

## LEGISLATIVE COUNCIL BRIEF

Jury Ordinance (Cap. 3)  
Criminal Procedure Ordinance (Cap. 221)  
Coroners Ordinance (Cap. 504)

### ALLOWANCES TO JURORS (AMENDMENT) ORDER 2012

### CRIMINAL PROCEDURE (WITNESSES' ALLOWANCES) AMENDMENT) RULES 2012

### CORONERS (WITNESSES' ALLOWANCES) (AMENDMENT) RULES 2012

## INTRODUCTION

A At the meeting of the Executive Council on 30 October 2012, the Council ADVISED and the Chief Executive ORDERED that the Allowances to Jurors (Amendment) Order 2012 (Jurors (Amendment) Order), at **Annex A**, should be made under section 31 of the Jury Ordinance to effect the proposed increases in the rates of allowances for jurors.

B 2. The Criminal Procedure Rules Committee<sup>1</sup> (Rules Committee) and the Chief Justice (CJ) respectively made the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2012 (Criminal Procedure (Amendment) Rules) at **Annex B** on 26 October 2012 under section 9B of the Criminal Procedure Ordinance, and the Coroners (Witnesses' Allowances) (Amendment) Rules 2012 (Coroners (Amendment) Rules) at **Annex C** on 25 October 2012 under section 54 of the Coroners Ordinance to increase the rates of allowances for witnesses in criminal proceedings and coroners' inquests. These two sets of Rules are subject to the approval of the Legislative Council (LegCo).

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<sup>1</sup> The Rules Committee is established under section 9 of the Criminal Procedure Ordinance to make rules and orders regulating the practice and procedure under the Ordinance. The Committee is chaired by the Chief Judge of the High Court and comprises, among others, a barrister nominated by the Hong Kong Bar Association and a solicitor nominated by the Law Society of Hong Kong.

## JUSTIFICATIONS

### Existing rates of allowances

#### (i) *Jurors*

3. Section 31(1) of the Jury Ordinance provides that a person who serves as a juror in a criminal or civil case, or any inquest under the Coroners Ordinance, shall be paid an allowance at such rate as the Chief Executive in Council may prescribe. If the CJ or the trial judge so orders, a juror may also be paid an additional allowance not exceeding such rate as the Chief Executive in Council may prescribe (section 31(2) and (3) of the Jury Ordinance). The existing rates of both allowances and maximum additional allowances for jurors are \$360 a day, or part of a day, during which a person serves as a juror and are specified in the Allowances to Jurors Order (Cap. 3A).

#### (ii) *Witnesses*

4. Section 9B(1) of the Criminal Procedure Ordinance provides that the Rules Committee may, with the approval of the LegCo, make rules providing for the payment of different rates of allowance to different classes of witnesses in criminal proceedings. Accordingly, the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221B) provide that the maximum allowance the court may allow in respect of a professional or an expert witness is \$2,170 for each day of attendance (or \$1,085 for not exceeding four hours of attendance) and that for any other witness (ordinary witness) is \$360 for each day of attendance (or \$180 for not exceeding four hours of attendance).

5. Similarly, section 54(1) of the Coroners Ordinance provides that the CJ may make rules providing for the payment of different rates of allowance to different classes of witnesses in coroners' inquests. The rules are subject to the approval of the LegCo (section 54(4) of the Coroners Ordinance). At present, the maximum rates of allowances are specified in the Coroners (Witnesses' Allowances) Rules (Cap. 504E) and are the same as those in criminal proceedings (see paragraph 4 above).

## **Adjustment mechanism**

6. In approving the rates of allowances for jurors and witnesses on 15 October 1993, the Finance Committee (FC) of the LegCo delegated authority to the then Secretary for Treasury (now the Secretary for Financial Services and the Treasury (SFST)) to approve future changes in the rates of allowances for jurors and witnesses made in accordance with the movements of the following indices –

- (a) rates for jurors and ordinary witnesses - to be made in accordance with the movements in the median monthly earnings of employees (MMEE) in Hong Kong; and
- (b) rates for professional and expert witnesses - to be made in accordance with the changes in the mid-point salary of a Medical and Health Officer.

