CRIMINAL AND LAW ENFORCEMENT INJURIES

COMPENSATION SCHEME

THE ADMINISTRATIVE DOCUMENT

This paper sets out the general basis of the Scheme for compensating victims of crimes of violence and victims of law-enforcement officers using weapons in the execution of their duty.

THE SCHEME

Administration

1. The Scheme which came into force on 23rd May 1973 will continue to be administered by the Criminal Injuries Compensation Board and the Law Enforcement Injuries Compensation Board, appointments to which will be made by the Chief Executive by notice in the Gazette. The Chairman and members of the Boards will be selected for their professional, business or administrative experience. The Boards will be serviced by staff who will be carried on the establishment of the Social Welfare Department. Other administrative costs will also be met from Social Welfare Department costs.

2. Each Board will award (from money voted by Legislative Council) compensation if satisfied, in accordance with the principles set out below, that compensation is justified.

3. The Boards' office will be at the Social Welfare Department but other offices may be established if the need arises. The Boards will hold hearings at that address, or elsewhere if necessary.

4. A Board will be entirely responsible for deciding what compensation should be paid in individual cases (subject to following such scales as may be directed by the Chief Executive from time to time). The Board's decision will be final. The Boards Chairman will submit annually to the Chief Executive a full report on the operation of the Scheme, together with its accounts.

Criminal Injuries Compensation Board

5. The Board will entertain an application for ex gratia compensation where the applicant or (in the case of an application by a spouse* or dependant*), the deceased sustained in Hong Kong on or after the 23rd May 1973 personal injury directly attributable to and arising out of:-

(a) a crime of violence (including arson and poisoning);

(b) an arrest or attempted arrest of an offender or suspected offender;

(c) the prevention or attempted prevention of an offence; or

(d) the giving of help to any police officer or other person who is engaged in arresting or attempting to arrest an offender or suspected offender or preventing or attempting to prevent an offence.

*These terms have the same meaning as they do in the Emergency Relief Fund Scheme.

In considering for the purpose of this paragraph whether an act is a criminal act, any immunity at law of an offender attributable to his youth or insanity or other condition, will be left out of account.

6. Compensation will not be payable unless the Board is satisfied:-

(a) that, subject to paragraph 20, the injury was not caused by a law-enforcement officer in circumstances falling within paragraph 16;

(b) that the injury gave rise to at least 3 days (w.e.f. 4th March 1981) loss of earnings or earning capacity except in cases which fall within paragraph 14 and in which the Board is satisfied that there are exceptional circumstances to warrant an award the Board may make under paragraph 10; (for all fatal and permanent disability cases, it is considered that the loss of the earning capacity is greater than 3 days); without prejudice to the generality of the requirement of three days loss of earnings or earning capacity, a person shall be deemed to have suffered three days loss of earnings or earning capacity if he is on sick leave as certified by a registered medical practitioner/registered Chinese medicine practitioner (for the sick leave period recommended on or after 1st December 2006) or in hospital for three days whether he is a wage earner or not;

(c) that the circumstances of the injury have been the subject of criminal proceedings, or were reported to the police without unreasonable delay;

(d) that the applicant has given the Board all related information and reasonable assistance, particularly in relation to any medical reports which it might require;

(e) that for a new application, the claim for compensation has been made within 3 years of the date of the incident (w.e.f. 4th March 1981);

(f) that for a re-application where the first claim for compensation had been made within 3 years of the date of the incident but the case was closed due to self-withdrawal or lost contact, the second or subsequent claim has been made either within 3 years of the date of the incident or within 1 year of the date of self-withdrawal or lost contact, whichever is later (w.e.f. 1st July 1991); and

(g) that the victim is a person having the right to remain in Hong Kong or being permitted to remain in Hong Kong under the Immigration Ordinance, Cap. 115, who is not in contravention of a limit of stay (if any) in force against

him at the time of the incident. Where permission to remain is granted subsequently after a person has landed in Hong Kong or that permission is granted to extend a person's stay after he has been overstaying in Hong Kong, payment of compensation may be granted if the incident occurs on or after the effective date of such permission (w.e.f. 24th May 1997).

