

LEGISLATIVE COUNCIL BRIEF

LEGAL AID (AMENDMENT) REGULATION 2000 LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIUBTIONS) (AMENDMENT) REGULATION 2000

INTRODUCTION

Annex

At the meeting of the Executive Council on 16 May 2000, the Council ADVISED and the Chief Executive ORDERED that the Legal Aid (Amendment) Regulation 2000, and Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000, at Annex, should now be made.

BACKGROUND AND ARGUMENT

2. We have consulted the Legislative Council's Panel on Administration of Justice and Legal Services (AJLS Panel) on three occasions between September 1998 and February 1999 and finalised the recommendations of the Legal Aid Policy Review 1997. Some of the recommendations were implemented through the Legal Aid (Amendment) Bill 1999, which was passed by the Legislative Council on 3 May 2000. The Legal Aid (Amendment) Regulation 2000 and Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulations 2000 seek to implement some recommendations of the Legal Aid Policy Review 1997 which are set out below.

(a) *assessment of disposable income*

3. At present, the Comprehensive Social Security Assistance (CSSA) rates are used as the personal allowance deductible from the gross income of legal aid applicants in assessing their financial capacity. We propose to

replace the CSSA rate with the 35-percentile household expenditure as revealed by the 5-yearly Household Expenditure Survey as the allowance, to reflect more realistically the expenditure level of our target group, i.e. households in the lower middle class, so that more people can become financially eligible for legal aid. 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. The figure will be adjusted by the Consumer Price Index (A) every year until the result of the next 5-yearly Household Expenditure Survey is released.

b) contribution under the standard legal aid scheme

4. At present, under the standard legal aid scheme, persons with financial resources above \$86,000 are required to contribute to the legal costs to be incurred by Legal Aid Department (LAD), in accordance with a sliding scale. Those with financial resources below \$86,000 are not required to contribute. We propose that legally aided persons under the standard legal aid scheme should pay a contribution according to a revamped sliding scale of contribution, except those on CSSA who should be exempt from paying any contribution.

c) contribution under Supplementary Legal Aid Scheme (SLAS)

5. At present, aided person under SLAS are not required to pay a contribution upon the grant of legal aid. Depending on the outcome of the proceedings, successful litigants are required to pay a contribution to the SLAS fund at an amount equal to the total legal cost incurred by LAD and 15% of the property recovered or preserved. Unsuccessful litigants pay no contribution to the fund, apart from the \$1,000 application fee and another \$1,000 when he accepts legal aid. We propose that legally aided persons under SLAS would be required to pay, in addition to an application fee of \$1,000, interim contribution once legal aid is granted irrespective of the outcome of the case.

The contribution amount is set at the maximum amount payable under the standard scheme, i.e. \$42,425. For successful litigants, the interim contribution and application fee will be deducted from the final contribution payable. For unsuccessful litigants, the application fee and to the extent that costs are already incurred, the interim contribution will not be refunded. We also propose that the percentage contribution for SLAS be reduced from 15% to 12%.

(d) contribution in Bill of Rights cases

6. At present, Director of Legal Aid (DLA) is empowered to grant legal aid to a person involved in Bill of Rights cases even though his financial capacity exceeds the eligibility limit for the standard legal aid scheme. Such aided persons are required to contribute according to a sliding scale. We propose that this group of legally aided persons should continue to contribute but in accordance with a revamped sliding scale.

(e) discretion not to discharge a legal aid certificate

7. At present, DLA has to discharge a legal aid certificate if the financial resources of the legally-aided person become greater than the statutory eligibility limit after legal aid has been given. The DLA will be given the discretion not to discharge a legal aid certificate if he considers it is not appropriate to do so in the interest of the aided person and of the Legal Aid Fund.

(f) legal aid in coroner's inquest

8. At present, legal aid is generally not available to proceedings before the Coroner's Court. It is proposed that the DLA be empowered to provide legal assistance in the form of legal representation to persons who have already been issued legal aid certificates, if the DLA is satisfied that such assistance is necessary for the proper conduct of the cases for which legal aid is given.

9. We have presented the draft regulations for Bills Committee on the Legal Aid (Amendment) Bill's reference and consideration. Members' views have been taken on board in finalising the amendment regulations.

