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**Paper for the House Committee meeting
on 28 April 2000**

**Report of the Bills Committee on
Legal Aid (Amendment) Bill 1999**

Purpose

This paper reports on the deliberations of the Bills Committee on the Legal Aid (Amendment) Bill 1999 (the Bill).

Background

2. In early 1997, the Government appointed an inter-departmental Working Group, comprising representatives from the Administration Wing of the Chief Secretary for Administration's Office, Legal Aid Department (LAD), Department of Justice and Finance Bureau, to conduct a comprehensive review of the criteria used to assess financial eligibility of applicants for legal aid services provided by LAD. In addition, the Working Group had reviewed the scope of legal aid and the operation of the Legal Aid Ordinance (Cap. 91). A consultation paper entitled "Legal Aid Policy Review 1997" was issued in December 1997 seeking the views of the public on the 17 recommendations drawn up by the Working Group.

3. There are six recommendations in the consultation paper on which the Administration has received no opposing views. Differing views on the remaining 11 recommendations have been received; and where appropriate, the Administration has modified its recommendations to take into account the views expressed.

4. Seven of the 17 final recommendations require legislative amendments. Three of them which are reflected in the Bill are as follows -

- (a) to give the Director of Legal Aid (DLA) the discretion to reduce, or not to seek, interest on the DLA's charges on preserved/recovered property;
- (b) to require legally aided persons under the Supplementary Legal Aid Scheme (SLAS) to pay interim contributions regardless of the outcome of the case; and

- (c) to extend legal assistance to the next of kin of the deceased in coroner's inquests involving cases of great public concern.

5. The remaining four final recommendations requiring legislative amendments seek to -

- (a) prescribe the manner and the circumstances in which contributions and allowable deductions are to be calculated or made for the purposes of grants of legal aid;
- (b) adjust the scale of contributions payable by persons granted legal aid and to provide for a variation of the resources limits for meritorious Bill of Rights cases;
- (c) enable the DLA to provide for exceptions in the determination of the financial resources of persons receiving assistance under the Comprehensive Social Security Assistance Scheme (CSSA); and
- (d) make it clear that the DLA need not discharge the legal aid certificate under Regulation 8 if he is satisfied that it is appropriate not to do so.

These recommendations will be implemented through amendments to the Legal Aid Regulations and Legal Aid (Assessment of Resources and Contributions) Regulations, which will be made following the passage of the Bill.

The Bill

6. The Bill seeks to implement the three final recommendations of the Legal Aid Policy Review 1997 referred to in paragraph 4 above.

7. The Bill, if enacted, will come into operation on a day to be appointed by the Director of Administration by notice in the Gazette.

The Bills Committee

8. At the meeting of the House Committee on 15 October 1999, members decided to form a Bills Committee to study the Bill. The membership list of the Bills Committee is at **Appendix**.

9. Under the chairmanship of Hon Ambrose LAU Hon-chuen, the Bills Committee held four meetings with the Administration. The Bills Committee also considered the views of the Hong Kong Bar Association, the Law Society of Hong Kong and the Legal Aid Services Council.

Deliberations of the Bills Committee

10. The Administration has advised that the draft Legal Aid (Amendment) Regulation 2000 and Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000 dealing with the four final recommendations mentioned in paragraph 5 above will be introduced into the Legislative Council (LegCo) after the Bill is enacted. The Administration has therefore suggested that the Bill and the two draft Amendment Regulations be considered in tandem. The Bills Committee has agreed to the Administration's suggestion.

11. The Bills Committee welcomes the proposed increase in the personal allowance figures so as to allow more households to become financially eligible for legal aid. The Bills Committee has, however, expressed concern about certain proposals in the Bill and the draft Amendment Regulations. The Bills Committee's deliberations on the issues involved are summarized in the following paragraphs.

Assessment of disposable income and financial eligibility

12. Some members are of the view that the median monthly household expenditure figure reflects more realistically the expenditure pattern of the lower-middle class which is the target group of legal aid services. They consider that the median monthly household expenditure figure, instead of the average monthly expenditure of the lowest 35% households as revealed in the Household Expenditure Survey, should be used in determining the disposable income of legal aid applicants.

