

LEGISLATIVE COUNCIL BRIEF

Jury Ordinance (Cap. 3)
Control of Obscene and Indecent Articles Ordinance (Cap. 390)
Criminal Procedure Ordinance (Cap. 221)
Coroners Ordinance (Cap. 504)

ALLOWANCES TO JURORS (AMENDMENT) ORDER 2019

CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) REGULATION 2019

CRIMINAL PROCEDURE (WITNESSES' ALLOWANCES) (AMENDMENT) RULES 2019

CORONERS (WITNESSES' ALLOWANCES) (AMENDMENT) RULES 2019

INTRODUCTION

At the meeting of the Executive Council on 12 February 2019, the Council ADVISED and the Chief Executive ORDERED that –

- A
- (a) the Allowances to Jurors (Amendment) Order 2019 (Amendment Order), at **Annex A**, should be made under section 31 of the Jury Ordinance (Cap. 3) to effect the proposed increase in the rates of allowances for jurors; and
- B
- (b) the Control of Obscene and Indecent Articles (Amendment) Regulation 2019 (Amendment Regulation), at **Annex B**, should be made under section 46 of the Control of Obscene and Indecent Articles Ordinance (Cap. 390) to effect the proposed increase in the rates of fees payable to adjudicators of the Obscene Articles Tribunal (OAT).

2. On 19 February 2019, the Criminal Procedure Rules Committee (Rules Committee)¹ and the Chief Justice (CJ) respectively made the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2019 at **Annex C** under section 9B of the Criminal Procedure Ordinance (Cap. 221), and the Coroners (Witnesses' Allowances) (Amendment) Rules 2019 at **Annex D** under section 54 of the Coroners Ordinance (Cap. 504) to increase the rates of allowances for witnesses in criminal proceedings and coroners' inquests respectively. These two sets of Rules (Amendment Rules) are subject to the approval of the Legislative Council (LegCo).

JUSTIFICATIONS

Existing rates of allowances

(i) *Jurors*

3. Section 31(1) of the Jury Ordinance provides that a person who serves as a juror in a criminal or civil case, or any inquest under the Coroners Ordinance, shall be paid an allowance at such rate as the Chief Executive in Council may prescribe. If the CJ or the trial judge so orders, a juror may also be paid an additional allowance not exceeding such rate as the Chief Executive in Council may prescribe (section 31(2) and (3) of the Jury Ordinance). The existing rates of both allowance and maximum additional allowance for jurors are \$830 a day, or part of a day, during which a person serves as a juror and are specified in the Allowances to Jurors Order (Cap. 3A).

(ii) *Witnesses*

4. Section 9B(1) of the Criminal Procedure Ordinance provides that the Rules Committee may, with the approval of the LegCo, make rules providing for the payment of different rates of allowance to different classes of witnesses in criminal proceedings. Accordingly, the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221B) provide that the maximum allowance the court may allow in respect of a professional or an expert witness is \$2,770 for each day of attendance (or \$1,385 for not exceeding four hours of attendance) and that for any other

¹ The Rules Committee is established under section 9 of the Criminal Procedure Ordinance to make rules and orders regulating the practice and procedure under the Ordinance. The Committee is chaired by the Chief Judge of the High Court and comprises, among others, a barrister nominated by the Hong Kong Bar Association and a solicitor nominated by the Law Society of Hong Kong.

witness (ordinary witness) is \$515 for each day of attendance (or \$255 for not exceeding four hours of attendance).

5. Similarly, section 54(1) of the Coroners Ordinance provides that the CJ may make rules providing for the payment of different rates of allowance to different classes of witnesses in coroners' inquests. The rules are subject to the approval of the LegCo in accordance with section 54(4) of the Coroners Ordinance. At present, the maximum rates of allowances are specified in the Coroners (Witnesses' Allowances) Rules (Cap. 504E) and are the same as those in criminal proceedings as stated in paragraph 4 above.

(iii) Adjudicators

6. The OAT was set up under the Control of Obscene and Indecent Articles Ordinance to determine whether an article is obscene or indecent. Adjudicators are appointed by the CJ to help such classification and determination work. To be eligible for appointment, the person must be ordinarily resident in Hong Kong and have so resided for at least seven years; and be proficient in written English or written Chinese.

