檔案編號: CR 7/5091/82(99) Pt. 12

立法會參考資料摘要

《香港太平洋戰爭紀念撫恤金條例》 (第386章)

1999 年香港太平洋戰爭紀念撫恤金 (修訂)條例草案

引言

在一九九九年三月三十日的會議上,行政會議**建** 議,行政長官**指令**

- (a)向立法會提交 1999 年香港太平洋戰爭紀念撫恤 金(修訂)條例草案(載於附件 A),令東江縱 隊港九獨立大隊(港九獨立大隊)原成員及其在 生的配偶可符合資格申領撫恤金;及
- (b)在免費醫療計劃下,向聯誼會在港的原成員及其 在生的配偶提供醫療福利。

背景和論據

港九獨立大隊

2. 港九獨立大隊是在日軍佔領香港期間一支在本港活動的游擊隊。根據原東江縱隊港九獨立大隊老游擊

戰士聯誼會的資料,港九獨立大隊是按中國共產黨南 方前線工作委員會一九四一年的一項決議,在一九四 二年二月在西貢成立,其任務是對抗佔領香港的日 軍。

- 3. 聯誼會現由約 430 名老戰士組成,當中約 300 人居於香港,其餘多數居於內地。該會表示,在抗戰期間獨立大隊約有 1 000 名成員。
- 4. 在回歸後,政府決定把港九獨立大隊成員的名字 列入大會堂紀念龕的陣亡戰士名冊。聯誼會在諮詢政 府後編訂了一份名單,列出 115 名陣亡或因戰時受傷 而死的成員。在一九九八年十月二十八日政府為紀念 這些名字列入陣亡戰士名冊而舉行了一項正式的儀 式。

聯誼會的要求

5. 該會提出其成員應可享有與現行條例附表指明隊 伍的合資格成員相若的利益。除撫恤金外,居住在本 地的受益人可有權在政府門診診所和醫院管理局轄下 某些醫院接受免費醫療服務。此外,受益人使用醫院 管理局轄下醫院的住院服務時,亦可支付較低廉的費 用。這計劃由衞生署執行,而非一項法定計劃。現時 有 297 名退伍軍人已在衞生署登記。

撫恤金的政策

- 6. 多年來,政府的政策是向在第二次世界大戰中對防衛香港有貢獻,並在該戰爭中曾受傷難的人發放撫恤金(以及提供醫療福利)。政府既已肯定港九獨立大隊戰時的角色,並確認他們在本港的軍事行動,我們深信他們也應根據現行發放撫恤金的制度,同樣的申領準則規限,獲得一如其他隊伍成員所享有的待遇。
- 7. 截至一九九九年二月,條例下的受益人共有 672 名。在一九九七至九八年度的支付撫金額為五千 八百三十萬元。

條訂法例

8. 我們建議把港九獨立大隊納入條例附表,使原港九獨立大隊成員可有資格申領撫恤金。根據條例第 7條(見附件 B)的規定,在附表中指明的隊伍成員,如在一九四一年十二月七日至二十五日期間服役,並罹受傷病、被俘虜,或在執行任務過程中被殺,他們(或他們的配偶)便符合資格申領撫恤金。由於港九獨立大隊在一九四二年二月始成立,因此條例第 7 條需要修訂,把一九四二年二月至一九四五年九月期間活動的

港九獨立大隊包括在內。必須注意的是,單是曾在有關部隊服役,並不足以可獲發撫恤金。

建議

- 9. 我們建議:
 - (a) 把港九獨立大隊納入條例附表,使原成員可符合資格申領撫恤金;
 - (b) 評審原港九獨立大隊成員的申請時,其基礎 和準則,應與評審條例附表指明的其他隊伍 成員的申請無異。所有提交的證據均會經過 審核,而有關標準必須與審核其他申請者的 標準一致;
 - (c)條例的執行方式維持不變,即香港太平洋戰爭紀念撫恤金顧問委員會應按條例審核申請,向衞生福利局局長提交建議。根據現行的執行方法,香港太平洋戰爭紀念撫恤金上訴委員會會聆訊任何因衞生福利局局長的決定感受委屈而提出的上訴;及
 - (d) 在免費醫療計劃下,向聯誼會在港的所有成員及其在世的配偶提供醫療福利。

條例草案

10. 條例草案第 2 條修訂原條例第 7 條,列出原港九獨立大隊成員根據條例申領撫恤金所須符合的條件。原港九獨立大隊成員須證明他們在服役期間受傷或被日軍俘虜。遺孀須證明他們為陣亡成員的配偶和並未再婚。

立法程序時間表

11. 立法程序時間表如下-

刊登憲報 一九九九年四月九日

首讀和開始二讀辯論 一九九九年四月二十一日

恢復二讀辯論、委員會審 另行通知

議階段和三讀

對人權的影響

12. 根據律政司的意見,該條例草案符合《基本法》 內與人權有關的條文。

法例的約束力

13. 條例草案並無影響原條例的約束力。

財政和人手方面的影響

- 14. 由於我們並無港九獨立大隊中曾在戰時受傷或被拘禁的成員的數目,現時不可能估計受益人的數目及對財政的影響。但假設 430 名成員全部有資格領取撫恤金,而 115 名陣亡人士均有配偶而其配偶仍在生亦並未再婚,我們估計最高撫恤金金額約達四千七百萬元。把免費醫療計劃延伸至該會會員可能導至衞生署和醫院管理局有額外開支,但相信涉及金額不會太大。
- 15. 條例草案在人手方面並無影響。