7. The FC also noted the intention of the Administration to review the rates of allowances biennially. The existing rates of allowances for jurors and witnesses were set in 2009 using the MMEE between the first quarter of 1995 to the second quarter of 2008 and the mid-point salary of a Medical and Health Officer from 1 April 1995 to 1 April 2008. The biennial review conducted in 2010 has not recommended any rate adjustment because the review results indicated either no change or a downward adjustment.

## **Proposed revisions**

8. The Judiciary Administration (JA) conducted another review earlier this year. Taking into account the movements in the MMEE from the second quarter of 2008 to the second quarter of 2012, the mid-point salary of a Medical and Health Officer from 1 April 2008 to 1 April 2012, and the need to maintain the real value of the rates of allowances to minimise any financial loss suffered by members of the public serving as jurors in courts or testifying as witnesses, JA proposes and SFST approves the following increases in the rates of allowances –

Type of Allowances	Existing Rates	Changes in MMEE/ mid-point salary of a Medical and Health Officer	Proposed Rates
(a) Allowance for jurors	\$360 a day or part of a day	+14.3%	\$410 a day or part of a day
(b) Maximum additional allowance for jurors	\$360 a day or part of a day	+14.3%	\$410 a day or part of a day
(c) Maximum allowance for ordinary witnesses	\$360 a day	+14.3%	\$410 a day
	\$180 not exceeding four hours	+14.3%	\$205 not exceeding four hours
(d) Maximum allowance for professional and expert witnesses	\$2,170 a day	+8.50%	\$2,355 a day
	\$1,085 not exceeding four hours	+8.50%	\$1,175 not exceeding four hours

## THE AMENDMENT ORDER AND AMENDMENT RULES

9. The main provisions of the amendment order and amendment rules for revising the rates of allowances for jurors and witnesses are -

(a) *Jurors (Amendment) Order*

Section 3 increases the rate of allowance and the maximum rate of additional allowance for jurors specified in the Allowances to Jurors Order. The existing section 2 of the Allowances to Jurors Order proposed to be amended is at **Annex D**;

(b) *Criminal Procedure (Amendment) Rules*

Rules 3, 4 and 5 respectively increase the maximum rates of allowances for professional witnesses, expert witnesses and ordinary witnesses in criminal cases specified in the Criminal Procedure (Witnesses' Allowances) Rules. The existing rules 3, 4 and 5 of the Criminal Procedure (Witnesses' Allowances) Rules proposed to be amended are at **Annex E**; and

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(c) *Coroners (Amendment) Rules*

Rules 3, 4 and 5 respectively increase the maximum rates of allowances for professional witnesses, expert witnesses and ordinary witnesses in coroners' inquests specified in the Coroners (Witnesses' Allowances) Rules. The existing rules 3, 4 and 5 of the Coroners (Witnesses' Allowances) Rules proposed to be amended are at **Annex F**.

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## LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows –

**Jurors (Amendment) Order**

Publication in the Gazette 9 November 2012

Tabling in the LegCo 14 November 2012  
(for negative vetting)

**Criminal Procedure (Amendment) Rules**

**Coroners (Amendment) Rules**

Introduction into LegCo 28 November 2012

## IMPLICATIONS OF THE PROPOSAL

11. The proposed increases in the rates of allowances for jurors and witnesses will entail an additional expenditure of about \$0.99 million per annum. Extra financial provisions for this particular exercise are not required as the sum involved can be absorbed from the approved envelope of the Judiciary. The amendment order and amendment rules are in conformity with the Basic Law, including the provisions concerning human rights and will not affect the binding effect of the Jury Ordinance, the

Criminal Procedure Ordinance and the Coroners Ordinance. They have no economic, civil service, productivity, environmental or sustainability implications.

