

立法會
Legislative Council

LC Paper No. CB(3) 713/16-17

Ref. : CB(3)/M/OR

Tel : 3919 3300

Date : 20 June 2017

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 12 July 2017

Proposed resolution under the Criminal Procedure Ordinance

The Secretary for Home Affairs will move the proposed resolution in **Appendix 1** under section 9A of the Criminal Procedure Ordinance (Cap. 221) at the above meeting. The President has directed that the proposed resolution be printed in the terms in which it was handed in on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is in **Appendix 2**.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

Criminal Procedure Ordinance

Resolution

(Under section 9A of the Criminal Procedure Ordinance (Cap. 221))

Resolved that the Legal Aid in Criminal Cases (Amendment) Rules 2017, made by the Criminal Procedure Rules Committee on 2 May 2017, be approved.

Legal Aid in Criminal Cases (Amendment) Rules 2017

(Made by the Criminal Procedure Rules Committee under section 9A 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 Secretary for Home Affairs by notice published in the Gazette.

2. Legal Aid in Criminal Cases Rules amended

The Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) are amended as set out in rules 3, 4 and 5.

3. Rule 21 amended (solicitor and counsel fees)

(1) Rule 21(8)(a)(i)—

Repeal

“\$840”

Substitute

“\$870”.

(2) Rule 21(8)(a)(ii)—

Repeal

“\$1,760”

Substitute

“\$1,830”.

(3) Rule 21(8)(a)(iii)—

Repeal

“\$1,560”

Substitute

“\$1,620”.

(4) Rule 21(8)(b)(i)—

Repeal

“\$1,000”

Substitute

“\$1,040”.

(5) Rule 21(8)(b)(ia)—

Repeal

“\$2,150”

Substitute

“\$2,230”.

(6) Rule 21(8)(b)(ii)—

Repeal

“\$1,910”

Substitute

“\$1,980”.

(7) Rule 21(8)(c)(i)—

Repeal

“\$1,360”

Substitute

“\$1,410”.

(8) Rule 21(8)(c)(ia)—

Repeal

“\$2,150”

Substitute

“\$2,230”.

- (9) Rule 21(8)(c)(ii)—

Repeal

“\$1,910”

Substitute

“\$1,980”.

4. Rule 23 added

After rule 22—

Add

“23. Transitional provision—Legal Aid in Criminal Cases (Amendment) Rules 2017

- (1) In this rule—

amending Rules (《修訂規則》) means the Legal Aid in Criminal Cases (Amendment) Rules 2017;

commencement date (生效日期) means the date on which the amending Rules come into operation.

- (2) If a solicitor or counsel is assigned to an aided person under these rules before the commencement date, these rules as in force immediately before the commencement date continue to apply to the solicitor or counsel in respect of the assignment as if the amending Rules had not been made.”.

5. Schedule amended (solicitor and counsel fees)

- (1) The Schedule, Part 2, item 1(a)—

Repeal

“\$1,000”

Substitute

“\$1,040”.

- (2) The Schedule, Part 2, item 1(b)(i)—

Repeal

“\$4,040”

Substitute

“\$4,200”.

- (3) The Schedule, Part 2, item 1(b)(ii)—

Repeal

“\$4,040”

Substitute

“\$4,200”.

- (4) The Schedule, Part 2, item 1(c)—

Repeal

“\$1,000”

Substitute

“\$1,040”.

- (5) The Schedule, Part 2, item 1(d)—

Repeal

“\$8,100”

Substitute

“\$8,420”.

- (6) The Schedule, Part 2, item 2(a)—

Repeal

“\$1,000”

Substitute

- “\$1,040”.
- (7) The Schedule, Part 2, item 2(b)(i)—
Repeal
 “\$4,040”
Substitute
 “\$4,200”.
- (8) The Schedule, Part 2, item 2(b)(ii)—
Repeal
 “\$4,040”
Substitute
 “\$4,200”.
- (9) The Schedule, Part 2, item 2(c)—
Repeal
 “\$1,000”
Substitute
 “\$1,040”.
- (10) The Schedule, Part 2, item 2(d)—
Repeal
 “\$8,100”
Substitute
 “\$8,420”.
- (11) The Schedule, Part 2, item 3(a)—
Repeal
 “\$1,360”
Substitute
 “\$1,410”.

