

**立法會**  
**Legislative Council**

LC Paper No. CB(3)153/2023

Ref. : CB(3)/M/OR

Tel : 3919 3300

Date : 9 March 2023

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 15 March 2023**

**Debate and voting arrangements for  
three proposed resolutions to be moved by  
the Chief Secretary for Administration**

Members were informed vide email (LC Paper No. CB(3)134/2023) on 23 February 2023 that the Chief Secretary for Administration (“CS”) will respectively move the following three proposed resolutions at the Council meeting of 15 March 2023:

- (a) the proposed resolution under section 7(a) of the Legal Aid Ordinance (“LAO”) (Cap. 91) (**“the first proposed resolution”**);
- (b) the proposed resolution under section 22A of LAO (**“the second proposed resolution”**); and
- (c) the proposed resolution under section 9A of the Criminal Procedure Ordinance (Cap. 221) (**“the third proposed resolution”**).

The speech which CS will deliver when moving the above proposed resolutions is in LC Paper No. CB(3)153/2023(01) attached.

2. Given that the above three proposed resolutions all relate to adjustments to the financial eligibility limits or charges/fees under the Legal Aid Schemes, 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 and/or second proposed resolution(s) is/are passed, invite CS to move the third proposed resolution and forthwith propose and put to vote the question on it.

4. Members are reminded that in accordance with Appendix IIIA to the House Rules, the **maximum duration of this joint debate (including voting on the three proposed resolutions) is four hours. Each Member may speak once up to a maximum of five minutes in the joint debate.** The public officer will not be subject to any speaking time limit.

5. For enquiries, please contact **Ms Kathy SHEK at tel. no. 3919 3328.**

(Miranda HON)  
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 15 March 2023  
(Translation)**

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

President,

I move that my first motion, as printed on the Agenda, be passed to adjust the financial eligibility limits ("FELs") for legal aid applicants. Later I will move that the other two legal aid-related motions standing in my name as printed on the Agenda be passed one after another. These two motions seek to adjust the Director of Legal Aid's ("DLA") First Charge and make the Legal Aid in Criminal Cases (Amendment) Rules 2023 ("Amendment Rules") to adjust the criminal legal aid fees.

**(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 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. Pursuant to the Government's report to the LegCo on the Legal Aid (Amendment) Bill 1999 in September 1999, FELs under OLAS and SLAS are

subject to review annually to take into account general price movement as reflected by the Consumer Price Index (C) (“CPI(C)”).

6. According to the latest round of annual review of FELs, for the reference period from July 2020 to July 2022, the CPI(C) has increased by 3.1%. In the previous round of annual review for the reference period from July 2019 to July 2020, owing to the minimal change of -0.1% in CPI(C) during the reference period, the FELs were frozen. We reserved this review result for consideration in the next round of review. Taking into account the cumulative changes in CPI(C) for the three-year period from July 2019 to July 2022, we propose to adjust the FELs upwards by 3.0%, from \$420,400 to \$433,010 for OLAS and from \$2,102,000 to \$2,165,060 for SLAS.

7. We informed the LegCo Panel on Administration of Justice and Legal Services of the above proposed increase via an information paper in November 2022. Members raised no objection to the proposal.

8. 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**

9. Mr President, the second Resolution is that 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).

10. 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 the first \$9,100 (or its equivalent) of each monthly payment of the 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, and that it is in all the circumstances just and equitable to reduce the sum to be so retained.

11. Same as FELs, in the previous round of annual review for the reference period from July 2019 to July 2020, owing to the minimal change of -0.1% in CPI(C) during the reference period, the two specific amounts were frozen. We reserved this review result for consideration in the next round of review. Taking into account the cumulative changes in CPI(C) for the three-year period from July 2019 to July 2022, we propose to adjust the amount specified in section 18A(5) upwards from \$9,100 to \$9,370 and the amount specified in section 19B(1)(a) upwards from \$108,850 to \$112,120.

12. The LegCo Panel on Administration of Justice and Legal Services was informed of the outcome of the review via an information paper in November 2022, and raised no objection to the above proposal.

13. 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 2023 (“Amendment Rules”) made under Section 9A(1) of the Criminal Procedure Ordinance**

14. 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). Pursuant to section 9A(1) of the CPO, the Amendment Rules are subject to the approval of the LegCo. 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.

15. 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 mainly

takes into account general price movement during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors.

16. Regarding the biennial review completed in 2022, as the CPI(C) for the reference period (i.e. July 2020 to July 2022) increased by 3.1%, we propose to adjust the Fees upwards by 3.1% accordingly. The general price movement after July 2022 will be reflected in the next biennial review.

17. We informed the LegCo Panel on Administration of Justice and Legal Services of the outcome of this biennial review via an information paper in November 2022. Members raised no objection to the proposed increase.

18. 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.

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

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

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