

立法會
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**Subcommittee on Proposed Resolution
under section 4(5) of the Fatal Accidents Ordinance (Cap. 22)**

Background brief

Purpose

This paper provides background information on the proposed resolution under section 4(5) of the Fatal Accidents Ordinance (Cap. 22) ("the Ordinance"). It also summarizes the major views and concerns expressed by Legislative Council ("LegCo") Members on the statutory sum to be awarded as damages for bereavement ("bereavement sum") under section 4(3) of the Ordinance.

Background

2. The Ordinance was enacted in 1986.¹ 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 LegCo may by resolution vary the sum.

¹ The Law Reform Commission of Hong Kong ("LRC") published its Report on Damages for Personal Injury and Death in 1984 ("LRC's Report") which recommended, inter alia, that an award for bereavement should be introduced as a measure of compensation for grief and loss of society and guidance. The Fatal Accidents Ordinance and the Law Amendment and Reform (Consolidation) (Amendment) Ordinance implemented the Report's proposals in 1986.

3. The bereavement sum was initially set at \$40,000.² This sum was increased to \$70,000 in 1991, by a resolution moved by the then Attorney General. The sum was further increased to the current sum of \$150,000 in April 1997, by a resolution moved by a Member at the Council meeting of 16 April 1997. Speaking in support of the resolution at the above Council meeting, the then Attorney General undertook to review the sum every two years.

Proposed resolution under section 4(5) of the Fatal Accidents Ordinance (Cap 22)

4. At the meeting of the Panel on Administration of Justice and Legal Services ("the Panel") on 28 May 2018, the Administration consulted the Panel on the following proposals:

- (a) a resolution be moved by the Secretary for Justice, within the 2017-2018 legislative session, to increase the bereavement sum under section 4(3) of the Ordinance from \$150,000 to \$220,000 which was 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 Administration hereafter to reflect inflation by making reference to the Consumer Price Index (A) ("CPI(A)") every two years.

5. After the above meeting, the Administration gave a notice to move a resolution at the Council meeting of 13 June 2018 to amend section 4(3) of the Ordinance to increase the bereavement sum from \$150,000 to \$220,000.

6. Before the Administration consulted the Panel on the proposed resolution, at the Panel meeting on 26 March 2018, Hon HUI Chi-fung had indicated his intention to move a resolution at the Council meeting on 9 May 2018 to increase the bereavement sum from \$150,000 to \$220,000. Considering that Mr HUI's proposal was within the Panel's purview and suitable for discussion at a future meeting, the Panel Chairman agreed to liaise with the Administration on the proposal.

² LRC's Report recommended that the fixed sum awarded for bereavement should initially be \$40,000.

7. On the same day, i.e. 26 March 2018, Mr HUI gave a notice to the Council for moving a resolution to amend the Ordinance at the Council meeting on 9 May 2018. The President had invited the Administration to give views on Mr HUI's proposed resolution. In his reply to Mr HUI on 27 April 2018,³ the President directed that the proposed resolution should, in accordance with House Rule 22(q), be considered by the Panel first.

Major views and concerns of members

8. The major views and concerns of members expressed at the Panel meeting on 28 May 2018 are summarized in the ensuing paragraphs.

Failure of the Administration to timely propose the adjustment of the bereavement sum

9. Members expressed grave concern that the bereavement sum had not been adjusted since 1997 and that the benefits of dependents of the deceased were not well taken care of. Some members considered that the Administration should have proactively reviewed the bereavement sum but had been slow to act, only after Hon HUI Chi-fung had indicated his intention to move a motion to amend the bereavement sum. The Panel passed a motion urging the Administration to move a resolution in 2017-2018 legislative session with a view to increasing the statutory sum of damages to \$220,000 as soon as possible.

10. The Administration responded that in 2000, the Administration 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. The overall downward trend in the cumulative inflation rate had continued and by making reference to the indices in March of each year, CPI(A) returned to the 1997 level only by March 2010.

11. The Administration further advised that in mid-2014, the Administration commenced a review of the bereavement sum ("2014 Review") and proposed to increase the sum to \$190,000, having made reference to the cumulative inflation as measured by CPI(A) but the two legal professional bodies counter-proposed that the amount be adjusted to \$250,000. The Administration considered it appropriate to review the bereavement sum again at this stage.

³ LC Paper No. CB(3)543/17-18

Regular review of the bereavement sum

12. While members were in general supportive of the Administration's proposal to conduct a biennial review of the bereavement sum to reflect the inflation trend by making reference to CPI(A), some members urged the Administration to comprehensively review the bereavement sum having regard to other factors, say, every six years as proposed by The Law Society of Hong Kong ("Law Society") in its submission.⁴

13. The Administration responded that in the 2014 Review, the Administration had studied the proposal of the two legal professional bodies that the increase in the bereavement sum should not just take inflation into account but also "changing social and economic conditions of Hong Kong". The Administration had also studied the methodology for adjusting the sum of similar compensation adopted in other common law jurisdictions. It concluded that there was no single indicator that could serve the purpose of manifesting the changing social and economic conditions in a nutshell.

14. The Administration added that an adjustment based on inflation by making reference to CPI(A) could provide a simple and objective methodology for the coming and future reviews of the bereavement sum. It was 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 would have the advantage of allowing 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 necessary.

Level of the bereavement sum

15. While members generally supported the proposal to increase the bereavement sum to \$220,000, some members considered that even after the proposed increase, the bereavement sum of \$220,000 was still low as. It was due to the trend that more families were small in size than those in 20 years ago, the bereavement suffered by dependents for the loss of a chief breadwinner in a family (with fewer members) would be even greater nowadays. Members urged the Administration to consider that in the next review of the bereavement sum, other factors which were beyond or not captured in the measurement of CPI(A) should be taken into account.

⁴ LC Paper No. CB(4)1113/17-18(05)

Class of recognized dependants eligible to claim for the bereavement sum

16. A member enquired about the class of recognized dependants who might claim under the Ordinance, in particular, whether a dependent of a deceased person in a marriage not recognized under the Hong Kong legislation would be entitled to claim for the bereavement sum. The Administration advised that the Ordinance had stipulated the persons who could claim for damages for bereavement.

Views of the two legal professional bodies and relevant stakeholder

17. The Panel noted that The Hong Kong Bar Association, the Law Society and the Hong Kong Federation of Insurers ("HKFI") in general supported the Administration's proposals. However, HKFI indicated that the proposal to increase the bereavement sum might have an impact on the claim cost and premium rate.

Latest development

18. At the meeting held on 1 June 2018, the House Committee agreed to form a Subcommittee to study the proposed resolution under section 4(5) of the Ordinance. At the request of the House Committee, the Administration has withdrawn the notice to move the motion mentioned in paragraph 5 above.

Relevant papers

19. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
14 June 2018

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List of relevant papers

Meeting	Date	Paper
Panel on Administration of Justice and Legal Services	28.5.2018	Agenda (Item IV) Administration's supplementary information paper

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