

《致命意外條例》 (第 22 章)

Fatal Accidents Ordinance (Cap. 22)

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制定史

本為 1986 年第 41 號 —— 1986 年編正版，1991 年第 205 號法律公告，1995 年第 (C)61 號法律公告 (中文真確本)，1997 年第 13 號，1997 年第 144 號法律公告，1999 年第 27 號，2017 年第 1 號編輯修訂紀錄，2018 年第 143 號法律公告，2020 年第 134 號法律公告

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《致命意外條例》

(第 22 章)

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Fatal Accidents Ordinance

(Cap. 22)

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本條例旨在廢除及取代現行法例內對侵權作為的受害者的受養人給予補償的規定。

[1986 年 11 月 1 日] 1986 年第 260 號法律公告
(格式變更——2017 年第 1 號編輯修訂紀錄)

1. 簡稱

本條例可引稱為《致命意外條例》。

2. 釋義

(1) 在本條例中，除文意另有所指外——

受養人 (dependant) 就死者而言，指——

- (a) 死者的妻子、丈夫、前妻或前夫，以及與死者所締結的婚姻已經作廢或遭宣布無效的人；
- (b) 死者在 1971 年 10 月 7 日以前合法納娶的妾侍；
- (c) 符合下列條件的人——
 - (i) 在緊接死者死亡的日期之前，與死者在同一住戶內生活，如同夫妻；及
 - (ii) 在該日期的前 2 年或更長時間內，一直與死者在同一住戶內生活，如同夫妻；
- (d) 死者的父母或祖先；
- (e) 任何在有婚姻關係的期間，視死者為該段婚姻的家庭的子女的人（不包括死者的父母）；
- (f) 死者的子女或後裔；
- (g) 於任何時間死者在有婚姻關係的期間內，死者視之為屬於該段婚姻的家庭的子女的人（不包括死者的子女）；

To repeal and replace existing provision for the compensation of dependants of persons killed as a result of tortious acts.

[1 November 1986] *L.N. 260 of 1986*
(*Format changes—E.R. 1 of 2017*)

1. Short title

This Ordinance may be cited as the Fatal Accidents Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

adopted (領養) means adopted in pursuance of an adoption order made under the Adoption Ordinance (Cap. 290) or of any adoption recognized as valid by the law of Hong Kong;

dependant (受養人), in relation to a deceased person, means—

- (a) the wife, husband, former wife or former husband of the deceased and any person whose marriage to the deceased has been annulled or declared void;
- (b) a concubine lawfully taken by the deceased before 7 October 1971;
- (c) any person who—
 - (i) was living with the deceased in the same household immediately before the date of his death; and
 - (ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased;
- (d) any parent or other ascendant of the deceased;

- (h) 死者的兄弟姊妹、伯父母、叔父母、舅父母、姑丈、姑母、姨丈、姨母，或其後嗣；
- (i) 死者的祖父母的兄弟姊妹或其後嗣，或死者的外祖父母的兄弟姊妹或其後嗣；
- (j) 根據中國風俗是死者的誼父母或誼子女的人；

妻、妻子 (wife) 指 ——

- (a) 在基督教婚姻或與其相等的世俗婚姻中的合法妻子；及
- (b) 在其他合法婚姻中 ——
 - (i) 該宗婚姻的合法妻子；或
 - (ii) (如有超過一個合法妻子)，對丈夫本人有約束力的法律所承認的合法正妻，或(如並無合法正妻)該等法律所承認的各合法妻子；

領養 (adopted) 指依據根據《領養條例》(第 290 章)發出的領養令而領養，或依據香港法律承認為有效的方式而領養。

- (2) 為本條例的施行而推斷關係時 ——
 - (a) 須視受領養人為領養人的子女而非其他人的子女，並且在符合本段的規定下；
 - (b) 須視姻親關係為血親關係，半血親關係為全血親關係，以及視繼子女為子女；及
 - (c) 須視非婚生者為其母親與據稱的父親的婚生子女。
- (編輯修訂 —— 2017 年第 1 號編輯修訂紀錄)

