

"SEVENTH SCHEDULE [ss. 6A & 48B]

Apportionment of Compensation Payable to Eligible Members of the Family

1. If the only eligible members of the family are spouses or cohabitees, or any combination thereof, then the compensation shall be paid to all of them in equal amounts.

2. If the only eligible members of the family are children, then the compensation shall be paid to all of them in equal amounts.

3. If the only eligible members of the family are parents or grandparents, or any combination thereof, then---

(a) the compensation shall be paid to all of those parents in equal amounts if there are no grandparents;

(b) the compensation shall be paid to all of those grandparents in equal amounts if there are no parents;

(c) in any other case---

(i) 70% of the compensation shall be paid to all of those parents in equal amounts; and

(ii) the remaining 30% of the compensation shall be paid to all of those grandparents in equal amounts.

4. If the only eligible members of the family are members other than spouses, cohabitees, children, parents and grandparents, then the compensation shall be paid to all of those eligible members in equal amounts.

5. If the only eligible members of the family are---

(a) spouses or cohabitees, or any combination thereof; and

(b) children,

then---

(i) 50% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts; and

(ii) the remaining 50% of the compensation shall be paid to all of those children in equal amounts.

6. If the only eligible members of the family are or the eligible members of the family include---

(a) spouses or cohabitees, or any combination thereof;

(b) children; and

(c) parents or grandparents, or any combination thereof,

then, whether or not there is any other eligible member of the family---

(i) 45% of the compensation shall be paid to all of those spouses or cohabitees

in equal amounts;

(ii) 45% of the compensation shall be paid to all of those children in equal amounts;

(iii) the remaining 10% of the compensation shall be paid---

(A) to all of those parents in equal amounts if there are no grandparents;

(B) to all of those grandparents in equal amounts if there are no parents; and

(C) in any other case, to all of those parents and grandparents such that 70% of that 10% is paid to all of those parents in equal amounts and 30% of that 10% is paid to all of those grandparents in equal amounts.

7. If the only eligible members of the family are---

(a) spouses or cohabitees, or any combination thereof; and

(b) parents or grandparents, or any combination thereof,

then---

(i) 80% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;

(ii) the remaining 20% of the compensation shall be paid---

(A) to all of those parents in equal amounts if there are no grandparents;

(B) to all of those grandparents in equal amounts if there are no parents; and

(C) in any other case, to all of those parents and grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts.

8. If the only eligible members of the family are---

(a) spouses or cohabitees, or any combination thereof; and

(b) other members who are not children, parents or grandparents,

then---

(i) 95% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;

(ii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

9. If the only eligible members of the family are---

(a) spouses or cohabitants, or any combination thereof;

(b) parents or grandparents, or any combination thereof; and

(c) other members who are not children,

then---

(i) 75% of the compensation shall be paid to all of those spouses or cohabitants in equal amounts;

(ii) 20% of the compensation shall be paid---

(A) to all those parents in equal amounts if there are no grandparents;

(B) to all of those grandparents in equal amounts if there are no parents; and
(C) in any other case, to all of those parents or grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts;

(iii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

10. If the only eligible members of the family are---

(a) spouses or cohabitees, or any combination thereof;

(b) children; and

(c) other members who are not parents or grandparents,

then---

(i) 50% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;

(ii) 45% of the compensation shall be paid to all of those children in equal amounts;

(iii) the remaining 5% of the compensation shall be paid to all of those other members of the family in equal amounts.

11. If the only eligible members of the family are---

(a) children; and

(b) parents or grandparents, or any combination thereof,

then---

(i) 80% of the compensation shall be paid to all of those children in equal amounts;

(ii) the remaining 20% of the compensation shall be paid---

(A) to all of those parents in equal amounts if there are no grandparents;

(B) to all of those grandparents in equal amounts if there are no parents; and

(C) in any other case, to all of those parents and grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts.

12. If the only eligible members of the family are---

(a) children; and

(b) other members who are not spouses, cohabitees, parents or grandparents,

then---

(i) 95% of the compensation shall be paid to all of those children in equal amounts;

(ii) the remaining 5% of the compensation shall be paid to all those other members in equal amounts.

