

Law Reform Commission Press Release

Release of consultation paper on criteria for service as jurors

A Law Reform Commission (LRC) sub-committee today (January 28) released a consultation paper on the criteria for service as jurors.

Amongst other recommendations, the sub-committee proposes to extend the upper age limit for jury service, to reduce the categories of persons automatically exempt from jury service and to provide legislative definitions of what constitutes "residence" and "good character" for jury purposes.

The existing legislation that applies to the appointment of jurors requires that a juror must be a resident of Hong Kong, between 21 and 65 years of age, not afflicted by blindness, deafness or other disability preventing him from serving as a juror, be of good character, and have *"a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings."*

The legislation does not prescribe how that linguistic competence is to be measured, nor does it define what constitutes "good character" or "residence" for jury purposes. As a result, an LRC sub-committee was asked to consider whether the existing criteria for jury service are appropriate, and whether they should be set out with greater clarity and precision.

The Hon Mr Justice Woo, the chairman of the LRC's Juries sub-committee, said that the jury plays a key role in Hong Kong's criminal justice system and allows members of the community to participate in, and contribute to, the operation of that system. He added that it is important that the jury system should remain comprehensible and accountable to the community it exists to serve.

The consultation paper recommends that the minimum age for jury service should be maintained at 21, but that the upper age limit should be raised from 65 to 70. An individual who has attained 65 years of age should, however, be entitled as of right to exemption from jury service if he makes such an application.

To ensure that jurors have a reasonable connection with Hong Kong and have some understanding of local norms, values and culture, the consultation paper proposes that potential jurors must have been resident in Hong Kong for a period of three years or more immediately before they are issued with a Notice of Jury Service. If a juror has been issued with a Hong Kong identity card three years or more prior to his being issued with that Notice, he should be presumed to be a resident of Hong Kong (unless the contrary is proved).

As to the "good character" requirement, the consultation paper recommends that no person should be eligible for jury service if he has a previous criminal conviction other than a spent conviction, or if he is charged with an indictable offence and has not yet been tried, or if he is charged with any offence and remanded in custody pending trial. The consultation paper rejects the idea of excluding undischarged bankrupts from jury service and considers it would be wrong to automatically characterise undischarged bankrupts as not of "good character."

In relation to educational standards, the consultation paper proposes that the existing administrative practice of requiring jurors to have attained an education standard of at least Form 7 or its equivalent should be maintained, but that this should be stipulated in legislation. This is to ensure that jurors have the ability to understand and comprehend the evidence and to discharge their duties as jurors properly. However, as a new curriculum for secondary education will be implemented in 2012 and a single public examination leading to the Hong Kong Diploma of Secondary Education ("HKDSE") will be taken at the end of Secondary Six (what is now Form Six), the consultation paper proposes that the education standard required of jurors should be amended in 2012 to require a juror to have completed Secondary Six and achieved Level 3 in both English and Chinese in the HKDSE or its equivalent.

The consultation paper does not propose any changes to the existing provisions relating to jury service and the disabled.

The consultation paper notes that the Jury Ordinance uses the term "exemption", without differentiating between different types of exemption. The consultation paper suggests that different terms should be adopted in different situations so that the reasons for the individual's exemption or exclusion from jury service may be more readily understood. The proposed terms are:

- (a) *"ineligible for jury service"* when a person is not qualified to be a juror because of age, unsoundness mind, or illiteracy, etc;
- (b) *"excluded from jury service"* when a person is excluded on a point of principle;
- (c) *"exempt"* for those categories of persons whose services are much needed and in respect of whom there would be substantial inconvenience to the public if they were required to serve on a jury;
- (d) *"excused"* when an eligible juror is excused from serving on a particular occasion upon application being made to the Registrar or the trial judge, but his service would be required for future cases.

The consultation paper suggests that the guiding principles for granting exemptions, exclusions or deferrals should be set out in the Jury Ordinance and that the justifications should include the fact that:

- (a) substantial inconvenience to the public may result;
- (b) undue hardship or extreme inconvenience may be caused to the individual concerned;
- (c) the person is involved in the administration of justice so that bias may result or may be perceived to result; and
- (d) jury service is incompatible with the person's tenets or beliefs.

On the basis of these principles, the consultation paper recommends that certain categories of persons who are currently exempt from jury service should no longer be exempt, but that they should instead be able to apply to be excused from jury service in a particular case.

Those who should no longer be exempt from jury service include: justices of the peace; apprentices or trainees; doctors, dentists and veterinary surgeons; newspaper editors; chemists and druggists; clergymen and those holding similar positions in any congregation or those who are full-time members of any monastery, etc; pilots, navigators and wireless operators and other aircraft crew-members; and the spouses of certain members of the Judiciary. The consultation paper proposes that the Registrar or trial judge may defer jury service by any persons in these categories, or exclude or excuse them from jury service, if satisfied with the merits of their application.

Copies of the consultation paper are available on request from the LRC's Secretariat at 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The consultation paper can also be accessed on the LRC's website at <www.hkreform.gov.hk>.

The consultation period will end on 30 April 2008.

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Monday, 28 January 2008