公眾諮詢

16. 我們已徵詢香港太平洋戰爭紀念撫恤金顧問委員會。該會支持我們的建議。

宣傳安排

17. 我們會在一九九九年四月八日發出新聞稿,並會安排發言人解答傳播媒界的查詢。

衞生福利局

一九九九年四月

《1999 年香港太平洋戰爭紀念撫恤金 (修訂)條例草案》

附件一覽表

- 附件 A 《1999 年香港太平洋戰爭紀念撫恤金 (修訂)條例草案》
- 附件 B 《香港太平洋戰爭紀念撫恤金條例》 (第 386 章)第 7 及 21 條, 及附表

《1999年香港太平洋戰爭紀念撫恤金 (修訂)條例草案》

附件一覽表

附件 A - 《1999年香港太平洋戰爭紀念撫恤金(修訂)條例草案》

本條例草案

旨在

修訂《香港太平洋戰爭紀念撫恤金條例》。

由立法會制定。

1. 簡稱

本條例可引稱爲《1999年香港太平洋戰爭紀念撫恤金(修訂)條例》。

2. 申請成爲合資格受益人身分

《香港太平洋戰爭紀念撫恤金條例》(第386章)第7(2)條現予修訂一

- (a) 在(d)段中,廢除"附表中"而代以"附表 1";
- (b) 加入一
 - "(da) 申請人於 1942 年 2 月 3 日至 1945 年 9 月 1 日期間,屬附表 2 指明的隊伍的成員, 並在從事該等隊伍行動期間—
 - (i) 罹受傷病;或
 - (ii) 被駐於香港的日本當局俘虜及 拘禁;";
- (c) 在(e)(i)段中,在"(d)"之後加入"或(da)";

(d) 廢除(f)段而代以一

- "(f) 申請人在配偶去世後並無再婚,而其已故 配偶一
 - (i) 於 1941 年 12 月 7 日至 1941 年 12 月 25 日期間,服役於附表 1 指明的任何隊伍;或
 - (ii) 於 1942 年 2 月 3 日至 1945 年 9 月 1 日期間,服役於附表 2 指明 的隊伍,

並—

- (A) 在執行任務過程中被殺;
- (B) 因爲在執行任務過程中所罹受 的傷病而死亡;或
- (C) 因爲在服役期間所罹受的傷病 或苦難而死亡;"。

3. 行政長官可修訂附表

第 21 條現予修訂,在"附表"之後加入"1 或 2"。

4. 修訂附表

附表現予修訂一

- (a) 將其重編爲附表 1;
- (b) 廢除"〔第7(2)條〕"而代以"〔第7(2)及21條〕"。

5. 加入附表

現加入一

"附表 2

〔第7(2)及21條〕

東江縱隊港九獨立大隊。"。

摘要說明

本條例草案修訂《香港太平洋戰爭紀念撫恤金條例》(第 386 章),以擴大可有權享有該條例所指的撫恤金的合資格受益人的涵蓋範圍。

PART III

PENSION AND ADDITIONAL BENEFITS

5. Payment of pension and additional benefits

There shall be charged on and paid out of the general revenue to the eligible beneficiaries in accordance with the provisions of this Ordinance pensions to be known as the Hong Kong War Memorial Pensions and additional benefits as provided in section 9.

6. Entitlement to pensions

- (1) Any eligible beneficiary shall be entitled, as from the date on which he is determined by the Secretary under section 7(2) to be an eligible beneficiary, subject to and in accordance with the provisions of this Ordinance, to a pension at the rate specified from time to time by the Secretary.
- (2) Except as otherwise provided in this Ordinance, the entitlement to the pension under subsection (1) shall be a right

7. Application for the status of eligible beneficiaries

- (1) Application for the status of an eligible beneficiary shall be made to the Secretary.
- (2) Upon an application under subsection (1), the Secretary shall determine the applicant to be an eligible beneficiary if it is shown by the applicant to the satisfaction of the Secretary that the applicant fulfils any of the following conditions -
 - (a) that the applicant was a beneficiary of the Hong Kong War Memorial Fund established under section 2 of the Hong Kong War Memorial Fund Ordinance (Cap. 1026) immediately before the date on which this section comes into operation;
 - (b) that the applicant was a beneficiary of the non-statutory fund known as the Far Eastern Relief Fund immediately before the date on which this section comes into operation;
 - (c) that the applicant had applied for benefits under the aforementioned Hong Kong War Memorial Fund or Far Eastern Relief Fund and his application was rejected in the period from 18 February 1985 to the date on which this section comes into o9peration solely on the ground that his financial means exceeded the means threshold prescribed by the administration authority of the relevant Fund;

