

**For discussion
on 11 October 2021**

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

**2021 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 2021 Policy Address and the Policy Address Supplement.

OUR VISION

2. The rule of law is the cornerstone of Hong Kong's success. Judicial independence is firmly enshrined in various provisions of the Basic Law. We will continue to steadfastly safeguard judicial independence, and provide all the needed support to the Judiciary to facilitate the effective 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.

NEW INITIATIVES

Judiciary

Legislation to Enable Courts to Conduct Remote Hearing

4. The Judiciary has been making on-going efforts to make use of technology to enhance the efficiency of court operations. The impetus has substantially increased arising from the impact of COVID-19 since 2020. In particular, since April 2020, the Judiciary has been promoting the use of more remote hearings for civil proceedings for appropriate circumstances. The

Judiciary started with remote hearings using video-conferencing facilities for handling interlocutory applications at the High Court (“HC”) and then gradually extended the use of remote hearings to more types of facilities (i.e. including phone hearings), more complicated court processes (such as trials) and other levels of court (such as District Court (“DC”)). So far, over 1 000 remote hearings have been conducted and the experience has been positive.

5. At present, there are legal obstacles which prevent the general use of remote hearing for criminal proceedings. For example, the existing law generally requires the defendant to be physically present at arraignment and trial in criminal proceedings. The Judiciary plans to introduce legislative amendments to provide Judges and Judicial Officers with the flexibility to order remote hearings at all levels of courts and tribunals as appropriate, having regard to all relevant circumstances, as well as the dual requirements of open justice and fairness. This flexibility is particularly important when it is undesirable, if not impossible, to conduct physical hearing, either because of the peculiar features of a case, or because of special circumstances like public health condition, or other emergency situations which render it either undesirable or impossible for court users to physically attend the hearing. The Judiciary has conducted the first round of stakeholders’ consultation on the key policy proposals and will consult stakeholders again on the detailed legislative amendments before introducing the Bill into the Legislative Council (“LegCo”).

Legislation to Implement Procedural Reforms on the Family Justice System

6. The Judiciary plans to introduce new legislation to reform the procedural rules for the family justice system in taking forward recommendations put up in the Final Report published by the Working Party on Family Procedure Rules appointed by the former Chief Justice. One of the key recommendations is to adopt a single set of self-contained procedural rules for the family justice system. Another recommendation is to set up a new Family Procedure Rules Committee as the single rule-making authority for making the new rules and any subsequent amendments. The reforms can contribute to a common approach to family proceedings across the Family Court and the HC, resulting in a more efficient, cost-effective and user-friendly family justice system, reaping the benefits of Civil Justice Reform. With streamlined procedures, the time and costs needed for family proceedings are likely to be reduced. Adversarial excesses in the culture of family litigation might also be mitigated. The Judiciary is working towards engaging the public over the relevant legislation by the end of this year.

Additional Court Facilities for Coping with Upsurge of Court Cases Arising from Opposition to the Proposed Legislative Amendments

7. The Judiciary has been coping with the rapid and substantial upsurge in cases arising from opposition to the proposed legislative amendments, particularly those involving a large number of defendants, since 2020. As at end July 2021, over 1 900 cases were brought before various levels of courts and around 1 400 or 74% have already been disposed of. It is expected that the vast majority of cases at the Magistrates' Courts would have been disposed of by end 2021. The impending challenge falls mainly on cases to be handled by the DC. By the end of July 2021, over 300 criminal cases were received, with about 250 cases yet to be disposed of. Many of them involve ten or more defendants, entailing long trials, some of which lasting over 20 to 30 days.

8. The sudden upsurge of cases arising from opposition to the proposed legislative amendments has brought unprecedented challenges to the Judiciary in terms of court facilities and judicial resources. Operational experience indicates that arrangements for cases arising from opposition to the proposed legislative amendments tend to be more complex, mainly because quite a number of them involve a large number of defendants, legal representatives, media and public viewers, and evidence in the form of voluminous video recordings. While continued efforts have been made to increase judicial manpower through recruitment of judges and appointment of deputies, the Judiciary has been making the best possible use of around 135 existing courtrooms suitable for criminal cases in 11 law courts buildings for coping with around 80 hearings of cases arising from opposition to the proposed legislative amendments each week.

