

LEGCO PANEL ON WELFARE SERVICES

Financial Assistance Scheme for Family Members of Those Who Sacrifice Their Lives to Save Others

INTRODUCTION

On 8 January 2002, the Executive Council noted the introduction of a new Scheme, to provide financial assistance to the surviving family members of those who sacrifice their lives to save (or protect) others.

BACKGROUND

A 2. The tragic death of individuals who lose their lives attempting to save or protect others has aroused considerable public sympathy. Depending on the circumstances, members of the deceased's family may be eligible to receive compensation or financial assistance under a number of existing Ordinances and schemes (details are at Annex A). The Comprehensive Social Security Assistance Scheme and a number of charitable funds may also provide financial assistance. However, there is no dedicated mechanism to help alleviate the financial hardship, surviving family members may face as a consequence of the heroic act. As such, the Government has decided to establish a financial assistance scheme for this purpose. The detailed arrangements are set out below.

Assessment Principles

3. We consider it desirable for the Committee, which will be set up to consider applications, to draw up a set of assessment principles, to serve as guidelines for the determination of applications. Our initial suggestions on the assessment principles, to be submitted for the Committee's consideration, are -

- (a) the death-causing act of the deceased should be a proactive action;
- (b) the intention behind the death-causing act should be to save or protect the life of another person;
- (c) the act to save or protect the life of another can be established if the deceased believed that he/she was acting to save or protect another life regardless of whether that person actually existed (e.g. a fireman entering a blazing building believing people might be trapped inside);
- (d) the cause of death should be directly attributable to the act of saving the life of another person;
- (e) an act with the intention of preventing an incident which could endanger the life of another, should be considered as an act to save or protect the life of another;
- (f) whether the attempt to save or protect the life of another person is successful (i.e. whether the person being saved survives) is irrelevant;
- (g) whether the deceased is under a professional duty to save or protect the life of another is irrelevant;
- (h) the time lag between the incident and the date of death should be disregarded; and
- (i) the act should normally have been witnessed.

4. It is clearly not possible to draw up an exhaustive list of principles to cover every situation. However, we believe that the above principles can form the basis for the Committee to make an assessment.

Logistical Arrangements

Approving Authority

5. Since we envisage that the community will have an interest in the Scheme, we see advantage in involving views from a broad spectrum of the community, in the operation of the Scheme. As such, the Government will set up a "Committee on Financial Assistance for Family Members of those who Sacrifice their Lives to Save Others", to serve as the approving authority for the Scheme. The Committee will be chaired by the Secretary for Health and Welfare and comprise non-official members from the welfare, business, local community sectors, and others as appropriate.

Executive Functions

6. The Health and Welfare Bureau will be responsible for co-ordinating the processing of applications under the Scheme. It will also serve as the Committee Secretariat.

Commencement Date

7. The Scheme took effect on 9 January 2002.

Eligibility Criteria

8. Assistance will be considered upon application. In some cases, members of the deceased's family may not need or wish to claim. The eligibility criteria for application under the Scheme are -

- (a) the deceased was lawfully residing in Hong Kong at the time of death. This would include Hong Kong residents, visitors, imported workers but exclude illegal immigrants;
- (b) the death should result from the deceased proactively rendering assistance to save or protect the life of another person;
- (c) the deceased should have identifiable surviving family member(s) as defined in Section 3 of the Employees' Compensation Ordinance (see Annex B); and

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- (d) the award should be made regardless of whether the death

was caused by the deceased's serious or wilful misconduct. A number of Ordinances, compensation and assistance schemes contain specifications relating to death attributable to serious or wilful misconduct. While some specify that this factor may have a bearing on the decision to make an award or the amount of payment, others do not take this factor into account. We intend to adopt a more generous approach and to disregard the deceased's conduct when considering such cases.

9. Individuals who die in the course of performing their 'normal' duties (such as disciplined service officers) and who demonstrate bravery or perform acts of exceptional sacrifice, over and above that normally required in the conduct of their duties, will also be eligible for benefits under the Scheme.

Implications for Civil Servants

10. For civil servants who die on duty, their families will be able to receive death gratuity, dependants' pension or compensation as stipulated under the Employees' Compensation Ordinance, and/or ex-gratia allowance for dependant parents where appropriate. The amount of compensation is based on the salary, pensionable service, age and family composition of the deceased officer. A brief outline on the nature and level of these payments is at Annex A.

11. Since the new financial scheme aims to recognize the gallant act of the deceased, it is reasonable to apply it to all individuals who sacrifice their lives to save or protect others, irrespective of their duties. While it may be the duty of some employees to protect others, be they security guards in the private sector or policemen in the Civil Service, their gallant acts should be duly recognized and appreciated. Hence, this Scheme should also be applicable to eligible civil servants in addition to their established death payments to be provided by the Civil Service.

12. It should be noted that the Scheme is provided on top of established employees' compensation schemes in both the private sector and the Civil Service. The Committee, to be chaired by the Secretary for Health and Welfare, will adopt the same set of criteria in assessing the

merits of each application on the basis of the relevant facts and circumstances, regardless of the employment status of the deceased.