## **PUBLIC CONSULTATION**

12. The JA issued an information paper on the proposed increases to the LegCo Administration of Justice and Legal Service Panel on 19 June 2012, using the MMEE from the second quarter of 2008 to the fourth quarter of 2011 and the mid-point salary of a Medical and Health Officer from 1 April 2008 to 1 April 2011. The Panel raised no comments on the proposed increases at its meeting on 10 July 2012. The proposed rates of allowances have since been updated in the light of the updated MMEE for the second quarter of 2012 and the updated mid-point salary of a Medical and Health Officer as at 1 April 2012 during the preparation of the amendment order and amendment rules.

## **PUBLICITY**

13. A press release will be issued and a spokesman will be available for answering media enquiries.

## **BACKGROUND**

14. The JA conducted a review of the allowances for jurors, and witnesses in criminal cases and coroners' inquests earlier this year. Following the review, the JA proposed and SFST approved the proposed increases based on the mechanism approved by the FC on 15 October 1993. The amendment order and amendment rules aim to give effect to the proposed increases.

## **ENQUIRIES**

15. Any enquiry on this brief should be directed to Mr Howard Lee, Assistant Director of Administration, at 2810 3946 or Mr Arthur Ng, Deputy Judiciary Administrator (Operations), at 2825 4211.

Administration Wing  
Chief Secretary for Administration's Office

Judiciary Administration

7 November 2012

**Allowances to Jurors (Amendment) Order 2012**

(Made by the Chief Executive in Council under section 31 of the Jury Ordinance (Cap. 3))

**1. Commencement**

This Order comes into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

**2. Allowances to Jurors Order amended**

The Allowances to Jurors Order (Cap. 3 sub. leg. A) is amended as set out in section 3.

**3. Section 2 amended (allowances to jurors)**

(1) Section 2(1)—

**Repeal**

everything after “who serves as a juror”

**Substitute**

“is \$410 in respect of each day during the whole or part of which the person serves as a juror.”.

(2) Section 2—

**Repeal subsection (2)**

**Substitute**

“(2) The rate of allowance prescribed for the purpose of section 31(3) of the Ordinance is \$410 in respect of each day during the whole or part of which the person serves as a juror.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2012



**Explanatory Note**

This Order amends the Allowances to Jurors Order (Cap. 3 sub. leg. A) to increase the allowance payable to a juror, and the maximum rate of additional allowance that may be paid to a juror, in criminal or civil cases or in inquests under the Coroners Ordinance (Cap. 504).

## Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2012

(Made by the Criminal Procedure Rules Committee under section 9B of the  
Criminal Procedure Ordinance (Cap. 221) subject to the approval of the  
Legislative Council)

### 1. Commencement

These Rules come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

### 2. Criminal Procedure (Witnesses' Allowances) Rules amended

The Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) are amended as set out in rules 3, 4 and 5.

### 3. Rule 3 amended (allowances for professional witnesses)

(1) Rule 3(1)—

#### Repeal

everything after "not exceeding"

#### Substitute

"\$2,355 for each day the witness is necessarily absent from the witness's place of residence or practice to attend for such purpose."

(2) Rule 3(2)—

#### Repeal

everything after "during which"

#### Substitute

"the witness is necessarily absent from the witness's place of residence or practice to attend for such purpose does not

exceed 4 hours, the professional witness allowance must not exceed \$1,175."

### 4. Rule 4 amended (allowances for expert witnesses)

(1) Rule 4(1)—

#### Repeal

everything after "not exceeding"

#### Substitute

"\$2,355 for each day the witness is necessarily absent from the witness's place of residence, business or employment to attend for such purpose."

(2) Rule 4(2)—

#### Repeal

everything after "during which"

#### Substitute

"the witness is necessarily absent from the witness's place of residence, business or employment to attend for such purpose does not exceed 4 hours, the expert witness allowance must not exceed \$1,175."

### 5. Rule 5 amended (allowances for loss of remuneration or expenses incurred)

(1) Rule 5(1)—

#### Repeal

everything after "to which"

#### Substitute

"the witness would not otherwise have been subject, a loss allowance not exceeding \$410 for each day of attendance, in respect of that loss or expense."

(2) Rule 5(2)—

**Repeal**

everything after “absent from”

**Substitute**

“the witness’s place of residence, business or employment to attend to give evidence does not exceed 4 hours, the witness’s loss allowance must not exceed \$205.”.

