

**For discussion on  
14 April 2011**

**Legislative Council Panel on  
Administration of Justice and Legal Services  
Criminal Legal Aid Fees System**

**PURPOSE**

This paper informs Members of the progress of legislative amendments on the criminal legal aid fees system.

**LATEST DEVELOPMENT**

2. The Administration is in the course of drafting the Legal Aid in Criminal Cases (Amendment) Rules 2011 to amend –
  - (a) Rule 4 of the Legal Aid in Criminal Cases Rules (LACCR) (Cap. 221D), with a view to expanding the scope of legal aid in criminal cases so that legal aid can be granted in cases to be heard in the Court of Appeal (CA) and the Court of Final Appeal (CFA) which do not involve a conviction; and
  - (b) Rule 21 of LACCR, with a view to improving the payment structure of the criminal legal aid fees system.

**AMENDMENTS TO RULE 4**

3. As reported to Members at the Panel meeting on 25 January 2010, the Administration has decided to expand the existing scope of legal aid in criminal cases by amending the LACCR to allow for legal aid to be granted in cases considered by the CA and the CFA which do not involve a conviction.
4. The LACCR are made pursuant to section 9A(1) of the Criminal Procedure Ordinance (CPO) (Cap. 221). Rule 4 of the LACCR sets out the

list of circumstances in which legal aid in criminal cases may be granted, subject to the applicant's eligibility on means and merits.

5. Rule 4(1) does not expressly cover proceedings where after an acquittal or discharge, a reservation, reference or an appeal is made to the CA and the CFA. With the proposed amendments to Rule 4, legal aid can be granted to a person regardless of whether he/she has been convicted of an offence in an appeal case heard in the CA and the CFA.

6. The drafting of the legislative amendments to Rule 4 is near completion.

## **AMENDMENTS TO RULE 21**

7. In January 2010, the Administration completed the review on criminal legal aid fees, having reached an agreement with the two legal professional bodies on the revised fee structure and the fees payable to assigned solicitors handling criminal legal aid cases, the main features of which are set out below –

(a) Preparatory work

Under the current system, solicitors and counsel are paid a fee for preparation of the case for trial or appeal, irrespective of the time spent up to the first day of trial or appeal. Under the revised fee structure, preparation work will be remunerated according to the time required.

(b) Rationalization of fee items

At present, only counsel is paid a “conference fee” with the legally aided person(s). Under the revised structure, a conference fee will also be payable to solicitors on an hourly basis.

(c) Enhanced transparency for the fee setting and re-determination basis

Under the current system, the fee payable to an assigned lawyer is assessed after the work is done and the case concluded. Under the revised structure, the classification of a particular case and hence the rates, as well as the required preparation time will be assessed beforehand and marked on the brief when making the assignment. Assigned lawyers will be allowed to view the bundle(s) before accepting assignments with a view to agreeing the fees to be paid. They can also seek a re-determination of the agreed fees if

circumstances warrant this. These measures are designed to enhance the transparency of the fee structure.

(d) Abolition of existing statutory cap or limit on fees

Under the revised fee structure, the existing statutory cap or limit on fees payable to instructing solicitors will be abolished.

8. As reported to Members at the meeting on 21 December 2010, the Administration has decided to amend the LACCR with a view to improving the payment structure of the criminal legal aid fee system. This is to be achieved by the introduction of additional items of remuneration for work done by counsel and solicitor in criminal legal aid work and by setting the fee level for solicitors acting as instructing solicitors as follows (in simplified terms) –

	<b>Revised Rates</b> <i>(simplified as hourly rate)</i>
<b>District Court</b> Instructing Solicitor	\$620
<b>Court of First Instance</b> Instructing Solicitor	\$730
<b>Court of Appeal</b> Instructing Solicitor	\$990

9. The drafting of the legislative amendments to Rule 21 is near completion.

## **WAY FORWARD**

10. Upon the completion of drafting of the abovementioned legislative amendments, we will submit the Legal Aid in Criminal Cases (Amendment) Rules 2011 to the Criminal Procedure Rules Committee chaired by the Chief Judge of the High Court.

11. Separately, the Administration has completed the biennial review of the criminal legal aid fees, prosecution fees and duty lawyer fees. Details of the review are set out at **Annex**. The fees are proposed to be raised by 1.6% in accordance with the movement in Consumer Price Index (CPI)(C) during the reference period from July 2008 to July 2010.

12. The proposed +1.6% adjustment in the revised criminal legal aid fees will be incorporated in the Amendment Rules in one go. We expect that the Amendment Rules (with incorporation of the +1.6% adjustment in the updated fees) can be finalized and submitted to the Criminal Procedure Rules Committee in April 2011.

13. Subject to the Criminal Procedure Rules Committee's views, we will submit the Amendment Rules to the Legislative Council (LegCo) for consideration and approval in May/June 2011. A motion will be moved at LegCo for positive vetting of the Amendment Rules. Subject to discussions by the LegCo House Committee and the resolution by LegCo, the Amendment Rules are expected to be put into effect in June/July 2011.

