

Head 92 — DEPARTMENT OF JUSTICE

Controlling officer: the Director of Administration and Development will account for expenditure under this Head.

Estimate 2000–01	\$955.6 m
Establishment ceiling 2000–01 (notional annual mid-point salary value) representing an estimated 1 121 non-directorate posts at 31 March 2000 rising by one post to 1 122 posts at 31 March 2001.....	\$450.3 m
In addition there will be an estimated 78 directorate posts at 31 March 2000 reducing by one post to 77 posts at 31 March 2001.	
Capital Account commitment balance	\$14.1 m

Controlling Officer's Report

Programmes

- Programme (1) Prosecutions**
- Programme (2) Civil**
- Programme (3) Legal Policy**
- Programme (4) Law Drafting**
- Programme (5) International Law**

These programmes contribute to Policy Area 11: Legal Administration (Secretary for Justice).

Detail

Programme (1): Prosecutions

	1998–99 (Actual)	1999–2000 (Approved)	1999–2000 (Revised)	2000–01 (Estimate)
Financial provision (\$m)	353.8	425.7 (+20.3%)	381.9 (–10.3%)	409.8 (+7.3%)

Aim

2 The aim is to advise and decide whether or not criminal proceedings should be undertaken and to prosecute cases in the courts.

Brief Description

3 The Prosecutions Division advises on and prosecutes criminal cases in all the courts in Hong Kong. In most appeals to the Court of Final Appeal and the Court of Appeal, a senior member of the Prosecutions Division appears in court to represent the prosecution. In many cases in the Court of First Instance and some in the District Court, the prosecution is conducted by Government Counsel. Most of the cases in the Magistrates' Court are prosecuted by Court Prosecutors. Some cases are briefed out to members of the private Bar and solicitors in private practice. The Division also advises the law enforcement agencies generally on criminal law and practice and the effect of legislation.

4 These advocacy and advisory functions are performed by various specialist sections within the Prosecutions Division. These sections deal with trial preparation, trials, training and developing bilingualism, vice, obscenity and gambling cases, complaints against Police, appeals, the Basic Law and human rights, immigration cases, coroners' inquests, labour cases, ICAC cases, Customs & Excise cases, commercial crime cases, and miscellaneous advice.

5 The aim of the programme has been broadly achieved and the overall performance of the programme as reflected by the key indicators is satisfactory.

6 The key performance measures in respect of the Prosecutions Division are:

Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
cases conducted by Government Counsel	3 828	4 125	4 130
cases conducted by Counsel instructed to prosecute	993	776	780
average number of court days for court specialists.....	97	94	95
number of court days undertaken by Government Counsel who are not court specialists	5 844	5 638	5 650
number of court days undertaken by Court Prosecutors in Magistrates' Court	15 031	15 230	15 250
number of court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors.....	937	73	75

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	1998 (Actual)	1999 (Actual)	2000 (Estimate)
number of trials prepared in the Court of First Instance	451	415	420
number of trials prepared in the District Court	684	586	590
items of legal advice provided	13 675	12 974	12 980
number of appeals conducted.....	1 882	1 995	2 000

7 The conviction rates for 1998 and 1999 are:

	1998 (Actual)	1999 (Actual)
Magistrates' Court		
- defendants convicted after trials	52.6%	55.6%
- defendants convicted after trials and defendants convicted on their own pleas.....	73.4%	75.8%
District Court		
- defendants convicted after trials	61.9%	69.4%
- defendants convicted after trials and defendants convicted on their own pleas.....	83.7%	87.6%
Court of First Instance		
- defendants convicted after trials	47.1%	69.9%
- defendants convicted after trials and defendants convicted on their own pleas.....	80.6%	90.4%

It should be noted that while it is the duty of Counsel and Court Prosecutors to prosecute vigorously in courts, they have to act in a fair and objective manner. It is wrong to strive to secure a conviction at all costs. The question of guilt or innocence is a matter for the court to decide. Therefore, conviction rates in criminal cases are not and should not be taken as performance indicators. They are published regularly for reference only.

