

LEGISLATIVE COUNCIL BRIEF

Hong Kong War Memorial Pensions Ordinance
(Chapter 386)

HONG KONG WAR MEMORIAL PENSIONS
(AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 30 March 1999, the Council ADVISED and the Chief Executive ORDERED that -

- (a) the Hong Kong War Memorial Pensions (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council, to enable former members of the Hong Kong Independent Battalion of the Dongjiang Column (the Independent Battalion) and their surviving spouses to be eligible for pension benefits; and
- (b) medical benefits under the Free Medical Treatment Scheme should be granted to former members of the Independent Battalion and their surviving spouses residing in Hong Kong.

BACKGROUND AND ARGUMENT

The Independent Battalion

2. The Independent Battalion was a guerrilla unit operating in Hong Kong during the Japanese occupation. According to the Association of Former Members of the Independent Battalion, the Battalion was formed in February 1942 in Sai Kung, pursuant to a decision made in 1941 by a southern front working committee of the Chinese Communist Party. Its mission was to fight Japanese forces occupying Hong Kong.

3. The Association now comprises approximately 430 veterans. About 300 live in Hong Kong, with most of the remainder living on the Mainland. The Association has indicated that around 1,000 people enlisted in the Independent Battalion during the War.

4. After the Reunification, the names of members of the Independent Battalion, who died in the defence of Hong Kong, were included in the Roll of Honour kept in the Memorial Shrine at the City Hall. In consultation with the Administration, the Association compiled a list of 115 members of the Independent Battalion who were killed in action or who died as a result of injuries sustained during the War. A formal ceremony was held on 28 October 1998 to commemorate the inclusion of these names in the Roll of Honour.

Request by the Association

5. The Association has requested that their members should become eligible for benefits similar to those currently provided for qualified members of service units specified in the Schedule to the Ordinance. In addition to pension benefits, beneficiaries resident in Hong Kong are entitled to receive free medical treatment at Government out-patient clinics and certain hospitals under the Hospital Authority (HA hospitals). Beneficiaries may also receive in-patient service in HA hospitals charged at reduced rates. The scheme is non-statutory and administered by the Department of Health. 297 veterans are currently registered with the Department of Health.

Policy on Pension Benefits

6. For many years, it has been the Government's policy to provide pension (and medical benefits) to those who contributed to and suffered in the defence of Hong Kong during the Second World War. As we have accepted the role of the Independent Battalion during this period and recognised their military activities in Hong Kong, we believe that members of the Independent Battalion and their surviving spouses, should be accorded the same treatment as other veterans under the existing scheme subject to the same eligibility criteria.

7. As at February 1999, there were 672 beneficiaries under the Ordinance. The amount of pensions paid out in 1997-98, was \$58.3 million.

Legislative Amendments

8. To allow members of this group to apply for pension benefits, we propose to include the Independent Battalion in the Schedule to the Ordinance. Under section 7 of the Ordinance (Annex B), a member (or his spouse) of the service units specified in the Schedule is eligible for pension benefits if the member sustained injury, was killed in action, or was captured by the Japanese authority in Hong Kong between 7 and 25 December 1941. As the Independent Battalion was only formed in February 1942, section 7 will need to be amended to cover the period of the Battalion's activities between February 1942 and September 1945. It is important to note that service in the relevant units alone is not sufficient grounds for the award of a pension.

The proposal

9. We propose that -
- (a) the Independent Battalion should be included in the Schedule to the Ordinance so as to enable its former members and surviving spouses to be eligible for pension benefits;
 - (b) applications from this group should be assessed on the same basis and using the same criteria as are applied to veterans of the other units specified in the Schedule to the Ordinance. All evidence submitted will be considered but the standard of proof must be consistent with that required for other individuals;

- (c) administration of the Ordinance should remain unchanged, i.e. the Hong Kong War Memorial Pensions Advisory Committee should consider applications for pension benefits under the Ordinance and submit recommendations to the Secretary for Health and Welfare. In line with current practice, the Hong Kong War Memorial Pensions Appeal Board will hear appeals lodged against the Secretary for Health and Welfare's decision; and
- (d) medical benefits, under the Free Medical Treatment Scheme, should be granted to all members of the Association including surviving spouses, residing in Hong Kong.