7. (1) Where the victim who suffered injuries, and the offender, who inflicted them, were living together at the time as members of the same family no compensation will be paid except in accordance with sub-paragraph (2). For the purpose of this paragraph where a man and a woman were living together as man and wife they will be treated as if they were married to one another.

(2) Compensation will be paid only where:-

(a) the offender has been prosecuted in connection with the offence except where the Board considers that there are practical, technical or other grounds for not prosecuting the offender; and

(b) the Board is satisfied that it is in the interests of the applicant, or the minor or other person on whose behalf the application is made, as the case may be, to make an award.

8. Traffic offences will be excluded from the Scheme, except where there has been a deliberate attempt to run the victim down.

9. The Board will scrutinise with particular care all applications in respect of sexual offences or other offences arising out of a sexual relationship, in order to determine whether there was any responsibility, either because of provocation or otherwise on the part of the victim (see paragraph 12 below), and they will especially have regard to any delay which has occurred in submitting the application. The Board will consider applications for compensation for loss of earnings or earning capacity (whether caused by injury or pregnancy) attributable to the sexual offence. Compensation will not be payable for the maintenance of a child born as a result of a sexual offence.

Basis of Compensation

10. Subject to paragraph 14 the assessed award of compensation will be paid without reference to means in accordance with the Emergency Relief Fund scale (the current scale is at Appendix A) and will usually take the form of a lump sum payment. In this part the assessed award of compensation means all types of grants including Injury Grant, Interim Maintenance Grant, Disability Grant, Burial Grant or Death Grant which an applicant may be entitled to under the Scheme. More than one payment may, however, be made in circumstances, for example, where only a provisional medical assessment can be given in the first instance. For the assessment of the degree of disability, mental impairment of victims of sexual offences should be taken into account. Other victims can also be similarly assessed if found necessary by a medical practitioner.

11. Where the victim has died otherwise than in consequence of the injury, the Board may make an award on the Emergency Relief Fund scale in respect of loss of wages incurred before death as a result of the injury if, in its opinion, hardship to dependants would

otherwise result, whether or not application for compensation in respect of the injury has been made before the death.

12. The Board will reduce the amount of compensation, or reject the application altogether, if having regard to the conduct of the victim (including his conduct before and after the events giving rise to the claim) and his character and way of life, it is inappropriate that he should be granted a full award or any award at all.

13. The Board will have discretion to make special arrangements for the administration of any money awarded as compensation.

14. The Board may increase the total compensation payable, with the exception of sub-paragraph (d) below, under the provisions of paragraph 10 in respect of the claim by up to a maximum of 100%:-

(a) if, in the events giving rise to the claim, the victim suffered injury or death in:-

(i) effecting an arrest or attempted arrest of an offender or suspected offender; or

(ii) preventing or attempting to prevent the commission of a crime; or

(iii) giving help to any police officer or other person who is engaged in arresting or attempting to arrest an offender or suspected offender or preventing or attempting to prevent the commission of a crime; or

(b) if, subsequent to the events giving rise to the claim, the victim made exemplary efforts, in the face of personal embarrassment, inconvenience or danger, to assist the police in the arrest or prosecution of an offender or suspected offender; or

(c) if, in the event of a police-criminal shoot-out giving rise to the claim, the victim was injured or killed by bullets fired by a person other than the police (be it a criminal or an unknown party) and his conditions warrant a compassionate consideration. If the victim's conditions also fall under the provisions stipulated in sub-para. 14(a), the total compensation payable may be increased by up to a maximum of 200%, (applicable to incidents which occurred on or after 1st November 1994); or

(d) if the applicant is the victim of rape, in which case only the Injury Grant, the Interim Maintenance Grant and the Disability Grant payable in accordance with the Emergency Relief Fund Scale may be increased by up to 100%.

