

**Information Paper for Legislative Council Subcommittee on
Employees' Compensation Ordinance
(Amendment of Second Schedule) Order 2004 and
Occupational Safety and Health Ordinance
(Amendment of Schedule 2) Order 2004**

PURPOSE

This paper briefs Members on the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 and the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004 (Annex), which specify the addition of two new diseases — severe acute respiratory syndrome (SARS) and avian influenza A — to the Second Schedule to the Employees' Compensation Ordinance (ECO) and Schedule 2 to the Occupational Safety and Health Ordinance (OSHO).

BACKGROUND

2. The Second Schedule of the ECO specifies, for the purpose of employees' compensation, a list of occupational diseases together with the details of the nature of the trade, industry or process associated with such diseases and their respective prescribed period of employment immediately preceding the incapacity or death of the employee. The schedule currently prescribes 46 occupational diseases.

3. The purpose of specifying a list of occupational diseases is to relieve an employee of the need to prove that the disease is due to the nature of employment, thereby expediting the compensation process. The schedule was introduced in 1964 with 21 specified occupational diseases.

4. Following a recent review, we consider it necessary and justified to expand the list of specified occupational diseases under the ECO and to make corresponding amendment to the list of notifiable occupational diseases in Schedule 2 of the OSHO.

PROPOSAL

5. It is proposed –
- (a) to amend the Second Schedule of the ECO by adding two new diseases, namely, SARS and avian influenza A; and
 - (b) to amend Schedule 2 of the OSHO in line with the proposed amendments to the Second Schedule of the ECO.

ARGUMENTS

6. As has always been the case, the following criteria are adopted in determining whether a disease should be prescribed as a new occupational disease under the ECO –
- (a) the disease would impose significant recognized risk to workers of Hong Kong in a certain occupation; and
 - (b) the link between the disease and the occupation can be reasonably presumed or established in individual cases.

Severe acute respiratory syndrome

7. SARS is an atypical pneumonia caused by SARS-associated coronavirus (SARS-CoV) infection. An initial outbreak of the disease began in mid-November 2002 in southern China and spread to other places in late February 2003. According to the World Health Organization, altogether 8,437 cases occurred in 29 countries, resulting in 917 fatalities. Confirmed instances of human-to-human transmission have been established and the risk of transmission is greatest in the medical and health care sectors and for laboratory workers. SARS was added to the list of infectious diseases specified in Schedule 1 of the Quarantine and Prevention of Disease Ordinance (Cap. 141) on 27 March 2003. Medical practitioners are required to notify the Director of Health if they have reason to suspect the existence of any of the infectious diseases specified in the Schedule.

8. Employees infected with the disease at work are currently protected under section 36(1) of the ECO but the onus is on the employee to prove that the infection is by accident arising out of and in the course of employment. Compensation claims from 414 employees affected by the SARS outbreak last year are being processed in this way. However, in order to safeguard the interests of employees in specified high-risk trade, industry or process and to facilitate them in making compensation claims without having to prove that the injury is by accident arising out of and in the course of employment, it is proposed to prescribe SARS as an occupational disease under the ECO.

9. As the incubation period for the disease is not more than 14 days, the prescribed employment period is proposed to be set at one month.

10. The proposed amendment will expedite the compensation process for injured employees involving close and frequent contacts with a source or sources of SARS infection by reason of employment in specified high-risk occupations. These include medical and nursing staff, medical research and laboratory workers, pathologists, post-mortem or funeral services workers, etc. There are about 94,000 employees in these occupations.

Avian influenza A

11. Avian influenza A is an infectious disease of poultry and birds caused by Type A influenza viruses. Avian influenza A viruses do not usually directly infect humans or circulate among humans. There is no established evidence that avian influenza A causes human-to-human transmission. However, several instances of human infections and outbreaks have been reported. The first documented infection of humans with avian influenza A virus occurred in Hong Kong in 1997, when the virus caused severe respiratory disease in 18 people, of whom six died. The risk of transmission of avian influenza A viruses to humans is greatest for persons having close and frequent contacts with infected poultry or birds, materials or substances from such poultry or birds. However, there is no evidence of transmission of avian influenza A viruses through cooked poultry.