Matters Requiring Special Attention in 2000–01

8 During 2000–01, the Division will:

- develop a specialised team for prosecution of computer crime;
- strengthen the existing specialist teams for prosecution of white collar crime;
- continue efforts to improve our capacity to process and to conduct cases which go to the Court of Final Appeal; and
- continue to provide training for counsel to conduct court proceedings in Chinese.

Programme (2): Civil

	1998–99 (Actual)	1999–2000 (Approved)	1999–2000 (Revised)	2000–01 (Estimate)
Financial provision (\$m)	282.2	298.5 (+5.8%)	324.5 (+8.7%)	323.7 (–0.2%)

Aim

9 The aim is to provide legal advice to Government in civil matters, to undertake civil litigation and to draft contracts on commercial and other matters.

Brief Description

10 The work of the Civil Division involves:

- representing Government and other public bodies in courts and tribunals in all forms of civil litigation (including arbitration and mediation);
- providing legal advice on land law matters;
- providing legal advice on commercial law matters and drafting commercial contracts, licences and franchises; and
- providing legal advice on legislation and civil law matters to Government.

11 The aim of the programme has been broadly achieved and the overall performance of the programme as reflected by the key indicators is satisfactory.

12 The key performance measures in respect of the Civil Division are:

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Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
civil proceedings (including arbitration) brought by Government	1 292	1 608	2 260
civil proceedings (including arbitration) brought against Government	947	1 241	1 455
number of person days of court appearances.....	1 015	814	820
number of civil litigation cases current on 31 December	9 286	10 426	11 620
items of legal advice provided.....	13 026	13 212	16 230
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted	406	373	1 710

Note: The estimated figures for 2000 have taken into account the transfer of workload to the department upon the reorganisation of municipal services on 1 January 2000.

Matters Requiring Special Attention in 2000–01

13 During 2000–01, the Division will:

- advise on proceedings against Government, in particular those involving public law claims and related appeals;
- recover costs and enforce judgment debts;
- draft, vet and advise on the Chinese texts of contracts, undertakings, tender documents, public franchises and other legal documents for Government;
- provide legal advice on a wide range of land matters, including town planning, environmental protection, control of building operations, sewage and flood control, new railway scheme and cable car system;
- provide legal advice on the regulation of companies, securities, insurance, information technology, transportation, television broadcasting and telecommunications including proposals for reform;
- provide counsel to the Insider Dealing Tribunal;
- provide legal advice on Public Sector Reform on the privatisation, corporatisation and outsourcing of the Government's commercial activities;
- provide legal advice on occupational retirement and provident fund schemes; and
- implement the initiatives in the proposed composite Securities and Futures legislation including the automation of trading facilities and the conduct of inquiries into market misconduct.

Programme (3): Legal Policy

	1998–99 (Actual)	1999–2000 (Approved)	1999–2000 (Revised)	2000–01 (Estimate)
Financial provision (\$m)	55.8	67.6 (+21.1%)	60.9 (–9.9%)	67.2 (+10.3%)

Aim

14 The aim is to advise Government on matters raising questions of legal policy; to assist in formulating policy, particularly in relation to the legal system and the legal profession; to provide support to the Secretary for Justice in relation to the discharge of her duties; to provide advice in respect of the Basic Law, human rights, constitutional and electoral affairs as well as the law and legal developments in the Mainland, and to review chosen areas of the law and provide secretariat support for the Law Reform Commission.