Made this            day of            2012.

**Explanatory Note**

These Rules amend the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) to increase the maximum rates of allowances that may be allowed in respect of the following classes of witnesses in criminal proceedings before any court—

- (a) a witness practising any of the specified professions and attending to give professional evidence;
- (b) an expert witness attending to give expert evidence;
- (c) a witness attending to give evidence (other than professional or expert evidence).

## Coroners (Witnesses' Allowances) (Amendment) Rules 2012

(Made by the Chief Justice under section 54 of the Coroners Ordinance (Cap. 504) subject to the approval of the Legislative Council)

### 1. Commencement

These Rules come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

### 2. Coroners (Witnesses' Allowances) Rules amended

The Coroners (Witnesses' Allowances) Rules (Cap. 504 sub. leg. E) are amended as set out in rules 3, 4 and 5.

### 3. Rule 3 amended (allowances for professional witnesses)

(1) Rule 3(1)—

#### Repeal

everything after "not exceeding"

#### Substitute

"\$2,355 for each day the witness is necessarily absent from the witness's place of residence or practice to attend for such purpose."

(2) Rule 3(2)—

#### Repeal

everything after "during which"

#### Substitute

"the witness is necessarily absent from the witness's place of residence or practice to attend for such purpose does not

exceed 4 hours, the professional witness allowance must not exceed \$1,175."

### 4. Rule 4 amended (allowances for expert witnesses)

(1) Rule 4(1)—

#### Repeal

everything after "not exceeding"

#### Substitute

"\$2,355 for each day the witness is necessarily absent from the witness's place of residence, business or employment to attend for such purpose."

(2) Rule 4(2)—

#### Repeal

everything after "during which"

#### Substitute

"the witness is necessarily absent from the witness's place of residence, business or employment to attend for such purpose does not exceed 4 hours, the expert witness allowance must not exceed \$1,175."

### 5. Rule 5 amended (allowances for loss of remuneration or expenses incurred)

(1) Rule 5(1)—

#### Repeal

everything after "to which"

#### Substitute

"the witness would not otherwise have been subject, a loss allowance not exceeding \$410 for each day of attendance, in respect of that loss or expense."

(2) Rule 5(2)—

**Repeal**

everything after “absent from”

**Substitute**

“the witness’s place of residence, business or employment to attend to give evidence does not exceed 4 hours, the witness’s loss allowance must not exceed \$205.”.

Chief Justice

2012

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**Explanatory Note**

These Rules amend the Coroners (Witnesses' Allowances) Rules (Cap. 504 sub. leg. E) to increase the maximum rates of allowances that may be allowed in respect of the following classes of witnesses at inquests under the Coroners Ordinance (Cap. 504)—

- (a) a witness practising any of the specified professions and attending to give professional evidence;
- (b) an expert witness attending to give expert evidence;
- (c) a witness attending to give evidence (other than professional or expert evidence).

Title: **ALLOWANCES  
TO JURORS  
ORDER**

Section: 2

Heading: **Allowances to  
jurors**

Version 19/01/2009  
Date:

(1) The allowance payable under section 31(1) of the Ordinance to a person who serves as a juror shall be \$360 in respect of each day during the whole or part of which he serves as a juror.

(2) The rate of allowance which may be paid under section 31(2) of the Ordinance to a person who serves as a juror shall not exceed \$360 in respect of each day during the whole or part of which he serves as a juror.

(L.N. 205 of 1978; L.N. 129 of 1984; L.N. 481 of 1993; L.N. 61 of 1996; L.N. 240 of 2008)

Chapter: 221B Title: **CRIMINAL PROCEDURE  
(WITNESSES'  
ALLOWANCES) RULES**

Rule: 3 Heading: **Allowances for professional witnesses** Version 19/01/2009  
Date:

(1) The court may allow in respect of a witness practising as a member of the legal or medical profession or as a dentist or veterinary surgeon for attending to give professional evidence, whether in one or more cases, a professional witness allowance not exceeding \$2170 for each day he is necessarily absent from his place of residence or practice to attend for such purpose.

