

立法會
Legislative Council

LC Paper No. LS72/18-19

**Paper for the House Committee Meeting
on 17 May 2019**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 10 May 2019**

Tabling in LegCo : Council meeting of 15 May 2019

Amendment to be made by : Council meeting of 12 June 2019 (or that of
3 July 2019 if extended by resolution)

Solicitor Advocates (Higher Rights of Audience Certificates)

Rules

(L.N. 71)

Sections 39H to 39R of Part IIIB of the Legal Practitioners Ordinance (Cap. 159), which came into operation on 22 June 2012, relate to the granting of higher rights of audience ("HRA") to solicitors before the Competition Tribunal, the High Court and the Court of Final Appeal in civil and/or criminal proceedings, but excluding any of those rights that solicitors generally may from time to time have apart from Cap. 159. A person who has HRA under Part IIIB of Cap. 159 is known as a solicitor advocate. Solicitors who satisfy the eligibility requirements may apply to the Higher Rights Assessment Board ("Board") for HRA (section 39H). As soon as practicable after any HRA are granted by the Board, the Council of The Law Society of Hong Kong ("Law Society") must issue to the solicitor advocate a certificate in respect of those HRA (section 39P). Under section 73(1)(de) of Cap. 159, the Council of the Law Society may make rules regulating, among other things, the form of HRA certificates issued to solicitor advocates.

2. L.N. 71 is made by the Council of the Law Society under section 73(1)(de) of Cap. 159 with the prior approval of the Chief Justice. It provides for the forms of HRA certificates to be issued under section 39P of Cap. 159 by the Council of the Law Society to solicitor advocates:

- (a) in respect of civil proceedings (Form 1);
- (b) in respect of criminal proceedings (Form 2);
- (c) in respect of both civil and criminal proceedings (Form 3); and

- (d) who were previously granted HRA in respect of one class of proceedings (civil or criminal) and subsequently granted additional HRA for the other class of proceedings (Form 4).

3. According to the Law Society's website,¹ 65 solicitor advocates have been granted HRA by the Board since February 2013. Upon enquiry by the Legal Service Division ("LSD"), the Law Society has clarified that (a) no HRA certificates have been issued to any of these solicitor advocates because it is considered not practicable to do so in the absence of statutory forms; (b) as soon as L.N. 71 comes into operation, HRA certificates would be issued to the existing solicitor advocates; and (c) in the meantime, the list of solicitor advocates on the Law Society's website will be updated from time to time as and when HRA are granted by the Board.

4. L.N. 71 comes into operation on a day to be appointed by the President of the Law Society by notice published in the Gazette.

5. The Legislative Council ("LegCo") Brief (no file reference) issued by the Law Society on 10 May 2019 does not mention whether the public or the legal profession has been consulted on L.N. 71. Upon LSD's enquiry, the Law Society has advised that due to the technical nature of the HRA certificates, public consultation is not considered necessary.

6. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 71.

Declaration of Increase in Pensions Notice 2019 (L.N. 72)

Widows and Orphans Pension (Increase) Notice 2019 (L.N. 73)

7. L.N. 72 and L.N. 73 are made by the Chief Executive ("CE") under section 4 of the Pensions (Increase) Ordinance (Cap. 305) and section 3(3) of the Widows and Orphans Pension (Increase) Ordinance (Cap. 205) respectively after consultation with the Executive Council to declare, with effect from 1 April 2019, a 2.7% increase in:

- (a) the basic pensions payable to ex-officers and dependants eligible for pension under various pieces of pension legislation specified in Schedule 1 to Cap. 305;² and

¹ http://www.hklawsoc.org.hk/pub_e/hra/ [Accessed May 2019].

² The specified Ordinances are the Auxiliary Forces Pay and Allowances Ordinance (Cap. 254), Pensions Ordinance (Cap. 89), Pension Benefits Ordinance (Cap. 99), Pension Benefits (Judicial Officers) Ordinance (Cap. 401), Police Force Ordinance 1932 (37 of 1932), Police Officers (Special Cases) Pensions Ordinance 1954 (21 of 1954), and Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

- (b) the pensions payable under the Widows and Orphans Pension Ordinance (Cap. 94) to widows and orphans of officers.

8. Under section 4 of Cap. 305 and section 3 of Cap. 205, if the average monthly Consumer Price Index (A) ("CPI(A)") of a 12-month period ending on 31 March of a year exceeds the average monthly CPI(A) of the immediately preceding 12 months by more than 0.1%, CE must declare a percentage of increase in the relevant pensions equal to the excess expressed as a percentage as soon as practicable by notice in the Gazette, and specify in the notice the effective date for such an increase.

9. As mentioned in paragraph 4 of the LegCo Brief (File Ref: CSBCR/AP/4-075-005/5 Pt. 22) issued by the Civil Service Bureau on 8 May 2019, the average monthly CPI(A) for the period from 1 April 2018 to 31 March 2019, as compared with the average monthly CPI(A) for the previous 12 months, has increased by 2.7%. L.N. 72 and L.N. 73 reflect that increase by raising the relevant pensions by the same percentage.

10. According to paragraph 8 of the LegCo Brief, no consultation with pensioners and dependants is required as a pension increase in accordance with an increase in the average monthly CPI(A) is a statutory entitlement for pensioners and dependants, and L.N. 72 and L.N. 73 are made in accordance with the relevant statutory provisions, and established policy and procedures.

11. As advised by the Clerk to the Panel on Public Service, the Panel has not been consulted on L.N. 72 and L.N. 73.

Concluding observations

12. Subject to Members' views on the matters referred to in paragraph 3 above, no difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

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