7. Section 46 of the Control of Obscene and Indecent Articles Ordinance provides that the Chief Executive in Council may make regulations to provide for, among others, the payment of fees and allowances to adjudicators. The current rates, specified in the Control of Obscene and Indecent Articles Regulations (Cap. 390A), are \$955 for every day on which an adjudicator serves as a member of the OAT for not less than half a day, and \$480 for less than half a day.

Adjustment mechanisms

Allowances for Jurors and Witnesses

8. In approving the rates of allowances for jurors and witnesses on 15 October 1993, the Finance Committee (FC) of the LegCo delegated authority to the then Secretary for the Treasury (now the Secretary for Financial Services and the Treasury (SFST)) to approve future changes in the rates of allowances for jurors and witnesses made in accordance with the movements of the following adjustment indicators on a biennial basis –

- (a) rates for jurors and witnesses (other than professional or expert witnesses) (ordinary witnesses) - to be made in accordance with the movements in the Median Monthly Employment Earnings of Employees (MMEE) in Hong Kong as recorded in the General Household Survey by the Census and Statistics Department; and
- (b) rates for professional and expert witnesses - to be made in accordance with the changes in the mid-point salary of a Medical and Health Officer in Hong Kong as recorded in the Master Pay Scale of the Civil Service Grades, Ranks and Pay Scales.

The FC also noted the intention of the Government to review the rates of allowances biennially.

9. Upon consideration of the result of the biennial review conducted by the Judiciary Administration (JA) in 2014, the basis for determining the rates of jurors' allowances has been changed from the overall MMEE (the computation of which is based on the composition of employees aged 15 or above, irrespective of their education level) to a stratified MMEE (to be computed on the basis of the composition of employees which fulfill the requirement of being empanelled as jurors, i.e. aged 21 or above and below 65 with education level of matriculation or above, or equivalent). The ceiling of the amount of additional allowance for jurors, which has been set at the same level as the jurors' allowance, has also been adjusted accordingly.

10. The existing rates of allowances for jurors and witnesses were set in July 2017 based on the biennial review in 2016.

Fees Payable to Adjudicators

11. The rates for the fees payable to adjudicators were first set in 1987 by reference to the then remuneration of Lay Magistrates². In the review in 2016, it was agreed that as the adjudicators come from the general public on a voluntary basis and there is no specific requirement on professional expertise and experience, it would be more appropriate to draw reference to the ceiling of remuneration for non-official members of boards and committees determined by the Government in revising the rates instead. The Government had no objection to this.

12. At present, the ceiling of remuneration for non-official members of boards and committees is adjusted by the Financial Services and the Treasury Bureau annually under the delegated authority of the FC having regard to the movement of the Consumer Price Index (C) (CPI(C))³.

13. The JA has tied in the reviews of the rates of fees payable to OAT adjudicators with the biennial reviews on the rates of allowances for jurors and witnesses since 2016.

² The title of the Lay Magistrate grade has been changed to Special Magistrate since 1990.

³ The FC approved in March 1993 a remuneration ceiling per member per attendance payable to non-official members serving on boards and committees set up by the Government, and delegated to the SFST (formerly Secretary for the Treasury) the authority to approve future revisions to the ceiling by reference to the movement of the CPI(C).

Proposed revisions

Allowances for Jurors and Witnesses

14. Taking into account the changes in the overall MMEE and stratified MMEE from the third quarter of 2016 to the third quarter of 2018, the mid-point salary changes of a Medical and Health Officer from 1 April 2016 to 1 April 2018, and the need to maintain the real value of the rates of allowances to minimise any financial loss suffered by members of the public serving as jurors or testifying as witnesses in courts, the JA proposed and the SFST approved the following increases in the rates of allowances –

Types of Allowances	Existing Rates	Percentage (%) Changes in Respective Adjustment Indicators for Daily Rates	Proposed Rates
(a) Allowance for jurors	\$830 a day or part of a day	+5.2%	\$875 a day or part of a day
(b) Maximum additional allowance for jurors	\$830 a day or part of a day	+5.2%	\$875 a day or part of a day
(c) Maximum allowance for ordinary witnesses	\$515 a day or \$255 for not exceeding four hours	+11.3%	\$575 a day or \$285 for not exceeding four hours
(d) Maximum allowance for professional and expert witnesses	\$2,770 a day or \$1,385 for not exceeding four hours	+10.6%	\$3,065 a day or \$1,530 for not exceeding four hours

