

刑事法律援助費用、檢控費用及 當值律師費用兩年一度的檢討

Biennial Review of Criminal Legal Aid Fees, Prosecution Fees and Duty Lawyer Fees

政府在 2021 年 3 月告知本局，於 2020 年完成刑事法律援助（法援）費用、檢控費用及當值律師費用（統稱為「三項費用」）兩年一度檢討的結果。

法律援助署（法援署）根據《法律援助條例》（第 91 章）和《刑事案件法律援助規則》（第 221 章，附屬法例 D）（《規則》），為獲批法援的申請人，在裁判法院的交付審判程序、區域法院或以上級別法院審理的民事和刑事案件提供法律代表。法援署會向獲委聘代表其負責刑事案件訴訟工作的私人執業大律師和律師支付刑事法援費用，有關費用按照《刑事訴訟程序條例》（第 221 章）的《規則》所訂明。

當值律師費用即為支付予當值律師計劃下當值律師的費用。該計劃由當值律師服務管理，旨在配合法援署所提供的法援服務。

檢控方面，律政司亦委聘私人執業律師代表控方出庭處理刑事案件，並會參照法援署的刑事法援費用收費表，確保法援署和律政司在爭取同一批律師提供服務時，不會有任何一方不公平地佔優。在裁判法院層面，律政司付予裁判法院“A”名單外判律師的費用會參照刑事法援費用，而付予裁判法院“B”名單外判律師的費用則與當值律師費用掛鉤，以維持控辯雙方「勢力均等」。

In March 2021, the Government informed the Council of the outcome of the 2020 biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees (collectively referred to as “the Fees”).

The Legal Aid Department (LAD) provides legal aid for representation in committal proceedings in the Magistrates’ Courts (MC), civil and criminal proceedings in the District Court (DC) or courts at levels above in accordance with the Legal Aid Ordinance (Cap. 91) and the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (LACCR). LAD will pay criminal legal aid fees to counsel and solicitors in private practice undertaking criminal litigation work on behalf of it. The fee levels are prescribed in the LACCR under the Criminal Procedure Ordinance (Cap. 221).

Duty lawyer fees are the fees payable to duty lawyers engaged under the Duty Lawyer Scheme administered by the Duty Lawyer Service, which aims at complementing the legal aid services provided by LAD.

On the prosecution side, the Department of Justice (DoJ) also engages lawyers in private practice to prosecute criminal cases on fiat. It draws reference to the same scale of criminal legal aid fees as that of LAD, so as to ensure that neither LAD nor DoJ would have unfair advantage in competing for the same pool of lawyers. At the MC level, the briefing out rates of MC “A” List counsel make reference to criminal legal aid fees, while the rates for fiat counsel on DoJ’s MC “B” List are tied to that for duty lawyer fees to maintain equality of arms.

檢討

根據前庫務司在 1992 年 10 月向前立法局財務委員會匯報，政府會兩年一度檢討三項費用，以計及參照期內丙類消費物價指數的變動。在兩年一度檢討時，政府主要考慮參照期內的一般物價變動情況，以及委聘大律師和律師時有否出現困難。

最新一輪兩年一度檢討已於 2020 年完成，政府備悉在參照期內（即 2018 年 7 月至 2020 年 7 月）丙類消費物價指數上升了 2.7%，因此建議把有關費用相應上調 2.7%。至於 2020 年 7 月至 2022 年 7 月之間一般物價的變動，將會在下一輪兩年一度的檢討中反映。

下表總結過去五次兩年一度檢討的調整費用幅度（全部皆按相關參照期內錄得的丙類消費物價指數變動）和是次檢討的建議調整幅度：

年份 Year	2010	2012	2014	2016	2018	2020
調整幅度 Adjustment	+1.6%	+9.3%	+7.7%	+4.0%	+4.0%	+2.7% (建議 proposed)

The Review

Pursuant to the report by the then Secretary for the Treasury to the Legislative Council (LegCo) Finance Committee in October 1992, the Fees are subject to review on a biennial basis to take into account changes in Consumer Price Index (C) (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.

In the biennial review of 2020, noting that the CPI(C) for the reference period (i.e. July 2018 to July 2020) increased by 2.7%, the Government proposed to adjust the Fees upwards by 2.7% accordingly. The impact of general price movement between July 2020 and July 2022 will be reflected in the next biennial review.

The following table summarises the adjustments to the Fees in the past five biennial reviews (which were all based on the CPI(C) movement of the then reference period) and the adjustment proposed for the current review –





實施情況

政府會把修訂《規則》的建議提交予由高等法院首席法官出任主席的刑事訴訟程序規則委員會（「規則委員會」）審批。如獲規則委員會批准，政府會向立法會動議一項決議案以修改法例，並在獲得立法會通過後，儘快確定生效日期。檢控費用和當值律師費用會通過行政方式予以調整，並在實施經修訂的法援費用當日同時生效。

本局歡迎上調費用的方案，並期待三項修訂費用早日生效。

Implementation

To adjust criminal legal aid fees, the Government will submit the proposed amendments to the LACCR to the Criminal Procedure Rules Committee (Rules Committee) chaired by the Chief Judge of the High Court for approval. Subject to the Rules Committee's approval, the Government will move a resolution in LegCo to effect the legislative changes and appoint the commencement date as soon as possible upon LegCo's approval. Prosecution fees and duty lawyer fees will be adjusted administratively on the same date as for the implementation of the increased criminal legal aid fees.

The Council welcomes the proposed upward adjustment and is looking forward to the commencement of the revised Fees.