

**立法會**  
**Legislative Council**

(issued by email only)  
LC Paper No. CB(3) 502/19-20

Ref. : CB(3)/M/OR

Tel : 3919 3300

Date : 5 June 2020

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 10 June 2020**

**Debate and voting arrangements for  
three proposed resolutions in relation to legal aid policy**

Members have been informed vide LC Paper No. CB(3) 465/19-20 issued on 26 May 2020 that the Chief Secretary for Administration (“CS”) will move the following three proposed resolutions at the above meeting:

- (a) the proposed resolution under section 7(a) of the Legal Aid Ordinance (Cap. 91) (which concerns the increase of the financial eligibility limits of legal aid applicants) (“the first proposed resolution”);
- (b) the proposed resolution under section 22A of Cap. 91 (which concerns the review of the Director of Legal Aid’s first charge (i.e. the sum that the legally aided person has to pay the Director out of the money or property recovered or preserved) (“the second proposed resolution”); and
- (c) the proposed resolution under section 9A of the Criminal Procedure Ordinance (Cap. 221) (which concerns the review of criminal legal aid fees) (“the third proposed resolution”).

The speech which CS will deliver when moving the above proposed resolutions is in the **Appendix**.

2. As the three proposed resolutions relate to legal aid policy, to make effective use of the Council’s time and avoid repetition of arguments, the President has decided that **a joint debate** be held on the proposed resolutions and then they be **voted upon one by one**.

3. To assist Members in considering the proposed resolutions, I set out the relevant proceedings under which the President will:

- (a) first call upon CS to speak and move the first proposed resolution, and then propose the question on it to kick off the joint debate;
- (b) invite other Members to speak;
- (c) call upon CS to reply and order that the debate comes to a close;
- (d) put to vote the question on the first proposed resolution;
- (e) irrespective of whether the first proposed resolution is passed, invite CS to move the second proposed resolution and forthwith propose and put to vote the question on it; and
- (f) irrespective of whether the first or second proposed resolution is passed, invite CS to move the third proposed resolution and forthwith propose and put to vote the question on it.

4. Members are invited to note that each Member may only speak once in the above joint debate and the time limit is 15 minutes. The public officer will not be subject to any speaking time limit.

(Dora WAI)  
for Clerk to the Legislative Council

Encl.

**Draft**

(Please check against final delivery)

**Speech by the Chief Secretary for Administration at the  
Legislative Council meeting on 10 June 2020  
(Translation)**

**Proposed Resolutions Moved  
Under the Legal Aid Ordinance and the Criminal Procedure Ordinance**

President,

I move three legal aid related Resolutions standing in my name on the agenda. These three Resolutions aim at (1) adjusting the financial eligibility limits (“FELs”) for legal aid applicants, (2) adjusting the Director of Legal Aid’s First Charge, and (3) making the Legal Aid in Criminal Cases (Amendment) Rules 2020.

**(1) Proposed Resolution under Section 7(a) of the Legal Aid Ordinance (“LAO”) (Cap.91) regarding the FELs**

2. I introduce the first Resolution.

3. Pursuant to section 7(a) of the LAO, the Legislative Council (“LegCo”) may by resolution amend the FELs specified in sections 5 and 5A of the LAO.

4. Legal aid services form an integral part of the legal system in Hong Kong. The policy objective of legal aid is to ensure that all those who comply with the regulations of the LAO and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. To qualify for legal aid, a person must satisfy both the means test and merits test as provided by the LAO. FELs have been set respectively under the means tests of the Ordinary Legal Aid Scheme (“OLAS”) and Supplementary Legal Aid Scheme (“SLAS”).

Review of the FELs

5. As announced in the Chief Executive’s 2019 Policy Address

Supplement, the Government proposes to increase the FELs of the legal aid applicants by about 30%.

6. First, we propose to increase the FEL for OLAS by 30% from \$307,130 to \$420,400. We have mainly taken into account the higher increase in legal costs than the cumulative increase in general price movement since the last one-off adjustment in 2011, as well as the affordability of the applicants concerned. We have also made reference to the average cumulative change of a series of indices relevant to legal professionals' expenses, such as civil litigation costs of legally aided cases, nominal wage indices and rental indices for private offices for comparison with that of Consumer Price Index (C) ("CPI(C)") for the purpose.

7. Regarding SLAS, we propose to increase the FEL by 30% from \$1,535,650 to \$2,102,000. Apart from having considered the higher increase in legal costs than the cumulative increase in general price movement, we also hope that the increase can provide a modest buffer for sandwich class applicants with financial resources marginally higher than the current FEL, particularly applicants of higher age who are living on savings (not regular income) and may otherwise need to exhaust all their assets to cope with tremendous legal costs for the more complicated cases.

8. Taking this opportunity of amending the subsidiary legislation, we will also process the outcome of the annual review of FELs under the regular mechanism, i.e. increasing the FELs of OLAS and SLAS by 5.1% in accordance with the change in CPI(C) for the period between July 2017 and July 2019.