### **ADVICE SOUGHT**

14. Members are invited to note the progress of legislative amendments.

**Home Affairs Bureau  
Legal Aid Department  
April 2011**

**The Biennial Review of Criminal Legal Aid Fees,  
Prosecution Fees and Duty Lawyer Fees**

**PURPOSE**

The Administration has completed the 2010 biennial review of the following fees –

- (a) Criminal Legal Aid Fees – payable to lawyers in private practice who undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department (LAD);
- (b) Prosecution Fees – payable to lawyers in private practice engaged by the Department of Justice (DoJ) to appear for the Government in criminal cases; and
- (c) Duty Lawyer Fees – payable to duty lawyers providing legal assistance under the Duty Lawyer Service (DLS)<sup>1</sup>.

2. This paper informs Members of the outcome of the review of the criminal legal aid fees, the prosecution fees and the duty lawyer fees (collectively referred to as “the Fees” in the rest of the paper).

**BACKGROUND**

3. The criminal legal aid fees are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules (Cap. 221D) under the Criminal Procedure Ordinance (Cap. 221). The DoJ draws reference to the same scale of fees to engage counsel in private practice to appear for the Government in criminal cases. The duty lawyer fees are also determined with reference to the same scale of fees.

4. Pursuant to the decision of the Legislative Council Finance Committee in October 1992, the Fees are subject to review by the Administration on a biennial basis. The Finance Committee also delegated in June 2003 the authority to approve future adjustments to any of the Fees to the Administration, provided that the extent of adjustment is no greater than the movement of the Consumer Price Index (C) (CPI(C)) during the reference

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<sup>1</sup> The Duty Lawyer Scheme (DLS) provides legal representation to eligible defendants who appear in Magistrates’ Courts, Juvenile Courts and the Coroners’ Court.

period.

## THE PREVIOUS REVIEWS

5. In conducting the biennial reviews, the Administration takes into account mainly inflation/deflation during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors. The last biennial review was completed in 2008.

## THE 2010 REVIEW

6. The Administration has completed the 2010 biennial review. We note that the CPI(C) for the reference period (i.e. July 2008 to July 2010) had increased by 1.6%. We therefore propose to adjust the Fees upward by 1.6% in accordance with the level of inflation during the reference period. The impact of economic changes after July 2010 will be reflected in the next biennial review.

7. The following table summarizes the adjustment to the Fees in the past five reviews and the adjustment proposed for the current review –

Year	Adjustment	CPI(C) Movement
2000 review	Nil	-8.8%
2002 review	-4.3%	-4.3%
2004 review	Nil	-4.4%
2006 review	Nil <sup>2</sup>	+3.4%
2008 review	+8.3%	+8.3%
2010 review	+1.6% (proposed)	+1.6%

8. Following the established practice, the Administration will need to move a resolution in the Legislative Council to amend the Legal Aid in Criminal Cases Rules in order to adjust the criminal legal aid fees by +1.6% to reflect the change in CPI(C). The prosecution fees and the duty lawyer fees, although not specified in the Legal Aid in Criminal Cases Rules, will be adjusted administratively by drawing reference to the updated set of criminal legal aid fees to reflect the +1.6% change in CPI(C).

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<sup>2</sup> The fees were last reduced by 4.3% pursuant to the 2002 biennial review, following the change in CPI(C). Pursuant to the 2004 biennial review, the Administration decided not to reduce the fees to follow the 4.4% drop in CPI(C) and instead, reserved the 4.4% reduction and pledged to consider it together with the 2006 review. In the 2006 review, the Administration reported to this Panel that the cumulative change in CPI(C) in the 2004 and 2006 reviews recorded a decrease of 1% (-4.4%+3.4%), and decided to freeze the fees.

9. Separately, Members may wish to note that the Administration is now drafting the Legal Aid in Criminal Cases (Amendment) Rules 2011 to amend –

(c) Rule 4 of the Legal Aid in Criminal Cases Rules, with a view to expanding the scope of legal aid in criminal cases so that legal aid can be granted in cases to be heard in the Court of Appeal and the Court of Final Appeal which do not involve a conviction; and

(d) Rule 21 of Legal Aid in Criminal Cases Rules, with a view to improving the payment structure of the criminal legal aid fee system.

10. The proposed +1.6% adjustment in the revised criminal legal aid fees will be incorporated in the Amendment Rules in one go. The Amendment Rules (with incorporation of the +1.6% adjustment in the updated fees) will be submitted to the Criminal Procedure Rules Committee chaired by the Chief Judge of the High Court in April 2011.

#### **ADVICE SOUGHT**

11. Members are invited to note the outcome of the review.

**Home Affairs Bureau  
Legal Aid Department  
April 2011**