第III部

撫恤金及附加利益

5. 撫恤金及附加利益的支付

一項名爲"香港太平洋戰爭紀念撫恤金"的撫恤金及第9條所規定的附加利益,須按照本條例條文由政府一般收入支付予合資格受益人。

6. 撫恤金享有權

- (1) 合資格受益人自衞生福利司根據第7(2)條決定他 是合資格受益人的日期起,有權在本條例的規限下,按照本條例的條 文享有撫恤金,款額由衞生福利司不時指明。
- (2) 除本條例另有規定外,第(1)款下的撫恤金享有權 是一項權利。

7. 申請成爲合資格受益人身分

- (1) 尋求合資格受益人身分的申請須向衞生福利司提出。
- (2) 凡衞生福利司收到根據第(1)款提出的申請,而申請人提出證明令衞生福利司信納申請人符合以下任何一項條件,衞生福利司須決定申請人是合資格受益人一
 - (a) 在緊接本條實施日期之前,申請人是根據 《香港國殤紀念基金條例》(第 1026 章) 第 2 條設立的香港國殤紀念基金的受益人;
 - (b) 在緊接本條實施日期之前,申請人是一項名 爲"遠東賑濟基金"的非法定基金的受益 人;
 - (c) 申請人曾申請上述香港國殤紀念基金或遠東賑濟基金下的利益,但在自 1985 年 2 月 18 日至本條實施日期的期間內,該申請純粹因爲他的經濟能力超逾由有關基金管理當局訂明的經濟能力限額,而遭拒絕;

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- (d) that the applicant served as a member of any service specified in that Schedule between 7 December 1941 and 25 December 1941 and sustained an injury during such service or was captured by the Japanese and held in captivity for -
 - (i) any period not being a period falling exclusively before 30 December 1941 or:
 - (ii) any period exclusively before 30 December 1941 where the person was held at the prison camps at Argyle Street, Bowen Road Hospital, Ma Tau Chung, Ma Tau Wai, North Point or Sham Shui o;
- (e) that the applicant-
 - is the widow or widower of a person who prior to his or her death would have fulfilled the conditions specified in paragraph (d); and
 - (ii) is unmarried;
- (f) that the applicant is the widow or widower of a person who served as a member in any service specified in the Schedule between 7 December 1941 and 25 December 1941 and who-
 - (i) was killed in action;
 - (ii) died as a result of an injury sustained in action; or
 - (iii) died as a result of an injury or hardship sustained during such service.

and that the applicant is unmarried;

- (g) that the applicant was subject to torture by or under of the Japanese authority in Hong Kong during the period from 7 December 1941 to 1 September 1945;
- (h) that the applicant is the spouse of a person who fulfills the conditions specified in paragraph(g);
- (i) that the applicant is the widow or widower of a person executed by or under the order of the Japanese authority in Hong Kong during the period from 7 December 1941 to 1 September 1945 on any ground other than the commission of an offence which would have been punishable by a mandatory sentence of death penalty under the law of Hong Kong prevailing on 7 December 1941 had the offence been committed on that date and that the applicant is unmarried.
- (3) The Secretary may determine to reject an application for the status of an eligible beneficiary and where he does so, he shall give notice in writing to the applicant and the Chairman of the Committee stating the reasons for the determination.
- (4) Any condition specified in subsection (2)shall, except where the context otherwise permits, be construed as a continuing condition and accordingly, where person is determined to be an eligible beneficiary by reason of his

- (d) 申請人於 1941 年 12 月 7 日至 1941 年 12 月 25 日期間,在附表中指明的任何隊伍中服役,並在 服役期間罹受傷病或被日本人俘虜及在以下期 間被拘禁一
 - (i) 在 1941 年 12 月 30 日或之後結束的任 何期間;或
 - 在 1941年 12月 30日之前結束的任何 (ii) 期間(此期間祇適用於被拘禁在位於 亞皆老街、寶雲道醫院、馬頭涌、馬 頭圍、北角或深水埗的戰俘營的人);
- (e) 申請人一
 - (i) 的配偶已去世, 而其已故配偶在去世 前是會符合(d)段所指明的條件的; 及
 - 並無再婚; (ii)
- (f) 申請 人在配偶去世後並無再婚,而其已故配偶於 1941年12月7日至1941年12月25日期間, 服役於附表中指明的任何隊伍, 並一
 - (i) 在執行任務過程中被殺;
 - (ii) 因爲在執行任務過程中所罹受的傷病 而死亡;或
 - 因爲在服役期間所罹受的傷病或苦難 而死亡;
- (g) 申請人於 1941 年 12 月 7 日至 1945 年 9 月 1 日 期間,受到駐於香港的日本當局虐待,或在駐於 香港的日本當局的命令之下受到虐待;
- (h) 申請人的配偶符合(g)段指明的條件;
- (i) 申請人在配偶去世後並無再婚,而其已故配偶於 1941年12月7日至1945年9月1日期間,被 駐於香港的日本當局處決,或在駐於香港的日本 當局的命令之下被處決,而處決的理由,並非死 者生前犯了一項如是在 1941 年 12 月 7 日所犯 的,則在當日施行的香港法律下犯者會被強制性 地判處死刑的罪行。
- 衞生福利司可決定拒絕一項尋求合資格受益人身分的申 請,而如他這樣做,他須以書面通知有關申請人及顧問委員會主席,並須在 通知書中說明該決定的理由。
- 除文意不容許外,在第(2)款中指明的條件均須解釋爲 須持續符合的條件,因此凡任何人因爲符合第(2)款所列的某項條件,而獲 决定爲合資格受益人,如他不再符合該條件,他便即時喪失撫恤金享有權

fulfillment of a condition set out in subsection (2), his entitlement to a pension shall extinguish if and when the condition ceases to be fulfilled by him.