Fees Payable to Adjudicators

15. The Government's latest ceiling remuneration for non-official members which came into effect in August 2018 is \$990 per attendance. Accordingly, the JA proposed the following increase in the daily rate of fees payable to an adjudicator who serves as a member of the OAT in accordance with the agreed adjustment mechanism stated in paragraph 11 above –

Type of Fees	Existing Daily Fees	% Changes in Remuneration Ceiling for Daily Fees	Proposed Fees
Fees payable to adjudicators for serving as OAT members	\$955 for not less than half a day or \$480 for less than half a day	+3.7%	\$990 for not less than half a day or \$495 for less than half a day

THE AMENDMENT ORDER, AMENDMENT RULES AND AMENDMENT REGULATION

16. The main provisions of the Amendment Order, Amendment Rules and Amendment Regulation for revising the rates of allowances for jurors and witnesses and fees payable to adjudicators of the OAT are –

(a) *Allowances to Jurors (Amendment) Order 2019*

The rate of allowance and the maximum rate of additional allowance for jurors are to be increased as proposed in paragraph 14 above. The existing section 2 of the Allowances to Jurors Order proposed to be amended is at **Annex E**;

E

(b) *Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2019*

The maximum rates of allowances for professional witnesses, expert witnesses and ordinary witnesses in criminal cases are to be increased as proposed in paragraph 14 above. The existing

IMPLICATIONS OF THE PROPOSAL

18. The proposed increases in the rates of allowances for jurors and witnesses and fees payable to adjudicators will entail an additional expenditure of about \$0.76 million per annum. This will be met from within the approved envelope allocation to the Judiciary.

19. The Amendment Order, Amendment Rules and Amendment Regulation are in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the Jury Ordinance, the Criminal Procedure Ordinance, the Coroners Ordinance and the Control of Obscene and Indecent Articles Ordinance. They have no staffing, economic, sustainability, environmental, family or gender implications.

PUBLIC CONSULTATION

20. On 12 December 2018, the JA issued an information paper to the LegCo Panel on Administration of Justice and Legal Services on the proposed revisions to the rates of allowances for jurors and witnesses and fees payable to adjudicators. The Panel raised no comments on the proposed increases at its meeting on 19 December 2018.

PUBLICITY

21. A press release will be issued and a spokesperson will be available for answering media enquiries.

BACKGROUND

22. Following the latest review conducted in 2018, the JA proposed and the SFST approved the increases in the rates of allowances for jurors and witnesses. The Government also had no objection to the adjustment of fees payable to OAT adjudicators with reference to the agreed adjustment mechanism in paragraph 11 above. The Amendment Order, Amendment Rules and Amendment Regulation aim to give effect to the proposed increases.

ENQUIRIES

23. Any enquiry on this brief should be directed to Ms Vivian Cheung, Assistant Director of Administration, at 2810 3946 or Ms Wendy Cheung, Assistant Judiciary Administrator (Development), at 2867 5201.

**Administration Wing
Chief Secretary for Administration's Office**

Judiciary Administration

27 February 2019

Allowances to Jurors (Amendment) Order 2019

(Made by the Chief Executive in Council under section 31 of the Jury Ordinance (Cap. 3))

1. Commencement

This Order comes into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Allowances to Jurors Order amended

The Allowances to Jurors Order (Cap. 3 sub. leg. A) is amended as set out in section 3.

3. Section 2 amended (allowances to jurors)

(1) Section 2(1)—

Repeal

“\$830”

Substitute

“\$875”.

(2) Section 2(2)—

Repeal

“\$830”

Substitute

“\$875”.

Clerk to the Executive Council

COUNCIL CHAMBER

2019

Explanatory Note

This Order amends the Allowances to Jurors Order (Cap. 3 sub. leg. A) to increase the rate of allowance and the maximum rate of additional allowance for jurors in criminal or civil cases, or in inquests under the Coroners Ordinance (Cap. 504).

