal aid fees review-

Timing	Action
December 2010 – January 2011	Drafting of legislative amendments.
February/March 2011	The Administration to submit the legislative amendment rules to the Criminal Procedure Rules Committee chaired by the Chief Judge of the High Court.
March/April 2011	The Administration to brief the AJLS Panel on the finalized legislative amendment rules.
May/June 2011	The Administration to submit the legislative amendment rules to LegCo for consideration and approval. A motion will be moved at LegCo for positive vetting of the amendment rules.
June/July 2011	Subject to discussions by the LegCo House Committee, and the resolution by LegCo, the amendment rules are expected to be put into effect in June/July 2011.

WAY FORWARD

9. Members are invited to note the progress of work on the above-stated reviews.

**Home Affairs Bureau
Legal Aid Department
December 2010**