- (e) any person (not being a parent of the deceased) who, during any marriage to which that person was a party, treated the deceased as a son or daughter of the family in relation to that marriage;
- (f) any child or other descendant of the deceased;
- (g) any person (not being a child of the deceased) who, during any marriage to which the deceased was at any time a party, was treated by the deceased as a son or daughter of the family in relation to that marriage;
- (h) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased;
- (i) any person who is, or is the issue of, a brother or sister of a grandparent of the deceased;
- (j) any godchild or godparent of the deceased according to Chinese custom;

wife (妻、妻子) means—

- (a) in the case of a Christian marriage or its civil equivalent, the lawful wife; and
- (b) in the case of any other lawful marriage—
 - (i) the lawful wife of such marriage; or
 - (ii) if there is more than one lawful wife, the lawful principal wife recognized as such by the personal law of the husband of such marriage, or if there is no lawful principal wife, the lawful wives so recognized.

- (2) In deducing any relationship for the purposes of this Ordinance—
 - (a) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and, subject thereto;

3. 就錯誤作為所導致的死亡作訴訟的權利

倘若某人(死者)的死亡是任何錯誤作為、疏忽或過失導致的，而死者(若非死去)原可有權就此等錯誤作為、疏忽或過失提出訴訟和追討損害賠償，則除第 4(2) 條另有規定外，可為死者的受養人的利益，就該錯誤作為、疏忽或過失向原須對死者承擔損害賠償之責的人，提出索償的訴訟。

[比照 1982 c. 53 s. 3 U.K.]

4. 親屬喪亡之痛

- (1) 除非有人已經因為第 3 條所指的作為、疏忽或過失，循訴訟或其他方式，根據《法律修訂及改革(綜合)條例》(第 23 章)第 20C(1) 條就不能再與死者相處而追討得到一筆款項，否則根據本條例提出的訴訟可包括親屬喪亡之痛的損害賠償申索，亦可只是提出該項申索。
- (2) 關於親屬喪亡之痛的損害賠償申索，只可為下述的人的利益而提出，而且有關的人須在死者死後最少仍生存 30 天——
 - (a) 死者的丈夫或妻子，除非是在緊接死者死亡日期的前 2 年或更長的時間內，一直與死者分開生活；或
 - (b) 如並無能夠根據 (a) 段親自或由他人代為提出申索的配偶，則死者的子女；或

- (b) any relationship by affinity shall be treated as relationship by consanguinity, any relationship of the half-blood as a relationship of the whole blood, and the stepchild of any person as his child; and
- (c) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

3. Right of action for wrongful act causing death

If death is caused to any person (*the deceased*) by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the deceased to maintain an action and recover damages in respect thereof, then subject to section 4(2) an action for damages may be brought for the benefit of the dependants of the deceased against the person who would have been liable in damages to the deceased in respect of that wrongful act, neglect or default.

[cf. 1982 c. 53 s. 3 U.K.]

4. Bereavement

- (1) An action under this Ordinance may consist of or include a claim for damages for bereavement unless, by reason of the act, neglect or default referred to in section 3, any person has recovered, by action or otherwise, a sum in respect of loss of the deceased's society under section 20C(1) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23).
- (2) A claim for damages for bereavement shall only be for the benefit of such of the following persons as survive the deceased for not less than 30 days—
 - (a) the wife or husband of the deceased, unless they had been living apart for a continuous period of at least 2