Brief Description

15 The work of the Secretary for Justice's Office and the Legal Policy Division includes:

- advising whether proposed legislation or particular policy is contrary to established principles underlying the legal system;
- providing support for the Secretary for Justice in relation to her duties as a member of the Executive Council, a designated officer attending meetings of the Legislature and as legal adviser to the Chief Executive;
- advising on legal issues arising out of prisoners' petitions for remission, references of cases to the Court of Appeal under the Criminal Procedure Ordinance and responses to public enquiries and complaints;
- providing specialised human rights advice to ensure the consistency of policy and legislation with the human rights requirements of the Basic Law and of international treaties extended to Hong Kong;

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- promoting Adaptation Bills in relation to ordinances concerning the legal system;
- providing advice and information on the laws of the Mainland and developing working relationships with counterparts in the Mainland;
- providing advice on Hong Kong's constitutional and electoral law on the legislation required and on the conduct and supervision of elections;
- providing advice to the Administration on procedures of the Legislature;
- providing advice and lectures on the Basic Law and establishing a Basic Law Database; and
- giving advice and providing research and support to facilitate the work of the Law Reform Commission.

16 The aim of the programme has been broadly achieved and the overall performance of the programme as reflected by the key indicators is satisfactory.

17 The key performance measures in respect of legal policy are:

Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
number of Bills being promoted per session of the Legislature.....	5	5	5
number of petitions handled.....	84	83	83
items of written advice given on general legal policy issues ..	1 114	1 450	1 450
items of legal advice given on human rights issues	738	939	939
number of law reform projects being handled	10	10	10
number of speeches prepared (both for the Legislature and elsewhere).....	81	98	98
items of legal advice given on Mainland law and related matters	203	357	350
items of legal advice given on the Basic Law and constitutional matters.....	543	920	920
number of Basic Law seminars conducted	25	17	17

Matters Requiring Special Attention in 2000–01

18 During 2000–01, the Secretary for Justice's Office and the Legal Policy Division will:

- continue to provide legal advice in respect of the implementation of the Basic Law and the development of our new constitutional order;
- continue to provide prompt and reliable human rights advice including advice in respect of anti-discrimination legislation;
- continue to develop expertise in respect of legislative powers, procedures and practices in the context of the Basic Law;
- continue to develop working relationships with counterparts in the Mainland in particular areas which call for co-operation between the Hong Kong Special Administrative Region (HKSAR) and the Mainland; and
- continue to organise talks, seminars and visits in order to develop and enhance mutual understanding of the legal systems in HKSAR and the Mainland.

Programme (4): Law Drafting

	1998–99 (Actual)	1999–2000 (Approved)	1999–2000 (Revised)	2000–01 (Estimate)
Financial provision (\$m)	99.9	125.3 (+25.4%)	115.4 (–7.9%)	119.9 (+3.9%)

Aim

19 The aim is to draft sound and enforceable legislation.

Brief Description

20 The work of the Law Drafting Division involves:

- drafting of legislation in the English and Chinese languages and steering such draft legislation through the law-making process;
- adapting Hong Kong laws to conform with the Basic Law;

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- publishing the loose-leaf edition of laws; and
- maintaining the Bilingual Laws Information System database.

21 The aim of the programme has been broadly achieved and the overall performance of the programme as reflected by the key indicators is satisfactory.

22 The key performance measures in respect of the Law Drafting Division are:

Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
number of bills gazetted	65	107	50
number of subsidiary legislation gazetted	398	332	500
pages of bills/subsidiary legislation gazetted (English)	2 387	3 274	2 800
pages of bills/subsidiary legislation gazetted (Chinese).....	2 387	3 274	2 800
pages of legislation published in the loose-leaf edition.....	28 814	15 586	8 000
English-Chinese Glossary of Legal Terms (number of entries)..	31 044	—	—
Chinese-English Glossary of Legal Terms (number of entries)..	—	11 440	—

23 The Adaptation of Laws Programme is in active progress. Under the Programme, 574 Ordinances were identified as requiring adaptation. The drafting work in respect of the adaptation of 532 Ordinances has been completed and the relevant adaptation proposals have been introduced into the Legislative Council. For the remaining 42 Ordinances, further deliberation on policy implications arising from adaptation is required before drafting work may begin.