13. If the only eligible members of the family are---

- (a) children;
 - (b) parents or grandparents, or any combination thereof; and
 - (c) other members who are not spouses or cohabitees,
- then---

(i) 75% of the compensation shall be paid to all of those children in equal amounts;

(ii) 20% of the compensation shall be paid---

- (A) to all of those parents in equal amounts if there are no grandparents;
- (B) to all of those grandparents in equal amounts if there are no parents; and
- (C) in any other case, to all of those parents or grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts;

(iii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

14. If the only eligible members of the family are---

- (a) parents or grandparents, or any combination thereof; and
 - (b) other members who are not spouses, cohabitees or children,
- then---

(i) 95% of the compensation shall be paid---

- (A) to all of those parents in equal amounts if there are no grandparents;
- (B) to all of those grandparents in equal amounts if there are no parents; and
- (C) in any other case, to all of those parents or grandparents such that 70% of that 95% is paid to all of those parents in equal amounts and 30% of that 95% is paid to all of those grandparents in equal amounts;

(ii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts."

Consequential Amendments

Pensions Ordinance

28. Pensions to dependants when an officer dies on duty

Section 18(6) of the Pensions Ordinance (Cap. 89) is amended by repealing "dependants" and substituting "members of the family".

29. Section added

The following is added---

"23. Transitional

Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply to claims for compensation in respect of accidents occurring before the commencement of the amending Ordinance, and the provisions in force immediately before the commencement of the amending Ordinance

shall continue to apply to such claims as if they had not been amended by the amending Ordinance."

Pension Benefits Ordinance

30. Dependant pension

Section 19(9) of the Pension Benefits Ordinance (Cap. 99) is amended by repealing "dependants" and substituting "members of the family".

31. Section added

The following is added---

"36. Transitional

Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply to claims for compensation in respect of accidents occurring before the commencement of the amending Ordinance, and the provisions in force immediately before the commencement of the amending Ordinance shall continue to apply to such claims as if they had not been amended by the amending Ordinance."

Auxiliary Forces Pay and Allowances (Pensions) Regulation

32. Exclusion from application

Section 8 of the Auxiliary Forces Pay and Allowances (Pensions) Regulation (Cap. 254 sub. leg.) is amended, in paragraph (b), by repealing "dependants as defined in section 3 of the Employees' Compensation Ordinance (Cap. 282) or any member of his family as defined in" and substituting "member of the family as defined in section 3 of the Employees' Compensation Ordinance (Cap. 282) or".

33. Section added

The following is added---

"9. Transitional

Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply to claims for compensation in respect of accidents occurring before the commencement of the amending Ordinance, and the provisions in force immediately before the commencement of the amending Ordinance shall continue to apply to such claims as if they had not been amended by the amending Ordinance."

Employees' Compensation Regulations

34. Certificate as to compensation payable

Regulation 5 of the Employees' Compensation Regulations (Cap. 282 sub. leg.) is amended by adding---

"(c) a Certificate of Interim Payment or Review Certificate of Interim Payment has been issued and it is desired to proceed in accordance with section 6C(14) of the Ordinance; or

(d) a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case has been issued and it is desired to proceed in accordance with section 6D(9) of the Ordinance; or

(e) a Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses has been issued and it is desired to proceed in accordance with section 6E(14) of the Ordinance,".

Employees' Compensation (Rules of Court) Rules

35. Rule substituted

Rule 25 of the Employees' Compensation (Rules of Court) Rules (Cap. 282 sub. leg.) is repealed and the following substituted---

"25. Medical and funeral expenses

(1) An application to determine the reimbursement payable in respect of the expenses of medical attendance on or the funeral of a deceased employee shall be made by any person who has paid the expenses and any other person known to the applicant to be a person who has paid the expenses shall be joined in the application either as applicant or as respondent.

(2) Where the amount awarded by the court on such applications is insufficient to reimburse such expenses in full, it shall be apportioned between the persons to whom such reimbursement are payable on a pro rata basis."

36. Application to make a certificate as to compensation payable an order of the court

Rule 27 is amended by repealing "section 16A(8)" and substituting "sections 6C(14), 6D(9), 6E(14) or 16A(8)".

37. Schedule amended

The Schedule is amended, in Form 2---

(a) in the heading, by repealing "Dependants of Deceased Employee" and substituting "Members of the Family";

(b) in paragraph 2, by repealing "dependents of the deceased employee" and substituting "members of the family";

(c) in paragraph 3(6),---

(i) by repealing "dependants of the deceased" and substituting "members of the family";

(ii) by repealing "Wholly/Partially Dependant".