13. The Administration has explained that it would not be appropriate to adopt the median household expenditure figure since this may not be representative of the general expenditure level of the target group. Instead, the expenditure patterns of households in the 35-percentile are proposed for use as the benchmark. This index will on average allow 58% of the total number of households in Hong Kong to become financially eligible for legal aid, up from 48% under the existing arrangement where CSSA rates are used as the personal allowances deductible from the gross income of legal aid applicants in assessing their financial capacity. CSSA recipients will continue to be eligible for legal aid and be exempted from paying a contribution. The Administration has also advised that the median household expenditure figure is not an appropriate indicator, since it also includes the middle and upper class households which are not the target group of legal aid services. Moreover, people whose financial resources exceeding the eligibility limit of \$169,700 of the standard legal aid scheme could apply for legal aid under the SLAS.

14. Several members have suggested that the Administration should, in its next review of the financial eligibility limit for the standard legal aid scheme, consider using the median monthly household expenditure figure in calculating the disposable income of legal aid applicants. The Administration has agreed to follow up the

suggestion.

15. Some members consider that the upper financial eligibility limit of the SLAS should also be increased so as to enable more people in the "sandwich class" to gain access to legal aid. They are of the view that even if the upper limit of \$471,600 of the SLAS is increased twofold, it would not jeopardize the financial viability of the SLAS Fund, having regard to the fact that a "merit test" would be conducted before granting legal aid to an applicant. Moreover, successful aided persons would need to contribute a sum equal to the total legal costs incurred by the LAD and 15% of the property recovered/preserved.

16. The Administration has explained that the SLAS is a self-financing scheme to help the sandwich class whose resources are in excess of the limit for the standard legal aid scheme but may not be sufficient to meet the costs of conducting litigation on a private basis. The Administration has pointed out that the average litigation costs per case during the period April to July 1997 for the four types of cases (i.e. matrimonial, employee compensation, traffic running down and miscellaneous personal injury), which represent about 80% of cases handled by the LAD, are below or only slightly higher than the present limits. For example, the current financial eligibility of the standard scheme of \$169,700 is well above the average costs for matrimonial and employee compensation cases at \$30,000 and \$90,000 respectively. Although the average costs for traffic running down and miscellaneous personal injury cases were higher than the upper limit for the standard scheme, they were below or only slightly higher than the upper limit of \$471,000 for the SLAS.

17. Regarding the current arrangement under which the aided persons in successful cases under the SLAS are required to contribute 15% of the property recovered or preserved in addition to the sum of total legal costs incurred by the LAD, the Administration's advice is that following the enactment of the Bill, amendment would be made to the Legal Aid (Assessment of Resources and Contributions) Regulations to reduce the rate of contribution from the existing 15% to 12% in view of the relatively healthy condition of the SLAS Fund.

18. Some members have pointed out that the damages received in a miscellaneous personal injury case could be of quite a substantial amount. They are of the view that the Administration should consider requiring successful aided persons under the SLAS to contribute according to a sliding scale, instead of the proposed contribution rate of 12% across the board. The Administration has undertaken to give due consideration to this proposal when the contribution rate under the SLAS is next reviewed.

19. The Administration has advised that the review of the provision of legal aid services is a continuous process. Apart from the expenditure figures which will be revised every year according to Consumer Price Index (A) to take account of inflation until the next five-yearly Household Expenditure Survey has revealed a new expenditure figure, the financial eligibility limits for the two legal aid schemes will

also be reviewed annually to take account of inflation, and biennially to take account of the change in litigation costs and other relevant factors.

Contribution in Bills of Rights cases

20. Some members point out that there is no provision in the Bill or the draft Amendment Regulations exempting legally aided persons involved in Bill of Rights cases from making contributions. These members are of the view that since most if not all of the Bill of Rights cases involve important points of law affecting human rights of the community, persons involved in such cases should not be required to contribute according to the sliding scale.

