

立法會
Legislative Council

LC Paper No. CB(2)228/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/5/08

**Bills Committee on
Occupational Deafness (Compensation) (Amendment) Bill 2009**

**Minutes of meeting
held on Monday, 12 October 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon PAN Pey-chyou (Chairman)
Hon Abraham SHEK Lai-him, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon CHAN Kin-por, JP
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP

Members absent : Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon LI Fung-ying, BBS, JP

Public Officers attending : Mrs Tonia LEUNG
Assistant Commissioner for Labour

Dr Raymond LEUNG Lai-man, JP
Occupational Health Consultant
Labour Department

Ms Melody LUK
Senior Labour Officer
Labour Department

Mr Alan CHONG Ka-ning
Senior Government Counsel
Department of Justice

Ms Mandy NG Wing-man
Government Counsel
Department of Justice

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Miss Josephine SO
Senior Council Secretary (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions to be taken by the Administration

2. The Administration advised that given members' grave concerns, it would consider raising the ceiling of the first-time reimbursable amount for expenses of hearing assistive devices (HADs). The Administration undertook to revert to the Bills Committee on its decision at the next meeting.

3. The Administration also advised that it was prepared to make the proposed transitional arrangement more flexible such that persons suffering from monaural hearing loss (MHL) who had not filed applications previously with the Occupational Deafness Compensation Board but could provide proof on his employment in the specified noisy occupations for the designated number of years and hearing test results conducted in Hong Kong showing their sensorineural MHL at that point in time, could also be netted in the transitional arrangement. The Bills Committee requested the Administration to provide before the next meeting a paper setting out the details of its proposal for members' consideration.

Clause-by-clause examination of the Bill

4. The Bills Committee commenced clause-by-clause examination of the Bill, and completed scrutiny up to clause 5 of the Bill.

II. Date of next meeting

5. The Bills Committee agreed that the next meeting would be held on 11 November 2009 at 8:30 am.

6. The meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
6 November 2009

**Proceedings of meeting of the
Bills Committee on
Occupational Deafness (Compensation) (Amendment) Bill 2009
on Monday, 12 October 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 001657	Chairman	Opening remarks	
001658 - 002710	Admin Chairman Hon Abraham SHEK	Briefing on the Administration's response to issues raised by members at the Bills Committee meeting held on 22 June 2009 (LC Paper No. CB(2)2592/08-09(01)) Noisy occupations specified in Schedule 3 of the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO)	
002711 - 003950	Chairman Admin Hon Abraham SHEK Hon IP Wai-ming	Briefing on the Administration's response to issues raised by members at the Bills Committee meeting held on 28 July 2009 (LC Paper No. CB(2)2592/08-09(02)) Expressed support for the Administration's proposal to increase the maximum reimbursable amount for expenses incurred in purchasing, repairing and replacing hearing assistive devices (HADs) from the current level of \$18,000 to \$36,000; whether the ceiling of first-time reimbursable amount of HADs, which was set at \$9,000, should be further uplifted or waived The Administration advised that the setting of the \$9,000 limit was appropriate as the expenses of HADs normally ranged from \$6,000 to \$8,000. However, given members' grave concerns, the Administration would consider raising the ceiling of the first-time reimbursable amount for expenses of HADs	Admin to revert to the Bills Committee on its decision as per paragraph 2 of the minutes

