

LEGISLATIVE COUNCIL BRIEF

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

ALLOWANCES TO JURORS (AMENDMENT) ORDER 2015

CRIMINAL PROCEDURE (WITNESSES' ALLOWANCES) (AMENDMENT) RULES 2015

CORONERS (WITNESSES' ALLOWANCES) (AMENDMENT) RULES 2015

INTRODUCTION

A At the meeting of the Executive Council on 27 January 2015, the Council ADVISED and the Chief Executive ORDERED that the Allowances to Jurors (Amendment) Order 2015 (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 Committee¹ (Rules Committee) and the Chief Justice (CJ) respectively made the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2015 (Criminal Procedure (Amendment) Rules) at **Annex B** on 13 January 2015 under section 9B of the Criminal Procedure Ordinance, and the Coroners (Witnesses' Allowances) (Amendment) Rules 2015 (Coroners (Amendment) Rules) at C **Annex C** on 15 January 2015 under section 54 of the Coroners Ordinance to increase the rates of allowances for witnesses in criminal proceedings

¹ 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.

and coroners' inquests respectively. These two sets of Rules are subject to the approval of the Legislative Council (LegCo).

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 \$410 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 \$2,355 for each day of attendance (or \$1,175 for not exceeding four hours of attendance) and that for any other witness (ordinary witness) is \$410 for each day of attendance (or \$205 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 adjustment indicators on a biennial basis –

- (a) rates for jurors and ordinary witnesses - to be made in accordance with the movements in the Median Monthly Employment Earnings of Employees (MMEE) in Hong Kong as recorded in the General Household Survey by the Census and Statistics Department; 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 in Hong Kong as recorded in the Master Pay Scale of the Civil Service Grades, Ranks and Pay Scales.

7. The existing rates of allowances for jurors and witnesses were set in 2013 based on the biennial review conducted in 2012.

8. At the biennial review conducted by the Judiciary Administration (JA) in 2014, the opportunity was taken to review the basis for determining the rates of jurors' allowances. As a refinement measure, it is considered that the MMEE to be adopted should more appropriately be changed from the overall MMEE (the computation of which is based on the composition of employees aged 15 or above, irrespective of their educational level) to a stratified MMEE (computed on the basis of the composition of employees who fulfill the requirement of being empanelled as jurors, i.e. aged 21 or above and below 65 with education standard of matriculation or above, or equivalent). The ceiling of the amount of additional jurors' allowances should continue to be set at the same level as the jurors' allowances and should be adjusted accordingly.

Proposed revisions

9. Taking into account the movements of the relevant MMEE from the second quarter of 2012 to the third quarter of 2014, the mid-point salary changes of a Medical and Health Officer from 1 April 2012 to the third quarter of 2014², 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 or testifying as witnesses in courts, JA proposed and SFST approved 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	\$410 a day or part of a day	+76.8%	\$725 a day or part of a day
(b) Maximum additional allowance for jurors	\$410 a day or part of a day	+76.8%	\$725 a day or part of a day
(c) Maximum allowance for ordinary witnesses	\$410 a day	+8.3%	\$445 a day
	\$205 not exceeding four hours	+8.3%	\$220 not exceeding four hours
(d) Maximum allowance for professional and expert witnesses	\$2,355 a day	+2.6%	\$2,415 a day
	\$1,175 not exceeding four hours	+2.6%	\$1,205 not exceeding four hours

² As at December 2014 (when the two amendment rules were being prepared), the 2014-15 civil service pay adjustment was yet to be approved by the FC. Hence the rates of allowances proposed in this paper could only reflect the mid-point salary as at the third quarter of 2014.

Criminal Procedure (Amendment) Rules 2015
Coroners (Amendment) Rules 2015

Introduction into LegCo

18 March 2015

IMPLICATIONS OF THE PROPOSAL

12. The proposed increases in the rates of allowances for jurors and witnesses will entail an additional expenditure of about \$2.34 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 staffing, environmental, economic, family or sustainability implications.

PUBLIC CONSULTATION

13. On 31 October 2014, the JA issued an information paper to the LegCo Panel on Administration of Justice and Legal Services on the proposed revisions to the rates of allowances for jurors and witnesses, on the basis of the movements of the relevant adjustment indicators between the second quarter of 2012 and the second quarter of 2014. The Panel raised no comments on the proposed increases at its meeting on 24 November 2014. The proposed rates of allowances for jurors in paragraph 9 above have since been updated in the light of the updated stratified MMEE for the third quarter of 2014 during the preparation of the amendment order. As there was no change in the overall MMEE and mid-point salary of a Medical and Health Officer between the second and the third quarter of 2014, no updating to the rates of allowances for ordinary witnesses and professional and expert witnesses is required.

PUBLICITY

14. A press release will be issued and a spokesperson will be available for answering media enquiries.

BACKGROUND

15. The JA conducted a review of the allowances for jurors, and witnesses in criminal cases and coroners' inquests in 2014. Following the review, the JA proposed and SFST approved the proposed increases. The amendment order and amendment rules aim to give effect to the proposed increases.

ENQUIRIES

16. Any enquiry on this brief should be directed to Ms Christine Wai, 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

4 February 2015

Allowances to Jurors (Amendment) Order 2015

(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

“\$410”

Substitute

“\$725”.

(2) Section 2(2)—

Repeal

“\$410”

Substitute

“\$725”.

Clerk to the Executive Council

COUNCIL CHAMBER

2015

Explanatory Note

This Order amends the Allowances to Jurors Order (Cap. 3 sub. leg. A) to increase the allowance payable, 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 2015**

(Made by the Criminal Procedure Rules Committee under section 9B of the
Criminal Procedure Ordinance (Cap. 221) with 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

“\$2,355”

Substitute

“\$2,415”.

