

**立法會**  
***Legislative Council***

LC Paper No. LS29/11-12

**Paper for the House Committee Meeting  
on 17 February 2012**

**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 on 29 February 2012 to seek the Legislative Council's approval of the Legal Aid in Criminal Cases (Amendment) Rules 2012 (the Amendment Rules) made by the Criminal Procedure Rules Committee (the Rules Committee) under section 9A of the Criminal Procedure Ordinance (Cap. 221) on 19 January 2012.

2. Rule 4 of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (the principal Rules) sets out the circumstances in which legal aid in criminal cases may be granted. While subparagraphs (c), (f) and (h) of rule 4(1) provide that a person who is convicted by a lower court may be granted legal aid for the purpose of any appeal to the Court of First Instance (CFI), Court of Appeal (CA) and Court of Final Appeal (CFA), rule 4(1) does not at present expressly cover appeal cases dealt with by these courts which do not involve a conviction.

3. Rule 21 of the principal Rules sets out the fees payable to solicitors or counsel in private practice engaged to undertake litigation work in respect of criminal cases on behalf of the Director of Legal Aid (the Director).

4. The primary purpose of the Amendment Rules is to amend rules 4 and 21 of the principal Rules. Rule 5 of the Amendment Rules proposes to expand the scope of legal aid in criminal cases by repealing the existing rule 4(1)(c), (f) and (h) of the principal Rules and substituting new subparagraphs (c), (f) and (h) to allow legal aid to be granted to a person who is or was charged with an offence (whether or not the person has been convicted of the offence) for:

- (a) any appeal to CFI, CA or CFA in relation to that offence;
- (b) any application for leave to appeal to CFA in relation to that offence;  
and
- (c) any proceedings preliminary or incidental to the appeal or application for leave to appeal.

Upon our enquiry, the Administration has confirmed that these amendments are intended to cover cases where a person is charged with one offence but is subsequently convicted of another related offence; for example, the Amendment Rules are intended to allow legal aid to be granted to a person charged with dangerous driving but convicted of careless driving if the person makes an appeal against the conviction of careless driving. We are seeking the Administration's further clarification on certain drafting issues including whether the new rule 4(1)(c), (f) and (h) as drafted accurately reflect the Administration's intention.

5. Rules 7 and 8 of the Amendment Rules seek to amend rule 21 of the principal Rules to revise the payment structure for solicitors and counsel undertaking litigation work in criminal cases on behalf of the Director by introducing additional items of remuneration and setting out in a new Schedule the fee levels for work done by counsel and solicitors in criminal legal aid work. The main changes sought to be implemented include:

- (a) paying for preparation work (e.g. reading bundles) on a time basis as opposed to a flat fee;
- (b) paying solicitors fees for conferences with counsel;
- (c) allowing the Director to re-determine the fees for preparation work payable to a solicitor or counsel (other than Senior Counsel) in circumstances that the Director considers appropriate having regard to any change in the work reasonably expected to be done or work actually and reasonably done; and
- (d) repealing rule 21(2) and (3) of the principal Rules which empower a judge to certify the exceptional length or complexity of a case so as to increase the fees payable to the assigned solicitor or counsel.

Upon our enquiry, the Administration has explained that the existing rule 21(2) and (3) are no longer necessary because the agreed fees (and required preparation time) will be marked on the brief when making the assignment under the revised fees structure which would also allow the assigned solicitor or counsel to seek a re-determination of the agreed fees if the circumstances of the case so warrant.

6. According to the draft speech of the Secretary, the Administration has reached an agreement with the two legal professional bodies on the revised fee structure proposed under the Amendment Rules with a view to improving the payment structure of the criminal legal aid fee system. Upon our enquiry, the Administration has confirmed that the revised rates reflected in the Amendment Rules have been further increased by 1.6% based on the movement of Consumer Price Index (C) during the reference period from July 2008 to July 2010, and then rounded down to the nearest \$10 in line with the practice of previous biennial reviews of the criminal legal aid fees, prosecution fees and duty lawyer fees.

7. Other provisions of the Amendment Rules (rules 3, 4, 6 and 9) provide for transitional arrangements and textual amendments to the principal Rules to make them clearer and more readable.

8. The Amendment Rules will come into operation on 9 March 2012. By virtue of rule 9 of the Amendment Rules, the principal Rules as amended by the Amendment Rules apply only in relation to a solicitor or counsel assigned under the principal Rules on or after that date.

9. The proposed amendments to rules 4 and 21 of the principal Rules were discussed by the Panel on Administration of Justice and Legal Services in January 2010, December 2010 and April 2011. When the Administration briefed the Panel at its meeting on 19 April 2011 on the proposed amendments, the Administration informed the Panel that the drafting of the relevant legislative amendments was near completion and that the Amendment Rules would be submitted to the Legislative Council for consideration and approval in May/June 2011. Members of the Panel were generally in support of the Administration's legislative proposal and requested the Administration to expedite the legislative process so as to implement the changes as soon as possible. Members suggested that the Administration should put in place a mechanism to conduct regular reviews of fees in the future. The Administration assured the Panel that the revised fee structure would be reviewed after two years of implementation. Members may refer to the minutes of the meeting of 19 April 2011 (LC Paper No. CB(2)657/11-12) for further details.

10. Upon our enquiry, the Administration has advised that the draft Amendment Rules were submitted to the Rules Committee on 29 April 2011, and that the Rules Committee made the Amendment Rules on 19 January 2012.

11. A further report will be issued, if necessary, after considering the Administration's reply on the drafting issues referred to in paragraph 4 above.

Prepared by

LOO Chi-pong Bonny  
Assistant Legal Adviser  
Legislative Council Secretariat  
16 February 2012

LS/R/2/11-12