15. In any case of necessity and urgency the Board may order payment of funeral expenses on the Emergency Relief Fund scale to be made expeditiously to any person responsible for arranging the funeral of a victim whose death, the Board is satisfied resulted from a crime of violence, the commission of such crime having been confirmed by the Commissioner of Police.

The Law Enforcement Injuries Compensation Board

Scope of the Scheme

16. The Board will entertain an application for ex-gratia compensation, where the applicant or (in the case of an application by a spouse or dependant), the deceased sustained in Hong Kong on or after the 23rd May 1973 personal injury inflicted, whether negligently or otherwise, by a law-enforcement officer (which means any police officer or other public officer on duty) using a weapon in the execution of his duty in connection with:-

(a) an arrest or attempted arrest of an offender or suspected offender;

(b) the prevention or attempted prevention of an offence;

(c) the giving of help to any police officer or other person who is engaged in arresting or attempting to arrest an offender or suspected offender or preventing or attempting to prevent an offence.

17. Compensation will not be payable unless the Board is satisfied:-

(a) that the injury gave rise to at least 3 days (w.e.f. 4th March 1981) loss of earnings or earning capacity; (for all fatal and permanent disability cases, it is considered that the loss of earning capacity is greater than 3 days); without prejudice to the generality of the requirement of three days loss of earnings or earning capacity, a person shall be deemed to have suffered three days loss of earnings or earning capacity if he is on sick leave as certified by a registered medical practitioner/registered Chinese medicine practitioner (for the sick leave period recommended on or after 1st December 2006) or in hospital for three days whether he is a wage earner or not;

(b) that the circumstances of the injury were reported to the police without unreasonable delay;

(c) that the applicant has given the Board all related information and reasonable assistance, particularly in relation to any medical reports which it may require;

(d) that for a new application, the claim for compensation has been made within 3 years of the date of the incident (w.e.f. 4th March 1981);

(e) that for a re-application where the first claim for compensation had been made within 3 years of the date of the incident but the case was closed due to self-withdrawal or lost contact, the second or subsequent claim has been made either within 3 years of the date of the incident or within 1 year of the date of self-withdrawal or lost contact, whichever is later (w.e.f. 1st July 1991); and

(f) that the victim is a person having the right to remain in Hong Kong or being permitted to remain in Hong Kong under the Immigration Ordinance, Cap. 115, who is not in contravention of a limit of stay (if any) in force against him at the time of the incident. Where permission to remain is granted

subsequently after a person has landed in Hong Kong or that permission is granted to extend a person's stay after he has been overstaying in Hong Kong, payment of compensation may be granted if the incident occurs on or after the effective date of such permission (w.e.f. 24th May 1997).

Basis of Compensation

18. Subject to paragraphs 19-24 compensation will be:-

(a) assessed on the basis of either common law damages regardless of the negligence of the law-enforcement officer; or

(b) in accordance with the Emergency Relief Fund Scale (enhanced, if the case is appropriate, under paragraph 14);

whichever is the greater. In sub-para (b) above, the compensation will be the "assessed award" which has the same meaning as in paragraph 10. Compensation will take the form of a lump sum payment, but more than one payment may, however, be made in circumstances – for example, where only a provisional medical assessment can be given in the first instance.

19. Where the victim is alive the amount of compensation will be assessed as follows:-

(a) the rate of loss of earnings (and, where appropriate, of earning capacity) at the time the injury was sustained will be taken into account; and

(b) there will be no element comparable to exemplary or punitive damages.