Matters Requiring Special Attention in 2000–01

24 During 2000–01, the Division will:

- meet the Government's requirements for the drafting of legislation in an effective manner; and
- continue efforts to complete the Adaptation of Laws Programme as soon as possible.

Programme (5): International Law

	1998–99 (Actual)	1999–2000 (Approved)	1999–2000 (Revised)	2000–01 (Estimate)
Financial provision (\$m)	32.5	37.3 (+14.8%)	34.6 (–7.2%)	35.0 (+1.2%)

Aim

25 The aim is to provide advice on international law issues to Government and to handle requests for international legal co-operation efficiently.

Brief Description

26 The work of the International Law Division involves:

- providing advice on all aspects of public international law including the application to HKSAR of multilateral and bilateral international agreements, maritime and aviation law, consular privileges and immunities and the resolution of trade disputes;
- negotiating and advising on international agreements, including those for surrender of fugitive offenders, mutual legal assistance, transfer of sentenced persons, investment promotion and protection and air services;
- providing advice on the international legal aspects of HKSAR's laws; and
- handling requests to and from HKSAR for surrender of fugitive offenders, mutual legal assistance in criminal matters and transfer of sentenced persons and advising on matters involving international legal co-operation.

27 The key performance measures in respect of the International Law Division are:

Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
number of international agreements initialled.....	24	9	9
briefings, negotiation and discussion (number of working sessions).....	302	346	300
number of items of advice provided.....	4 680	5 700	5 500

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	1998 (Actual)	1999 (Actual)	2000 (Estimate)
number of new requests dealt with in various categories of mutual legal assistance	N.A. §	132	150
number of court appearances	N.A. §	125	140

§ Figures are not available in 1998.

Matters Requiring Special Attention in 2000–01

28 During 2000–01, the Division will:

- continue to provide timely and accurate advice on international law issues and relating to mutual legal assistance;
- continue to negotiate international agreements or to contribute as legal advisers in these negotiations; and
- continue to handle requests for international legal co-operation effectively.

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ANALYSIS OF FINANCIAL PROVISION

Programme	1998–99 (Actual) (\$m)	1999–2000 (Approved) (\$m)	1999–2000 (Revised) (\$m)	2000–01 (Estimate) (\$m)
(1) Prosecutions	353.8	425.7	381.9	409.8
(2) Civil	282.2	298.5	324.5	323.7
(3) Legal Policy	55.8	67.6	60.9	67.2
(4) Law Drafting	99.9	125.3	115.4	119.9
(5) International Law	32.5	37.3	34.6	35.0
	824.2	954.4 (+15.8%)	917.3 (–3.9%)	955.6 (+4.2%)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2000–01 is \$27.9 million (7.3%) higher than the revised estimate for 1999–2000. This is mainly due to the full-year provision for posts created and vacancies filled in 1999–2000, a net creation of one post in 2000–01 mainly for improving administrative support and additional requirements for court costs payments.

Programme (2)

Provision for 2000–01 is \$0.8 million (0.2%) lower than the revised estimate for 1999–2000. This is mainly due to a net deletion of two posts in 2000–01 and an anticipated decrease in expenditure for hire of legal services for projects relating to the Port and Airport Development Strategy. The decrease in expenditure is partly offset by the full-year provision for the resources transferred to the department upon the reorganisation of municipal services on 1 January 2000.

Programme (3)

Provision for 2000–01 is \$6.3 million (10.3%) higher than the revised estimate for 1999–2000. This is mainly due to salary increments for existing staff, a net creation of three posts in 2000–01 and additional provision for appointment of non-civil service contract staff for improving professional and administrative support.

