

LEGISLATIVE COUNCIL BRIEF

Administrative Services Appeals Board Ordinance (Chapter 442)

ADMINISTRATIVE APPEALS BOARD (WITNESSES' ALLOWANCES) RULES

INTRODUCTION

A With the prior approval of the Chief Justice, the Chairman of the Administrative Appeals Board has made the Administrative Appeals Board (Witnesses' Allowances) Rules (the Rules), at Annex A, under section 30 of the Administrative Appeals Board Ordinance, to provide for the payment of allowances to witnesses summoned to appear before the Administrative Appeals Board (the AAB) to give evidence or to produce documents.

BACKGROUND AND ARGUMENT

B 2. The Administrative Appeals Board Ordinance (the AAB Ordinance) provides for the establishment, and the powers and procedure of the AAB in respect of the appeals made to it. The AAB Ordinance provides that for the purposes of an appeal, the Board may pay an allowance for the expenses of any witness summoned under the Ordinance and that the Chairman of the AAB, with the prior approval of the Chief Justice, may make rules for this purpose. Relevant extract of the AAB Ordinance is at Annex B.

3. Owing to the lack of rules providing for the payment of witnesses' allowances, no such allowances can be paid to witnesses summoned to the hearings to give evidence under the AAB Ordinance. This is unfair to the witnesses who have devoted their time or incurred expenses to attend the appeal hearings.

4. During the hearing of an appeal, an application for the payment of witnesses' allowances was received by the AAB in September 2000. The AAB agreed in principle to pay an allowance to the witnesses concerned, pending the making of the relevant rules under the AAB Ordinance to enable the payment. We therefore propose that rules should be made under the AAB Ordinance to facilitate the payment of witnesses' allowances in respect of the appeals to the AAB.

5. In line with the practice adopted in relevant appeals boards, we propose that the rates of the witnesses' allowances payable under the AAB Ordinance should follow those for the same purpose adopted by the courts as provided under the Criminal Procedure (Witnesses' Allowances) Rules, which is currently set at a maximum of \$1,690 per day for a professional/expert witness and \$280 per day for an ordinary witness. We also propose to exclude public officers summoned to appear before the AAB to give evidence during the course of their duties from receiving the witnesses' allowances.

THE RULES

6. The provisions of the Rules include –
- (a) Rule 1 provides that the Rules shall come into operation on a day to be appointed by the Director of Administration.
 - (b) Rule 2 excludes public officers who are summoned to appear before the Board in the course of their duties from receiving witnesses' allowances.
 - (c) Rule 3 sets out the application arrangements for witnesses' allowances.
 - (d) Rule 4 provides that the rates of the witnesses' allowances should be the same as that provided under the Criminal Procedure (Witnesses' Allowances) Rules.
 - (e) Rule 5 provides that any allowance shall be claimed within three months from the date on which it was allowed
 - (f) Rule 6 provides for the transitional arrangements for the payment of allowances already approved by the Board.

PUBLIC CONSULTATION

7. As the Rules aim to facilitate the payment of witnesses' allowances which involves no change in policy, no prior public consultation is considered necessary.

BASIC LAW IMPLICATIONS

8. The Department of Justice advises that the Rules do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

9. The Department of Justice advises that the Rules are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

10. The Rules will not affect the current binding effect of the AAB Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

11. We assess that the amount of witnesses' allowances to be paid out under the AAB Ordinance is unlikely to be significant. Such expenditure will be absorbed by the Director of Administration's existing resources.

LEGISLATIVE TIMETABLE

12. The legislative timetable is as follows -

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| Publication in the Gazette | 8 June 2001 |
| Tabling at the Legislative Council | 13 June 2001 |

PUBLICITY

13. A press release will be issued and a spokesman will be made available to answer media enquiries.

ENQUIRIES

14. For enquiries on this brief, please contact Ms Maggie Wong, Assistant Director of Administration at 2810 3503.

Administration Wing
Chief Secretary for Administration's Office

7 June 2001

**ADMINISTRATIVE APPEALS BOARD (WITNESSES'
ALLOWANCES) RULES**

(Made by the Chairman of the Administrative Appeals Board under section 30 of the Administrative Appeals Board Ordinance (Cap. 442) with the prior approval of the Chief Justice)

1. Commencement

These Rules shall come into operation on a day to be appointed by the Director of Administration by notice published in the Gazette.

2. Interpretation

In these Rules, unless the context otherwise requires -

" witness" 證人) means a witness summoned under the Ordinance but does not include a public officer acting in the course of his duties.