20. Where the victim has died in consequence of the injury, no compensation will be payable for the benefit of his estate, but the Board will be able to entertain claims from his spouse, or dependants. For this purpose, compensation, if any, will be payable to any person entitled to claim under the Fatal Accidents Ordinance, Cap. 22 and, subject to what is said in the following paragraphs the amount of compensation will be governed by the same principles as under the provisions of that Ordinance. A person dependent upon the victim who falls outside the definition of "dependant" in the Fatal Accidents Ordinance will be eligible to apply for compensation as though he were the dependant of a victim entitled to be compensated under the Scheme for compensating victims of crimes of violence. Where the victim's funeral expenses are paid by any person the Board may pay that person a reasonable sum in respect of funeral expenses.

21. Where the victim has died otherwise than in consequence of the injury, the Board may make an award in respect of loss of wages, expenses and liabilities incurred before death as a result of the injury where, in its opinion, hardship to dependants would otherwise result, whether or not application for compensation in respect of the injury has been made before the death.

22. The Board will reduce the amount of compensation or reject the application altogether if, having regard to the conduct of the victim (including his conduct before and after the events giving rise to the claim) and to his character and way of life, it is

inappropriate that he should be granted a full award or any award at all.

23. The Board will have discretion to make special arrangements for the administration of any money awarded as compensation.

24. In any case of necessity and urgency the Board may order payment of funeral expenses on the Emergency Relief Fund scale to be made expeditiously to any person responsible for arranging the funeral of a victim whose death, the Board is satisfied resulted from injuries inflicted by a law enforcement officer using a weapon in the execution of his duty, the action of such officer having been confirmed by the Commissioner of Police.

Procedure to be adopted by both Boards in determining applications

25. An application should be made to the appropriate Board in writing as soon as possible after the event on a prescribed form.

26. A member of the staff of the appropriate Board will seek further information as to the relevant circumstances and, where necessary, ask for medical advice. Applications for criminal injuries compensation will be considered by the Criminal Injuries Compensation Board and applications for law enforcement injuries compensation by the Law Enforcement Injuries Compensation Board.

27. Every applicant may appear personally before the Board hearing his claim subject to the approval of the individual Board. The applicant should provide his own interpreter in the event that neither of the official languages (i.e. English or Chinese) of the Board is comprehensible to him. Nonetheless, the Social Welfare Department would, as far as practical, render assistance where the applicant has genuine difficulties in finding an interpreter.

28. It is for the appropriate authority, such as the Correctional Services Department (CSD), to decide whether to release, and to make arrangements for, applicants under lawful custody to attend the Board hearings. The Social Welfare Department will encourage and the CSD will as a general rule co-operate and respond positively to such requests.

29. The initial decision as to whether the application should be allowed (and, if so, what amount of compensation should be offered) or should be rejected will normally be taken without a hearing by two members of the Board whose decision will be communicated to the applicant. It will, however, also be open to either member if he considers it desirable, to refer the application to three other members of the Board appointed by the Boards Chairman for a hearing.

30. Whenever the amount of compensation is reduced or an application is rejected, the grounds for such reduction or rejection shall be given in writing to the applicant (w.e.f. 24th March 2009).

31. If an applicant is not satisfied with the decision of the Board, whether because no compensation is offered or because he considers the amount offered to be inadequate, he will be entitled to appeal to an Appeal Board in the manner provided for in the Appeals Rules at Appendix B to this document. The Appeal Board will reach its decision solely in the light

of the evidence available at the hearing and all the information before it will be available to the applicant.

32. It is not intended that a person who has pursued a claim for damages for personal injuries should obtain compensation from the Board in respect of those injuries in addition to obtaining satisfaction from that claim. Therefore compensation will be reduced by any sum which the victim has received in respect of his injuries, whether in pursuance of an order for compensation or damages by a court or otherwise. In assessing the sum whereby the compensation is to be reduced, the Board shall take into consideration pensions and Employees' Compensation (w.e.f. 24th May 1997) which are paid to the victim as a direct result of the injuries and which would not otherwise have been payable. Furthermore, a person who is compensated by the Board will be required to undertake to repay it from any damages settlement or compensation including such pensions and Employees' Compensation (w.e.f. 24th May 1997) as aforesaid which he may subsequently obtain in respect of his injuries. However, the portion of increased award granted to "civic minded" applicants in accordance with paragraphs 14(a) and (b) will not be repayable (w.e.f. 24th May 1997).