**Control of Obscene and Indecent Articles (Amendment)
Regulation 2019**

(Made by the Chief Executive in Council under section 46 of the Control of Obscene and Indecent Articles Ordinance (Cap. 390))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Control of Obscene and Indecent Articles Regulations amended

The Control of Obscene and Indecent Articles Regulations (Cap. 390 sub. leg. A) are amended as set out in section 3.

3. Regulation 4 amended (fees payable to adjudicators)

(1) Regulation 4(a)—

Repeal

“\$955 for every day on which he”

Substitute

“\$990 for every day on which the adjudicator”.

(2) Regulation 4(b)—

Repeal

“\$480 for every day on which he”

Substitute

“\$495 for every day on which the adjudicator”.

Clerk to the Executive Council

COUNCIL CHAMBER

2019

Explanatory Note

This Regulation amends the Control of Obscene and Indecent Articles Regulations (Cap. 390 sub. leg. A) to increase the fees for adjudicators serving as members of an Obscene Articles Tribunal.

**Criminal Procedure (Witnesses' Allowances)
(Amendment) Rules 2019**

(Made by the Criminal Procedure Rules Committee under section 9B of the
Criminal Procedure Ordinance (Cap. 221) with the approval of the
Legislative Council)

1. **Commencement**
These Rules come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.
2. **Criminal Procedure (Witnesses' Allowances) Rules amended**
The Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) are amended as set out in rules 3, 4 and 5.
3. **Rule 3 amended (allowances for professional witnesses)**
 - (1) Rule 3(1)—
Repeal
"\$2,770"
Substitute
"\$3,065".
 - (2) Rule 3(2)—
Repeal
"\$1,385"
Substitute
"\$1,530".
4. **Rule 4 amended (allowances for expert witnesses)**
 - (1) Rule 4(1)—

- Repeal**
"\$2,770"
- Substitute**
"\$3,065".
- (2) Rule 4(2)—
Repeal
"\$1,385"
Substitute
"\$1,530".
5. **Rule 5 amended (allowances for loss of remuneration or expenses incurred)**
 - (1) Rule 5(1)—
Repeal
"\$515"
Substitute
"\$575".
 - (2) Rule 5(2)—
Repeal
"\$255"
Substitute
"\$285".

Made this 19th day of February 2019.

The Hon. Mr. Justice YEUNG
Chief Judge of the High Court
(Acting)

The Hon. Mr. Justice MACRAE, V.P.

The Hon. Mrs. Justice BARNES

Andy HO
Senior Deputy Registrar, High Court

Charlotte DRAYCOTT, S.C.

Eric T M CHEUNG

Jonathan MAN

Ms Juliana OY CHAN

Explanatory Note

These Rules amend the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) to increase the maximum rates of allowances for the following classes of witnesses in criminal proceedings before any court—

- (a) witnesses practising specific professions and attending to give professional evidence;
- (b) expert witnesses attending to give expert evidence;
- (c) witnesses attending to give evidence (other than professional or expert evidence) and losing remuneration or incurring expenses as a result.



Chief Justice

19 February 2019

Explanatory Note

These Rules amend the Coroners (Witnesses' Allowances) Rules (Cap. 504 sub. leg. E) to increase the maximum rates of allowances for the following classes of witnesses at inquests under the Coroners Ordinance (Cap. 504)—

- (a) witnesses practising specific professions and attending to give professional evidence;
- (b) expert witnesses attending to give expert evidence;
- (c) witnesses attending to give evidence (other than professional or expert evidence) and losing remuneration or incurring expenses as a result.

2. Allowances to jurors

(1) The allowance payable under section 31(1) of the Ordinance to a person who serves as a juror is \$830 in respect of each day during the whole or part of which the person serves as a juror. *(L.N. 170 of 2012)*

(2) The rate of allowance prescribed for the purpose of section 31(3) of the Ordinance is \$830 in respect of each day during the whole or part of which the person serves as a juror. *(L.N. 170 of 2012)*

(L.N. 205 of 1978; L.N. 129 of 1984; L.N. 481 of 1993; L.N. 61 of 1996; L.N. 240 of 2008; L.N. 29 of 2015; L.N. 27 of 2017)

3. Allowances for professional witnesses

- (1) The court may allow in respect of a witness practising as a member of the legal or medical profession or as a dentist or veterinary surgeon for attending to give professional evidence, whether in one or more cases, a professional witness allowance not exceeding \$2,770 for each day the witness is necessarily absent from the witness's place of residence or practice to attend for such purpose.
- (2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which the witness is necessarily absent from the witness's place of residence or practice to attend for such purpose does not exceed 4 hours, the professional witness allowance must not exceed \$1,385.