9. Making reference to the application statistics for 2019 from Legal Aid Department, the average and top 10% of the assessed financial resources (under the means test) for those approved legal aided cases under both OLAS and SLAS are way below the respective revised FELs. The proposed relaxation in FELs would enhance access to justice by rendering more people with greater economic means eligible for legal aid over a sustained period of time in the future.

10. The operation of the legal aid system in Hong Kong has been smooth. In the past three years, about 70% (around 2,600) of the legal aid applications for criminal cases and 40% (around 5,600) of those for civil cases in each year were approved. I wish to stress that the vast majority (around 80%) of the rejected applications (limited to civil cases and criminal appeal cases) had indeed failed the merits test but not the means test. The

merits test is an established statutory mechanism to guard against possible abuse of the legal aid system following the proposed relaxation of the means test and ensure the prudent use of public resources.

11. We consulted the LegCo Panel on Administration of Justice and Legal Services about the above proposed increase on 27 April and Members raised no objection to the above proposal.

12. Subject to LegCo's approval of the Resolution, the adjusted FELs will come into effect upon gazettal.

**(2) Proposed Resolution under Section 22A of the LAO Pursuant to the Review of Director of Legal Aid's ("DLA") First Charge**

13. I now explain the second Resolution. Pursuant to section 22A of the LAO, LegCo may, by resolution, amend the rate of maintenance payments that is exempted from the DLA's first charge specified in section 18A(5), as well as the amount by which the money retained by DLA may be reduced in cases of serious hardship specified in section 19B(1)(a).

14. A legally aided person who is successful in recovering or preserving any money or property in the legally aided proceedings will be required to repay DLA the sums as required under section 18A(1) of the LAO out of the money or property recovered or preserved in such proceedings. The sum that the legally aided person has to pay DLA out of the money or property recovered or preserved is called DLA's first charge. According to section 18A(5) of the LAO, DLA's first charge does not apply to maintenance payment for spouse or former spouse. Separately, DLA may exercise discretion under section 19B(1)(a) of the LAO to reduce the amount to be retained by DLA in cases of serious hardship to any person, including statutory charges.

15. The Government has completed a review on the above two exempted amounts in 2018 and considers it necessary to adjust the two amounts to reflect the inflation since 1996 (i.e. the last adjustment) and the increase of 48% in financial eligibility limit ("FEL") of the Ordinary Legal Aid Scheme in May 2011. We propose to adjust the amount specified in section 18A(5) upwards from \$4,800 to \$9,100 and the amount specified in section 19B(1)(a) upwards from \$57,400 to \$108,850, representing a proposed increase of 89.6%.

16. In addition, we also propose to introduce a mechanism for reviewing the above two amounts on an annual basis to take into account the general price movement as measured by Consumer Price Index (C), in conjunction with the annual review of FELs for legal aid in the future. The introduction of the annual review mechanism does not require amendments to the LAO.

17. The LegCo Panel on Administration of Justice and Legal Services was consulted about the outcome of the review and the way forward in April 2018 and raised no objection to the above proposal.

18. Subject to LegCo's approval of the Resolution, we will implement the proposal upon gazettal of the Resolution.

**(3) Legal Aid in Criminal Cases (Amendment) Rules 2020 (“Amendment Rules”) made under Section 9A(1) of the Criminal Procedure Ordinance**

19. As to the third Resolution, the Criminal Procedure Rules Committee makes the Legal Aid in Criminal Cases Rules (Cap. 221D) under section 9A(1) of the Criminal Procedure Ordinance (“CPO”) (Cap.221). It stipulates, among others, that the Legal Aid Department (“LAD”) will pay fees to counsel and solicitors in private practice engaged to undertake litigation work on behalf of it for criminal cases in different levels of courts (i.e. criminal legal aid fees). To ensure that neither LAD nor Department of Justice (“DoJ”) would have unfair advantage in competing for the same pool of lawyers, DoJ draws reference to the same scale of fees to engage counsel and solicitors in private practice to appear for the prosecution in criminal cases (i.e. prosecution fees). Duty lawyer fees will be paid to lawyers who provide legal representation to defendants in Magistrates’ Courts and Juvenile Courts through the Duty Lawyer Service.

20. Since the Government reported to the then LegCo Finance Committee in October 1992, the fees mentioned above (or “the Fees”, i.e. criminal legal aid fees, prosecution fees and duty lawyer fees) are subject to review on a biennial basis to take into account changes in CPI(C) during the reference period. In conducting the biennial reviews, the Government takes into account mainly general price movement during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors.

21. Regarding the biennial review completed in 2018, as the CPI(C) for the reference period (i.e. July 2016 to July 2018) increased by 4.0%, we propose to adjust the Fees upwards by 4.0% accordingly. The general price movement after July 2018 will be reflected in the next biennial review.

22. The LegCo Panel on Administration of Justice and Legal Services was consulted about the outcome of this biennial review in January 2019 and raised no objection to the proposed increase.

23. While LAD implements the increased criminal legal aid fees, DoJ will also adjust the scale of prosecution fees administratively. The Administration Wing will also adjust the duty lawyer fees through administrative means accordingly.

24. Subject to LegCo's approval of the Resolution, we will implement the Amendment Rules on 20 July this year.

25. I appeal for Members' support for the above three Resolutions. Thank you, Mr President.

- End -