

## Report on criteria for service as jurors released

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The Law Reform Commission (LRC) today (June 21) released a report on the criteria for service as jurors.

Amongst other recommendations, the LRC 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 LRC's Secretary, Mr Stuart Stoker, said: *"The current legislation doesn't define what is meant by 'good character' or 'residence', nor does it set out how language competence is to be measured for jury purposes. As a result, the LRC was asked to consider whether the existing criteria for jury service are appropriate, and whether they should be set out more clearly and with greater precision."*

Mr Stoker said that the review was carried out by a sub-committee chaired by the Hon Mr Justice Woo which issued a consultation paper in 2008 setting out its provisional proposals. The responses to that paper have been taken into account in formulating the final proposals in the report.

The report 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 report proposes that potential jurors must have been issued with a Hong Kong identity card three years or more prior to their being issued with a notice of jury service and be resident in Hong Kong at the time the notice is issued.

As to the "good character" requirement, the report recommends that no person should be eligible for jury service if he or she:

- (a) has been convicted at any time in Hong Kong or elsewhere of a criminal offence for which he or she has been sentenced to imprisonment (whether suspended or not) exceeding three months, without the option of a fine;

- (b) has been convicted within the previous five years of a criminal offence for which he or she has been sentenced to imprisonment (whether suspended or not) for three months or less;
- (c) is awaiting trial for an indictable offence; or
- (d) is remanded in custody pending trial for any offence.

A "spent" conviction under the Rehabilitation of Offenders Ordinance (Cap 297) would not be regarded as a criminal conviction for these purposes.

The report 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 LRC does not think it desirable that the existing educational standards required for jury service should be lowered. The LRC 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 secondary education structure will be fully implemented by 2012, with a single public examination leading to the Hong Kong Diploma of Secondary Education to be taken at the end of Secondary Six (what is now Form Six), the report proposes that the education standard required of jurors should be completion of either Form 7, Secondary Six, the IB Diploma, or such other secondary education as the Registrar of the High Court considers equivalent.

The report recommends that the guiding principles for consideration by the court of applications for excusal from, or deferrals of, jury service should be set out in the Jury Ordinance. The justifications for excusal or deferral should include the fact that:

- (a) substantial inconvenience to the public may result;
- (b) undue hardship or undue inconvenience may be caused to the person or any person under his or her care or supervision;
- (c) the person is involved in the administration of justice so that bias may result or may be perceived to result;
- (d) jury service is incompatible with the person's tenets or beliefs; or
- (e) it is in the interests of justice to do so.

The LRC has reviewed the categories of persons who are currently exempt from jury service and has concluded that a number should no longer be exempt, but should instead be able to apply to be excused from jury service in a particular case, or to have their jury service deferred.

Those who the LRC recommends should no longer be exempt from jury service include: public officers serving in a training or apprentice rank; editors of daily newspapers in Hong Kong; registered pharmacists; clergymen and those holding similar positions in any congregation or those who are full-time members of any monastery, etc; full-time students; pilots, navigators and wireless operators and other aircraft crew-members; justices of the peace; and the spouses of certain members of the Judiciary.

The report proposes that the Registrar of the High Court or the trial judge may defer jury service by any persons in these categories, or excuse them from jury service, if satisfied with the merits of their application.

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

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