THE REGULATIONS

10. The major provisions in the Legal Aid (Amendment) Regulations 2000 and Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulations 2000 seek to:

a) give the DLA the discretion not to discharge a legal aid certificate even if the financial resources of a legally aided person have become greater than the respective financial eligibility limit after legal aid has been granted [Section 6 of the Legal Aid (Amendment) Regulation],

b) stipulate that, subject to the DLA's approval, legal aid granted to a person may cover legal representation at a coroner's inquest in respect of the death of a deceased which gives rise to the proceedings to which the relevant legal aid certificate relates [Section 8 of the Legal Aid (Amendment) Regulation],

c) provide for a list of members of the family of the deceased who might be eligible for the grant of legal aid in a coroner's inquest in cases where the DLA considers legal aid should be granted in the interests of public justice. The list models on the categories of relatives set out in Rule 7 of Labour Tribunal (Suitors' Fund) Rules. It also empowers the DLA to grant legal aid to a person outside the list who, in the opinion of the DLA, may reasonably be regarded as close relative of the deceased [Section 9 of the Legal Aid (Amendment) Regulation],

(d) require legally-aided persons under the standard scheme to pay a contribution according to a revamped sliding scale of contribution, except those on Comprehensive Social Security Assistance Scheme who will be exempt from paying any contribution [Sections 3 and 7 of the Legal Aid (Assessment of Resources and Contribution) (Amendment) Regulation],

e) prescribe in a formula the method by which the personal allowance deductible is calculated for the purpose of assessing a legal aid applicant's financial resources [Section 5 of the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulations]; and

(f) in Bill of Rights cases, require legally aided persons with financial capacity falling under the standard scheme to contribute according to the contribution scale under the standard scheme; if their financial capacity exceeds the limit for the standard scheme, require them to contribute in accordance with a revamped sliding scale, with bandwidths of \$100,000 (Section 7 of the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation).

BASIC LAW IMPLICATIONS

11. The Department of Justice advises that the proposed regulations do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

12. The Department of Justice advises that the proposed regulations are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

13. The amendments do not affect the binding effect of the Legal Aid Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

14. The proposals to increase the personal allowance deductible and to expand the assistance in coroner's inquests will slightly increase the number of individuals eligible for legal aid. We estimate that this would entail additional expenditure of about \$10 million per annum in legal aid costs. In addition, the Legal Aid Department will require five additional non-directorate posts at an annual staff cost of \$2.5 million to handle the expected increase in legal aid applications and the additional receipt of contribution. The Director of Administration has secured the necessary resources for implementation of the proposals. On the revenue side, there will be an estimated increase in revenue of about \$1 million annually with the introduction of a revised scale of contribution.

PUBLIC CONSULTATION

15. We conducted a public consultation exercise and consulted the AJLS Panel on the original recommendations and comments received during public consultation. We have also briefed and secured the endorsement of the Legal Aid Services Council of our final recommendations.

PUBLICITY

16. A press release will be issued on 19 May 2000 and a spokesman will

be available for answering media enquiries.

ENQUIRIES

17. For enquiries on the brief, please contact Mr. Ryan Chiu, Assistant Secretary (Administration) at 2810 2783.

Administration Wing

Chief Secretary for Administration's Office

May 2000

LEGAL AID (AMENDMENT) REGULATION 2000

(Made by the Chief Executive in Council under section 28
of the Legal Aid Ordinance (Cap. 91))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Legal Aid (Amendment) Ordinance 2000 (26 of 2000).

2. Application for certificate

Regulation 3(2) (c) of the Legal Aid Regulations (Cap. 91 sub. leg.) is repealed and the following substituted -

"(c) the financial resources of the applicant."

3. Issue of certificate

Regulation 5 is amended -

- (a) in paragraph (4), by repealing "income or financial resources, disposable income and disposable capital" and substituting "financial resources";
- (b) in paragraph (7), by repealing "and, in the case of legal aid to be granted under the Supplementary Legal Aid Scheme, also pay a fee of \$1,000";
- (c) by repealing paragraph (8);
- (d) by repealing paragraph (9) and substituting -
 - "(9) When an applicant has complied with such of the provisions of paragraph (7) as may be relevant to his case, the Director shall issue a certificate in the form determined by the Director.";
- (e) by repealing paragraph (10) and substituting -

"(10) Nothing in paragraph (3), (4) or (6) (a) shall apply where legal aid is granted under the Supplementary Legal Aid Scheme."

4. Power to amend on change of circumstances or contribution

Regulation 6B is amended by repealing "8(3)" and substituting "8(2), (2A) or (3)".

5. Increase of contribution under certificates

Regulation 6C is amended by adding "or 5AA" after "section 5".