Programme (4)

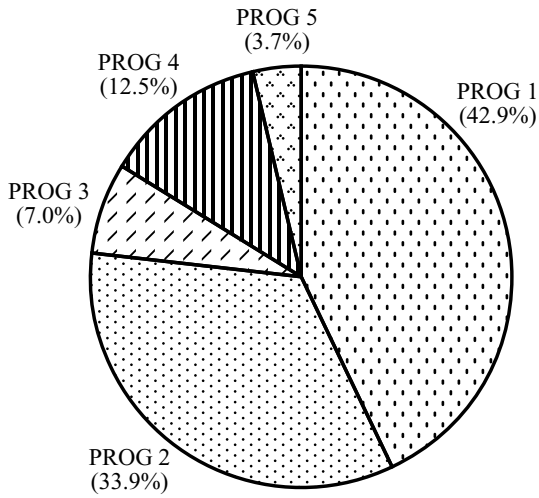
Provision for 2000–01 is \$4.5 million (3.9%) higher than the revised estimate for 1999–2000. This is mainly due to salary increments for existing staff, additional provision for appointment of non-civil service contract staff for improving professional support and an increase in the cashflow requirement for updating the loose-leaf edition of the Laws of Hong Kong (adaptation amendments). The increase in expenditure is partly offset by a net reduction of two posts in 2000–01.

Programme (5)

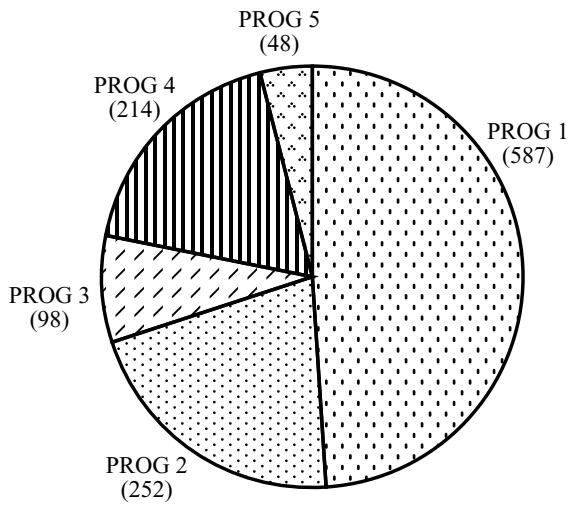
Provision for 2000–01 is \$0.4 million (1.2%) higher than the revised estimate for 1999–2000. This is mainly due to salary increments for existing staff.

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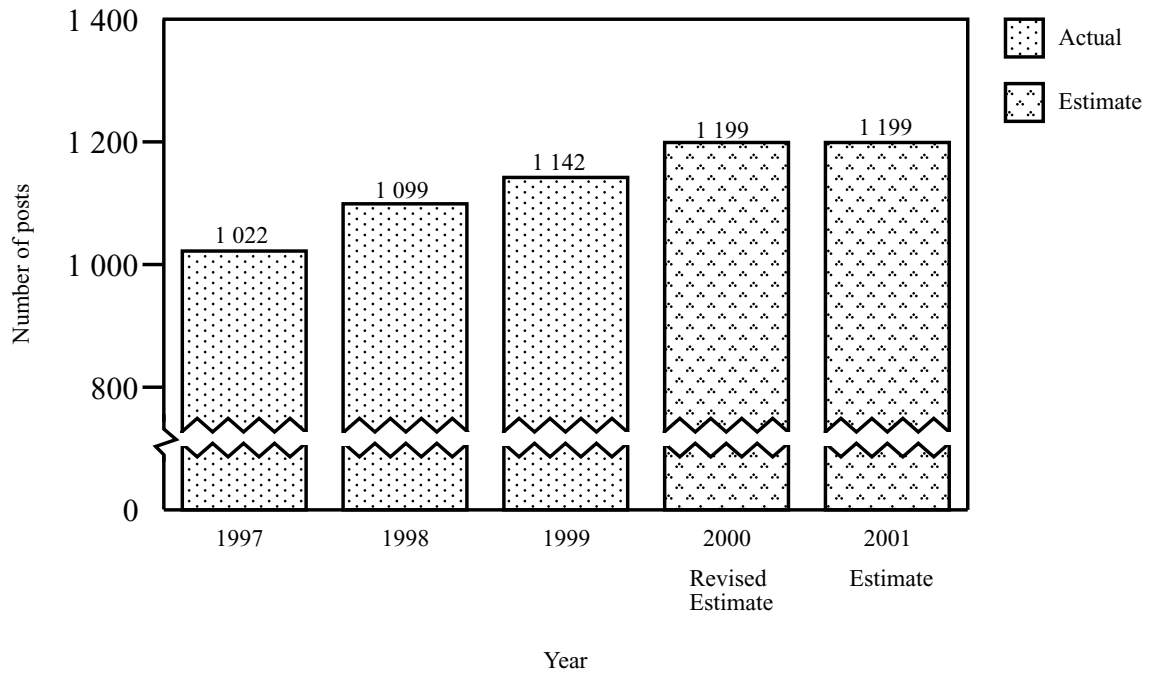
Allocation of provision to programmes (2000-01)



