

立法會 *Legislative Council*

LC Paper No. LS70/16-17

Paper for the House Committee Meeting on 26 May 2017

Legal Service Division Report on Proposed Resolution under section 9A of the Criminal Procedure Ordinance (Cap. 221)

The Secretary for Home Affairs ("SHA") has given notice to move a motion at the meeting of the Legislative Council ("LegCo") of 7 June 2017 to seek LegCo's approval of the Legal Aid in Criminal Cases (Amendment) Rules 2017 ("the Rules") made by the Criminal Procedure Rules Committee under section 9A of the Criminal Procedure Ordinance (Cap. 221) on 2 May 2017.¹

2. The fees payable to solicitors or counsel in private practice engaged to undertake criminal litigation work on behalf of the Legal Aid Department are prescribed under rule 21(1) of the Legal Aid in Criminal Cases Rules (Cap. 221D) and set out in the Table of Fees in Part 2 of the Schedule to Cap. 221D ("the fees"). Pursuant to the Finance Committee's decision in October 1992, the fees are subject to review by the Administration on a biennial basis to take into account changes in the Consumer Price Index (C) ("CPI(C)") during the reference period. The last adjustment to the fees (L.N. 109 of 2016), which incorporated a 7.7% increase to reflect the change in CPI(C) from July 2012 to July 2014, came into effect on 14 November 2016 (L.N. 110 of 2016).

3. The Rules seek to increase the fees further by approximately 4%² to reflect the accumulated increase in CPI(C) during the reference period from July 2014 to July 2016. If approved by LegCo, the Rules would come into operation on a day to be appointed by SHA by notice published in the Gazette. By virtue of rule 4 of the Rules (which adds a new rule 23 to Cap. 221D), the new fees under the Rules apply only in relation to a solicitor or counsel assigned to an aided person under Cap. 221D on or after the commencement date.

¹ Under section 9A(1) of Cap. 221, the Criminal Procedure Rules Committee may, with the approval of LegCo, make rules providing for, among other matters, the scale of fees and costs which shall be paid to a solicitor or counsel acting for an aided person.

² The new fees reflect the 4% increase in CPI(C) but are rounded down to the nearest \$10.

4. According to the LegCo Brief (File Ref: HAB/CR 19/1/7) issued by the Home Affairs Bureau in May 2017, fees payable to lawyers in private practice engaged by the Department of Justice to appear for the prosecution in criminal cases, as well as those payable to duty lawyers providing legal assistance and representation to eligible defendants in Magistrates' Courts, Juvenile Courts and the Coroner's Court under the Duty Lawyer Service, will also be adjusted administratively to reflect the 4% increase in CPI(C). Members may refer to the LegCo Brief for further background information.

5. As advised by the Clerk to the Panel on Administration of Justice and Legal Services ("the Panel"), the Administration consulted the Panel at its meeting on 19 December 2016 on the above proposal. The Panel raised no objection to the proposed increase in the fees payable under Cap. 221D.

6. No difficulties have been identified in relation to the legal and drafting aspects of the Rules.

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