(2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which he is necessarily absent from his place of residence or practice to attend for such purpose does not exceed 4 hours, his professional witness allowance shall not exceed \$1085.

(L.N. 474 of 1993; L.N. 49 of 1996; L.N. 258 of 2008)

Chapter: 221B Title: **CRIMINAL  
PROCEDURE  
(WITNESSES'  
ALLOWANCES)  
RULES**

Rule: 4 Heading: **Allowances for expert witnesses** Version 19/01/2009  
Date:

(1) The court may allow in respect of an expert witness for attending to give expert evidence, whether in one or more cases, an expert witness allowance not exceeding \$2170 for each day the witness is necessarily absent from his place of residence, business or employment to attend for such purpose.

(2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which he is necessarily absent from his place of residence, business or employment to attend for such purpose does not exceed 4 hours, his expert witness allowance shall not exceed \$1085.

(L.N. 474 of 1993; L.N. 49 of 1996; L.N. 258 of 2008)

Chapter: 221B Title: **CRIMINAL  
PROCEDURE  
(WITNESSES'  
ALLOWANCES)  
RULES**

Rule: 5 Heading: **Allowances for loss of remuneration or expenses incurred** Version: 19/01/2009 Date:

(1) The court may allow in respect of a witness who attends to give evidence (other than professional or expert evidence), whether in one or more cases, and thereby loses remuneration or necessarily incurs expense (other than expense on account of lodging or subsistence) to which he would not otherwise have been subject, a loss allowance not exceeding \$360 for each day of attendance, in respect of that loss or expense.

(2) If the period during which the witness is necessarily absent from his place of residence, business or employment to attend to give evidence does not exceed 4 hours, his loss allowance shall not exceed \$180.

(L.N. 238 of 1978; L.N. 403 of 1983; L.N. 474 of 1993; L.N. 49 of 1996; L.N. 258 of 2008)



Chapter: 504E Title: **CORONERS  
(WITNESSES'  
ALLOWANCES)  
RULES**

Rule: 3 Heading: **Allowances for professional witnesses** Version 19/01/2009  
Date:

(1) A coroner may allow in respect of a witness practising as a member of the legal or medical profession or as a dentist or veterinary surgeon for attending to give professional evidence, whether in one or more cases, a professional witness allowance not exceeding \$2170 for each day he is necessarily absent from his place of residence or practice to attend for such purpose.

(2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which he is necessarily absent from his place of residence or practice to attend for such purpose does not exceed 4 hours, his professional witness allowance shall not exceed \$1085.

(L.N. 260 of 2008)

Chapter: 504E Title: **CORONERS  
(WITNESSES'  
ALLOWANCES)  
RULES**

Rule: 4 Heading: **Allowances for expert witnesses** Version 19/01/2009  
Date:

(1) A coroner may allow in respect of an expert witness for attending to give expert evidence, whether in one or more cases, an expert witness allowance not exceeding \$2170 for each day the witness is necessarily absent from his place of residence, business or employment to attend for such purpose.

(2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which he is necessarily absent from his place of residence, business or employment to attend for such purpose does not exceed 4 hours, his expert witness allowance shall not exceed \$1085.

(L.N. 260 of 2008)

Chapter: 504E Title: CORONERS  
(WITNESSES'  
ALLOWANCES) RULES  
Rule: 5 Heading: **Allowances for loss of** Version 19/01/2009  
**remuneration or expenses** Date:  
**incurred**

(1) A coroner may allow in respect of a witness who attends to give evidence (other than professional or expert evidence), whether in one or more cases, and thereby loses remuneration or necessarily incurs expense (other than expense on account of lodging or subsistence) to which he would not otherwise have been subject, a loss allowance not exceeding \$360 for each day of attendance, in respect of that loss or expense.

(2) If the period during which the witness is necessarily absent from his place of residence, business or employment to attend to give evidence does not exceed 4 hours, his loss allowance shall not exceed \$180.

(L.N. 260 of 2008)