(2) Rule 3(2)—

Repeal

“\$1,175”

Substitute

“\$1,205”.

4. Rule 4 amended (allowances for expert witnesses)

(1) Rule 4(1)—

Repeal

“\$2,355”

Substitute

“\$2,415”.

(2) Rule 4(2)—

Repeal

“\$1,175”

Substitute

“\$1,205”.

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

(1) Rule 5(1)—

Repeal

“\$410”

Substitute

“\$445”.

(2) Rule 5(2)—

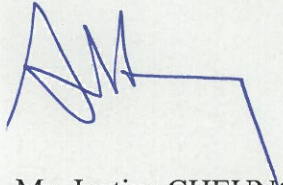
Repeal

“\$205”

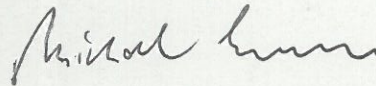
Substitute

“\$220”.

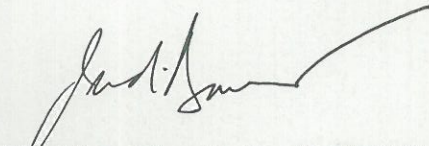
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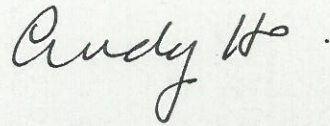
The Hon. Mr. Justice CHEUNG
Chief Judge of the High Court



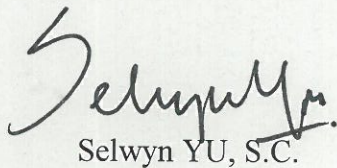
The Hon. Mr. Justice LUNN, V.P.



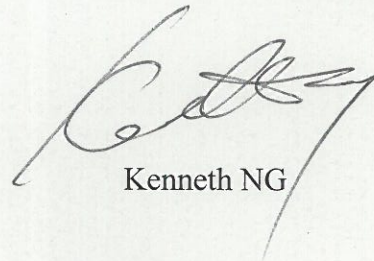
The Hon. Mrs. Justice BARNES



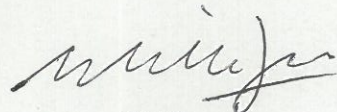
Andy HO
Senior Deputy Registrar, High Court



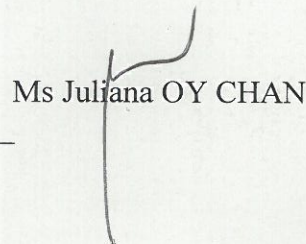
Selwyn YU, S.C.



Kenneth NG



William TAM



Ms Juliana OY CHAN

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 paid in respect of each of the following classes of witnesses in criminal proceedings before any court—

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

Coroners (Witnesses' Allowances) (Amendment) Rules 2015

(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

“\$2,355”

Substitute

“\$2,415”.

(2) Rule 3(2)—

Repeal

“\$1,175”

Substitute

“\$1,205”.

4. Rule 4 amended (allowances for expert witnesses)

(1) Rule 4(1)—

Repeal

“\$2,355”

Substitute

“\$2,415”.

(2) Rule 4(2)—

Repeal

“\$1,175”

Substitute

“\$1,205”.

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

(1) Rule 5(1)—

Repeal

“\$410”

Substitute

“\$445”.

(2) Rule 5(2)—

Repeal

“\$205”

Substitute

“\$220”.



Chief Justice

15th January 2015

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 paid in respect of each of the following classes of witnesses at inquests under the Coroners Ordinance (Cap. 504)—

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

Annex D

Chapter: 3A Title: **ALLOWANCES TO
JURORS ORDER**

Section: 2 Heading: **Allowances to jurors** Version 25/04/2013
Date:

(1) The allowance payable under section 31(1) of the Ordinance to a person who serves as a juror is \$410 in respect of each day during the whole or part of which the person serves as a juror. (L.N. 170 of 2012)

(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. (L.N. 170 of 2012)

(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 25/04/2013
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 \$2355 for each day the witness is necessarily absent from the witness's 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 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 \$1175.

(L.N. 474 of 1993; L.N. 49 of 1996; L.N. 258 of 2008; L.N. 182 of 2012)

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

Rule: 4 Heading: **Allowances for expert witnesses** Version 25/04/2013
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 \$2355 for each day the witness is necessarily absent from the witness's 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 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 \$1175.

(L.N. 474 of 1993; L.N. 49 of 1996; L.N. 258 of 2008; L.N. 182 of 2012)

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

Rule: 5 Heading: **Allowances for loss of remuneration or expenses incurred** Version: 25/04/2013 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 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) If the period during which the witness is necessarily absent from 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.

(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; L.N. 182 of 2012)

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

Rule: 3 Heading: **Allowances for professional witnesses** Version 25/04/2013
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 \$2355 for each day the witness is necessarily absent from the witness's 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 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 \$1175.

(L.N. 260 of 2008; L.N. 184 of 2012)

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

Rule: 4 Heading: **Allowances for expert witnesses** Version 25/04/2013
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 \$2355 for each day the witness is necessarily absent from the witness's 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 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 \$1175.

(L.N. 260 of 2008; L.N. 184 of 2012)

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

Rule: 5 Heading: **Allowances for loss of remuneration or expenses incurred** Version 25/04/2013 Date:

(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 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) If the period during which the witness is necessarily absent from 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.

(L.N. 260 of 2008; L.N. 184 of 2012)