THE BILL

10. Clause 2 is to amend Section 7 of the Ordinance and to set out the conditions that former members of the Independent Battalion and their surviving spouses need to fulfil before they are entitled to pension benefits under the Ordinance. Former members of the Independent Battalion have to prove that they had either sustained injury or were captured by the Japanese authority in Hong Kong during their service. The surviving spouses are also required to prove that they were the spouses of those Battalion members killed in action during the War and that they remain unmarried.

LEGISLATIVE TIMETABLE

11. The legislative timetable is as follows-

Publication in the Gazette 9 April 1999

First Reading and 21 April 1999
commencement of Second
Reading debate

Resumption of Second Reading to be notified
debate, committee stage and
Third Reading

HUMAN RIGHTS IMPLICATIONS

12. The Department of Justice advises that the proposed Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

13. The amendments will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

14. As we do not have information on the number of Battalion members who were injured or captured during the war, or the number of surviving widows or widowers, it is not possible to estimate the number of beneficiaries, and the associated financial implications. However, on the assumption that all 430 members are eligible for pension benefits, and that all 115 members who died in action had spouses who survive to this day and

remain unmarried, we estimate that the maximum additional pension payment is around \$47 million. The extension of the Free Medical Treatment Scheme to the Association's members will result in additional expenditure to the Department of Health and the Hospital Authority but the amount involved will not be significant.

15. There are no additional staffing implications.

PUBLIC CONSULTATION

16. The Hong Kong War Memorial Pensions Advisory Committee has been consulted and supports the proposal.

PUBLICITY

17. A press release will be issued and a spokesman will be available to handle media enquiries.

**HONG KONG WAR MEMORIAL PENSIONS
(AMENDMENT) BILL 1999-ANNEXES**

- Annex A - Hong Kong War Memorial Pensions (Amendment) Bill 1999
- Annex B - Sections 7 and 21 and the Schedule to Hong Kong War Memorial Pensions Ordinance (Cap. 386)

A BILL

To

Amend the Hong Kong War Memorial Pensions Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Hong Kong War Memorial Pensions (Amendment) Ordinance 1999.

2. Application for the status of eligible beneficiaries

Section 7(2) of the Hong Kong War Memorial Pensions Ordinance (Cap. 386) is amended-

- (a) in paragraph (d), by repealing “the Schedule” and substituting “Schedule 1”;
- (b) by adding-
 - “(da) that the applicant served as a member of the service specified in Schedule 2 between 3 February 1942 and 1 September 1945 and during such service-
 - (i) sustained an injury; or
 - (ii) was captured and held in captivity by the Japanese authority in Hong Kong;”;

(c) in paragraph (e)(i), by adding “or (da)” after “(d)”;

(d) by repealing paragraph (f) and substituting-

“(f) that the applicant is the widow or widower of a person who-

(i) served as a member in any service specified in
Schedule 1 between 7 December 1941 and 25
December 1941; or

(ii) served as a member in the service specified in
Schedule 2 between 3 February 1942 and 1
September 1945,

and who-

(A) was killed in action;

(B) died as a result of an injury sustained in action;
or

(C) died as a result of an injury or hardship
sustained during such service,

and the applicant is unmarried;”.

3. Chief Executive may amend Schedules

Section 21 is amended by repealing “the Schedule” and substituting “Schedule 1 or 2”.

4. Schedule amended

The Schedule is amended-

- (a) by renumbering it as Schedule 1;
- (b) by repealing “[s. 7(2)]” and substituting “[ss. 7(2) & 21]”.

5. Schedule added

The following is added-

“SCHEDULE 2 [ss. 7(2) & 21]

The Hong Kong Independent Battalion of the Dongjiang Column.”.

Explanatory Memorandum

This Bill amends the Hong Kong War Memorial Pensions Ordinance (Cap. 386) to expand the range of eligible beneficiaries who may be entitled to a pension under the Ordinance.