

**For discussion
on 4 January 2021**

**Legislative Council
Panel on Administration of Justice and Legal Services**

**2020 Policy Address
Policy Initiatives of the Chief Secretary for Administration's Office**

INTRODUCTION

This paper sets out the policy initiatives of the Chief Secretary for Administration's Office in relation to the Judiciary and legal aid in the 2020 Policy Address and the Policy Address Supplement.

OUR VISION

2. The rule of law is a core value and the cornerstone of Hong Kong's success. Judicial independence is the linchpin in upholding the rule of law. We strive to render all necessary support to the Judiciary in promoting the effective, efficient and equitable administration of justice in Hong Kong.

3. Legal aid services form an integral part of the legal system in Hong Kong. We strive to ensure reasonable accessibility of legal aid and free legal advice services to the public which is conducive to upholding the principle of equality before the law.

ONGOING INITIATIVES

Judiciary

The New High Court and the New District Court

4. To address the long-term accommodation needs of the Judiciary, the Chief Executive announced in her 2017 Policy Address that the Government planned to construct a new High Court ("HC") building at Site 5 and the site south of Site 5 at the new Central harbourfront to relocate the existing HC in Admiralty; and a new District Court ("DC") building at Caroline Hill Road ("CHR") to house the DC, the Family Court and the Lands Tribunal. The

Central Steering Committee for the Development of the HC and the DC, established under the Judiciary, has been closely overseeing the implementation of the two projects.

5. For the HC project, relevant bureaux/departments will continue to actively iron out the interfacing issues with infrastructure projects in the vicinity, such as the proposed North Island Line and the existing Harcourt Road Fresh Water Pumping Station, to ensure the smooth delivery of the project. For the DC project, the rezoning process for the CHR site¹ has been completed by end 2020. In tandem with the rezoning of the CHR site, the gazetting procedure for road improvement works in support of the development at the CHR site has also been completed by end 2020. The finalisation of the project scope and subsequent pre-construction studies and investigation for the DC project are in progress.

Appointment of non-permanent judges from other common law jurisdictions of the Court of Final Appeal

6. The Court of Final Appeal (“CFA”) is the final appellate court in Hong Kong, hearing both civil and criminal appeals. It consists of the Chief Justice (“CJ”) and the permanent judges (“PJs”). Non-permanent judges may be invited to sit and they come from Hong Kong or other common law jurisdictions. When hearing and determining appeals, the CFA is constituted by five judges, comprising the CJ, three PJs, and one non-permanent Hong Kong judge (“HKNPJ”) or one non-permanent judge from another common law jurisdiction (“CLNPJ”).

7. Article 88 of the Basic Law provides that judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission. The Judicial Officers Recommendation Commission (“JORC”) is the statutory body constituted by the Judicial Officers Recommendation Commission Ordinance (Cap. 92) to perform the functions of an independent commission referred to in Article 88 of the Basic Law. Article 92 of the Basic Law stipulates that judges of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions. In addition, Article 90 of the Basic Law provides that in the case of appointment of judges of the CFA, the Chief Executive shall obtain the endorsement of the Legislative Council (“LegCo”).

¹ From “Other Specified Use” annotated “Sports and Recreation Club” and “Government, Institution or Community” to “Commercial (2)” and “Government, Institution or Community (2)” (G/IC(2)) for the entire CHR site. The portion where the DC will be located is rezoned from “G/IC” to “G/IC(2)”.

8. Since 1 July 1997, judges from other common law jurisdictions continue to be appointed as non-permanent judges of the CFA in accordance with the Basic Law. Since July 2017, the Chief Executive has appointed four CLNPJs, including the first two female judges, to sit on the CFA. Commencing 1 January 2021, the panel of CLNPJs will consist of 14 judges from the United Kingdom, Australia and Canada, including the Right Honourable Lord Patrick Hodge whose appointment shall take effect on 1 January 2021. These CLNPJs are judges or retired judges of the most eminent standing with profound judicial experience who enjoy the highest professional status and reputation, with good track records of judicial services in their respective jurisdictions, all of which are common law jurisdictions with whose legal systems Hong Kong has the closest connection. The Chief Executive will continue to appoint judges from other common law jurisdictions to the CFA on the recommendation of JORC in accordance with the Basic Law.

