

**For discussion on
28 May 2018**

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Review of the amount of damages for bereavement
under the Fatal Accidents Ordinance (Cap 22)**

This paper briefs Members on the background of and the ongoing review conducted by the Government on the statutory sum to be awarded as damages for bereavement (“**bereavement sum**”) under section 4(3) of the *Fatal Accidents Ordinance* (Cap 22) (“**the Ordinance**”) and to seek Members’ views on the following Government proposals:

- (a) a resolution be moved by the Secretary for Justice, within the current legislative session, to increase the bereavement sum to HK\$220,000 which is capable of reflecting liberally the cumulative impact of inflation experienced over the period from March 1997 to March 2018; and
- (b) a review of the bereavement sum be conducted by the Government hereafter to reflect inflation by making reference to the Consumer Price Index (A) (“**CPI(A)**”) every two years.

Background

2. The Ordinance was enacted in 1986. It allows an action for damages to be brought against a person for the benefit of the dependants of the deceased in respect of that person’s wrongful act, neglect or default which has caused the death of the deceased. An action under the Ordinance may include a claim for damages for bereavement in the sum as prescribed in section 4(3). Section 4(5) of the Ordinance provides that the Legislative Council may by resolution vary the sum. Since the

enactment of the Ordinance, the bereavement sum was adjusted in 1991 and 1997. The current sum is set at HK\$150,000.

3. In 2000, the Government conducted a review of the bereavement sum and reached the view that there was no basis for increasing the sum at that stage considering, *inter alia*, the drop in consumer price index between 1997 and 2000. This Panel¹ and the consultees were informed of the result of the review.

4. The overall downward trend in the cumulative inflation rate had continued and by making reference to the indices in March of each year, the CPI(A) returned to the 1997 level only by March 2010.²

The Review in 2014

5. In mid-2014, the Department of Justice (“**DoJ**”) commenced a review of the bereavement sum and proposed to increase the sum to HK\$190,000, having made reference to the cumulative inflation as measured by the CPI(A), and consulted The Law Society of Hong Kong (“**LawSoc**”) and the Bar Association (“**the Bar**”). In response to that consultation, the LawSoc and the Bar counter-proposed that the amount be adjusted to HK\$250,000 on the ground that the increase should take into account not only inflation but also “changing social and economic conditions of Hong Kong”³.

6. In light of the counter-proposal of the LawSoc and the Bar, DoJ has deliberated internally and consulted the Census and Statistics Department as well as the Government Economist on whether, and if so

¹ LC Paper No. CB(2)30/00-01(01)

² In March 1997, the CPI(A) was 78.5. The CPI(A) rose to 82.3 in March 1998 but thereafter dropped to 80.4 in March 1999. Looking at March in the years between 2000 and 2009, the CPI(A) was below 78.5. It was only until March 2010 when the CPI (A) rose back to 80.5.

³ The two legal professional bodies referred to the motion debate before the Legislative Council in April 1997, when Hon. Albert HO moved a resolution to increase the bereavement sum from HK\$70,000 to HK\$150,000. While the then Attorney General pointed out that an inflation adjustment would bring the amount up to about HK\$112,000, Hon. Albert HO had argued that the award should be further increased to meet the changing social and economic conditions of Hong Kong.” See the Hansard of the proceedings of the Legislative Council on 16 April 1997, at p. 97.

how, the “changing social and economic conditions of Hong Kong” could be quantified objectively. It was concluded that the “social and economic conditions” of an economy could embrace many different aspects, including but not limited to population growth and structure, public health, housing, social welfare, crime, social stability, economic growth, business performance, inflation, employment earnings and income. Therefore, there is no single indicator that can serve the purpose of manifesting the changing social and economic conditions in a nutshell.