- (12) The Schedule, Part 2, item 3(b)(i)—
Repeal
 “\$5,490”
Substitute
 “\$5,700”.
- (13) The Schedule, Part 2, item 3(b)(ii)—
Repeal
 “\$5,490”
Substitute
 “\$5,700”.
- (14) The Schedule, Part 2, item 3(c)—
Repeal
 “\$1,360”
Substitute
 “\$1,410”.
- (15) The Schedule, Part 2, item 3(d)—
Repeal
 “\$10,980”
Substitute
 “\$11,410”.
- (16) The Schedule, Part 2, item 4(a)—
Repeal
 “\$1,360”
Substitute
 “\$1,410”.
- (17) The Schedule, Part 2, item 4(b)(i)—

- Repeal**
“\$5,490”
Substitute
“\$5,700”.
- (18) The Schedule, Part 2, item 4(b)(ii)—
Repeal
“\$5,490”
Substitute
“\$5,700”.
- (19) The Schedule, Part 2, item 4(c)—
Repeal
“\$1,360”
Substitute
“\$1,410”.
- (20) The Schedule, Part 2, item 4(d)—
Repeal
“\$10,980”
Substitute
“\$11,410”.
- (21) The Schedule, Part 2, item 5(a)—
Repeal
“\$840”
Substitute
“\$870”.
- (22) The Schedule, Part 2, item 5(b)(i)—
Repeal

- “\$3,430”
Substitute
“\$3,560”.
- (23) The Schedule, Part 2, item 5(b)(ii)—
Repeal
“\$3,430”
Substitute
“\$3,560”.
- (24) The Schedule, Part 2, item 5(c)—
Repeal
“\$840”
Substitute
“\$870”.
- (25) The Schedule, Part 2, item 5(d)—
Repeal
“\$6,860”
Substitute
“\$7,130”.
- (26) The Schedule, Part 2, item 5A(a)(i)—
Repeal
“\$21,240”
Substitute
“\$22,080”.
- (27) The Schedule, Part 2, item 5A(a)(ii)—
Repeal
“\$8,600”

- Substitute**
“\$8,940”.
- (28) The Schedule, Part 2, item 5A(b)(i)—
Repeal
“\$21,240”
Substitute
“\$22,080”.
- (29) The Schedule, Part 2, item 5A(b)(ii)—
Repeal
“\$23,540”
Substitute
“\$24,480”.
- (30) The Schedule, Part 2, item 5B(a)(i)—
Repeal
“\$21,240”
Substitute
“\$22,080”.
- (31) The Schedule, Part 2, item 5B(a)(ii)—
Repeal
“\$8,600”
Substitute
“\$8,940”.
- (32) The Schedule, Part 2, item 5B(b)(i)—
Repeal
“\$21,240”
Substitute

- “\$22,080”.
- (33) The Schedule, Part 2, item 5B(b)(ii)—
Repeal
“\$23,540”
Substitute
“\$24,480”.
- (34) The Schedule, Part 2, item 5C(a)(i)—
Repeal
“\$28,320”
Substitute
“\$29,450”.
- (35) The Schedule, Part 2, item 5C(a)(ii)—
Repeal
“\$8,600”
Substitute
“\$8,940”.
- (36) The Schedule, Part 2, item 5C(b)(i)—
Repeal
“\$28,320”
Substitute
“\$29,450”.
- (37) The Schedule, Part 2, item 5C(b)(ii)—
Repeal
“\$31,400”
Substitute
“\$32,650”.

- (38) The Schedule, Part 2, item 5D(a)(i)—
Repeal
 “\$22,640”
Substitute
 “\$23,540”.
- (39) The Schedule, Part 2, item 5D(a)(ii)—
Repeal
 “\$8,600”
Substitute
 “\$8,940”.
- (40) The Schedule, Part 2, item 5D(b)(i)—
Repeal
 “\$22,640”
Substitute
 “\$23,540”.
- (41) The Schedule, Part 2, item 5D(b)(ii)—
Repeal
 “\$25,100”
Substitute
 “\$26,100”.
- (42) The Schedule, Part 2, item 6(a)(i)—
Repeal
 “\$14,130”
Substitute
 “\$14,690”.
- (43) The Schedule, Part 2, item 6(a)(ii)—

