

For information

Legislative Council
Panel on Administration of Justice and Legal Services

Annual Review of Financial Eligibility Limits of Legal Aid Applicants**PURPOSE**

This paper informs members of the outcome of the annual review of the financial eligibility limits (“FELs”) of legal aid applicants completed for the reference period from July 2016 to July 2017.

PROPOSAL

2. We propose to amend sections 5(1) and 5A(b) of the Legal Aid Ordinance (“LAO”) (Cap. 91) to increase the FELs under the Ordinary Legal Aid Scheme (“OLAS”) and the Supplementary Legal Aid Scheme (“SLAS”) by 1.7% to reflect the accumulated change in the Consumer Price Index (C) (“CPI(C)”) recorded between July 2016 and July 2017.

JUSTIFICATIONS

3. At present, a person whose financial resources¹ do not exceed \$302,000 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 Criminal Cases Rules (Cap. 221D). The corresponding upper limit for SLAS is \$1,509,980 as specified in section 5A(b) of the LAO.

4. Pursuant to the Government’s report to the Legislative Council (“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.

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 (“the Regulations”) (Cap. 91B). 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.

5. In the previous annual review, the Government proposed to increase the FELs by 4.0% in accordance with the CPI(C) changes between July 2014 and July 2016. We informed the LegCo Panel on Administration of Justice and Legal Services (“AJLS Panel”) in June 2017 and the resolution on the proposed increase to the FELs was approved by LegCo in February 2018 after scrutiny of a subcommittee² (“subcommittee”). The adjusted FELs came into effect on 9 February 2018.

THE CURRENT REVIEW

6. The Government has completed a new round of annual review on FELs. Noting that the CPI(C) for the reference period (i.e. July 2016 to July 2017) has increased by 1.7%, we propose to adjust the FELs upward by 1.7% accordingly. The impact of general price movement after July 2017 will be reflected in the next review. The existing FELs and proposed FELs are shown below –

	Existing FEL	Proposed FEL³
OLAS	\$302,000	\$307,130
SLAS	\$1,509,980	\$1,535,650

7. In conducting the previous biennial reviews, the Government sought assistance from the two legal professional bodies but was advised that information on private litigation costs was not available. No adjustment has been made to the FELs on the basis of changes in litigation costs since the introduction of the biennial review in 2000. Taking into account the views and suggestions of the subcommittee on how to take forward the biennial review, we are exploring other possible means to gather information on litigation costs and will consult the Legal Aid Services Council (“LASC”) and the AJLS Panel on the possible way forward in due course.

CONSULTATION

8. We have informed the LASC, the Hong Kong Bar Association and the Law Society of Hong Kong of the outcome of the annual review.

² At the LegCo House Committee meeting of 30 June 2017, Members decided to form a subcommittee to scrutinise the proposed resolution. The subcommittee held its first meeting on 14 July 2017 to elect the Chairman and completed its work at the second meeting held on 7 November 2017.

³ The figures are rounded to the nearest \$10.

FINANCIAL IMPLICATIONS

9. The proposal to increase the FELs is estimated to incur an additional recurrent expenditure of about \$650,000 in a full year by the Legal Aid Department (“LAD”). LAD will absorb the additional expenditure and workload in effecting the changes to the FELs with its existing resources.

WAY FORWARD

10. Section 7 of the LAO provides that LegCo may, by resolution, amend the amounts of financial resources specified in sections 5 and 5A of the LAO. In accordance with section 7 of the LAO, we plan to move a resolution in LegCo in the 2018-19 legislative session to adjust the FELs upward by 1.7%, i.e. from \$302,000 to \$307,130 for OLAS, and from \$1,509,980 to \$1,535,650 for SLAS.

ADVICE SOUGHT

11. Members are invited to note the outcome of the review and the way forward.

**Home Affairs Bureau
Legal Aid Department
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