9. Given the limited number and capacity of existing courtrooms suitable for criminal cases, most of which were designed for cases with less than ten defendants, the Government has supported the Judiciary in the completion of conversion works for enlarging the capacity of ten existing DC courtrooms so as to accommodate up to ten or slightly more defendants (from six previously), and one existing mega courtroom at the West Kowloon Law Courts Building so as to accommodate up to 54 defendants (from 12 previously). In addition, with the support of the Government, the Judiciary has recommissioned the Tsuen Wan Law Courts Building in October 2021 for hearing general criminal cases of the DC so as to free up the larger DC courtrooms at the Wan Chai Law Courts Building for cases arising from opposition to the proposed legislative amendments.

10. To further address the Judiciary's need for additional court facilities to expedite processing of cases arising from opposition to the proposed

legislative amendments, the Government supports the Judiciary's initiative to construct four courtrooms (including one mega courtroom that may accommodate up to 50 defendants) and associated facilities in the Wanchai Tower during the interim years before the commissioning of the proposed new DC building at Caroline Hill Road ("CHR"). Preparatory work for the project is actively underway. It is expected that the construction works in the Wanchai Tower will start in May 2022 for completion in mid-2023.

ONGOING INITIATIVES

Judiciary

High Court and District Court Relocation

11. 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 HC building to relocate the existing HC in Admiralty; and a new DC building at 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.

12. For the HC project, relevant policy bureaux / departments will continue to actively iron out the interfacing issues with infrastructure projects in the vicinity to ensure the smooth delivery of the project. For the DC project, tendering for design and construction was initiated in August 2021. Subject to funding approval of the LegCo, the construction works will commence around mid-2022 for completion around end-2026.

Appointment of Non-permanent Judges from Other Common Law Jurisdictions of the Court of Final Appeal

13. 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 Court

of Final Appeal (“CFA”), the Chief Executive shall obtain the endorsement of LegCo.

14. Since 1 July 1997, judges from other common law jurisdictions have continued 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 to sit on the CFA. The list of CLNPJs currently consists of 12 judges from the United Kingdom, Australia and Canada. 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

15. With the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance coming into effect since December 2019, the statutory retirement ages for Judges at the level of HC and above as well as Magistrates are generally extended by five years. The extension of statutory retirement ages for Judges and Judicial Officers (“JJOs”) is conducive to the recruitment of the best legal talents to the Judiciary and retention of the experience and skills for serving JJOs.

Legal Aid

Review of Financial Eligibility Limits for Legal Aid Applicants and Director of Legal Aid’s First Charge

16. The Government reviews annually the financial eligibility limits (“FELs”) under the Ordinary Legal Aid Scheme and Supplementary Legal Aid Scheme, as well as 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, to take into account general price movement as reflected by the Consumer Price Index (C) (“CPI(C)"). We reported the outcome of the latest review for the reference period from July 2019 to July 2020 to the Panel on Administration of Justice and Legal Services (“the Panel”) in February 2021. In view of the insignificant change in CPI(C) recorded during the reference period (minus 0.1%), the time and administrative costs involved in the requisite legislative processes may not commensurate with the need for

keeping up with the market. We therefore reserve this 0.1% decrease and will consider it together with the outcome of the next annual review. The next round of review covering the reference period from July 2020 to July 2021 is underway, and we will report the result to the Panel when ready.

Review of Criminal Legal Aid Fees

17. The Government reviews the criminal legal aid fees¹, prosecution fees² and duty lawyer fees³ (“the Fees”) on a biennial basis to take into account changes in CPI(C) during the reference period. With respect to the result of the latest biennial review (for the reference period from July 2018 to July 2020), the Legislative Council has passed the Legal Aid in Criminal Cases (Amendment) Rules 2021 on 30 September 2021 to increase the criminal legal aid fees by 2.7%. Adjustment to the Fees will come into effect on 8 October 2021⁴.

Review of the operations of the legal aid system

18. We are now actively reviewing the operational details of the existing legal aid system such as the administration, distribution of cases and selection of lawyers. The review is nearly completed. We will consult the Legal Aid Services Council and report to the Panel the outcome of the review.

ADVICE SOUGHT

19. 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 October 2021

¹ Fees payable to lawyers in private practice who undertake litigation work in respect of criminal cases by the Legal Aid Department.

² 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.

³ Fees payable to duty lawyers engaged under the Duty Lawyer Scheme, which provides legal representation to eligible defendants appearing in all Magistrates’ Courts.

⁴ Adjustment to prosecution fees and duty lawyer fees are made administratively.