6. Discharge and revocation of certificates

Regulation 8 is amended -

(a) in paragraph (2) -

(i) in subparagraph (e) (ii), by repealing "receiving" and substituting "bankruptcy";

(ii) by adding -

"(fa) if he is satisfied that the financial resources of an aided person exceed the limits prescribed in section 5 or 5A of the Ordinance:

Provided that a certificate shall not be discharged under this subparagraph until the aided person has been given an

opportunity to show cause why the certificate should not be discharged;"

(b) by adding -

"(2A) Notwithstanding paragraph (2) (fa) and without prejudice to regulation 6B, the Director need not discharge a certificate by reason of the circumstances referred to in that paragraph if he is satisfied that it is appropriate not to do so.";

(c) by repealing paragraph (3) and substituting -

"(3) The Director shall discharge a certificate if he considers that the aided person no longer has reasonable grounds for taking, defending or being a party to the proceedings or, as the case may be, that it is unreasonable in the particular circumstances for him to continue to receive legal aid:

Provided that a certificate shall not be discharged under this paragraph until the aided person has been given an opportunity to show cause why the certificate should not be discharged."

7. Effect of discharge and revocation

Regulation 9 is amended -

(a) by repealing paragraph (5A) (b) and substituting -

"(b) where aid was granted under the Supplementary Legal Aid Scheme, by the amount of any interim contribution paid

under section 32 of the Ordinance and the application fee paid under regulation 3(3).";

- (b) in paragraph (a) of the proviso to paragraph (10), by repealing "8(3)(b)" and substituting "8(3)".

8. Conduct of proceedings by solicitors

Regulation 12(2) is amended -

- (a) in subparagraph (f), by repealing the comma at the end and substituting "; or";
- (b) by adding -
 - "(g) to represent the aided person at an inquest into the death of a person under the Coroners Ordinance (Cap. 504) which gives rise to the proceedings to which the certificate relates,".

9. Regulation added

The following is added -

"15A. Category of persons who may be granted legal aid in coroners inquests

(1) For the purposes of section 28(2) of and paragraph 3 of Part I of Schedule 2 to the Ordinance and the grant of legal aid to the family of a deceased person in respect of an inquest into deaths under the Coroners Ordinance (Cap. 504), the Director may approve the grant of legal aid to one and, only one, person being the surviving spouse, child, father, mother, brother or sister of the deceased.

(2) Notwithstanding paragraph (1), where the Director is satisfied that there is no person of any description in

that paragraph either in being or, to whom a grant of legal aid can reasonably be made, he may for that reason approve the grant of legal aid for the purposes mentioned in that paragraph to any other person who, in the opinion of the Director, may reasonably be regarded as a surviving close relative of the deceased if he is satisfied that it is appropriate to do so."

Clerk to the Executive Council

COUNCIL CHAMBER

2000

Explanatory Note

This Regulation amends the Legal Aid Regulations (Cap. 91 sub. leg.) as follows -

- (a) to establish uniform reference to the expression "financial resources" (sections 2 and 3(a));
- (b) to make it clear that if the financial resources of an applicant exceed the financial eligibility limits the Director of Legal Aid need not discharge a legal aid certificate under regulation 8 if he is satisfied that it is appropriate not to do so (section 6);
- (c) to make it clear that interim contributions paid under section 32 of the Legal Aid Ordinance (Cap. 91) and an application fee paid under regulation 3(3) by a person who is granted aid under the

Supplementary Legal Aid Scheme are to be deducted from any amount recoverable by the Director from such person whose certificate has been revoked or discharged (section 7);

- (d) to make provision relating to the grant of legal aid for persons who seek representation at coroners inquests.

2. The other amendments are miscellaneous or consequential.

**LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS)
(AMENDMENT) REGULATION 2000**

(Made by the Chief Executive in Council under section 28
of the Legal Aid Ordinance (Cap. 91))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Legal Aid (Amendment) Ordinance 2000 (26 of 2000).

2. Resources of a spouse

Regulation 7(3) of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg.) is amended by repealing "and rule 11 of Schedule 2".

3. Regulation added

The following is added -

"8A. Resources of persons receiving Comprehensive Social Security Assistance

For the purposes of determining the financial resources of a person receiving assistance under the Comprehensive Social Security Assistance Scheme administered by the Director of Social Welfare, it shall be presumed that the financial resources of that person do not exceed the amount prescribed in subparagraph (a) of Part I of Schedule 3 unless there are reasonable grounds to believe or suspect that the financial resources of that person may be such as to render him ineligible for legal aid or liable to pay a contribution by virtue of section 18(1) of the Ordinance."

4. Regulation substituted

Regulation 14 is repealed and the following substituted -

"14. Contributions under the Supplementary Legal Aid Scheme

For the purposes of section 32 of the Ordinance and a grant of legal aid to any person under the Supplementary Legal Aid Scheme -

- (a) an interim contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to the maximum contribution payable by an aided person under section 18(1) of the Ordinance whose financial resources are equal to the limit prescribed in section 5 of the Ordinance; and
- (b) a final contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to -
 - (i) the sums paid or payable on his account out of the Fund;
 - (ii) the costs incurred on his behalf;
 - (iii) the percentage calculated in accordance with Part III of Schedule 3 of the value of any property (wherever situate) recovered or preserved for the aided person in such proceedings whether on his own behalf or on behalf of another, less any application fee paid under

regulation 3(3) of the Legal Aid Regulations (Cap. 91 sub. leg.).".

