

立法會
Legislative Council

LC Paper No. LS62/17-18

**Paper for the House Committee Meeting
on 1 June 2018**

**Legal Service Division Report on
Proposed Resolution under section 4(5) of the
Fatal Accidents Ordinance (Cap. 22)**

The Secretary for Justice has given notice to move, at the Legislative Council ("LegCo") meeting of 13 June 2018, a motion under section 4(5) of the Fatal Accidents Ordinance (Cap. 22) to seek LegCo's approval to increase the statutory sum of damages which may be awarded for bereavement in an action under Cap. 22.

2. Under Cap. 22, an action for damages may 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. Such action may consist of or include a claim for damages for bereavement, which is a sum fixed at \$150,000 under section 4(3) of Cap. 22 ("bereavement sum"). Under section 4(5) of Cap. 22, LegCo may amend the bereavement sum by resolution. The bereavement sum was last raised from \$70,000 to the current amount of \$150,000 in 1997.

3. The proposed resolution seeks to amend section 4(3) of Cap. 22 to increase the bereavement sum from \$150,000 to \$220,000.¹

4. According to the LegCo Brief (File Ref: LP 155/00C) issued by the Department of Justice ("DoJ") in May 2018, DoJ commenced a review of the bereavement sum in mid-2014. Having considered all relevant factors, the Administration considers that an adjustment based on inflation by making reference to the Consumer Price Index A ("CPI(A)") could provide a simple and objective methodology for future reviews of the bereavement sum as this will allow the Administration to conduct routine reviews every two years by making reference to CPI(A) and move a resolution to adjust the bereavement sum if

¹ If the bereavement sum is increased to \$220,000, the maximum amount which may be awarded as damages for loss of society or services of an injured person under section 20C of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) would correspondingly be increased to HK\$220,000 pursuant to section 20C(2)(a) of Cap. 23.

necessary. According to paragraph 12 of the LegCo Brief, the proposed increase from HK\$150,000 to HK\$220,000 would generally be more than sufficient to cover the cumulative inflation between March 1997 and March 2018.

5. According to paragraph 18 of the LegCo Brief, DoJ has consulted The Law Society of Hong Kong ("Law Society"), the Bar Association and the Hong Kong Federation of Insurers. Both the Law Society and the Bar Association expressed support for the legislative proposal and a periodic adjustment of the bereavement sum by reference to CPI(A) once every two years. The Hong Kong Federation of Insurers was generally supportive of the legislative proposal and indicated that any adjustment in the bereavement sum would be taken into consideration when reviewing the insurance premium rate.

6. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel was briefed at its meeting on 28 May 2018 on the legislative proposal and the proposed review mechanism. While generally supportive of the Administration's proposal to conduct a biennial review by making reference to CPI(A), some members urged the Administration to comprehensively review the bereavement sum having regard to other factors, such as changing social and economic conditions of Hong Kong. At the meeting, the Panel passed a motion urging the Administration to move a motion in 2017-2018 legislative session with a view to increasing the statutory sum of damages for bereavement to \$220,000 as soon as possible.

7. The proposed resolution, if passed, would come into operation on the day on which it is published in the Gazette.

8. No difficulties relating to the legal and drafting aspects of the proposed resolution have been identified.

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