12. In the latest outbreak sweeping through Asia since mid-December 2003, there were 44 confirmed cases of avian influenza A viruses infecting humans, resulting in 32 deaths, according to the World Health Organization as at 25 October 2004. To facilitate the early detection and implementation of

appropriate public health control measures to guard against avian influenza, Hong Kong made influenza A (H5) a statutorily notifiable disease on 30 January 2004 by adding it to Schedule 1 of the Quarantine and Prevention of Disease Ordinance.

13. It is proposed to prescribe avian influenza A as an occupational disease under the ECO in order to safeguard the interests of the employees concerned. Given that the incubation period for the virus is not more than seven days, the prescribed employment period is proposed to be set at 14 days.

14. The proposal will expedite the compensation process for injured employees engaged in occupations which are recognized to have significant risk of contracting avian influenza A. Our purpose is to safeguard the interests of employees in specified high-risk trade, industry or process and to facilitate them in making compensation claims without having to prove that the injury is due to the nature of employment. These include workers engaged in the handling of poultry or birds, their remains, residues or untreated products, that are a source of avian influenza A infection, in poultry farm, poultry transportation/ wholesale and retail etc., research in connection with avian influenza A, and laboratory work involved in the handling of materials that are a source of such infection etc. There are an estimated 5,000 employees in these occupations.

Related amendments to the Occupational Safety and Health Ordinance (OSHO)

15. Section 15 of the OSHO requires medical practitioners to notify cases of occupational diseases to the Commissioner for Labour. The list of notifiable occupational diseases, which is provided for in Schedule 2 of the OSHO, now covers 49 diseases which are identical to the 46 diseases prescribed under the ECO, the two diseases of silicosis and asbestosis under the Pneumoconiosis (Compensation) Ordinance (Cap. 360) and noise-induced deafness under the Occupational Deafness (Compensation) Ordinance (Cap. 469).

16. If the list of prescribed occupational diseases under the ECO is expanded to include SARS and avian influenza A, the list of notifiable occupational diseases under the OSHO should be correspondingly amended.

This will facilitate the Labour Department in collecting information about these two diseases and in monitoring the occupational health of affected workers.

IMPLICATIONS OF THE PROPOSAL

17. The economic implication of the proposed additions to the Second Schedule of the ECO should be insignificant. First, the risk of SARS has already been taken into account in the premium rate for employees' compensation insurance policies issued in 2004. Second, the number of human infections for avian influenza A is limited. Finally, even if the diseases are not prescribed under the Second Schedule, an employee may still claim compensation under Section 36(1) of the ECO if he/she can prove that such a disease is a personal injury by accident arising out of and in the course of employment. The Accident Insurance Association has advised that the impact on employees' compensation insurance premium is unlikely to be significant.

18. The proposed amendments to the OSHO do not carry any economic implication on employers.

19. The proposal is not expected to bring about additional financial implication on the Government as it has to pay compensation to staff who have contracted one of the above diseases in the employment context whether or not the diseases are prescribed under the Second Schedule of the ECO.

20. There will not be any staffing implication on the Government.

CONSULTATION

21. The Hong Kong Medical Association has been consulted and supports the proposal.

22. The Labour Advisory Board first discussed the proposal in April 2004 and endorsed it at its meeting in October 2004.

23. The LegCo Panel on Manpower was consulted on the proposal at its

meeting held on 18 November 2004. Members were generally supportive of the proposal.

ADVICE SOUGHT

24. Members are invited to note the content of the paper.

Economic Development and Labour Bureau
Labour Department
20 December 2004

L.N. 213 of 2004

EMPLOYEES' COMPENSATION ORDINANCE (AMENDMENT OF SECOND SCHEDULE) ORDER 2004

(Made under section 35 of the Employees' Compensation Ordinance (Cap. 282))

1. Commencement

This Order shall come into operation on a day to be appointed by the Commissioner for Labour by notice published in the Gazette.