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8. Secretary to consult the Committee

Before making any determination under section 7, the Secretary shall consult the Committee.

9. Additional benefits

- (1) The Secretary may, upon an application made to him in the specified circumstances by an eligible beneficiary or the personal representatives of a deceased eligible beneficiary, determine that additional benefits under the specified head and at the specified rate be paid, subject to the fulfillment or continued fulfillment of the specified conditions in the specified manner, to the beneficiary or, as the case may be, his estate.
 - (2) In subsection (1) "specified" (指明) means specified by the Secretary.

10. Application

- (1) Application under section 7(1) or 9(1) shall be made in the manner and form specified by the Secretary.
- (2) Upon receipt of an application under section 7(1) or 991), the Secretary may carry out such inquiries as the considers necessary to the making of a determination.

PART IV APPEAL

11. Appeals against determination of the Secretary

- (1) A person aggrieved by a determination of the Secretary under section 7(3) may appeal to the Appeal Board.
- (2) Any person who wishes to appeal under this section shall lodge a notice of appeal in manner and form specified by the Secretary within 28 days after receiving notice of the determination to which the appeal relates.

12. Appeal Board

- (1) Every appeal made under section 11 shall be determined by the Appeal Board constituted under section 13.
- (2) The Governor shall appoint as Chairman of the Appeal Board a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336).

第 386 章

8. 衛生福利司須諮詢顧問委員會

衛生福利司在根據第7條作出任何決定之前,須諮詢顧問委員會。

9. 附加利益

衞生福利司可應合資格受益人或已故合資格受益人的遺 產管理人在指明情況下提出的申請,決定在以指明方式符合或持續符合指明 條件的情況下,支付指明數額的指明項目附加利益予該受益人或(視乎情況) 該已故受益人的遺產

(2)在第(1)款中, "指明"(specified)指由衞生福利司指 明。

10. 申請

(1)根據第7(1)或9(1)條提出的申請,須以衞生福利司 指明的方式及表格提出。

(2)衞生福利司收到根據第7(1)或9(1)條提出的申請後, 可進行他認爲爲作出決定而需要進行的查訊。

第IV部

上訴

11. 上訴反對衞生福利司的決定

- 任何人如因衛生福利司根據第7(3)條所作的決定而感受 委屈,可向上訴委員會提出上訴。
- 擬根據本條上訴的人,須在收到有關決定的通知後28天 (2)內,以衞生福利司指明的方式,遞交符合衞生福利司指明的格式的上訴通知。

12. 上訴委員會

- (1)每宗根據第11條提出的上訴均須由根據第13條組成的上 訴委員會決定。
 - (2)總督須委任一位根據《地方法院條例》(第336章)第5 條有資格出任地方法院法官的人,擔任上訴委員會主席。

18. Protection of entitlement to pension

The pension shall not be liable to be attached, charged, sequestered or levied upon for or in respect of debt or claim whatsoever, other than a debt due to the Crown

19. Entitlement or pension not transferable

- (1) The entitlement of an eligible beneficiary to a pension shall not be assignable or transferable except for the purpose of -
 - (a) satisfying (either in whole or in part) a debt due to the Crown; or
 - (b) satisfying an order of any court for the payment of money towards the maintenance of the spouse or former spouse or minor child of the eligible beneficiary.
- (2) The entitlement of an eligible beneficiary to a pension shall not pass to any other person by operation of law.

20. Entitlement to pension not to survive death

The entitlement of an eligible beneficiary to a pension shall not survive for the benefit of his estate on his death.

21. Regulations

The Secretary may make regulations-

- (a) providing for-
 - (i) the making and determination of applications under section 7(1) or 9(1):
 - (ii) the payment of pensions or additional benefits; and
 - (iii) the lodging of appeals under section II and the practice and procedure of the Appeal Board;
- (b) generally for the better carrying out of the provisions and objects of this Ordinance.