21. The Administration has pointed out that the contributions rates for Bill of Rights cases are specified in Regulation 13 and paragraphs (a) and (c) of Part I of Schedule 3 of the Legal Aid (Assessment of Resources and Contributions) Regulations. The Administration considers it reasonable to require aided persons in Bills of Rights cases to pay a portion of their resources for the publicly-funded services which they are receiving. In the Administration's view, it would not be a proper use of public money if relatively well-off persons are allowed to enjoy Government-subsidized legal aid at no cost simply because of the nature of the cases in question.

DLA's First Charge on recovered/preserved property

22. Members note that under section 18A of Cap. 91, DLA is entitled to a first charge on any property which is recovered or preserved for the aided person in the proceedings for which legal aid is given. If DLA agrees to defer enforcing the first charge, a simple interest payable by the aided person will be accrued at a rate of 10% per annum from the date on which the charge is first registered.

23. Members enquire whether the DLA could waive the first charge on a recovered/preserved property in cases where the aided persons are in a difficult financial situation and have no other financial resources apart from the property recovered.

24. The Administration has advised that introducing alternative arrangements for such persons would not be fair to those aided persons who are able to pay up because the damages recovered are in cash. The Administration has pointed out that under section 19B(1)(a)(iii) of Cap. 91, the DLA is empowered to reduce the first charge on a recovered or preserved property by such amount not exceeding \$57,400 if he is satisfied that the enforcement of the first charge would cause serious hardship to the aided person and that in all the circumstances it is just and equitable to do so. Furthermore, under clause 5 of the Bill the DLA will be given the discretion to waive or reduce any interest payable arising from deferring enforcement of the first charge on a recovered/preserved property.

Legal assistance for persons required to attend coroners' inquests

25. Members have expressed concern that new Rule 15B(1) in clause 9 of the draft Legal Aid (Amendment) Regulation 2000, which provides for the types of relatives of a deceased person whom DLA could exercise discretion to grant legal aid involving cases of public interest at coroners' inquests, might inadvertently restrict the types of family members of the deceased who could be granted legal aid.

26. To address members' concern, the Administration has revised the description of persons in new Rule 15B(1) to follow more closely that in Rule 7 of the Labour Tribunal (Suitors' Fund) Rules. The Administration has also revised new Rule 15B(2) stipulating that if DLA is satisfied that legal aid could not reasonably be granted to person of the description of new Rule 15B(1), he could grant legal aid to persons who, in his opinion, may reasonably be regarded as a surviving close relative of the deceased.

27. Members are satisfied that the revised draft new Rule 15B will ensure that DLA could exercise his discretion without hindrance.

Recommendation

28. Members are generally of the view that the proposals in the Bill are acceptable. Members consider that there is a need for the method of computing disposable income for the standard legal aid scheme, as well as the contribution rate under the SLAS, to be further reviewed after the enactment of the Bill. The Bills Committee has agreed that the Panel on Administration of Justice and Legal Services be requested to follow up these two issues.

29. The Administration has proposed that the Second Reading debate on the Bill be resumed on 3 May 2000. Following the passage of the Bill, the Administration will introduce the Legal Aid (Amendment) Regulation 2000 and the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000 as soon as possible to allow time for LegCo Members to consider the two Amendment Regulations in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) before the end of the current LegCo term. As the earliest date for the Bills Committee to submit its report to the House Committee is 28 April 2000, the Administration will seek the President's permission for the Second Reading debate on the Bill to resume on 3 May 2000 in accordance with Rule 54(5)(c) of the Rules of Procedure.

30. The Bills Committee supports the Bill and recommends that the Administration's proposal that the Second reading debate on the Bill be resumed on 3 May 2000 be supported.

Advice sought

31. Members are invited to note the deliberations of the Bills Committee and support the recommendation in paragraph 30 above.

Legislative Council Secretariat
27 April 2000

**Bills Committee on
Legal Aid (Amendment) Bill 1999**

Membership list

Hon Ambrose LAU Hon-chuen, JP (Chairman)

Hon Cyd HO Sau-lan

Hon Albert HO Chun-yan

Hon LEE Cheuk-yan

Hon Margaret NG

Hon CHAN Kwok-keung

Hon LEUNG Yiu-chung

Hon Jasper TSANG Yok-sing, JP

Hon Mrs Miriam LAU Kin-yea, JP

Total : 9 members