Staff by programme (as at 31 March 2001)



Changes in the size of the establishment (as at 31 March)



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Sub-head (Code)		Actual expenditure 1998-99	Approved estimate 1999-2000	Revised estimate 1999-2000	Estimate 2000-01
		\$'000	\$'000	\$'000	\$'000
Recurrent Account					
I — Personal Emoluments					
001	Salaries	496,957	554,635	524,441	540,701
002	Allowances	17,122	23,400	19,278	19,184
007	Job-related allowances	25	36	36	37
	Total, Personal Emoluments	<u>514,104</u>	<u>578,071</u>	<u>543,755</u>	<u>559,922</u>
III — Departmental Expenses					
149	General departmental expenses	50,463	63,015	66,506	70,321
	Total, Departmental Expenses	<u>50,463</u>	<u>63,015</u>	<u>66,506</u>	<u>70,321</u>
IV — Other Charges					
234	Court costs	86,016	120,000	100,000	130,558*
243	Hire of legal services and related professional fees	147,615	169,414	171,314	169,107
287	Legal services for projects relating to the Port and Airport Development Strategy	18,843	18,000	32,700	18,000
	Total, Other Charges	<u>252,474</u>	<u>307,414</u>	<u>304,014</u>	<u>317,665</u>
V — Subventions					
	Commonwealth Legal Advisory Service	63	—	—	—
	Total, Subventions	<u>63</u>	<u>—</u>	<u>—</u>	<u>—</u>
	Total, Recurrent Account	<u>817,104</u>	<u>948,500</u>	<u>914,275</u>	<u>947,908</u>
Capital Account					
II — Other Non-Recurrent					
700	General other non-recurrent	7,050	5,894	3,034	7,655
	Total, Other Non-Recurrent	<u>7,050</u>	<u>5,894</u>	<u>3,034</u>	<u>7,655</u>
	Total, Capital Account	<u>7,050</u>	<u>5,894</u>	<u>3,034</u>	<u>7,655</u>
	Total Expenditure	<u><u>824,154</u></u>	<u><u>954,394</u></u>	<u><u>917,309</u></u>	<u><u>955,563</u></u>

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Details of Expenditure by Subhead

The estimate of the amount required in 2000–01 for the salaries and expenses of the Department of Justice is \$955,563,000. This represents an increase of \$38,254,000 over the revised estimate for 1999–2000 and of \$131,409,000 on actual expenditure in 1998–99.

Recurrent Account

Personal Emoluments

2 Provision of \$559,922,000 for personal emoluments represents an increase of \$16,167,000 over the revised estimate for 1999–2000 and takes into account salary increments for existing staff, the full-year provision for posts created and vacancies filled in 1999–2000, as well as savings in overtime and acting allowances under the Enhanced Productivity Programme. This includes provision of \$206,400 for a non-accountable entertainment allowance for the Secretary for Justice.