23-24. (Omitted as spent)

18. 保障撫恤金享有權

除了拖欠官方的債項外,撫恤金不得爲任何其他債項或聲請, 或就任何其他債項或聲請而被扣押、抵押、暫押或查押。

19. 撫恤金享有權不得移轉

(1) 除爲了以下目的外,合資格受益人的撫恤金享有權不 得轉讓或移轉一

- (a) 償還拖欠官方的債項的全部或一部分;或
- (b) 遵守法院命令向該受益人的配偶、前配偶或 未成年子女支付贍養費。
- (2) 合資格受益人的撫恤金享有權,不得因爲法律原則的 運作而轉予任何其他人。

20. 撫恤金享有權在受益人去世後不留存

合資格受益人的撫恤金享有權,在他去世之後不得爲他的遺產 的利益留存。

21. 總督可修訂附表

總督可藉於憲報刊登的命令修訂附表。

22. 規例

衞生福利司可一

- (a) 訂立規例就以下事項訂定條文一
 - (i) 第7(1)或9(1)條下的申請的 提出及決定;
 - (ii) 無恤金或附加利益的支付;及
 - (iii) 根據第 11 條提出上訴及上訴委員 會的實務和程序;
- (b) 為更有效地施行本條例的條文及貫撤本條例的宗旨就一般事項訂定條文。

SCHEDULE

[S.7(2)]

- 1. The Hong Kong Naval Volunteer Force
- 2. The Hong Kong Royal Naval Reserve
- 3. The Hong Kong Volunteer Defence Corps and the Auxiliary and Affiliated
 Units therefore
- 4. The Hong Kong Corps of Air Raid Wardens
- 5. The Police Force, the Hong Kong Police Reserve and the special constabulary established under the Peace Preservation Ordinance 1886
- . The Hong Kong Civil Defence Corps-

Auxiliary Communications Service

Auxiliary Conservancy Corps

Auxiliary Fire Service

Auxiliary Labour Corps

Auxiliary Medical Corps

Auxiliary Nursing Service

Auxiliary Ordinance Corps

Auxiliary Quartering Corps

Auxiliary Rescue and Demolition Corps

Auxiliary Supply Corps

Auxiliary Transport Service

Civil Pay and Accounts Service

Public Works Corps

- 7. The Regular Armed Forces and the Royal Naval Yard Police including uniformed personnel attached to such Forces and Police (not including persons not locally recruited or not locally attached or not, as on 25 December 1941, married to persons ordinarily resident in Hong Kong)
- 8. The St. John Ambulance Brigade
- 9. The Hong Kong Dockyard Defence Corps

23-24. (已失時效而略去)

附表

〔第7(2)條〕

- 1. 香港海軍義勇軍
- 2. 香港皇家海軍後備軍
- 3. 香港陸軍義勇軍及其輔助和附屬單位
- 4. 香港空襲民防隊
- 5. 香港警察隊、香港後備警察隊及根據《1886年保安條例》成立 的特別警察
- 6. 香港民防隊一

通訊輔助隊

河道管理輔助隊

消防輔助隊

勞工輔助隊

醫療輔助隊

護士輔助隊

砲兵輔助隊

住所編配輔助隊

拯救及拆卸輔助隊

軍需輔助隊

運輸輔助隊

薪餉發給及帳目管理處

工務隊

- 7. 正規部隊及皇家海軍船塢警察隊,包括附屬於這些部隊及警察隊的制服人員(不包括不是在本地徵募的人,不是在本地附屬於上述部隊及警察隊的人或在1941年12月25日不是與常居於香港的人有婚姻關係的人)
- 8. 聖約翰救傷隊
- 9. 香港船塢防衞隊

《1999年香港太平洋戰爭紀念撫恤金 (修訂)條例草案》

附件一覽表

附件 A - 《1999年香港太平洋戰爭紀念撫恤金(修訂)條例草案》

本條例草案

旨在

修訂《香港太平洋戰爭紀念撫恤金條例》。

由立法會制定。

1. 簡稱

本條例可引稱爲《1999年香港太平洋戰爭紀念撫恤金(修訂)條例》。

2. 申請成爲合資格受益人身分

《香港太平洋戰爭紀念撫恤金條例》(第386章)第7(2)條現予修訂一

- (a) 在(d)段中,廢除"附表中"而代以"附表 1";
- (b) 加入一
 - "(da) 申請人於 1942 年 2 月 3 日至 1945 年 9 月 1 日期間,屬附表 2 指明的隊伍的成員, 並在從事該等隊伍行動期間—
 - (i) 罹受傷病;或
 - (ii) 被駐於香港的日本當局俘虜及 拘禁;";
- (c) 在(e)(i)段中,在"(d)"之後加入"或(da)";

(d) 廢除(f)段而代以一

- "(f) 申請人在配偶去世後並無再婚,而其已故 配偶一
 - (i) 於 1941 年 12 月 7 日至 1941 年 12 月 25 日期間,服役於附表 1 指明的任何隊伍;或
 - (ii) 於 1942 年 2 月 3 日至 1945 年 9 月 1 日期間,服役於附表 2 指明 的隊伍,

並—

- (A) 在執行任務過程中被殺;
- (B) 因爲在執行任務過程中所罹受 的傷病而死亡;或
- (C) 因爲在服役期間所罹受的傷病 或苦難而死亡;"。

3. 行政長官可修訂附表

第 21 條現予修訂,在"附表"之後加入"1 或 2"。

4. 修訂附表

附表現予修訂一

- (a) 將其重編爲附表 1;
- (b) 廢除"〔第7(2)條〕"而代以"〔第7(2)及21條〕"。

5. 加入附表

現加入一

"附表 2

〔第7(2)及21條〕

東江縱隊港九獨立大隊。"。

摘要說明

本條例草案修訂《香港太平洋戰爭紀念撫恤金條例》(第 386 章),以擴大可有權享有該條例所指的撫恤金的合資格受益人的涵蓋範圍。

PART III

PENSION AND ADDITIONAL BENEFITS

5. Payment of pension and additional benefits

There shall be charged on and paid out of the general revenue to the eligible beneficiaries in accordance with the provisions of this Ordinance pensions to be known as the Hong Kong War Memorial Pensions and additional benefits as provided in section 9.