Extension of Statutory Retirement Ages for Judges and Judicial Officers

9. The Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance which came into effect in December 2019 has generally extended the statutory retirement ages for Judges and Judicial Officers² (“JJOs”) from 65 to 70 (for judges at the level of the Court of First Instance of the HC and above) and from 60 to 65 (for judicial officers below the HC level). In addition, while their retirement age is maintained at 65, District Judges are provided with discretionary extension of term of office up to an aggregate of five years. Discretionary extension arrangements are also available for other levels of Court.³ The extension of statutory retirement ages for JJOs is conducive to the recruitment of the best legal talents to the Judiciary and retention of the experience and skills of serving JJOs.

² “Judges” refer to officers in the grades of Chief Justice, CFA; Judge, CFA; Judge of the HC; and Judge of the DC. “Judicial Officers” refer to officers in the grades of Registrar, HC; Registrar, DC; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate. Special Magistrates are not included under the extension of retirement age arrangements for JJOs as they would be gradually phased out.

³ The discretionary extension arrangements beyond the statutory retirement ages for JJOs at all other levels of court (i.e. two periods of three years for CFA Judges, and five years in aggregate for other JJOs) have been maintained.

Legal Aid

Review of Financial Eligibility Limits for Legal Aid Applicants

10. The Government reviews the financial eligibility limits (“FELs”) under the Ordinary Legal Aid Scheme and Supplementary Legal Aid Scheme annually to take into account general price movement as reflected by the Consumer Price Index (C) (“CPI(C)”). On 26 June 2020, an upward adjustment of FELs by 5.1% was made effective to reflect the accumulated changes in CPI(C) from July 2017 to July 2019. In addition, a one-off upward adjustment of FELs by about 30%⁴ was also made effective on the same date having regard to the higher increase in legal costs than that of general price movement since the last one-off adjustment in 2011, as well as the affordability of private litigation services to legal aid applicants. The Government is now conducting the next round of annual review covering the reference period of July 2019 to July 2020, and will report the outcome to this Panel in due course.

Review of Director of Legal Aid’s First Charge

11. The Government reviews the amounts specified in sections 18A(5) and 19B(1)(a) of the Legal Aid Ordinance (Cap. 91) relating to the Director of Legal Aid’s first charge annually to reflect the changes in CPI(C). Following a one-off review, the two specified amounts were adjusted upwards by 89.6% with effect from 26 June 2020. The Government is now conducting the next round of annual review covering the reference period of July 2019 to July 2020, and will report the outcome to this Panel in due course.

Review of Criminal Legal Aid Fees

12. The Government reviews the criminal legal aid fees⁵, prosecution fees⁶ and duty lawyer fees⁷ (“the Fees”) on a biennial basis to take into account changes in CPI(C) during the reference period. The adjustment to

⁴ The increase of about 30% in the FELs was announced in the 2019 Policy Address Supplement. In the absence of any representative data on private litigation costs, we made reference to the average cumulative change of a series of indices relevant to legal professionals’ expenses, including civil litigation costs of legally aided cases, nominal wage indices and rental indices for private offices for comparison with that of CPI(C) for the purpose.

⁵ Fees payable to lawyers in private practice who undertake litigation work in respect of criminal cases by the Legal Aid Department.

⁶ Fees payable to lawyers in private practice engaged by the Department of Justice on a standard briefing-out basis to prosecute criminal cases on fiat.

⁷ Fees payable to duty lawyers engaged under the Duty Lawyer Scheme, which provides legal representation to eligible defendants appearing in all Magistrates’ Courts.

the Fees with respect to the last biennial review covering the reference period of July 2016 to July 2018 came into effect on 20 July 2020. We are now conducting the next round of biennial review covering the reference period of July 2018 to July 2020, and will report the outcome to this Panel in due course.

ADVICE SOUGHT

13. Members are invited to note the policy initiatives in relation to the Judiciary and legal aid as set out above.

Administration Wing
Chief Secretary for Administration's Office
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