

立法會
Legislative Council

LC Paper No. LS14/13-14

**Paper for the House Committee Meeting
on 15 November 2013**

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

The Secretary for Home Affairs (the Secretary) has given notice to move a motion at the Council meeting of 27 November 2013 to seek the Legislative Council's approval of the Legal Aid in Criminal Cases (Amendment) Rules 2013 (the Amendment Rules) made by the Criminal Procedure Rules Committee (the Rules Committee) under section 9A of the Criminal Procedure Ordinance (Cap. 221) on 4 October 2013.

2. The fees payable to solicitors or counsel in private practice engaged to undertake litigation work in criminal cases on behalf of the Legal Aid Department (the fees) are prescribed under Rule 21(1) of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (the principal Rules) and set out in the Table of Fees in Part 2 of the Schedule to the principal Rules¹. Pursuant to the decision of the Finance Committee in October 1992, the criminal legal aid fees are subject to review by the Administration on a biennial basis. The Amendment Rules seek to adjust the fees upwards by 9.3%² (which is the same as the increase in the Consumer Price Index (C) during the reference period from July 2010 to July 2012 (reference period)).

3. The Amendment Rules, if approved by the Legislative Council, would come into operation on the day it is published in the Gazette. By virtue of rule 4 of the Amendment Rules, the principal Rules as amended by the

¹ According to the draft speech of the Secretary, the Department of Justice draws reference to the fees prescribed in Rule 21(1) of the principal Rules when engaging lawyers in private practice to appear for the Government in criminal cases. The specified amounts are also referenced for determining the fees payable to duty lawyers providing legal assistance under the Duty Lawyer Scheme.

² The proposed fees adjustment is the result of the latest biennial review of the fees which has taken into account, inter alia, changes in consumer prices during the reference period.

Amendment Rules apply only in relation to a solicitor or counsel assigned under the principal Rules on or after that date.

4. Members may recall that the Legal Aid in Criminal cases (Amendment) Rules 2012 (the 2012 Amendment Rules) have commenced operation in March 2012. The 2012 Amendment Rules aim at clarifying and expanding the scope of legal aid in criminal cases, and improving the payment structure of the criminal legal aid fees system. The Administration had undertaken to review the revised rates of the criminal legal aid fees (which is independent of the biennial review of the fees) in two years' time upon implementation of the 2012 Amendment Rules. According to the draft speech of the Secretary, the Administration will maintain liaison with the two legal professional bodies and commence the review in 2014.

5. The Clerk to the Panel on Administration of Justice and Legal Services (the Panel) has advised that the information paper entitled "The Biennial Review of Criminal Legal Aid Fees, Prosecution Fees and Duty Lawyer Fees", provided by the Home Affairs Bureau and the Legal Aid Department, was issued to the Panel on 3 July 2013. The paper sets out the Administration's plan to, subject to the endorsement of the Legal Aid Services Council, move a resolution in the Legislative Council to increase the criminal legal aid fees as prescribed in Rule 21 of the principal Rules under Cap. 221 upwards by 9.3%, taking reference from the Consumer Price Index (C) from July 2010 to July 2012. At the meeting of the Panel held on 23 July 2013, members did not raise any queries on the proposed increases to the criminal legal aid fees.

6. Members may refer to the LegCo Brief (File Ref: HAB/CR 19/1/7) issued by the Home Affairs Bureau in November 2013 for background information.

7. No difficulties relating to the legal and drafting aspects of the Amendment Rules have been identified.

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