

## **LEGISLATIVE COUNCIL BRIEF**

### **Adoption Ordinance (Cap. 290)**

### **Adoption (Amendment) Rules 2015 Convention Adoption (Amendment) Rules 2015**

## **INTRODUCTION**

Rule 8(2) of the Adoption Rules (Cap. 290A) and rule 11(4) of the Convention Adoption Rules (Cap. 290D) made pursuant to the Adoption Ordinance (Cap. 290) prescribe the fees in payment of the proper costs of the Director of Social Welfare (DSW) for acting as guardian ad litem (GAL) of an infant for the purposes of an adoption application.

2. Under section 12(1) of Cap. 290, the Chief Justice has made the Adoption (Amendment) Rules 2015 as set out at **Annex A** to revise the fee payable under rule 8(2) of Cap. 290A to DSW for acting as GAL, and the Convention Adoption (Amendment) Rules 2015 as set out at **Annex B** to revise the fee payable under rule 11(4) of Cap. 290D to DSW for acting as GAL.

## **JUSTIFICATIONS**

3. Cap. 290 makes provisions for the adoption of children, gives effect in Hong Kong to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the Convention) and provides for incidental and connected matters. Under section 4 of Cap. 290, the Court may, upon an application made in the prescribed manner, make an order authorising the adoption of an infant (who refers to a person under the age of 18 and who is not or has not been married).

While Cap. 290A provides for the court rules and procedures that relate to non-Convention related adoptions, e.g. local adoptions, Cap. 290D provides for the court rules and procedures for handling adoptions to be made under Cap. 290 and in accordance with the Convention.

4. DSW, as GAL, has to investigate as fully as possible all circumstances relevant to the proposed adoption and make a report to the Court with a view to safeguarding the interests of the infant. Some of the infants to be adopted are orphans, abandoned babies or children relinquished by their parents, while others may be related to the applicants, for example, step-children being adopted to legalise the relationship.

5. An applicant for an adoption order in Hong Kong is required, either under Cap. 290A or Cap. 290D, to pay to DSW a fee in payment of the proper costs incurred by DSW in acting as GAL for the infant. The current GAL fee for non-Convention and that for Convention adoption applications are both set at \$2,840, and this fee level has not been revised since 1997 and 2006 respectively<sup>1</sup>. In the past three years, the average number of infants adopted, involving payment of GAL fees, was 119 per annum. All these cases involved locally adopted infants.

6. In line with the “user pays” principle, it is Government’s policy that fees charged by the Government should in general be set at levels sufficient to recover the full cost of providing the services. On the other hand, it has been the Government’s policy that applicants should not be discouraged from adopting children who have lost their parents or whose parents are unwilling to maintain them. Striking a balance between these two policy objectives, we seek to recover 20% of the full proper cost incurred by DSW in the execution of statutory duties under Cap. 290A or Cap. 290D.

7. The Social Welfare Department (SWD) recently completed a review of the two GAL fee items. The results show that the cost recovery rate of the two fee items at the prevailing level of \$2,840 falls short of the target of 20% of the full cost at 2015-16 price level.

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<sup>1</sup> Under Cap. 290A, the GAL fee has been revised from \$2,610 to \$2,840 since May 1997. Under Cap. 290D, the GAL fee has been set at the same level (i.e. \$2,840) since Cap. 290D came into effect in January 2006.

8. It is proposed to increase each of the two GAL fee items by about 12% in each of three consecutive years starting from June 2015. This proposal represents a gradual incremental approach whereby the two GAL fees will be increased from \$2,840 to \$3,170 with effect from 1 June 2015, from \$3,170 to \$3,550 with effect from 1 June 2016 and from \$3,550 to \$3,970 with effect from 1 June 2017. Details of the proposal are at Annex C. After increasing the two GAL fee items to \$3,970 on 1 June 2017, DSW would review the two GAL fee items every year with a view to bringing the fees to the target of 20% of the full cost.

## **THE AMENDMENT RULES**

9. The Adoption (Amendment) Rules 2015 and the Convention Adoption (Amendment) Rules 2015 revise the fees payable under rule 8(2) of Cap. 290A and rule 11(4) of Cap. 290D respectively to DSW for acting as GAL. It is proposed that the new fees will come into effect from 1 June 2015, 1 June 2016 and 1 June 2017.

## **LEGISLATIVE TIMETABLE**

10. The legislative timetable will be –

Publication in the Gazette	20 March 2015
Tabling at the Legislative Council for negative vetting	25 March 2015

## **EFFICIENCY IMPROVEMENT MEASURES**

11. SWD will continue to enhance efficiency and streamline work procedures so as to contain the costs of providing adoption service.

## **IMPLICATIONS OF THE AMENDMENT RULES**

12. The Amendment Rules are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of Cap. 290 and have no civil service, economic, productivity, environmental, sustainability or family implications.

13. The estimated increase in annual revenue arising from the fee revision is \$39,270 for the first year, \$45,220 for the second year and \$49,980 for the third year.

## **PUBLIC CONSULTATION**

14. The fee revision proposed is mild and should not be a factor to deter applicants from pursuing their adoption plans. Potential adoption applicants, the existing accredited bodies<sup>2</sup> for adoption service and the LegCo Panel on Welfare Services were consulted on the proposed fee adjustments. They did not express any strong views on the proposed fee adjustments.