5. Schedule 1 amended

Part II of Schedule 1 is amended by repealing rule 8 and substituting -

"8. (1) An amount equivalent to the 35-percentile household expenditure shall not be taken into account in relation to the person concerned and his dependants, if any.

(2) For the purposes of this paragraph -

- (a) the expression "35-percentile household expenditure" (住戶開支第 35 個百分值) means the level of expenditure of households of a particular size, excluding expenditure for rent, as obtained in the 5-yearly Household Expenditure Survey conducted by the Census and Statistics Department, so that 35% of the households of that size have household expenditure below that level and 65% of the households have household expenditure above that level;
- (b) the household expenditure obtained in the 1994-1995 Household Expenditure Survey shall, until the results of the next Household Expenditure Survey are obtained, be adjusted in accordance with subparagraph (c), on the coming into operation of the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000 (L.N. of 2000);

- (c) the amount that, in any particular year, shall not be taken into account for a particular household size shall be calculated in February of that particular year according to the following formula rounded to the nearest \$10 amount -

$$E_i \times \frac{\text{CPI(A) excluding rent component, } j-1}{100}$$

Where -

- (i) "E_i" is the 35-percentile household expenditure (excluding expenditure for rent) for a particular household size "i" based on the results of the latest round of the Household Expenditure Survey conducted by the Census and Statistics Department;
 - (ii) "CPI(A) excluding rent component, j-1" is the average monthly Consumer Price Index (A) which excludes the result derived from the item for "rent, including rates and government rents" in year "j-1", with the base period of the Index being the same as the survey period of the Household Expenditure Survey mentioned in sub-subparagraph (i);
 - (iii) "j" represents that particular year;
- (d) only the person concerned and his dependants, if any, are to be taken into account in determining the size of household; and

- (e) in ascertaining whether a person is a dependant, regard shall be had to his income and other resources."

6. Rules for computing disposable capital

Schedule 2 is amended by repealing "[regs. 4(b) & 7(1)]" and substituting "[reg. 4(b)]".

7. Contributions

Schedule 3 is amended -

- (a) by adding "8A," after "[regs.";
- (b) in Part I -
 - (i) in subparagraph (a), by repealing "\$86,000" and substituting "\$20,000";
 - (ii) by repealing subparagraph (b) and substituting -
 - "(b) except as provided in subparagraph (c), if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows

-

A	B	C
		Then, in relation to his financial resources, his maximum contribution is
If his financial resources exceed	But do not exceed	
\$20,000	\$40,000	\$1,000
\$40,000	\$60,000	\$2,000
\$60,000	\$80,000	5%
\$80,000	\$100,000	10%
\$100,000	\$120,000	15%
\$120,000	\$144,000	20%
\$144,000	\$169,700	25%;

and";

(iii) by repealing subparagraph (c) and substituting -

"(c) if his certificate is for proceedings in which a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue and -

(i) if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the

amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows -

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20,000	\$40,000	\$1,000
\$40,000	\$60,000	\$2,000
\$60,000	\$80,000	5%
\$80,000	\$100,000	10%
\$100,000	\$120,000	15%
\$120,000	\$144,000	20%
\$144,000	\$169,700	25%
\$169,700	\$269,700	30%
\$269,700	\$369,700	35%
\$369,700	\$469,700	40%
\$469,700	\$569,700	45%
\$569,700	\$669,700	50%
\$669,700	\$769,700	55%
\$769,700	\$869,700	60%
\$869,700	\$1,200,000	65%; or
	(ii) if his financial resources exceed \$1,200,000, be 67% of his financial resources.";	

(c) in Part III, in paragraph 3, by repealing "15%" and substituting "12%".

Clerk to the Executive Council

COUNCIL CHAMBER

2000

Explanatory Note

This Regulation amends the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg.) as follows -

- (a) to enable the Director of Legal Aid to provide for exceptions in the determination of the financial resources of persons receiving assistance under the Comprehensive Social Security Assistance Scheme (section 3);
- (b) to provide for the manner and the circumstances in which, having regard to the 5-yearly Household Expenditure Survey conducted by the Census and Statistics Department, allowable deductions are to be calculated or made for the purposes of grants of legal aid (section 5);
- (c) to adjust the scale of contributions payable by persons granted legal aid and to reduce the percentage contribution prescribed for legal aid granted under the Supplementary Legal Aid Scheme (section 6).