

立法會
Legislative Council

LC Paper No. LS36/11-12

**Paper for the House Committee Meeting
on 24 February 2012**

**Legal Service Division Further Report on
Proposed Resolution under section 9A
of the Criminal Procedure Ordinance (Cap. 221)**

Members may recall that at the House Committee meeting on 17 February 2012, the Legal Service Division (LSD) reported on a motion (the Motion) to be moved by the Secretary for Home Affairs (the Secretary) under section 9A of the Criminal Procedure Ordinance (Cap. 221) at the Council meeting on 29 February 2012 seeking the Legislative Council's approval of the Legal Aid in Criminal Cases (Amendment) Rules 2012 (the Amendment Rules). The primary purpose of the Amendment Rules is to amend rules 4 and 21 of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (the principal Rules) to expand the scope of legal aid in criminal cases and to revise the payment structure for solicitors and counsel undertaking litigation work in criminal cases on behalf of the Director of Legal Aid.

2. In the LSD's Report, it was stated that LSD was seeking clarification from the Administration on certain drafting issues including whether the new rule 4(1)(c), (f) and (h) of the principal Rules as drafted accurately reflected the Administration's intention to cover cases where a person charged with one offence was subsequently convicted of another related offence. LSD was concerned that the new rule 4(1)(c), (f) and (h), which used the expression "any appeal ... in relation to that offence" (i.e. the offence with which a person was charged, e.g. dangerous driving), did not cover an appeal against a conviction of another offence (e.g. careless driving).

3. In light of LSD's concerns, the Administration has agreed to make drafting and technical changes to the Amendment Rules to ensure that the new rule 4(1)(c), (f) and (h) of the principal Rules would allow legal aid to be granted for any appeal "arising out of or connected with the charge", whether or not the

person has been convicted of any offence. The proposed amendments would cover the cases referred to in paragraph 2 above to allow legal aid to be granted to a person who is charged with one offence but is subsequently convicted of another related offence. The Administration also takes the opportunity to propose changes to improve the Chinese texts of two new provisions of the principal Rules.

4. The Administration has indicated that it will withdraw the Motion and will move a new motion incorporating the above drafting changes. The Administration will seek the President's permission to waive notice of the new motion. A copy of the new motion is at **Annex**. In our view, the new motion has addressed the relevant drafting issues.

Encl

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22 February 2012

**Criminal Procedure Ordinance
and
Interpretation and General Clauses Ordinance**

Resolution

(Under section 9A of the Criminal Procedure Ordinance (Cap. 221) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1))

Legal Aid in Criminal Cases (Amendment) Rules 2012

Resolved that the Legal Aid in Criminal Cases (Amendment) Rules 2012, made by the Criminal Procedure Rules Committee on 19 January 2012, be approved, subject to the amendments as set out in the Schedule.

Schedule

Amendments to Legal Aid in Criminal Cases (Amendment) Rules 2012

1. **Rule 5 amended (rule 4 amended (legal aid for accused persons and appellants))**
 - (1) Rule 5(1), new rule 4(1)(c)—
Delete
“the offence”
Substitute
“any offence”.
 - (2) Rule 5(1), new rule 4(1)(c)(i)—
Delete
“in relation to that offence”
Substitute
“arising out of or connected with the charge”.
 - (3) Rule 5(4), new rule 4(1)(f)—
Delete
“the offence”
Substitute
“any offence”.
 - (4) Rule 5(4), new rule 4(1)(f)(i)—
Delete
“in relation to that offence”
Substitute
“arising out of or connected with the charge”.
 - (5) Rule 5(6), new rule 4(1)(h)—

Delete

“the offence”

Substitute

“any offence”.

- (6) Rule 5(6), new rule 4(1)(h)(i)—

Delete

“in relation to that offence”

Substitute

“arising out of or connected with the charge”.

2. Rule 7 amended (rule 21 amended (solicitor and counsel fees))

Rule 7(1), Chinese text, new rule 21(1), after “實際”—

Add

“地”.

3. Rule 8 amended (Schedule added)

Rule 8, Chinese text, new Schedule, Part 1, section 3—

Delete

“獲被”

Substitute

“獲”.