- (c) 如並無能夠根據 (a) 或 (b) 段親自或由他人代為提出申索的人，則死者的丈夫或妻子 (即使在死者死前已與死者分開生活) ；或
 - (d) 如並無能夠根據 (a) 、 (b) 或 (c) 段親自或由他人代為提出申索的人，則死者在 1971 年 10 月 7 日前納娶的妾侍；或
 - (e) 如並無能夠根據 (a) 、 (b) 、 (c) 或 (d) 段親自或由他人代為提出申索的人，則符合下列條件的人 ——
 - (i) 在緊接死者死亡的日期前，與死者在同一住戶內生活，如同夫妻；及
 - (ii) 在該日期的前 2 年或更長時間內，一直與死者在同一住戶內生活，如同夫妻；或
 - (f) 如並無能夠根據 (a) 、 (b) 、 (c) 、 (d) 或 (e) 段親自或由他人代為提出申索的人，則死者的父母或 (如死者是非婚生者) 死者的母親；或
 - (g) 如並無能夠根據 (a) 、 (b) 、 (c) 、 (d) 、 (e) 或 (f) 段親自或由他人代為提出申索的人，而死者在死亡當日是未成年人，則任何在有婚姻關係的期間，視死者為該段婚姻的家庭的子女的人；或
 - (h) 如並無其他能夠根據本款親自或由他人代為提出申索的人，則死者的任何兄弟姊妹。
- (3) 根據本條裁定給予的損害賠償款額為 \$231,000，並須符合第 (4) 款的規定。 (由 1991 年第 205 號法律公告修訂；由 1997 年第 144 號法律公告修訂；由 2018 年第 143 號法律公告修訂；由 2020 年第 134 號法律公告修訂)
- (4) 凡為 2 人或多於 2 人的利益而根據本條提出損害賠償申索，裁定給予的款額須平均分配給他們 (惟先須扣減任何並無從被告人收回的訟費) 。
- (5) 立法會可藉決議修訂第 (3) 款而將其中所指明的款額更改。 (由 1999 年第 27 號第 3 條修訂)

[比照 1982 c. 53 s. 3 U.K.]

- years immediately preceding the death of the deceased; or
- (b) where there is no spouse by or for whom a claim can be made under paragraph (a), the children of the deceased; or
- (c) where there is no person by or for whom a claim can be made under paragraph (a) or (b), the wife or husband of the deceased (notwithstanding that they had been living apart); or
- (d) where there is no person by or for whom a claim can be made under paragraph (a), (b) or (c), any concubine taken by the deceased before 7 October 1971; or
- (e) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c) or (d), any person who—
 - (i) was living with the deceased in the same household immediately before the date of his death; and
 - (ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased; or
- (f) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d) or (e), the parents of the deceased or (if the deceased was illegitimate) his mother; or
- (g) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d), (e) or (f), but the deceased was at the date of his death a minor, any person who during any marriage to which that person was a party treated the deceased as a son or daughter of the family in relation to that marriage; or

5. 有權提出訴訟的人

- (1) 根據本條例而提出的訴訟，須由死者的遺囑執行人或遺產管理人以該名義提出。
- (2) 如 ——
 - (a) 死者並沒有遺囑執行人或遺產管理人；或
 - (b) 在死者死後 6 個月內，並沒有由死者的遺囑執行人或遺產管理人以該等名義提出訴訟，
 則遺囑執行人或遺產管理人所能夠為其提出該訴訟的所有人或任何人，可自行以本身的名義提出訴訟。
- (3) 不得為同一申訴標的事項及就該事項提出超過 1 項訴訟。
- (4) 上述訴訟的原告人須向被告人或其律師表明該訴訟是代表誰人及為誰人的利益而提出，並須將該人的詳細資料以及該損害賠償申索的性質的詳細資料，送交被告人或其律師。

[比照 1982 c. 53 s. 3 U.K.]

- (h) where there is no other person by or for whom a claim can be made under this subsection, any brother or sister of the deceased.
- (3) Subject to subsection (4), the sum to be awarded as damages under this section shall be \$231,000. (*Amended L.N. 205 of 1991; L.N. 144 of 1997; L.N. 143 of 2018; L.N. 134 of 2020*)
- (4) Where there is a claim for damages under this section for the benefit of 2 or more persons, the sum awarded shall be divided equally between them (subject to any deduction falling to be made in respect of costs not recovered from the defendant).
- (5) The Legislative Council may by resolution amend subsection (3) by varying the sum specified therein.