3. Application for payment of witnesses'

allowances

(1) Subject to subrule (2), where a witness attends the hearing of an appeal to give evidence (including professional or expert evidence) or to produce documents, the witness may apply -

- (a) in writing to the Secretary; or
- (b) orally to the Board during the hearing of the appeal,

for payment of an allowance referred to in rule 4.

(2) An application under subrule (1) shall be made within 14 days beginning with the day on which the witness attends the hearing of an appeal, and in the case where he attends the hearing in respect of the same appeal for more than one day, the last of those days.

4. Allowances for witnesses

The Board may, upon an application under rule 3 or on its own motion, allow in respect of a witness a professional witness allowance, expert witness

allowance or loss allowance, as the case may be, not exceeding the professional witness allowance, expert witness allowance or loss allowance that a magistrate may allow under the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg.) in respect of a witness who attends to give evidence in criminal proceedings.

5. Allowance to be claimed within 3 months

Any sum allowed under these Rules shall cease to be payable unless claimed within 3 months from the date on which it was allowed.

6. Transitional

Where the Board had, before the commencement of these Rules, agreed to pay an allowance to a witness under section 21(1)(l) of the Ordinance, the Board shall upon the commencement of these Rules allow in respect of that witness a professional witness allowance, expert witness allowance or loss allowance, as the case may be, not exceeding the professional witness allowance, expert witness allowance or loss allowance that a magistrate may allow under the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg.) in respect of a witness who attends to give evidence in criminal proceedings.

Approved this day of 2001.

Chief Justice

Made this day of 2001.

Chairman,

Administrative Appeals Board

Explanatory Note

These Rules provide for the payment of allowances to witnesses summoned to appear before the Administrative Appeals Board to give evidence or to produce documents.

**BLIS ON
INTERNET**

Section of Enactment

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Chapter: 442 Title: ADMINISTRATIVE Gazette Number:
 APPEALS BOARD
 ORDINANCE
Section: **30** Heading: **Chairman may make** Version Date: 30/06/1997
 rules

The Chairman, with the prior approval of the Chief Justice, may make rules-

- (a) providing for the practice and procedure applying to proceedings before the Board;
- (b) relating to the payment of allowances for expenses of witnesses under section 21(1)(l);
- (c) generally for the better carrying out of this Ordinance.

(Enacted 1994)

**BLIS ON
INTERNET****Section of Enactment**



Chapter: 442 Title: ADMINISTRATIVE Gazette Number:
 APPEALS BOARD
 ORDINANCE
Section: 21 Heading: **Conduct of proceedings** Version Date: 30/06/1997

- (1) For the purposes of an appeal, the Board may-
- (a) subject to this Ordinance and to rules made by the Chairman under section 30 determine its own procedure;
 - (b) receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, whether or not such material would be admissible in evidence in civil or criminal proceedings;
 - (c) by notice in writing signed by the Secretary, require any person to attend before it at any hearing and to give evidence and produce documents;
 - (d) administer oaths and affirmations;
 - (e) examine on oath, affirmation or otherwise any person attending before it and require such person to answer all questions put by or with the consent of the Board;
 - (f) determine the manner in which the material referred to in paragraph (b) shall be received;
 - (g) with the consent of the parties to the appeal, determine the appeal without an oral hearing on the basis of written submissions only;
 - (h) if it appears to the Board that the respondent has reversed the decision appealed against, determine the appeal summarily in favour of the appellant without a hearing and without calling on anyone to attend or to appear before it;
 - (i) adjourn the determination of any appeal as it may deem fit;
 - (j) subject to subsection (2), confirm, vary or reverse the decision that is appealed against or substitute therefor such other decision or make such other order as it may think fit;
 - (k) subject to section 22, make an award to any of the parties to the appeal of such sum, if any, in respect of the costs of and relating to the appeal;
 - (l) pay an allowance for the expenses of any witness summoned under this Ordinance;
 - (m) do all things-
 - (i) ancillary to the powers conferred by this section; or
 - (ii) reasonably necessary for the discharge of its functions under this Ordinance.
- (2) The Board, in the exercise of its powers under subsection (1)(j), shall have regard to any statement of policy lodged by the respondent with the Secretary under section 11(2)(a)(ii), if it is satisfied that, at the time of the making of the decision being the subject of the appeal, the appellant was or could reasonably have been expected to be aware of the policy.
- (3) The Board, on the determination of any appeal, may order that the case being the subject of the appeal as so determined be sent back to the respondent for the consideration by the respondent of such matter as the Board may order.

(Enacted 1994)