

For Information

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

**Biennial review of the amount of damages for bereavement
under the Fatal Accidents Ordinance (Cap. 22)**

This paper briefs Members on the following:-

- (a) the outcome of the biennial 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
- (b) the Government’s proposal that a resolution be moved by the Secretary for Justice, within the current legislative session, to increase the bereavement sum from \$220,000 to \$231,000 to reflect the cumulative impact of inflation experienced over the reference period from March 2018 to March 2020 (“**reference period**”).

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, 1997 and 2018. The current sum is set at \$220,000.

3. In 1997, the then Attorney General undertook to review the statutory bereavement sum biennially to reflect inflation.¹ In the last review in 2018, the Government renewed its commitment to review the bereavement sum every two years to take into account inflation by making reference to the Consumer Price Index (A) (“CPI(A)”)². The present cycle of biennial review examines the cumulative inflation during the reference period by making reference to the CPI(A).

Biennial Review in 2020

4. The cumulative rate of change of CPI(A) during the reference period was 5.0%. The Government proposes to move a resolution to make a commensurate increase for the bereavement sum from \$220,000 to \$231,000 to cover the cumulative inflation as measured by CPI(A) reckoned from the reference period.³ A table showing the details of the calculation is set out at

———— **Annex**.

Engagement with the stakeholders

5. The Law Society of Hong Kong, the Hong Kong Bar Association and the Hong Kong Federation of Insurers have been informed of the outcome of the present biennial review and the Government’s intention to make the proposed adjustments.

¹ Legislative Council of Hong Kong, Official Record of Proceedings, *Hong Kong Hansard: Reports of the Sitting of the Legislative Council of Hong Kong*, 16 April 1997, at p. 96.

² Legislative Council of Hong Kong, Official Record of Proceedings, *Hong Kong Hansard: Reports of the Meetings of the Legislative Council of Hong Kong*, 11 July 2018, at p. 14361; see also Legislative Council Brief, *Review Of The Amount Of Damages For Bereavement Under The Fatal Accidents Ordinance (Chapter 22)*, May 2018, at paragraph 9, https://www.legco.gov.hk/yr17-18/english/subleg/brief/sc110_brf.pdf.

³ With the adjustment of the bereavement sum to \$231,000, 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 \$231,000 by operation of section 20C(2)(a) of that Ordinance.

Comprehensive review of the bereavement sum

6. In the run up to and during the last review exercise in 2018, there were suggestions that in addition to the biennial review of the bereavement sum by making reference to the CPI(A), there should also be a comprehensive review of the manner in which the bereavement sum should be set to take into account factors other than inflation. The Government is keeping an open mind in carefully studying views from stakeholders and will continue to engage them with regard to the way forward. This is, however, a separate and continuing exercise which should not affect the current biennial review exercise to reflect cumulative inflation by making reference to the CPI(A).

Way Forward

7. Members are invited to take note of the proposal in this paper. Comments or requests for information may be directed to Ms Peggy Au Yeung, Senior Assistant Solicitor General (Policy Affairs) (Acting) (tel. no.: 3918-4038; e-mail: lpd@doj.gov.hk) or Miss Jenny Hui, Senior Government Counsel (Acting) (tel. no.: 3918-4053; e-mail: lpd@doj.gov.hk). Given the technical, straightforward and time-sensitive nature of the proposal, it is the Government's intention to move the motion for a resolution as soon as practicable within this legislative session.

Legal Policy Division
Department of Justice
May 2020

**Calculation of the bereavement sum by making reference to the
CPI(A) from March 2018 to March 2020**

	Consumer Price Index (A)		Amount of damages*
	Index#	Cumulative % change [^]	
March 2018	107.4	5.0% (from March 2018 to March 2020)	\$220,000 (current sum)
March 2019	110.1		
March 2020	112.8		\$231,000*

Index from October 2014 - September 2015 = 100

[^] Cumulative percentage changes are derived from CPI(A) figures taken to more than one decimal place, and are presented with one decimal place.

* The amount is calculated by applying the formula below:

$$\text{Amount of damages} = \text{amount of damages in the reference year} \\ \times (1 + \text{cumulative \% change in the current year})$$

For example, for the current review, the amount of damages = \$220,000 x (1 + 5.0%) = \$231,000.