Social Welfare Department

March 2009

(Ref. SWD/CLEIC/101/1R II)

Amendment 1.5.1975
Amendment 9.4.1976
Amendment 23.2.1978
Amendment 18.12.1980
Amendment 4.3.1981
Amendment 6.5.1981
Amendment 18.10.1982
Amendment 1.12.1982
Amendment 1.4.1991
Amendment 1.7.1991
Amendment 1.11.1994
Amendment 24.5.1997
Amendment 10.11.1997
Amendment 24.3.2009

Appendix A

Criminal and Law Enforcement Injuries Compensation Scheme (for cases occurring on or after 01.04.2011)

Type of Payment	Level of Grant	Condition of Grant
1. Burial grant	**$11,480** per person.	If the burial expenses were paid whether in full or in part by Government (such as under the Comprehensive Social Security Assistance Scheme) or by one of the charitable funds, the amount of grant shall be reduced by the amount of such payment
2. Death grant		If the beneficiary is an adult who is mentally unsound or found unconscious or is a minor without surviving parent/ legal guardian, payments will be made on the advice of the Social Welfare Department
(a) Loss of sole wage earner where there are dependants	**$93,600** for one surviving dependent family member plus **$7,800** for each additional surviving dependent family member, up to a maximum of **$132,600**.	
b) Loss of a wage earner where there are dependants and another wage earner(s) remaining in the family	**$46,800** for one surviving dependent family member plus **$7,800** for each additional surviving dependent family member, up to a maximum of **$85,800**.	
(c) Loss of a parent who was not a wage earner where there are children under 15 years of age	**$46,800** for one surviving child under 15 plus **$7,800** for each additional surviving child under 15, up to a maximum of **$85,800**.	
3. Disability grant	From **$112** up to a maximum of **$112,320** based on the First Schedule or Section 9(1)(b) of Employees' Compensation Ordinance, Cap. 282 of the Laws of Hong Kong; abated to 2/3 for persons aged 60 and over.	

Type of Payment	Level of Grant	Condition of Grant
4. Injury grant	From **$549** up to a maximum of **$45,740** depending on gravity of injury.	The amount is assessed according to the number of days of sick leave/hospitalization. The maximum is 180 days. Injury grant is payable where the injury period is 7 days or more before death. Injury grant should cease from the date on which the victim becomes eligible for the disability grant, or upon the death of the victim.
5. Interim maintenance grant	From **$260** up to a maximum of **$46,800**.	The amount is assessed according to the number of days of sick leave/hospitalization. The maximum is 180 days. Interim maintenance grant is payable to a wage earner suffering loss of earnings as a result of incapacity to work, or to a non-wage-earning parent with a child under 15 years of age. Payment of interim maintenance grant should cease upon the death of the victim.

Appendix B

CRIMINAL AND LAW ENFORCEMENT INJURIES COMPENSATION SCHEME

Appeals Rules

Interpretation

1. In these rules, unless the context otherwise requires:-

"Board"	includes the Criminal Injuries Compensation Board and the Law Enforcement Injuries Compensation Board, and where appropriate, either of the Boards;
"Chairman"	means the Chairman of the Criminal and Law Enforcement Injuries Compensation Boards;
"Secretary"	means the Secretary of the Criminal and Law Enforcement Injuries Compensation Boards;
"Member"	means a member of the Criminal and Law Enforcement Injuries Compensation Boards;
"Secretariat"	means the Secretariat to the Criminal and Law Enforcement Injuries Compensation Boards;
"Appeal Board"	means the appeal body constituted under paragraphs 5, 6 and 7 below.