6. Entitlement to pensions

- (1) Any eligible beneficiary shall be entitled, as from the date on which he is determined by the Secretary under section 7(2) to be an eligible beneficiary, subject to and in accordance with the provisions of this Ordinance, to a pension at the rate specified from time to time by the Secretary.
- (2) Except as otherwise provided in this Ordinance, the entitlement to the pension under subsection (1) shall be a right

7. Application for the status of eligible beneficiaries

- (1) Application for the status of an eligible beneficiary shall be made to the Secretary.
- (2) Upon an application under subsection (1), the Secretary shall determine the applicant to be an eligible beneficiary if it is shown by the applicant to the satisfaction of the Secretary that the applicant fulfils any of the following conditions -
 - (a) that the applicant was a beneficiary of the Hong Kong War Memorial Fund established under section 2 of the Hong Kong War Memorial Fund Ordinance (Cap. 1026) immediately before the date on which this section comes into operation;
 - (b) that the applicant was a beneficiary of the non-statutory fund known as the Far Eastern Relief Fund immediately before the date on which this section comes into operation;
 - (c) that the applicant had applied for benefits under the aforementioned Hong Kong War Memorial Fund or Far Eastern Relief Fund and his application was rejected in the period from 18 February 1985 to the date on which this section comes into o9peration solely on the ground that his financial means exceeded the means threshold prescribed by the administration authority of the relevant Fund;

第III部

撫恤金及附加利益

5. 撫恤金及附加利益的支付

一項名爲"香港太平洋戰爭紀念撫恤金"的撫恤金及第9條所規定的附加利益,須按照本條例條文由政府一般收入支付予合資格受益人。

6. 撫恤金享有權

- (1) 合資格受益人自衞生福利司根據第7(2)條決定他 是合資格受益人的日期起,有權在本條例的規限下,按照本條例的條 文享有撫恤金,款額由衞生福利司不時指明。
- (2) 除本條例另有規定外,第(1)款下的撫恤金享有權 是一項權利。

7. 申請成爲合資格受益人身分

- (1) 尋求合資格受益人身分的申請須向衞生福利司提出。
- (2) 凡衞生福利司收到根據第(1)款提出的申請,而申請人提出證明令衞生福利司信納申請人符合以下任何一項條件,衞生福利司須決定申請人是合資格受益人一
 - (a) 在緊接本條實施日期之前,申請人是根據 《香港國殤紀念基金條例》(第 1026 章) 第 2 條設立的香港國殤紀念基金的受益人;
 - (b) 在緊接本條實施日期之前,申請人是一項名 爲"遠東賑濟基金"的非法定基金的受益 人;
 - (c) 申請人曾申請上述香港國殤紀念基金或遠東賑濟基金下的利益,但在自 1985 年 2 月 18 日至本條實施日期的期間內,該申請純粹因爲他的經濟能力超逾由有關基金管理當局訂明的經濟能力限額,而遭拒絕;

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- (d) that the applicant served as a member of any service specified in that Schedule between 7 December 1941 and 25 December 1941 and sustained an injury during such service or was captured by the Japanese and held in captivity for -
 - (i) any period not being a period falling exclusively before 30 December 1941 or:
 - (ii) any period exclusively before 30 December 1941 where the person was held at the prison camps at Argyle Street, Bowen Road Hospital, Ma Tau Chung, Ma Tau Wai, North Point or Sham Shui o;
- (e) that the applicant-
 - is the widow or widower of a person who prior to his or her death would have fulfilled the conditions specified in paragraph (d); and
 - (ii) is unmarried;
- (f) that the applicant is the widow or widower of a person who served as a member in any service specified in the Schedule between 7 December 1941 and 25 December 1941 and who-
 - (i) was killed in action;
 - (ii) died as a result of an injury sustained in action; or
 - (iii) died as a result of an injury or hardship sustained during such service.

and that the applicant is unmarried;

- (g) that the applicant was subject to torture by or under of the Japanese authority in Hong Kong during the period from 7 December 1941 to 1 September 1945;
- (h) that the applicant is the spouse of a person who fulfills the conditions specified in paragraph(g);
- (i) that the applicant is the widow or widower of a person executed by or under the order of the Japanese authority in Hong Kong during the period from 7 December 1941 to 1 September 1945 on any ground other than the commission of an offence which would have been punishable by a mandatory sentence of death penalty under the law of Hong Kong prevailing on 7 December 1941 had the offence been committed on that date and that the applicant is unmarried.
- (3) The Secretary may determine to reject an application for the status of an eligible beneficiary and where he does so, he shall give notice in writing to the applicant and the Chairman of the Committee stating the reasons for the determination.
- (4) Any condition specified in subsection (2)shall, except where the context otherwise permits, be construed as a continuing condition and accordingly, where person is determined to be an eligible beneficiary by reason of his

