

立法會
Legislative Council

LC Paper No. LS9/12-13

**Paper for the House Committee Meeting
on 16 November 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 November 2012**

Date of tabling in LegCo : 14 November 2012

Amendment to be made by : 12 December 2012 (or 9 January 2013 if extended by resolution)

Jury Ordinance (Cap. 3)

Allowances to Jurors (Amendment) Order 2012 (L.N. 170)

This Order amends the Allowances to Jurors Order (Cap. 3 sub. leg. A) (the Principal Order) to increase the rate of allowance and the maximum rate of additional allowance payable to jurors from \$360 to \$410 a day (or part of a day). This Order was made by the Chief Executive in Council under section 31 of the Jury Ordinance (Cap. 3).

2. According to the Administration, the Judiciary Administration (JA) conducted a review of the current rates of allowances in 2010 following their last revision in 2009 and the results suggested no upward adjustment. JA conducted another review earlier this year. Taking into account the movements in the median monthly earnings of employees in Hong Kong from the second quarter of 2008 to the second quarter of 2012, the new rates of allowances were proposed by JA and approved by the Secretary for Financial Services and the Treasury to maintain the real value of the allowances to minimize any financial loss suffered by members of the public serving as jurors in civil or criminal proceedings or coroner's inquests. Members may refer to LegCo Brief (File Ref: CSO/ADM/CR 11/3221/97) dated 7 November 2012, issued by the Administration Wing, Chief Secretary for Administration's Office and JA for further information on the proposal.

3. The current rates of allowances payable to jurors are the same as those payable to ordinary witnesses in criminal proceedings and coroners' inquests. The Chief Secretary for Administration has given notice to move

two proposed resolutions at the Legislative Council meeting of 28 November 2012 to seek a corresponding increase. The Legal Service Division has separately reported on the proposed resolutions (LC Paper No. LS8/12-13).

4. As advised by the Clerk of the Panel on Administration of Justice and Legal Services, at the meeting of the Panel held on 10 July 2012, members did not make any comments on the information paper (LC Paper No. CB(2)2398/11-12(01)) issued by JA on the proposed amendments to the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) and the Coroners (Witnesses' Allowances) Rules (Cap. 504 sub. leg. E) to increase the rates of allowances for witnesses; and the proposed amendments to the Principal Order to increase the rates of allowances for jurors.

5. The Order will come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

6. The Legal Service Division has sought clarification from the Administration in respect of an inconsistency in the Chinese text of the proposed section 2 of the Principal Order. In reply, the Administration states that if it is decided any amendment to the Chinese text is required, the amendment will be effected in an omnibus bill that takes care of various minor amendments (copy of the correspondence enclosed).

**Public Health and Municipal Services Ordinance (Cap. 132)
Public Health and Municipal Services Ordinance (Cemeteries)
(Amendment of Fifth Schedule) Order 2012 (L.N. 171)**

7. The Order is made by the Chief Executive in Council under section 113(3) of the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO).

8. Under section 118(1) of PHMSO, any person who, without the permission in writing of the Director of Food and Environmental Hygiene, buries any human remains, or deposits any urn or other receptacle containing any human remains, or scatters the ashes of any human remains after cremation, otherwise than in a cemetery, shall be guilty of an offence. The Fifth Schedule to PHMSO specifies places as "cemeteries" for the purpose of PHMSO by listing out public and private cemeteries in Hong Kong.

9. The Order seeks to amend the Fifth Schedule by deleting -

- (a) the Garden of Remembrance at Cape Collinson from the list of public cemeteries (Part I); and

- (b) New Kowloon Cemetery No. 2 (Little Sisters of the Poor Cemetery) from the list of private cemeteries (Part II).

10. According to the Administration, the New Kowloon Cemetery No. 2 is no longer used as a cemetery due to a redevelopment proposal approved by the Town Planning Board. All human remains previously buried there have been relocated. The site now forms part of a lot in a land exchange proposal. The Garden of Remembrance at Cape Collinson is erroneously listed in both Part I (Public Cemeteries) and Part VII (Gardens of Remembrance) of the Fifth Schedule and thus should be deleted from Part I to remove the duplication. Members may refer to the LegCo Brief (File Ref: FH CR 6/3231/07) issued by the Food and Health Bureau and dated 7 November 2012 for further information.