2. Occupational diseases

The Second Schedule to the Employees' Compensation Ordinance (Cap. 282) is amended by adding—

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| <p>“B11 Severe acute respiratory syndrome</p> | <p>Any occupation involving close and frequent contacts with a source or sources of severe acute respiratory syndrome infection by reason of employment—</p> | <p>1 month.</p> |
| | <p>(a) in the medical treatment or nursing of a person suffering from severe acute respiratory syndrome, or in a service ancillary to that treatment or nursing;</p> | |
| | <p>(b) in attending to a person suffering from severe acute respiratory syndrome, where the need for attendance arises by reason of the person's physical or mental infirmity;</p> | |
| | <p>(c) in identifying, detecting, tracing, isolating, detaining, supervising or surveillance of a person suffering from severe acute respiratory syndrome;</p> | |
| | <p>(d) as a research worker engaged in research in connection with severe acute respiratory syndrome, or in a service ancillary to that research; or</p> | |

- (e) as a laboratory worker, pathologist, post-mortem worker or funeral services worker, where the employment involves the handling of any human body or other materials that are a source of severe acute respiratory syndrome infection, or in a service ancillary to that handling.
- B12 Avian influenza A Any occupation involving close and frequent contacts with a source or sources of avian influenza A infection by reason of employment— 14 days.”.
- (a) as a worker engaged in the handling of poultry or birds or their remains, residues or untreated products, that are a source of avian influenza A infection, or in a service ancillary to that handling;
- (b) as a research worker engaged in research in connection with avian influenza A, or in a service ancillary to that research; or
- (c) as a laboratory worker engaged in the handling of materials that are a source of avian influenza A infection, or in a service ancillary to that handling.

Matthew CHEUNG Kin-chung
Commissioner for Labour

7 December 2004

Explanatory Note

The Second Schedule to the Employees' Compensation Ordinance (Cap. 282) specifies a list of occupational diseases in respect of which employees' compensation is payable under the Ordinance. The Schedule also specifies the nature of the trade, industry or process associated with the occupational

diseases and the prescribed period for the purpose of determining the liability to compensation. If the incapacity or death of an employee results from an occupational disease and is due to the nature of any employment in which the employee was employed at any time within the prescribed period immediately preceding such incapacity or death, the employee or members of his family, as the case may be, shall be entitled to compensation under the Ordinance as if such incapacity or death had been caused by an accident arising out of and in the course of employment.

2. The object of this Order is to add 2 occupational diseases, namely, severe acute respiratory syndrome and avian influenza A, to the Second Schedule to the Ordinance.

L.N. 214 of 2004**OCCUPATIONAL SAFETY AND HEALTH ORDINANCE
(AMENDMENT OF SCHEDULE 2) ORDER 2004**

(Made under section 43 of the Occupational Safety and Health Ordinance (Cap. 509))

1. Commencement

This Order shall come into operation on a day to be appointed by the Commissioner for Labour by notice published in the Gazette.

2. Notifiable occupational diseases

Schedule 2 to the Occupational Safety and Health Ordinance (Cap. 509) is amended by adding—

- “50. Severe acute respiratory syndrome
- Any occupation involving close and frequent contacts with a source or sources of severe acute respiratory syndrome infection that is attributable to employment—
- (a) in the medical treatment or nursing of a person suffering from severe acute respiratory syndrome, or in a service ancillary to that treatment or nursing; or
 - (b) in attending to a person suffering from severe acute respiratory syndrome, where the need for attendance arises because of the person's physical or mental infirmity; or
 - (c) in identifying, detecting, tracing, isolating, detaining, supervising or surveillance of a person suffering from severe acute respiratory syndrome; or
 - (d) as a research worker engaged in research in connection with severe acute respiratory syndrome, or in a service ancillary to that research; or
 - (e) as a laboratory worker, pathologist, post-mortem worker or funeral services worker, where the employment involves the handling of any human body or other materials that are a source of severe acute respiratory syndrome infection, or in a service ancillary to that handling.

51. Avian influenza A Any occupation involving close and frequent contacts with a source or sources of avian influenza A infection that is attributable to employment—
- (a) as a worker engaged in the handling of poultry or birds or their remains, residues or untreated products, that are a source of avian influenza A infection, or in a service ancillary to that handling; or
 - (b) as a research worker engaged in research in connection with avian influenza A, or in a service ancillary to that research; or
 - (c) as a laboratory worker engaged in the handling of materials that are a source of avian influenza A infection, or in a service ancillary to that handling.”.

Matthew CHEUNG Kin-chung
Commissioner for Labour

7 December 2004

Explanatory Note

The Occupational Safety and Health Ordinance (Cap. 509) requires a medical practitioner, on examining an employee, to notify the Commissioner for Labour if the practitioner finds or suspects that the employee suffers from an occupational disease specified in Schedule 2 to the Ordinance.

2. The object of this Order is to add 2 occupational diseases, namely, severe acute respiratory syndrome and avian influenza A, to Schedule 2 to the Ordinance.