

刑事法律援助费用、检控费用及 当值律师费用两年一度的检讨

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

政府在 2021 年 3 月告知本局，于 2020 年完成刑事法律援助（法援）费用、检控费用及当值律师费用（统称为「三项费用」）两年一度检讨的结果。

法律援助署（法援署）根据《法律援助条例》（第 91 章）和《刑事案件法律援助规则》（第 221 章，附属法例 D）（《规则》），为获批法援的申请人，在裁判法院的交付审判程序、区域法院或以上级别法院审理的民事和刑事案件提供法律代表。法援署会向获委聘代表其负责刑事案件诉讼工作的私人执业大律师和律师支付刑事法援费用，有关费用按照《刑事诉讼程序条例》（第 221 章）的《规则》所订明。

当值律师费用即为支付予当值律师计划下当值律师的费用。该计划由当值律师服务管理，旨在配合法援署所提供的法援服务。

检控方面，律政司亦委聘私人执业律师代表控方出庭处理刑事案件，并会参照法援署的刑事法援费用收费表，确保法援署和律政司在争取同一批律师提供服务时，不会有任何一方不公平地占优。在裁判法院层面，律政司付予裁判法院“A”名单外判律师的费用会参照刑事法援费用，而付予裁判法院“B”名单外判律师的费用则与当值律师费用挂钩，以维持控辩双方「势力均等」。

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.

检讨

根据前库务司在1992年10月向前立法局财务委员会汇报，政府会两年一度检讨三项费用，以计及参照期内丙类消费物价指数的变动。在两年一度检讨时，政府主要考虑参照期内的一般物价变动情况，以及委聘大律师和律师时有否出现困难。

最新一轮两年一度检讨已于2020年完成，政府备悉在参照期内（即2018年7月至2020年7月）丙类消费物价指数上升了2.7%，因此建议把有关费用相应上调2.7%。至于2020年7月至2022年7月之间一般物价的变动，将会在下一轮两年一度的检讨中反映。

下表总结过去五次两年一度检讨的调整费用幅度（全部皆按相关参照期内录得的丙类消费物价指数变动）和是次检讨的建议调整幅度：

年份 Year	2010	2012	2014	2016	2018	2020
调整幅度 Adjustment	+1.6%	+9.3%	+7.7%	+4.0%	+4.0%	+2.7% (建议 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 –





实施情况

政府会把修订《规则》的建议提交予由高等法院首席法官出任主席的刑事诉讼程序规则委员会（「规则委员会」）审批。如获规则委员会批准，政府会向立法会动议一项决议案以修改法例，并在获得立法会通过後，尽快确定生效日期。检控费用和当值律师费用会通过行政方式予以调整，并在实施经修订的法援费用当日同时生效。

本局欢迎上调费用的方案，并期待三项修订费用早日生效。

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.