

立法會
Legislative Council

LC Paper No. LS54/15-16

**Paper for the House Committee Meeting
on 20 May 2016**

**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 1 June 2016 to seek the Legislative Council (LegCo)'s approval of the Legal Aid in Criminal Cases (Amendment) Rules 2016 (the Amendment Rules) made by the Criminal Procedure Rules Committee under section 9A of the Criminal Procedure Ordinance (Cap. 221) on 4 May 2016.

2. The fees payable to counsel or solicitors in private practice engaged to undertake litigation work in criminal cases on behalf of the Legal Aid Department (LAD) are prescribed under rule 21(1) of the Legal Aid in Criminal Cases Rules (Cap. 221D) and set out in the Table of Fees in Part 2 of the Schedule to Cap. 221D (criminal legal aid fees). 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 to take into account changes in the Consumer Price Index (C) (CPI(C)) in the reference period.

3. The Amendment Rules seek to increase the criminal legal aid fees (inclusive of a 7.7% increase to reflect the recorded change in CPI(C) between July 2012 and July 2014) as follows:

- (a) 50% increase for all fees payable to counsel (e.g. the "court attendance" fee in the amount of \$12,260 payable to counsel appearing before the Court of First Instance (CFI) will be revised to \$18,390);

- (b) 25% increase for all fees payable to instructing solicitors (e.g. the applicable "hourly rate" of \$800 for solicitors handling CFI cases will be revised to \$1,000); and
 - (c) 40% increase for all fees payable to solicitors acting as both advocate and instructing solicitor (Solicitor Advocates) in the District Court (DC) (e.g. the "court attendance" fee in the amount of \$10,095 payable to Solicitor Advocates appearing before DC will be revised to \$14,130).
4. Other proposed amendments relate to improving the presentation of certain provisions of Cap. 221D and removing obsolete references.
5. The Amendment Rules also seek to introduce a new category of criminal legal aid fees for Solicitor Advocates with higher rights of audience (HRA) who are engaged to handle High Court cases. According to paragraph 6 of the LegCo Brief (File Ref: HAB/CR 19/1/7) issued by the Home Affairs Bureau in May 2016, the new category above is added following the grant of HRA to some Solicitor Advocates in March 2013.
6. The Amendment Rules, if approved by LegCo, would come into operation on a day to be appointed by the Secretary by notice published in the Gazette. By virtue of the new rule 22 of Cap. 221D, the Amendment Rules apply only in relation to counsel or solicitors assigned under Cap. 221D on or after the commencement date.
7. According to the Clerk to the Panel on Administration of Justice and Legal Services, the Panel was consulted on the proposed amendments at its meeting on 22 February 2016 and members supported the proposed amendments. The Administration was urged to continue to enhance criminal legal aid fees so as to attract more young lawyers to take up criminal legal aid cases and to retain experienced lawyers on the Legal Aid Panel under LAD.
8. No difficulties relating to the legal and drafting aspects of the Amendment Rules have been identified.

Prepared by

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