7. We have also studied the methodology adopted in other common law jurisdictions. In England and Wales, the UK Government announced in 2007 that the amount of damages for bereavement under the *Fatal Accidents Act*⁴ would be increased on a regular basis, being every three years, in line with the Retail Price Index (rounded to the nearest £100). This was to ensure that the award would be increased appropriately on a more regular and consistent basis and would assist insurers in building the effect of future increases into their reserves and financial plans.⁵

8. In our view, an adjustment based on inflation by making reference to the CPI(A) could provide a simple and objective methodology for the coming and future reviews of the bereavement sum.

9. In light of the above, we consider that it is not appropriate to include an amount over and above inflation in the bereavement sum to reflect the “changing social and economic conditions of Hong Kong” in the absence of an objective methodology to quantify the same. This will have the advantage of allowing the Government to conduct routine reviews every two years by making reference to the CPI(A) and move a resolution to adjust the bereavement sum if necessary.

⁴ See the Fatal Accidents Act 1976, which is the legislation on which the Ordinance is based on.

⁵ *The Law on Damages: Consultation Paper (9/2007)*, issued by the Department for Constitutional Affairs, 4 May 2007, at para 60.

Proposed Way Forward

10. In view of the above, by making reference to the CPI(A), the Government proposes to move a resolution to increase the bereavement sum to HK\$220,000 which would be more than sufficient to cover the cumulative inflation reckoned from March 1997 to March 2018.⁶ With the exception of the period from March 2017 to March 2018, the figure of HK\$220,000 is arrived at by reviewing the bereavement sum every two years based on the CPI(A) from March 1997 to March 2018 and rounded up to the nearest HK\$5,000 in each assumed review. This would help ensure that any increase in the bereavement sum would generally be more than enough to compensate for the effect of the cumulative inflation on the recipients' purchasing power between adjustments. A table showing the details of the calculation is enclosed at **Annex**.

11. In future, the Government will seek to conduct a review of the bereavement sum by making reference to the CPI(A) every two years and move a resolution to adjust the sum if necessary.

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May 2018

⁶ With the adjustment of the bereavement sum to HK\$220,000, the maximum amount which may be awarded as damages for loss of society of an injured person pursuant to section 20C of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23), will correspondingly be increased to HK\$220,000 by operation of section 20C(2)(a) of that Ordinance.

**Calculation of the bereavement sum by making reference to the
CPI(A)
From March 1997 to March 2018**

March /Year	Consumer Price Index (A)		
	Index#	Cumulative % change (since the specified month)^	Amount of damages* ** (amount of damages before rounding up)
1997	78.5		\$150,000
1998	82.3		
1999	80.4	2.42% (since March 1997)	\$155,000 (\$153,630)
2000	77.2		
2001	75.6		\$155,000
2002	74.1		
2003	72.7		\$155,000
2004	71.4		
2005	72.2		\$155,000
2006	73.2		
2007	74.8		\$155,000
2008	77.7		
2009	78.1		\$155,000
2010	80.5		
2011	84.4	4.98% (since March 1999)	\$165,000 (\$ 162,719)
2012	88.0		
2013	91.5	8.41% (since March 2011)	\$180,000 (\$178,876.5)
2014	95.4		
2015	101.4	10.82% (since March 2013)	\$200,000 (\$199,476)
2016	104.4		
2017	104.5	3.06% (since March 2015)	\$210,000 (\$206,120)
2018	107.4	2.78% (since March 2017)	\$220,000 (\$215,838)

Index from October 2014 - September 2015 = 100

^ Calculated based on CPI(A) index with 1 decimal place.

* The adjustments are calculated by applying the formula below and rounded **up** to the nearest \$5,000:

Amount of damages before rounding up = amount of damages in the reference year \times (1 + cumulative % change in the current year)

For example, for the review in 1999, the amount of damages before rounding up = \$150,000 \times (1+2.42%) = \$153,630. It is then rounded up to \$155,000.

** Amount is not adjusted in the years 2001, 2003, 2005, 2007 and 2009 due to deflation (as compared to the CPI(A) in March 1999), and the adjustment resumes in 2011 as the CPI(A) returned to the comparable level of the last adjustment (i.e. March 1999) in March 2010.