Application for Review

2. Any applicant who is dissatisfied with a decision of the Board may appeal against the decision.

3. Notice of Appeal (pursuant to paragraph 2) shall be given in writing within 1 month after the date on which notice has been given of the decision in respect of which review is sought or within such extended time as the Appeal Board may allow on application made either before or after the expiration of that month, and shall state the grounds on which the application is made.

4. Subject to the provisions of paragraph 3, the notice of appeal shall be delivered or posted to the Secretary of the appropriate Board.

The Appeal Board

5. The Appeal Board shall hear and determine appeals against any decision of the Board in respect of:-

(a) the amount of award;

(b) the coverage or types of award;

(c) the mode of payment of award;

(d) any special arrangement for the administration of any amount awarded;

(e) making no award.

6. The Chairman may from time to time appoint such members of the Board for the purpose of hearing appeals.

7. Each Appeal Board shall consist of three members, none of whom shall have taken part in the decision in respect of which appeal is brought. Depending upon need, there shall be no fixed number of Appeal Boards to be appointed by the Chairman. Any member can serve on more than one Appeal Board. The Appeal Board or Boards will be held as expeditiously as possible.

Conduct of the Hearing

8. The appellant, unless prevented by incapacity or other good cause, shall present at the hearing and put his case himself to the Appeal Board, but may be assisted by an interested relative or friend subject to the approval of the individual Appeal Board. It is for the appropriate authority, such as the Correctional Services Department (CSD), to decide whether to release, and to make arrangements for, appellants under lawful custody to attend the Board hearings. The Social Welfare Department will encourage and the CSD will as a general rule co-operate and respond positively to such requests.

9. In exceptional cases and subject to the approval of the Appeal Board, the appellant may be legally represented at his own cost and expense. Likewise, the Appeal Board may permit where appropriate attendance of the Government Counsel and/or Government officials at such hearings.

10. The appellant, the Appeal Board and any member of the Board's staff shall be able to call, examine, and cross-examine witnesses.

11. Every hearing shall be held at a place and time determined by the Appeal Board. The appellant should provide his own interpreter in the event that neither of the official languages (i.e. English or Chinese) of the Board is comprehensible to him. Nonetheless, the Social Welfare Department would, as far as practical, render assistance where the appellant has genuine difficulties in finding an interpreter.

12. Notice of hearing shall be given by the Secretariat to the appellant not less than 7 days before the day of hearing.

13. The Appeal Board in addition to the material placed before the Board from whose decision is made, may receive evidence and make such inquiries as it thinks fit.

14. The Appeal Board may receive any relevant evidence under paragraph 13, whether or not the evidence would be admissible in a Court of Law.

15. All evidence and information so received or ascertained (otherwise in the presence and hearing of the appellant) shall be conveyed to the appellant, who shall have an opportunity of dealing with the same. All papers provided to the appellant (apart from documents originating from him) are provided for the purpose of the appeal only and shall not be used by the appellant for any other purpose.

16. The Appeal Board may consult as assessor a person on any question involving consideration of matters of a professional, technical, or specialised nature.

17. On the completion by an Appeal Board of any hearing, it shall give a decision, whereby it may vary or confirm the decision of the Board from which appeal has been made, or may make any order or award which a Board might make or which ought to have been given or made, or such further or other order and award as the case may require. Such decision of an Appeal Board is final.

Sittings of the Appeal Board

18. Every sitting of the Appeal Board shall be as informal as is consistent with a proper determination of the application, and the hearing will be in private.

19. The Secretary or the Assistant Secretary, as appropriate, may be present at the proceedings and may take such part and perform such duties as may be determined or required by the Appeal Board.

Social Welfare Department
November 1997

Amendment 26.11.1991
Amendment 15.7.1993
Amendment 24.5.1997
Amendment 10.11.1997

(Ref. (33) in SWD/CLEIC/101/1R II)