## **PUBLICITY**

15. The Adoption (Amendment) Rules 2015 and the Convention Adoption (Amendment) Rules 2015 will be published in the Gazette on 20 March 2015. A press release will be issued on the same day and a spokesperson from the Labour and Welfare Bureau will be available to answer media enquiries.

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<sup>2</sup> Cap. 290 provides that DSW may accredit non-governmental organisations to carry out specified functions and procedural duties in relation to local and/or intercountry adoption.

## **ENQUIRIES**

16. Any enquiries on this brief should be addressed to Mr TANG Chun-yin, Assistant Secretary for Labour and Welfare (Welfare) 1B, at 2810 3933.

**Labour and Welfare Bureau**  
**18 March 2015**

**Adoption (Amendment) Rules 2015**

(Made by the Chief Justice under section 12(1) of the Adoption Ordinance (Cap. 290))

**1. Commencement**

- (1) These Rules, except rule 3(2) and (3), come into operation on 1 June 2015.
- (2) Rule 3(2) comes into operation on 1 June 2016.
- (3) Rule 3(3) comes into operation on 1 June 2017.

**2. Adoption Rules amended**

The Adoption Rules (Cap. 290 sub. leg. A) are amended as set out in rule 3.

**3. Rule 8 amended (Director of Social Welfare to be guardian ad litem subject to rule 9)**

- (1) Rule 8(2)—

**Repeal**

“\$2,840”

**Substitute**

“\$3,170”.

- (2) Rule 8(2)—

**Repeal**

“\$3,170”

**Substitute**

“\$3,550”.

- (3) Rule 8(2)—

**Repeal**

“\$3,550”

**Substitute**

“\$3,970”.

Chief Justice

2015

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### Explanatory Note

The purpose of these Rules is to amend rule 8(2) of the Adoption Rules (Cap. 290 sub. leg. A) (*rule 8(2)*) and increase in three phases the fee payable under rule 8(2) to the Director of Social Welfare for their acting as the guardian ad litem of an infant.

2. From 1 June 2015, the fee will increase from \$2,840 to \$3,170 (*first adjusted fee*).
3. From 1 June 2016, the first adjusted fee will increase to \$3,550 (*second adjusted fee*).
4. From 1 June 2017, the second adjusted fee will increase to \$3,970.

**Convention Adoption (Amendment) Rules 2015**

(Made by the Chief Justice under section 12(1) of the Adoption Ordinance (Cap. 290))

**1. Commencement**

- (1) These Rules, except rule 3(2) and (3), come into operation on 1 June 2015.
- (2) Rule 3(2) comes into operation on 1 June 2016.
- (3) Rule 3(3) comes into operation on 1 June 2017.

**2. Convention Adoption Rules amended**

The Convention Adoption Rules (Cap. 290 sub. leg. D) are amended as set out in rule 3.

**3. Rule 11 amended (appointment of guardian ad litem)**

- (1) Rule 11(4)—

**Repeal**

“\$2,840”

**Substitute**

“\$3,170”.

- (2) Rule 11(4)—

**Repeal**

“\$3,170”

**Substitute**

“\$3,550”.

- (3) Rule 11(4)—

**Repeal**

“\$3,550”

**Substitute**

“\$3,970”.

Chief Justice

2015

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**Explanatory Note**

The purpose of these Rules is to amend rule 11(4) of the Convention Adoption Rules (Cap. 290 sub. leg. D) (*rule 11(4)*) and increase in three phases the fee payable under rule 11(4) to the Director of Social Welfare for their acting as the guardian ad litem of an infant.

2. From 1 June 2015, the fee will increase from \$2,840 to \$3,170 (*first adjusted fee*).
3. From 1 June 2016, the first adjusted fee will increase to \$3,550 (*second adjusted fee*).
4. From 1 June 2017, the second adjusted fee will increase to \$3,970.

**Fee Revision Proposals under the Adoption Rules (Cap. 290A) and Convention Adoption Rules (Cap. 290D)**

Fee Item	Time of Last Revision / First Introduction	Prevailing Fees		Proposed Fees		
		Amount of Fees (\$) <i>(Effective Period)</i>	Recovery Level (%) of 20%-full cost <i>(Price Level)</i>	Amount of Fees (\$) <i>(Effective Period)</i>	Amount of Increase (\$) <i>(Percentage Increase)</i>	Recovery Level (%) of 20%-full cost <i>(Price Level)</i>
1. GAL fee under Cap. 290A	May 1997	2,840 <i>(May 1997 – May 2015)</i>	71.5% <i>(2015-16)</i>	3,170 <i>(Jun 2015 – May 2016)</i>	+ 330 (+ 11.6%)	79.9% <i>(2015-16)</i>
				3,550 <i>(Jun 2016 – May 2017)</i>	+ 380 (+ 12.0%)	85.6% <i>(2016-17)</i>
				3,970 <i>(Jun 2017 until next adjustment)</i>	+ 420 (+ 11.8%)	91.7% <i>(2017-18)</i>
2. GAL fee under Cap. 290D	Jan 2006	2,840 <i>(Jan 2006 – May 2015)</i>	71.5% <i>(2015-16)</i>	3,170 <i>(Jun 2015 – May 2016)</i>	+ 330 (+ 11.6%)	79.9% <i>(2015-16)</i>
				3,550 <i>(Jun 2016 – May 2017)</i>	+ 380 (+ 12.0%)	85.6% <i>(2016-17)</i>
				3,970 <i>(Jun 2017 until next adjustment)</i>	+ 420 (+ 11.8%)	91.7% <i>(2017-18)</i>