Employees Compensation Assistance Ordinance

38. Interpretation

Section 2 of the Employees Compensation Assistance Ordinance (Cap. 365) is amended by repealing the definition of "dependants" and substituting---

"member of the family" (家庭成員) has the meaning assigned to it under section 3 of the Employees' Compensation Ordinance (Cap. 282);".

39. Application by employee etc. for payment from the Fund

Section 16 is amended---

(a) in subsection (2)---

(i) in paragraph (a), by adding---

"(iv) pursuant to a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case issued under the Employees' Compensation Ordinance (Cap. 282);";

(ii) in paragraph (b), by repealing "or" at the end;

(iii) in paragraph (c)(iii), by repealing the full stop and substituting "or";

(iv) by adding---

"(d) in the case of reimbursement of the expenses of the funeral of the deceased employee and expenses of the medical attendance on the deceased employee, a Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses has been issued under the Employees' Compensation Ordinance (Cap. 282).".

(b) by adding---

"(4) Notwithstanding subsections (1) and (3), where---

(a) compensation under section 6(1) of the Employees' Compensation Ordinance (Cap. 282) payable pursuant to---

(i) a Certificate of Compensation Assessment for Fatal Case; or

(ii) a Review Certificate of Compensation Assessment for Fatal Case; or

(b) reimbursement under section 6(5) of that Ordinance payable pursuant to---

(i) a Certificate for Funeral and Medical Attendance Expenses; or

(ii) a Review Certificate for Funeral and Medical Attendance Expenses, has been fully paid by the employer or his insurer, no application shall lie for the payment thereof from the Fund.".

40. Applications

Section 21(4) is amended, in paragraph (a), by repealing "dependant" where it twice appears and substituting "member of the family".

41. Transitional

Section 46 is amended---

(a) by renumbering it as section 46(1);

(b) by adding---

"(2) Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) shall apply to applications for payment from the Fund in respect of claims for compensation arising from accidents occurring before the commencement of that Ordinance, and the provisions in force immediately before the commencement of

that Ordinance shall continue to apply to such applications as if they had not been repealed or amended by that Ordinance."

Pension Benefits (Judicial Officers) Ordinance

42. Dependant pension

Section 20(9) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) is amended by repealing "dependants" and substituting "members of the family".

43. Section added

The following is added---

"39. Transitional

Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply to claims for compensation in respect of accidents occurring before the commencement of the amending Ordinance, and the provisions in force immediately before the commencement of the amending Ordinance shall continue to apply to such claims as if they had not been amended by the amending Ordinance."

Explanatory Memorandum

This Bill amends the Employees' Compensation Ordinance (Cap. 282) ("the Ordinance"). The main purposes are to make compensation, in case of death of an employee, payable to members of his family instead of his dependants; to provide an additional avenue for settlement of claims to compensation whereby in straightforward cases the Commissioner for Labour ("the Commissioner") may determine a claim; to require the employer to make interim payment to the spouse of the deceased employee pending final determination by the Commissioner; to require an employer to reimburse funeral and medical attendance expenses in all fatal cases; and to revise the level of fines on offences committed under the Ordinance.

2. Clause 3 amends section 3 to introduce certain new definitions used in the Ordinance including a new definition of "member of the family" in substitution for the definition of "dependants".

3. Clause 5 amends section 6(1) to provide that compensation shall be payable to the members of family of the deceased employee and amends section 6(5) to provide the payment of reimbursement of funeral and medical attendance expenses by the employer.

4. Clause 6 adds new sections 6A to 6H---

(a) new section 6A sets out in the new Seventh Schedule the manner in which the compensation is to be apportioned;

(b) new sections 6B and 6D set out the procedure for making claims to the Commissioner and for making determination of claims by the Commissioner;

(c) new section 6C sets out the procedure for application for interim payments by

- the spouse and for making determination of those payments by the Commissioner;
- (d) new section 6E sets out the procedure for making claims for reimbursement of funeral and medical attendance expenses and for making determination of those reimbursements by the Commissioner;
- (e) new section 6F provides that the Commissioner may require production of supporting documents by any person making a claim;
- (f) new section 6G sets out the total liability of the employer and his insurer in respect of one deceased employee;
- (g) new section 6H provides for an avenue for appeal to the Court against a determination made by the Commissioner.
5. Clauses 11, 18, 19, 20, 21, 22 and 24 revise the level of fines for offences committed under the Ordinance.
6. Clauses 28 to 43 contain consequential amendments to other related Ordinances and subsidiary legislation.