- (d) 申請人於 1941 年 12 月 7 日至 1941 年 12 月 25 日期間,在附表中指明的任何隊伍中服役,並在 服役期間罹受傷病或被日本人俘虜及在以下期 間被拘禁一
 - (i) 在 1941 年 12 月 30 日或之後結束的任 何期間;或
 - 在 1941年 12月 30日之前結束的任何 (ii) 期間(此期間祇適用於被拘禁在位於 亞皆老街、寶雲道醫院、馬頭涌、馬 頭圍、北角或深水埗的戰俘營的人);
- (e) 申請人一
 - (i) 的配偶已去世, 而其已故配偶在去世 前是會符合(d)段所指明的條件的; 及
 - 並無再婚; (ii)
- (f) 申請 人在配偶去世後並無再婚,而其已故配偶於 1941年12月7日至1941年12月25日期間, 服役於附表中指明的任何隊伍, 並一
 - (i) 在執行任務過程中被殺;
 - (ii) 因爲在執行任務過程中所罹受的傷病 而死亡;或
 - 因爲在服役期間所罹受的傷病或苦難 而死亡;
- (g) 申請人於 1941 年 12 月 7 日至 1945 年 9 月 1 日 期間,受到駐於香港的日本當局虐待,或在駐於 香港的日本當局的命令之下受到虐待;
- (h) 申請人的配偶符合(g)段指明的條件;
- (i) 申請人在配偶去世後並無再婚,而其已故配偶於 1941年12月7日至1945年9月1日期間,被 駐於香港的日本當局處決,或在駐於香港的日本 當局的命令之下被處決,而處決的理由,並非死 者生前犯了一項如是在 1941 年 12 月 7 日所犯 的,則在當日施行的香港法律下犯者會被強制性 地判處死刑的罪行。
- 衞生福利司可決定拒絕一項尋求合資格受益人身分的申 請,而如他這樣做,他須以書面通知有關申請人及顧問委員會主席,並須在 通知書中說明該決定的理由。
- 除文意不容許外,在第(2)款中指明的條件均須解釋爲 須持續符合的條件,因此凡任何人因爲符合第(2)款所列的某項條件,而獲 决定爲合資格受益人,如他不再符合該條件,他便即時喪失撫恤金享有權

fulfillment of a condition set out in subsection (2), his entitlement to a pension shall extinguish if and when the condition ceases to be fulfilled by him.

Hong Kong War Memorial Pensions

8. Secretary to consult the Committee

Before making any determination under section 7, the Secretary shall consult the Committee.

9. Additional benefits

- (1) The Secretary may, upon an application made to him in the specified circumstances by an eligible beneficiary or the personal representatives of a deceased eligible beneficiary, determine that additional benefits under the specified head and at the specified rate be paid, subject to the fulfillment or continued fulfillment of the specified conditions in the specified manner, to the beneficiary or, as the case may be, his estate.
 - (2) In subsection (1) "specified" (指明) means specified by the Secretary.

10. Application

- (1) Application under section 7(1) or 9(1) shall be made in the manner and form specified by the Secretary.
- (2) Upon receipt of an application under section 7(1) or 991), the Secretary may carry out such inquiries as the considers necessary to the making of a determination.

PART IV APPEAL

11. Appeals against determination of the Secretary

- (1) A person aggrieved by a determination of the Secretary under section 7(3) may appeal to the Appeal Board.
- (2) Any person who wishes to appeal under this section shall lodge a notice of appeal in manner and form specified by the Secretary within 28 days after receiving notice of the determination to which the appeal relates.

12. Appeal Board

- (1) Every appeal made under section 11 shall be determined by the Appeal Board constituted under section 13.
- (2) The Governor shall appoint as Chairman of the Appeal Board a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336).

第 386 章

8. 衛生福利司須諮詢顧問委員會

衛生福利司在根據第7條作出任何決定之前,須諮詢顧問委員會。

9. 附加利益

衞生福利司可應合資格受益人或已故合資格受益人的遺 產管理人在指明情況下提出的申請,決定在以指明方式符合或持續符合指明 條件的情況下,支付指明數額的指明項目附加利益予該受益人或(視乎情況) 該已故受益人的遺產

(2)在第(1)款中, "指明"(specified)指由衞生福利司指 明。

10. 申請

(1)根據第7(1)或9(1)條提出的申請,須以衞生福利司 指明的方式及表格提出。

(2)衞生福利司收到根據第7(1)或9(1)條提出的申請後, 可進行他認爲爲作出決定而需要進行的查訊。

第IV部

上訴

11. 上訴反對衞生福利司的決定

- 任何人如因衛生福利司根據第7(3)條所作的決定而感受 委屈,可向上訴委員會提出上訴。
- 擬根據本條上訴的人,須在收到有關決定的通知後28天 (2)內,以衞生福利司指明的方式,遞交符合衞生福利司指明的格式的上訴通知。