11. As advised by the Clerk of the Panel on Food Safety and Environmental Hygiene, the Panel has not been consulted on the proposed amendments.

12. The Order will come into operation on 11 January 2013.

13. No difficulties relating to the legal or drafting aspects of the Order have been identified.

Encls.

Prepared by

TAM Shuk-fong, Clara
Assistant Legal Adviser
Legislative Council Secretariat
14 November 2012

香港司法機構
司法機構政務處



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14 November 2012

Ms Clara TAM
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
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1 Legislative Council Road,
Central
Hong Kong

Dear Ms Tam,

Allowances to Jurors (Amendment) Order 2012 (L.N.170)

I refer to your letter dated 13 November 2012.


2. We have consulted the Department of Justice (“DoJ”) on this. DoJ has advised that the Chinese version of the new section 2(2) of the Allowances to Jurors Order (Cap. 3, sub. leg. A) (“Principal Order”) has been drafted to improve the readability. The proposed wordings are more appropriate in that context.

3. On the other hand, regarding the Chinese version of section 2(1) of the Principal Order, the existing wordings have been retained. DoJ is of the view that these wordings are sufficiently clear. Though the wordings of section 2(1) (“按該人出任陪審員的每一天或不足一天的時間計”) are slightly different from those in the new section 2(2) (“按有關人士出任陪審員的每一天(不足一天亦作一天論)計算”), the differences are textual in nature. The difference in the drafting approach does not create any legal or operational problems. DoJ therefore considers that an amendment to

the Chinese text of section 2(1) is not strictly necessary and, even if considered desirable, is not urgent.

4. If it is decided to amend the Chinese version of section 2(1) of the Principal Order to improve the linguistic clarity, DoJ has suggested doing so in an omnibus bill which will take care of various minor amendments. Their initial plan is to introduce an omnibus bill in the not-too-distant future.

Yours sincerely,



(Ms Wendy CHEUNG)
for Judiciary Administrator

c.c. DoJ (Attn : Ms Carmen Chan, GC (Fax No. 2845 2215))



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2530 2648)

13 November 2012

Mr NG Sek Hon, Arthur
Deputy Judiciary Administrator (Operations)
Judiciary
Administrative Services
Operations Division
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38 Queensway, Hong Kong

Dear Mr NG,

Re: Allowances to Jurors (Amendment) Order 2012 (L.N. 170)

I am scrutinising the legal and drafting aspects of the above Amendment Order. The Amendment Order proposes to amend the Allowances to Jurors Order (Cap. 3A) (Principal Order) to increase the rates of allowances to jurors.

The Amendment Order proposes, among others, that the Chinese text "按該人出任陪審員的每一天或不足一天的時間計" in the existing section 2(2) of the Principal Order be amended to "按有關人士出任陪審員的每一天(不足一天亦作一天論)計算" to correspond with the English expression "in respect of each day during the whole or part of which the person serves as a juror". However, no similar amendments have been proposed to the Chinese text of section 2(1) to align with the proposed amendments to section 2(2).

As a result, under the proposed new section 2 of the Principal Order, there will be two versions of Chinese text for the same English expression "in respect of each day during the whole or part of which the person serves as a juror", namely -

- (a) "按該人出任陪審員的每一天或不足一天的時間計"
(existing section 2(1)); and
- (b) "按有關人士出任陪審員的每一天(不足一天亦作一天論)計算" (proposed new section 2(2))

Please let us know the reason(s) for not adopting the same Chinese text for the same English expression to maintain consistency within section 2 of the Principal Order.

I shall be most grateful if you would let me have your response in both Chinese and English on the above query on or before 14 November 2012 to enable us to report to the House Committee on 16 November 2012.

Yours sincerely,



(Clara TAM)

Assistant Legal Adviser

cc. DoJ (Attn: Ms Carmen CHAN, GC (Fax No.: 2845 2215))
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