- Repeal**
 “\$7,040”
Substitute
 “\$7,320”.
- (44) The Schedule, Part 2, item 6(b)(i)—
Repeal
 “\$14,130”
Substitute
 “\$14,690”.
- (45) The Schedule, Part 2, item 6(b)(ii)—
Repeal
 “\$15,670”
Substitute
 “\$16,290”.
- (46) The Schedule, Part 2, item 7(a)(i)—
Repeal
 “\$18,390”
Substitute
 “\$19,120”.
- (47) The Schedule, Part 2, item 7(a)(ii)—
Repeal
 “\$7,710”
Substitute
 “\$8,010”.
- (48) The Schedule, Part 2, item 7(b)—
Repeal

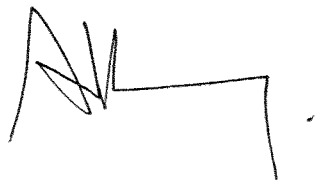
- “\$18,390”
Substitute
 “\$19,120”.
- (49) The Schedule, Part 2, item 8(a)(i)—
Repeal
 “\$18,390”
Substitute
 “\$19,120”.
- (50) The Schedule, Part 2, item 8(a)(ii)—
Repeal
 “\$7,710”
Substitute
 “\$8,010”.
- (51) The Schedule, Part 2, item 8(b)—
Repeal
 “\$18,390”
Substitute
 “\$19,120”.
- (52) The Schedule, Part 2, item 9(a)(i)—
Repeal
 “\$24,530”
Substitute
 “\$25,510”.
- (53) The Schedule, Part 2, item 9(a)(ii)—
Repeal
 “\$7,710”

- Substitute**
 “\$8,010”.
- (54) The Schedule, Part 2, item 9(b)—
Repeal
 “\$24,530”
Substitute
 “\$25,510”.
- (55) The Schedule, Part 2, item 10(a)(i)—
Repeal
 “\$19,610”
Substitute
 “\$20,390”.
- (56) The Schedule, Part 2, item 10(a)(ii)—
Repeal
 “\$7,710”
Substitute
 “\$8,010”.
- (57) The Schedule, Part 2, item 10(b)—
Repeal
 “\$19,610”
Substitute
 “\$20,390”.
- (58) The Schedule, Part 2, item 11(a)(i)—
Repeal
 “\$12,240”
Substitute

- “\$12,720”.
- (59) The Schedule, Part 2, item 11(a)(ii)—
Repeal
 “\$6,320”
Substitute
 “\$6,570”.
- (60) The Schedule, Part 2, item 11(b)—
Repeal
 “\$12,240”
Substitute
 “\$12,720”.
- (61) The Schedule, Part 2, item 13—
Repeal
 “\$1,910”
Substitute
 “\$1,980”.
- (62) The Schedule, Part 2, item 14—
Repeal
 “\$1,560”
Substitute
 “\$1,620”.
- (63) The Schedule, Part 2, item 17(a)—
Repeal
 “\$14,700”
Substitute
 “\$15,280”.

- (64) The Schedule, Part 2, item 18(a)—
Repeal
 “\$3,300”
Substitute
 “\$3,430”.
- (65) The Schedule, Part 2, item 18(b)—
Repeal
 “\$2,710”
Substitute
 “\$2,810”.
- (66) The Schedule, Part 2, item 19(a)—
Repeal
 “\$14,700”
Substitute
 “\$15,280”.
- (67) The Schedule, Part 2, item 19(b)—
Repeal
 “\$7,340”
Substitute
 “\$7,630”.
- (68) The Schedule, Part 2, item 20—
Repeal
 “\$4,860”
Substitute
 “\$5,050”.

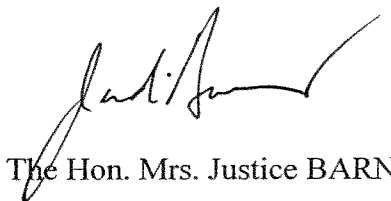
Made this 2nd day of May 2017.