12. 上訴委員會

- (1)每宗根據第11條提出的上訴均須由根據第13條組成的上 訴委員會決定。
 - (2)總督須委任一位根據《地方法院條例》(第336章)第5 條有資格出任地方法院法官的人,擔任上訴委員會主席。

18. Protection of entitlement to pension

The pension shall not be liable to be attached, charged, sequestered or levied upon for or in respect of debt or claim whatsoever, other than a debt due to the Crown

19. Entitlement or pension not transferable

- (1) The entitlement of an eligible beneficiary to a pension shall not be assignable or transferable except for the purpose of -
 - (a) satisfying (either in whole or in part) a debt due to the Crown; or
 - (b) satisfying an order of any court for the payment of money towards the maintenance of the spouse or former spouse or minor child of the eligible beneficiary.
- (2) The entitlement of an eligible beneficiary to a pension shall not pass to any other person by operation of law.

20. Entitlement to pension not to survive death

The entitlement of an eligible beneficiary to a pension shall not survive for the benefit of his estate on his death.

21. Regulations

The Secretary may make regulations-

- (a) providing for-
 - (i) the making and determination of applications under section 7(1) or 9(1):
 - (ii) the payment of pensions or additional benefits; and
 - (iii) the lodging of appeals under section II and the practice and procedure of the Appeal Board;
- (b) generally for the better carrying out of the provisions and objects of this Ordinance.

23-24. (Omitted as spent)

18. 保障撫恤金享有權

除了拖欠官方的債項外,撫恤金不得爲任何其他債項或聲請, 或就任何其他債項或聲請而被扣押、抵押、暫押或查押。

19. 撫恤金享有權不得移轉

(1) 除爲了以下目的外,合資格受益人的撫恤金享有權不 得轉讓或移轉一

- (a) 償還拖欠官方的債項的全部或一部分;或
- (b) 遵守法院命令向該受益人的配偶、前配偶或 未成年子女支付贍養費。
- (2) 合資格受益人的撫恤金享有權,不得因爲法律原則的 運作而轉予任何其他人。

20. 撫恤金享有權在受益人去世後不留存

合資格受益人的撫恤金享有權,在他去世之後不得爲他的遺產 的利益留存。

21. 總督可修訂附表

總督可藉於憲報刊登的命令修訂附表。

22. 規例

衞生福利司可一

- (a) 訂立規例就以下事項訂定條文一
 - (i) 第7(1)或9(1)條下的申請的 提出及決定;
 - (ii) 無恤金或附加利益的支付;及
 - (iii) 根據第 11 條提出上訴及上訴委員 會的實務和程序;
- (b) 為更有效地施行本條例的條文及貫撤本條例的宗旨就一般事項訂定條文。

SCHEDULE

[S.7(2)]

- 1. The Hong Kong Naval Volunteer Force
- 2. The Hong Kong Royal Naval Reserve
- 3. The Hong Kong Volunteer Defence Corps and the Auxiliary and Affiliated
 Units therefore
- 4. The Hong Kong Corps of Air Raid Wardens
- 5. The Police Force, the Hong Kong Police Reserve and the special constabulary established under the Peace Preservation Ordinance 1886
- . The Hong Kong Civil Defence Corps-

Auxiliary Communications Service

Auxiliary Conservancy Corps

Auxiliary Fire Service

Auxiliary Labour Corps

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Auxiliary Rescue and Demolition Corps

Auxiliary Supply Corps

Auxiliary Transport Service

Civil Pay and Accounts Service

Public Works Corps

- 7. The Regular Armed Forces and the Royal Naval Yard Police including uniformed personnel attached to such Forces and Police (not including persons not locally recruited or not locally attached or not, as on 25 December 1941, married to persons ordinarily resident in Hong Kong)
- 8. The St. John Ambulance Brigade
- 9. The Hong Kong Dockyard Defence Corps

23-24. (已失時效而略去)

附表

〔第7(2)條〕

- 1. 香港海軍義勇軍
- 2. 香港皇家海軍後備軍
- 3. 香港陸軍義勇軍及其輔助和附屬單位
- 4. 香港空襲民防隊
- 5. 香港警察隊、香港後備警察隊及根據《1886年保安條例》成立 的特別警察
- 6. 香港民防隊一

通訊輔助隊

河道管理輔助隊

消防輔助隊

勞工輔助隊

醫療輔助隊

護士輔助隊

砲兵輔助隊

住所編配輔助隊

拯救及拆卸輔助隊

軍需輔助隊

運輸輔助隊

薪餉發給及帳目管理處

工務隊

- 7. 正規部隊及皇家海軍船塢警察隊,包括附屬於這些部隊及警察隊的制服人員(不包括不是在本地徵募的人,不是在本地附屬於上述部隊及警察隊的人或在1941年12月25日不是與常居於香港的人有婚姻關係的人)
- 8. 聖約翰救傷隊
- 9. 香港船塢防衞隊