

LEGISLATIVE COUNCIL BRIEF

Legal Aid Ordinance
(Chapter 91)

REVIEW OF FINANCIAL ELIGIBILITY LIMITS OF LEGAL AID APPLICANTS

INTRODUCTION

Pursuant to section 7(a) of the Legal Aid Ordinance (Cap. 91) (LAO), the Legislative Council (LegCo), may by resolution amend the amounts of financial resources¹ specified in sections 5 and 5A of the LAO. It is proposed that the Resolution at **Annex** be passed to increase the financial eligibility limits (FELs) of legal aid applicants under the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) by 4.0% to reflect the accumulated change in the Consumer Price Index (C) (CPI(C)) recorded between July 2014 and July 2016.

Annex

JUSTIFICATIONS

The Review Mechanism

2. At present, a person whose financial resources do not exceed \$290,380 is financially eligible for legal aid under OLAS which covers civil proceedings in the District Court or higher courts as set out in section 5(1) of the LAO and criminal legal aid under the Legal Aid in

¹ “Financial resources” means the aggregate of an applicant’s yearly disposable income and disposable capital. A person’s disposable income is his/her gross income minus deductible items as allowed under the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) (the “Regulations”). A person’s disposable capital consists of all assets of a capital nature, such as the sum of his/her credit balance, money due to him/her, the value of the person’s interest in non-money resources, the value of business or share in a company etc., unless such items should be excluded from calculation under the Regulations.

Criminal Cases Rules (Cap. 221D). The corresponding upper limit for SLAS is \$1,451,900 as specified in section 5A(b) of the LAO.

3. Pursuant to the Government's report to LegCo on the Legal Aid (Amendment) Bill 1999 in September 1999, the FELs under OLAS and SLAS are to be reviewed annually to take into account general price movement and biennially to take into account changes in litigation costs and other relevant factors.

4. In the previous annual review, the Government proposed to increase the FELs by 7.7% in accordance with the CPI(C) changes between July 2012 and July 2014. We informed the LegCo Panel on Administration of Justice and Legal Services in February 2015 and the proposed increase to the FELs was approved by LegCo in July 2015. The adjusted FELs came into effect on 17 July 2015.

The Current Review

5. The Government has completed a new round of annual review on FELs. 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 FELs upward accordingly. The impact of general price movement after July 2016 will be reflected in the next review. The existing FELs and proposed FELs are shown below –

	Existing FEL	Proposed FEL²
OLAS	\$290,380	\$302,000
SLAS	\$1,451,900	\$1,509,980

THE RESOLUTION

6. A person is financially eligible for legal aid if his/her financial resources do not exceed the FELs specified in the LAO. The Resolution increases the FEL under OLAS from \$290,380 to \$302,000, and the FEL under SLAS from \$1,451,900 to \$1,509,980 as specified in sections 5 and 5A of the LAO respectively.

² Rounded to the nearest \$10.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows –

Issuing notice by the Government to move the Resolution at LegCo	21 June 2017
Moving the Resolution by the Secretary for Home Affairs at LegCo (if no Subcommittee is formed)	12 July 2017
Commencement of the proposal (if the Resolution is passed by LegCo)	Upon gazettal of the Resolution

IMPLICATIONS OF THE PROPOSAL

Financial and Civil Service Implications

8. The proposal to increase the FELs is estimated to incur an additional recurrent expenditure of around \$1.4 million in a full year by the Legal Aid Department (LAD). LAD has included the necessary provisions in the 2017-18 Estimates to meet the costs of the proposal and will reflect the resources required in the Estimates of subsequent years. LAD will absorb the workload in effecting the changes to the FELs with its existing manpower resources.

Other Implications

9. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the LAO and its subsidiary legislation. They have no competition, economic, productivity, environmental, sustainability, family or gender implications.

PUBLIC CONSULTATION

10. We have informed the Legal Aid Services Council, the Hong Kong Bar Association, the Law Society of Hong Kong and the LegCo Panel on Administration of Justice and Legal Services of the proposal.

PUBLICITY

11. A spokesperson will be available to respond to media enquiries.

ENQUIRY

12. Any enquiry on this brief should be directed to Ms Karyn CHAN, Principal Assistant Secretary for Home Affairs (Civic Affairs) 2, at 3509 8119.

Home Affairs Bureau

June 2017

Legal Aid Ordinance

Resolution of the Legislative Council

Resolution made and passed by the Legislative Council under section 7(a) of the Legal Aid Ordinance (Cap. 91) on 2017.

Resolved that the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule.

Schedule

Amendments to Legal Aid Ordinance

1. Section 5 amended (persons eligible for legal aid)

Section 5(1)—

Repeal

“\$290,380”

Substitute

“\$302,000”.

2. Section 5A amended (supplementary legal aid)

Section 5A(b)—

(a) **Repeal**

“\$290,380”

Substitute

“\$302,000”;

(b) **Repeal**

“\$1,451,900”

Substitute

“\$1,509,980”.

Explanatory Note

A person is eligible for legal aid under section 5 or 5A of the Legal Aid Ordinance (Cap. 91) if the person's financial resources do not exceed the limit specified in the section. This Resolution raises the limits.

Clerk to the Legislative Council

2017

Legal Aid Ordinance

Resolution

(Under section 7(a) of the Legal Aid Ordinance (Cap. 91))

Resolved that the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule.

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