(L.N. 474 of 1993; L.N. 49 of 1996; L.N. 258 of 2008; L.N. 182 of 2012; L.N. 59 of 2015; L.N. 52 of 2017)

4. Allowances for expert witnesses

- (1) The court may allow in respect of an expert witness for attending to give expert evidence, whether in one or more cases, an expert witness allowance not exceeding \$2,770 for each day the witness is necessarily absent from the witness's place of residence, business or employment to attend for such purpose.
- (2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which the witness is necessarily absent from the witness's place of residence, business or employment to attend for such purpose does not exceed 4 hours, the expert witness allowance must not exceed \$1,385.

(L.N. 474 of 1993; L.N. 49 of 1996; L.N. 258 of 2008; L.N. 182 of 2012; L.N. 59 of 2015; L.N. 52 of 2017)

5. Allowances for loss of remuneration or expenses incurred

- (1) The court may allow in respect of a witness who attends to give evidence (other than professional or expert evidence), whether in one or more cases, and thereby loses remuneration or necessarily incurs expense (other than expense on account of lodging or subsistence) to which the witness would not otherwise have been subject, a loss allowance not exceeding \$515 for each day of attendance, in respect of that loss or expense.
- (2) If the period during which the witness is necessarily absent from the witness's place of residence, business or employment to attend to give evidence does not exceed 4 hours, the witness's loss allowance must not exceed \$255.

(L.N. 238 of 1978; L.N. 403 of 1983; L.N. 474 of 1993; L.N. 49 of 1996; L.N. 258 of 2008; L.N. 182 of 2012; L.N. 59 of 2015; L.N. 52 of 2017)

Rules

3. Allowances for professional witnesses

- (1) A coroner may allow in respect of a witness practising as a member of the legal or medical profession or as a dentist or veterinary surgeon for attending to give professional evidence, whether in one or more cases, a professional witness allowance not exceeding \$2,770 for each day the witness is necessarily absent from the witness's place of residence or practice to attend for such purpose.
- (2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which the witness is necessarily absent from the witness's place of residence or practice to attend for such purpose does not exceed 4 hours, the professional witness allowance must not exceed \$1,385.

(L.N. 260 of 2008; L.N. 184 of 2012; L.N. 61 of 2015; L.N. 54 of 2017)

4. Allowances for expert witnesses

- (1) A coroner may allow in respect of an expert witness for attending to give expert evidence, whether in one or more cases, an expert witness allowance not exceeding \$2,770 for each day the witness is necessarily absent from the witness's place of residence, business or employment to attend for such purpose.
- (2) If the witness attends on any day to give evidence, whether in one or more cases, and the period during which the witness is necessarily absent from the witness's place of residence, business or employment to attend for such purpose does not exceed 4 hours, the expert witness allowance must not exceed \$1,385.

(L.N. 260 of 2008; L.N. 184 of 2012; L.N. 61 of 2015; L.N. 54 of 2017)

5. Allowances for loss of remuneration or expenses incurred

- (1) A coroner may allow in respect of a witness who attends to give evidence (other than professional or expert evidence), whether in one or more cases, and thereby loses remuneration or necessarily incurs expense (other than expense on account of lodging or subsistence) to which the witness would not otherwise have been subject, a loss allowance not exceeding \$515 for each day of attendance, in respect of that loss or expense.
- (2) If the period during which the witness is necessarily absent from the witness's place of residence, business or employment to attend to give evidence does not exceed 4 hours, the witness's loss allowance must not exceed \$255.

(L.N. 260 of 2008; L.N. 184 of 2012; L.N. 61 of 2015; L.N. 54 of 2017)

Cap. 390A

Control of Obscene and Indecent
Articles Regulations

01/02/2018

4. Fees payable to adjudicators

An adjudicator shall be paid—

- (a) a fee of \$955 for every day on which he serves as a member of the Tribunal for not less than half a day; and
- (b) a fee of \$480 for every day on which he serves as a member of the Tribunal for less than half a day.

(L.N. 28 of 2017)