[*cf. 1982 c. 53 s. 3 U.K.*]

5. Persons entitled to bring the action

- (1) An action under this Ordinance shall be brought by and in the name of the executor or administrator of the deceased.
- (2) If—
 - (a) there is no executor or administrator of the deceased; or
 - (b) no action is brought within 6 months after the death by and in the name of an executor or administrator of the deceased,
 the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it.
- (3) Not more than one action shall lie for and in respect of the same subject-matter of complaint.
- (4) The plaintiff in the action shall be required to deliver to the defendant or his solicitor full particulars of the persons for whom and on whose behalf the action is brought and of the

6. 損害賠償的評估

- (1) 在該等訴訟中，除了親屬喪亡之痛的損害賠償外，可將損害賠償按照反映各受供養人因死者死亡而受損的程度的比例判給各受養人。
- (2) 凡根據第 (1) 款裁定給予損害賠償，須扣減任何並無從被告人收回的訟費，然後按根據該款所決定的比例分給各受養人。
- (3) 在根據本條例或《航空運輸條例》(第 500 章) 提出的訴訟中，凡須就某人的死亡而評估須付予其遺孀的損害賠償時，不得將該遺孀的再婚或再婚機會列為考慮因素。(由 1997 年第 13 號第 20 條修訂)
- (4) 在根據本條例提出的訴訟中，凡須就某人的死亡而評估須付予屬第 2 條受養人一詞的定義中 (c) 段所指的受養人的人的損害賠償時，如該人在死者死亡時是與死者生活，如同夫妻者，則須將以下事項 (連同法庭認為與該訴訟有關連的其他事項) 列為考慮因素，即該受養人並不因為與死者共同生活而擁有可予強制執行的權利，向死者索取經濟支持。
- (5) 在根據本條例提出的任何訴訟中，如死者的殯殮費已由為其利益而提出訴訟的當事人承擔，則在評估損害賠償時須將此等殯殮費列為考慮因素。
- (6) 繳存法院作為了結本條例下的訴訟因由的金錢，可以是一整筆款項而無須指明任何人所佔的份數。

[比照 1982 c. 53 s. 3 U.K.]

nature of the claim in respect of which damages are sought to be recovered.

[cf. 1982 c. 53 s. 3 U.K.]

6. Assessment of damages

- (1) In the action, such damages, other than damages for bereavement, may be awarded to dependants in such proportions as reflect their respective injuries as a result of the death.
- (2) Where damages are awarded under subsection (1), any costs not recovered from the defendant shall be deducted from those damages and thereafter those damages shall be divided among the dependants in such proportions as has been decided under that subsection.
- (3) In an action under this Ordinance, or under the Carriage by Air Ordinance (Cap. 500), where there fall to be assessed damages payable to a widow in respect of the death of her husband there shall not be taken into account the re-marriage of the widow or her prospects of re-marriage. (Amended 13 of 1997 s. 20)
- (4) In an action under this Ordinance where there fall to be assessed damages payable to a person who is a dependant within the meaning of paragraph (c) of the definition of that term in section 2, in respect of the death of the person with whom the dependant was living as husband or wife, there shall be taken into account (together with any other matter that appears to the court to be relevant to the action) the fact that the dependant had no enforceable right to financial support by the deceased as a result of their living together.
- (5) In assessing damages in any action brought under this Ordinance the funeral expenses of the deceased person, if

7. 損害賠償的評估；某些利益無須理會

在根據本條例或《航空運輸條例》(第 500 章)而提出的訴訟中，就某人的死亡而評估損害賠償額時，不得理會任何人因死者死亡而由死者的遺產或其他方面所可能、將會、或已經取得的利益。

(由 1997 年第 13 號第 20 條修訂)

[比照 1982 c. 53 s. 3 U.K.]

such expenses have been incurred by the parties for whose benefit the action is brought, shall be taken into account.

- (6) Money paid into court in satisfaction of a cause of action under this Ordinance may be in one sum without specifying any person's share.

[cf. 1982 c. 53 s. 3 U.K.]

7. Assessment of damages; disregard of benefits

In assessing damages in respect of a person's death in an action under this Ordinance or under the Carriage by Air Ordinance (Cap. 500), benefits which have accrued or will or may accrue to any person from his estate or otherwise as a result of his death shall be disregarded.

(Amended 13 of 1997 s. 20)

[cf. 1982 c. 53 s. 3 U.K.]