Financial Arrangements

13. To keep administrative costs to a minimum, financial assistance will be given in the form of a one-off ex-gratia payment.

14. The spirit of the Scheme is to recognize the gallant act of the deceased. To ensure simple administration and the provision of timely assistance, the Scheme will require the applicant to confirm that the surviving members of the family have a financial need. This will obviate the need to examine the detailed financial situation of the family which would likely add to their trauma at a difficult time. Payments under many other compensatory schemes (such as the Hong Kong War Memorial Pensions, Employees' Compensation and Traffic Accident Victims Assistance Scheme) are also not conditional on the applicant's financial status.

15. Depending on the cause and the circumstances of the death, members of the deceased's family may be entitled to compensation and payment under a number of different Ordinances and schemes. We are aware, however, that these serve different purposes, and in order to ensure the provision of timely assistance, financial assistance under the Scheme will be disbursed in addition to any other assistance or compensation the family might receive in relation to the death of the deceased.

16. The level of assistance will be calculated according to the following formula:

Median monthly employment earnings x 12 x number of years between date of death and deceased's normal retirement age (if known), or 65 if not known.

17. In accordance with this formula, the current maximum level of payment will be approximately \$6 million. To ensure that a reasonable level of assistance is provided (especially if the deceased is either unemployed or close to retirement age), the current minimum level of

payment will be about \$3 million. Both levels will float according to the median monthly employment earnings. The detailed calculation is as follows:

Age factor	Median Monthly Employment Earnings (as at Q3, 2001)	Assistance Payable
50 (= 65 – 15 (minimum working age))	x \$10,000 x 12 (months)	=\$6 million (current maximum level of payment)
25 (Mid-point of the number of years between minimum working age and normal retirement age)		=\$3 million (current minimum level of payment)

C 18. Financial assistance under the Scheme will be disbursed to members of the deceased's family according to the scale of apportionment, as specified in Schedule 7 of the Employees' Compensation Ordinance (at Annex C). The Schedule, which was enacted in 2000, provides a comprehensive, clear-cut and widely acceptable scale for apportioning compensation payable to eligible members of the family of the deceased who die in fatal accidents, as specified in the Ordinance.

19. As the Scheme represents Government's recognition of the deceased's sacrifice, payment will be funded from the General Revenue. The Secretary for the Treasury has delegated authority to create non-recurrent commitments, as and when a case arises, provided the financial assistance does not exceed \$10 million.

FINANCIAL AND STAFFING IMPLICATIONS

20. We expect that only one or two cases will arise in most years. As such, we estimate that the maximum financial implications will be in the order of \$12 million per annum.

21. The operation of the Scheme will not require additional staff.

PUBLICITY

22. The Social Welfare Advisory Committee will be informed of the details of the Scheme. A press release and a Legislative Council Brief were issued.

Health and Welfare Bureau
January 2002

**Compensation/ Financial Assistance available for
Family Members of Individuals
who Died in Service, on Duty or in Accidents**

	Compensation/Assistance	Level of Payment
(A) Employees' compensation		
1.	Compensation under the Employees' Compensation Ordinance (Cap. 282) for employees who dies as a result of an accident arising out of and in the course of employment	Based on the age and salary of the deceased. Maximum level of payment is \$1.76 million.
(B) Major benefits payable to civil servants		
(a) Civil servants who died in service		
1.	Death Gratuity (for officers who is not on agreement and has no less than two years' continuous service)	Based on the salary and pensionable service of the deceased.
2.	Ex-gratia Payment (for officers who is not on agreement and has less than two years' continuous service)	Maximum payment granted since 1.7.1997 is \$4.86 million.
(b) Civil servants who died on duty		

	Compensation/Assistance	Level of Payment
1.	Death Gratuity	<p>Based on the salary and pensionable service of the deceased.</p> <p>Maximum payment granted since 1.7.1997 is \$1.96 million.</p>
2.	Dependents' Pension or compensation as stipulated under the Employees' Compensation Ordinance	<p><u>Dependant Pension</u></p> <p>Based on the salary of the deceased and the age of the dependants.</p> <p>Maximum payment granted since 1.7.1997 is \$3.72 million.</p> <p><u>Compensation under Employees' Compensation Ordinance</u></p> <p>Based on the age and salary of the deceased.</p> <p>Maximum level of payment is \$1.76 million.</p>
3.	Ex-gratia allowance for dependent parents not eligible for compensation under the Employees' Compensation Ordinance or the relevant pensions legislation	<p>Based on the salary of the deceased, the degree of dependency of the dependent parents on the deceased and money received by the dependent parents from the deceased's estate .</p> <p>Maximum level of payment is \$1.76 million (i.e. compensation limit for fatal cases under the Employees' Compensation Ordinance).</p> <p>Maximum payment granted since 1.7.1997 is \$0.86 million.</p>

