

立法會
Legislative Council

LC Paper No. LS40/16-17

**Paper for the House Committee Meeting
on 17 March 2017**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 February 2017**

Tabling in LegCo : Council meeting of 1 March 2017

Amendment to be made by : Council meeting of 29 March 2017 (or that of 26 April 2017 if extended by resolution)

Allowances to Jurors (Amendment) Order 2017 (L.N. 27)

Control of Obscene and Indecent Articles (Amendment) Regulation 2017 (L.N. 28)

L.N. 27 and L.N. 28 are made by the Chief Executive in Council under section 31 of the Jury Ordinance (Cap. 3) and section 46 of the Control of Obscene and Indecent Articles Ordinance (Cap. 390) respectively.

2. L.N. 27 amends the Allowances to Jurors Order (Cap. 3A) to increase from \$725 to \$830 a day (or part of a day) the rate of allowance and the maximum rate of additional allowance payable to jurors in criminal or civil cases, or inquests under the Coroners Ordinance (Cap. 504).

3. L.N. 28 amends regulation 4 of the Control of Obscene and Indecent Articles Regulations (Cap. 390A) to increase the fees payable to adjudicators for every day on which they serve as members of the Obscene Articles Tribunal ("OAT"), from \$800 to \$955 for not less than half a day and from \$400 to \$480 for less than half a day.

4. According to paragraph 14 of the LegCo Brief (File Ref: CSO/ADM/CR 11/3221/97) issued by the Administration Wing of the Chief Secretary for Administration's Office and the Judiciary Administration ("JA") dated 22 February 2017, the new rates of allowances for jurors were proposed, taking into account the changes in the relevant stratified Median Monthly

Employment Earnings of Employees ("SMMEE")¹ from the third quarter of 2014 to the third quarter of 2016 and the need to maintain the real value of the rates of allowances to minimize any financial loss suffered by members of the public serving as jurors.

5. As stated in paragraph 22 of the LegCo Brief, JA conducted a review of fees payable to OAT adjudicators in 2016. According to paragraph 15 of the LegCo Brief, the fees payable to OAT adjudicators were proposed with reference to the latest ceiling remuneration for non-official members of boards and committees announced by the Government in June 2016 which was set at \$955 per attendance.

6. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, an information paper issued by JA relating to the above fee increases (LC Paper No. CB(4)263/16-17(01)) was circulated to members of the Panel on 7 December 2016. At the meeting of the Panel held on 19 December 2016, no member raised any questions on the paper.

7. L.N. 27 and L.N. 28 come into operation on a day to be appointed by the Chief Justice ("CJ") by notice published in the Gazette.

Copyright Tribunal Rules

(L.N. 29)

8. The Copyright Tribunal ("CT"), established under section 169(1) of the Copyright Ordinance (Cap. 528), has jurisdiction to hear and determine proceedings as specified in sections 173 and 233 of Cap. 528, such as an application for the grant of a licence in connection with a licensing scheme under section 158 of Cap. 528.

9. Pursuant to paragraph 41 of Schedule 2 to Cap. 528, the Copyright Tribunal Rules (App. I, p. BF1) in force immediately before 27 June 1997 (i.e. the date on which Cap. 528 (except certain provisions) came into force), so far as they are not inconsistent with Cap. 528, apply to regulate CT, subject to such necessary adaptations and modifications as may be necessary for their having effect under Cap. 528, pending rules to be made by CJ under section 174 of Cap. 528. Those Copyright Tribunal Rules (App. I, p. BF1), which have subsequently been amended, are contained in Cap. 528C.

¹ According to paragraphs 9 and 10 of the LegCo Brief, SMMEE was computed on the basis of the composition of employees aged 21 or above and below 65 with education level of matriculation or above, or equivalent, which was also the basis adopted for determining the rates of jurors' allowances in 2015.

10. L.N. 29, which is made by CJ under sections 174 and 175 of Cap. 528, repeals Cap. 528C and makes a new set of rules for regulating CT. L.N. 29 sets out, among others,

- (a) underlying objectives of L.N. 29 and the requirements for CT to give effect to those underlying objectives and for the parties to the proceedings and their representatives to assist CT to further those underlying objectives (Part 1);
- (b) the procedure for making an application to CT, the procedure for responding to an application, the requirements for publication of a notice of an application, and the procedure for intervening in the proceedings (Parts 2 to 4);
- (c) CT's powers relating to case management (Part 5);
- (d) the procedure for appointment of a mediator (Part 6); and
- (e) transitional arrangements for CT proceedings commenced before the commencement of L.N. 29.

11. According to paragraphs 10 and 12 of the LegCo Brief (File Ref: CITB 07/09/8) issued by the Commerce and Economic Development Bureau and the Intellectual Property Department in February 2017, the Administration launched a two-month public consultation exercise on a new set of rules for CT in December 2014. Written submissions and comments were received. In general, the respondents supported having a new set of rules which seek to modernize the practice and procedure of CT. After considering the views received, the Administration refined the rules and sought views from major stakeholders including the Hong Kong Bar Association ("HKBA") and the Law Society of Hong Kong ("LSHK") on the proposed refinements. According to the Administration, they found the finalized rules in order.

12. As advised by the Clerk to the Panel on Commerce and Industry ("Panel"), an information paper issued by the Administration on the launch of the public consultation exercise on a new set of rules for CT (LC Paper No. CB(1)340/14-15(01)) was circulated to Panel members in December 2014. At its meeting held on 17 March 2015, the Panel was briefed on the views received in the public consultation exercise and the finalization of the new rules. Whilst expressing support in principle of the proposed introduction of the new rules, members of the Panel urged the Administration to step up publicity in promoting the functions of CT to the community. At the meeting held on 25 January 2017, the Panel noted from an information paper provided by the Administration (LC Paper No. CB(1)476/16-17(01)) that major stakeholders

including HKBA and LSHK found the finalized new rules in order and that CJ had given his agreement to them. No request was made at that meeting for a further discussion on the rules.

13. L.N. 29 comes into operation on 1 May 2017.

Concluding Observations

14. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 27 and L.N. 28. The Legal Service Division is scrutinizing L.N. 29 and a further report will be made if necessary.

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