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



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



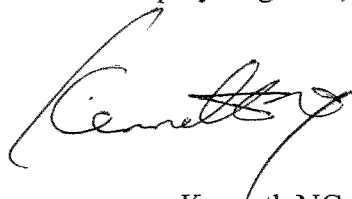
The Hon. Mrs. Justice BARNES



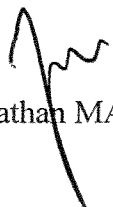
Andy HO
Senior Deputy Registrar, High Court



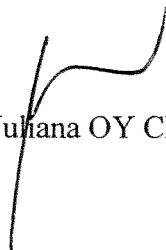
Ms Charlotte DRAYCOTT, S.C.



Kenneth NG



Jonathan MAN



Ms Juliana OY CHAN

Explanatory Note

The fees payable to solicitors or counsel assigned under the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (*principal Rules*) to represent legally aided persons are determined by the Director of Legal Aid (*Director*) according to the Table of Fees in the Schedule to the principal Rules. The Director may also re-determine some of the fees in certain circumstances under rule 21(8) of the principal Rules.

2. These Rules adjust the fees payable under that Table and that rule (see rules 3 and 5). Rule 4 provides for transitional arrangements.

(Translation)

**Speech by the Secretary for Home Affairs
at the Legislative Council meeting on 12 July 2017**

Legal Aid in Criminal Cases (Amendment) Rules 2017

President,

I move the resolution standing in my name on the Agenda.

2. Legal aid services form an integral part of the legal system in Hong Kong. The policy objective of legal aid is to ensure that all those who comply with the regulations of the Legal Aid Ordinance (Cap. 91) (“LAO”) and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. To qualify for legal aid, a person is required to satisfy both the means test and merits test as provided by the LAO.

3. The Criminal Procedure Rules Committee (“Rules Committee”) made the Legal Aid in Criminal Cases Rules (“LACCR”) (Cap. 221D) according to section 9A(1) of the Criminal Procedure Ordinance (Cap. 221). LACCR sets out the fees payable to counsel and solicitors in private practice undertaking criminal litigation work on behalf of the Legal Aid Department (“LAD”) in different levels of Court (i.e. criminal legal aid fees). The Department of Justice (“DoJ”) draws reference to the same scale of fees to engage counsel and solicitors in private practice to appear for the prosecution in criminal cases. Lawyers engaged in providing legal representation to defendants who appear in Magistrates’ Courts and Juvenile Courts through the Duty Lawyer Service are remunerated with duty lawyer fees.

Biennial review of criminal legal aid fees

4. Pursuant to the report by the Government to the Legislative Council Finance Committee in October 1992, the Government will review the above three fees on a biennial basis to take into account changes in Consumer Price Index (C) (“CPI(C)”) during the reference period. In conducting the biennial reviews, the Government takes into

account mainly general price movement during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors.

5. For the biennial review completed in 2016, noting that the CPI(C) for the reference period (i.e. July 2014 to July 2016) has increased by 4.0%, we propose to adjust the three fees upward by 4.0% accordingly. The impact of general price movement after July 2016 will be reflected in the next biennial review.

6. We have informed the Legal Aid Services Council, the Hong Kong Bar Association and the Law Society of Hong Kong of the outcome of the current biennial review. We also consulted the Panel on Administration of Justice and Legal Services in December 2016 and the Panel raised no objection to the proposed increase.

Proposed increase of prosecution fees

7. When adjusting the level of criminal legal aid fees, the issue of parity between the defendant and the prosecution should also be taken into account. Currently, DoJ adopts the same fee scale as that of the LAD under the LACCR when engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat, so as to ensure that neither LAD nor DoJ would have unfair advantage in competing for the same pool of lawyers. DoJ would administratively adjust its scale of fees for engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat upon LAD's implementation of the increased criminal legal aid fees.

Financial implications

8. The proposal to increase criminal legal aid fees and prosecution fees is estimated to incur an additional recurrent expenditure of around \$7 million in a full year by LAD and DoJ each. LAD and DoJ have included the necessary provisions in the 2017-18 Estimates to meet the costs of the proposed fee increases. The two departments will absorb the workload in effecting the changes in criminal legal aid fees and prosecution fees with their existing manpower resources.

9. Subject to the LegCo's approval of the resolution, we will submit

the Commencement Notice specifying the implementation date of the revised fees as soon as possible. May I urge Members to support the resolution. Thank you, Mr President.