	Compensation/Assistance	Level of Payment
4.	Funeral grant	\$55,500
(C) Accident Compensation Schemes administered by the Social Welfare Department		
1.	Traffic Accident Victims Assistance Scheme (TAVA)	<p>(i) Death grant: up to a maximum of \$144,075 (mainly depending on whether the deceased is a wage earner and the number of dependants)</p> <p>(ii) Burial grant: \$11,070</p>
2.	Criminal and Law Enforcement Injuries Compensation Scheme (CLEIC)	<p><u>Criminal injuries compensation:</u></p> <p>(i) Death grant: Up to a maximum of \$144,075 (mainly depending on whether the deceased is a wage earner and the number of dependants)</p> <p>(ii) Burial grant: \$11,070</p> <p>The Criminal Injuries Compensation Board may, under specific circumstances, increase the total compensation payable by up to a maximum of 200%.</p> <p><u>Law enforcement injuries compensation:</u></p>

	Compensation/Assistance	Level of Payment
		Assessed on the basis of the Emergency Relief Fund scale (i.e. a death grant of up to \$144,075 plus a burial grant of \$11,070, but the Law Enforcement Injuries Compensation Board may, under specific circumstances, increase the total compensation payable by up to a maximum of 100%) or common law damages, whichever is more ¹

¹ There has been no application for law enforcement injuries compensation since 1 July 1997.

	Compensation/Assistance	Level of Payment
3.	Emergency Relief Fund Scheme (ERF)	(i) Death grant: up to a maximum of \$144,075 (mainly depending on whether the deceased is a wage earner and the number of dependants) (ii) Burial grant: \$11,070

Section 3 of the Employees' Compensation Ordinance

Section 3 of the Employees' Compensation Ordinance specifies, among other things, that "member of the family", in relation to an employee, means a person who has any of the following relationships in respect of the employee, whether by blood or an adoption :

- (a) a spouse or cohabitee;
- (b) a child;
- (c) a parent or grandparent; or
- (d) a grandson, granddaughter, stepfather, stepmother, stepson, stepdaughter, son-in-law, daughter-in-law, brother, sister, half-brother, half-sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, and child of a brother or sister of the whole blood, any of whom has been living with the employee as a member of the same household and has been so living for the period of 24 months immediately preceding the accident concerned.

For the purpose of the definition of "member of the family" as specified in this section, an adoption means an adoption :

- (a) made under an adoption order made in accordance with the Adoption Ordinance (Cap. 290);
- (b) to which section 17 of the Adoption Ordinance applies; or
- (c) made in Hong Kong in accordance with Chinese law and custom before 1 January 1973; and

any person so adopted shall be treated as the child of the adopter, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly.

Apportionment of Compensation for Death
under Schedule 7 of the Employees' Compensation Ordinance

Family Members Eligible for Compensation	Apportionment of Compensation
1. Only spouse / cohabitee	100% to spouse / cohabitee
2. Only child(ren)	100% to child(ren)
3. Only parent(s) / grandparent(s)	100% to parent(s) / grandparent(s)
4. Only spouse / cohabitee and child(ren)	50% to spouse / cohabitee 50% to child(ren)
5. Only spouse / cohabitee and parent(s) / grandparent(s)	80% to spouse / cohabitee 20% to parent(s) / grandparent(s)
6. Only spouse / cohabitee, child(ren), and parent(s) / grandparent(s) (whether or not there is any other eligible members of the family)	45% to spouse / cohabitee 45% to child(ren) 10% to parent(s) / grandparent(s) other member(s) of the family is / are not entitled to compensation
7. Only child(ren) and parent(s) / grandparent(s)	80% to child(ren) 20% to parent(s) / grandparent(s)
8. Only other member(s) of the family with no surviving spouse / cohabitee, child(ren) or parent(s) / grandparent(s)	100% to the other member(s) of the family
9. Only spouse / cohabitee and other member(s) of the family	95% to spouse / cohabitee 5% to other member(s) of the family
10. Only child(ren) and other member(s) of the family	95% to child(ren) 5% to other member(s) of the family
11. Only parent(s) / grandparent(s) and other member(s) of the family	95% to parent(s) / grandparent(s) 5% to other member(s) of the family
12. Only spouse / cohabitee, child(ren) and other member(s) of the family	50% to spouse / cohabitee 45% to child(ren) 5% to other member(s) of the family
13. Only spouse / cohabitee, parent(s) / grandparent(s) and other member(s) of the family	75% to spouse / cohabitee 20% to parent(s) / grandparent(s) 5% to other member(s) of the family
14. Only child(ren), parent(s) / grandparent(s) and other member(s) of the family	75% to child(ren) 20% to parent(s) / grandparent(s) 5% to other member(s) of the family

Note 1: If there are more than one eligible person in the same category, the amount of compensation shall be shared among them equally. However, where the deceased employee is survived by both parent(s) and grandparent(s), the amount of compensation payable to this category of family members shall be divided as follows:

70% to parent(s)

30% to grandparent(s)

Note 2: Other member(s) of the family includes grandchild, stepparent, stepchild, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, child of a brother or sister of whole blood, half-brother and half-sister, any of whom shall be residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident.