

立法會
Legislative Council

LC Paper No. LS87/19-20

**Paper for the House Committee Meeting
on 29 May 2020**

**Legal Service Division Report on
Proposed Resolution under section 22A of
the Legal Aid Ordinance (Cap. 91)**

The Chief Secretary for Administration has given notice to move a motion at the Legislative Council ("LegCo") meeting of 10 June 2020 under section 22A of the Legal Aid Ordinance (Cap. 91) to seek LegCo's approval to raise both the rate of maintenance payments that is exempted from the Director of Legal Aid's ("DLA") first charge and the amount by which the moneys retained by DLA may be reduced in cases of serious hardship by 89.6%.

2. Under section 18A(1) of Cap. 91, an outstanding contribution or other sum required to be paid by a legally-aided person to DLA constitutes a first charge for the benefit of DLA on the property recovered or preserved by the person in the relevant proceedings ("First Charge"). However, the First Charge does not apply to maintenance payments for a spouse or former spouse up to the monthly rate specified in section 18A(5)(b) and (c) of Cap. 91 (i.e. \$4,800). Under section 19B(1)(a) of Cap. 91, on receiving the moneys paid to DLA in relation to a legally-aided person's proceedings, DLA is entitled to retain a sum which is equal to the amount of the First Charge and the legal costs recovered in the proceedings, provided that DLA may reduce the retained sum if DLA is satisfied that it would cause serious hardship to any person and that the reduction must not exceed the amount specified in the proviso to section 19B(1)(a) of Cap. 91 (i.e. \$57,400). The above amounts were specified in February 1997 (Ord. No. 8 of 1997).

3. The proposed resolution seeks to amend (a) the rate of maintenance payments that is exempted from the First Charge specified in section 18A(5)(b) and (c) of Cap. 91 by adjusting the amount from \$4,800 to \$9,100; and (b) the amount by which the moneys retained by DLA may be reduced in cases of serious hardship specified in the proviso to section 19B(1)(a) of Cap. 91 by adjusting the amount from \$57,400 to \$108,850.

4. According to paragraphs 5 and 6 of LegCo Brief (File Ref: CSO/ADM CR/2/3230/17 (18)) issued by the Chief Secretary for

Administration's Office and the Legal Aid Department in May 2020, when making the proposed upward adjustment of both the amount of maintenance payment specified in section 18A(5) of Cap. 91 and the amount specified in the proviso to section 19B(1)(a) of Cap. 91 by 89.6%, the Administration took into account the general price movement as measured by the Consumer Price Index ("CPI") (C) since July 1996 up to July 2019, as well as the increase of 48% to the financial eligibility limit ("FEL") of the Ordinary Legal Aid Scheme ("OLAS") in May 2011 which was made pursuant to a relevant review completed in 2010.

5. According to paragraph 7 of the LegCo Brief, the Administration proposes to introduce an administrative mechanism in future for reviewing the amounts specified in section 18A(5) of Cap. 91 and in the proviso to section 19B(1)(a) of Cap. 91 on an annual basis to take into account the general price movement as measured by CPI (C), in conjunction with the annual review of FELs of legal aid applicants under OLAS and the Supplementary Legal Aid Scheme.

6. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Administration briefed the Panel at its meeting on 30 April 2018 on the outcome of the review on the First Charge and its proposals to adjust upward the rate of maintenance payments that might be exempted from the First Charge, the amount of the First Charge to be waived in cases of serious hardship, and to introduce a mechanism to adjust the abovementioned amounts on an annual basis. The Panel raised no objection to the proposals. Some members considered that in view of the hefty fiscal reserves, the Administration should provide more relief to legally-aided persons.

7. The proposed resolution, if passed by LegCo, would come into operation on the date of publication in the Gazette.

8. No difficulties relating to the legal and drafting aspects of the proposed resolution have been identified.

Prepared by

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