3 The establishment at 31 March 2000 will be 1 191 permanent posts and eight supernumerary posts. It is expected that a net two permanent posts will be created and two supernumerary posts will lapse in 2000–01.

4 Subject to certain conditions, the controlling officer may under delegated powers create or delete non-directorate posts during 2000–01, but the notional annual mid-point salary value of all such posts must not exceed \$450,254,000 which will be reduced to \$449,962,000 upon the deletion of a time-limited post in the course of the year.

5 Provision of \$19,184,000 under *Subhead 002 Allowances* is for standard allowances and the following non-standard allowances—

	Rank		Rate per month \$
consolidated overtime allowance for domestic staff at the residence of the Secretary for Justice	No. 2 Chef		3,720
	Domestic Servant		2,805
	Rank	Master Pay Scale point	Rate per month† \$
consolidated overtime allowance for Chauffeur grade	Personal	11	7,590
	Chauffeur	12	8,060

† These rates are payable for the first 1–100 hours overtime per month. Overtime performed in excess of 100 hours will be compensated at 1% of the monthly rate per hour.

6 Provision of \$37,000 under *Subhead 007 Job-related allowances* is for standard job-related allowances.

Departmental Expenses

7 Provision of \$70,321,000 under *Subhead 149 General departmental expenses* represents an increase of \$3,815,000 (5.7%) over the revised estimate for 1999–2000. This is mainly due to increased requirements for employment of non-civil service contract staff for improving professional and administrative support, partly offset by savings in departmental expenses under the Enhanced Productivity Programme.

Other Charges

8 Provision of \$130,558,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases. The increase of \$30,558,000 (30.6%) over the revised estimate for 1999–2000 is mainly due to the estimated increased requirements for court costs payments in 2000–01.

9 Provision of \$169,107,000 under *Subhead 243 Hire of legal services and related professional fees* takes into account the full-year requirement for additional briefing out expenses arising from the reorganisation of municipal services which is partly offset by savings under the Enhanced Productivity Programme. The provision is to meet the costs for:

- engaging lawyers (local or overseas) to advise on, or act for the Government of the Hong Kong Special Administrative Region in any matter or proceeding whether criminal or civil (including arbitration) or to appear in such connection in any Hong Kong court, Commission of Inquiry, Inquiry, Tribunal or Board;
- engaging lawyers for overseas work;
- engaging expert witnesses and consultants;
- engaging accountants and arbitrators; and

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(e) engaging other services directly related to legal matters or proceedings.

10 Provision of \$18,000,000 under *Subhead 287 Legal services for projects relating to the Port and Airport Development Strategy* is for the payment of legal fees to private practitioners engaged to undertake specialised work relating to the Port and Airport Development Strategy projects. The decrease of \$14,700,000 (45.0%) against the revised estimate for 1999–2000 is mainly due to the estimated reduced requirements for such services in 2000–01.

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Capital Account

Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.99	Revised estimated expenditure for 1999–2000	Balance
			\$'000	\$'000	\$'000	\$'000
700		<i>General other non-recurrent</i>				
	509	Campaign and public education programme to promote the legal system in Hong Kong.....	5,300	4,541	609	150
	511	Training in China law and advocacy in Cantonese.....	2,700	1,487	910	303
	512	Hire of service for translation and Chinese typing.....	5,100	1,013	185	3,902
	513	Conducting mock trials in the Mainland.....	2,400	397	700	1,303
	514	Promotion of rule of law and Hong Kong's legal system.....	6,300	4,170	400	1,730
	515	Updating of the loose-leaf edition of the Laws of Hong Kong (adaptation amendments).....	1,900	—	230	1,670
	516	Production of publicity materials to promote the awareness of the rule of law.....	5,000	—	—	5,000
		Total	<u>28,700</u>	<u>11,608</u>	<u>3,034</u>	<u>14,058</u>