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003951 - 004305	Chairman Admin	Briefing on the Administration's response to issues raised by deputations at the meeting on 28 July 2009 (LC Paper No. CB(2)2592/08-09(03))	
004306 - 004910	Chairman Hon CHAN Kin-por Admin	<p>Expressed support for the Occupational Deafness (Compensation) (Amendment) Bill 2009 (the Bill); stressed the importance of enhancing employers' and employees' awareness of the prevention of noise-induced deafness through different kinds of educational and promotional activities; expressed support for the present proposal to adjust the overall rate and proportions of distribution of the Employees' Compensation Insurance Levy payable under the Employees' Compensation Insurance Levies Ordinance (Cap. 411); considered it appropriate for the Administration to make reference to a person's age and earnings at the time he sustained the injury or disease in providing further compensation for claimants whose hearing loss deteriorated as a result of continued employment in the specified noisy occupations</p> <p>Employers' responsibility to fulfill their obligations towards their employees under the Factories and Industrial Undertakings (Noise at Work) Regulation (Cap. 59T); employees' obligations under section 9(2) of Cap. 59T; enforcement action taken by the Labour Department to ensure employers' and employees' compliance with the legislation; the maximum penalty that might be imposed on employers and employees who failed to comply with the Regulation</p>	
004911 - 011738	Hon IP Wai-ming Admin Chairman	The Administration's view towards members' and deputations' suggestion of incorporating greater flexibility into the proposed transitional arrangements	

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		<p>for monaural hearing loss (MHL) cases such that those MHL persons who had not filed application previously with the Occupational Deafness Compensation Board (ODCB) could also be netted in the transitional arrangement (paragraph 2 of LC Paper No. CB(2)2592/08-09(03))</p> <p>The Administration advised that as long as the principles of fairness and reasonableness underpinning ODCO were not compromised, it was prepared to make the transitional arrangements more flexible. In response to members' request, the Administration would net in workers with MHL who had not filed any applications with ODCB in the past but could provide proof on his employment in the specified noisy occupations for the designated number of years and hearing test results conducted in Hong Kong showing their sensorineural MHL at that point in time, and consider adopting such results for the purpose of assessing the degree of hearing loss suffered by the claimant</p> <p>Reasons for setting a minimum of five-year employment in aggregate in specified noisy occupations for re-assessing the degree of hearing impairment for providing further compensation for additional hearing loss sustained as a result of continued employment in a noisy occupation (paragraph 8 of LC Paper No. CB(2)2592/08-09(03))</p> <p>In response to Hon IP Wai-ming's suggestion, the Administration advised that it would consider reducing the requirement of five-year employment in aggregate in specified noisy occupations for re-assessing the degree of hearing impairment for the purpose of providing further compensation due to continued exposure to noise</p>	Admin to provide the requested information (paragraph 3 of the minutes refers)

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		<p>Hon IP Wai-ming held the view that in calculating the amount of further compensation, the Administration should take the average earnings of the claimant's previous successful application or the average earnings of the claimant's current application, whichever was the higher. The Chairman supported his view</p> <p>The Administration pointed out that under the existing employees' compensation system in Hong Kong, for an employee who was injured or contracted occupational diseases at work, the amount of compensation to which he was entitled for the permanent incapacity so sustained was basically calculated with reference to his age and earnings at the time he sustained the injury or disease. This served to compensate the prospective loss of earnings of the employee in the years ahead. ODCO followed this rationale in determining the amount of compensation. The Administration did not agree to any suggestions running counter to the prevailing principles of employees' compensation in the local context</p> <p>Hon IP Wai-ming queried the need to follow the principles generally adopted for calculating employees' compensation in determining the amount of further compensation for claimants suffering from occupational deafness</p> <p>The appeal mechanism provided under ODCO; background to the enactment of ODCO; principles adopted generally for employees' compensation and the rationale behind them</p> <p>Hon IP Wai-ming said that he might consider moving Committee Stage amendments in respect of the method of calculating the amount of further</p>	

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		compensation for additional hearing loss sustained as a result of continued employment in a noisy occupation	
011739 - 013136	Chairman Hon Alan LEONG Admin Hon IP Wai-ming Hon IP Kwok-him	<p>Whether compensation would be made with retrospective effect when a disease was prescribed as an occupational disease under the Employees' Compensation Ordinance (Cap. 282) (ECO); reasons for not applying the compensation arrangements under ECO with retrospective effect in prescribing a new disease as compensable</p> <p>Method for calculating the amount of further compensation for claimants whose hearing loss deteriorated as a result of continued employment in the specified noisy occupations</p> <p>Method for calculating the amount of compensation payable to employees suffering from MHL, which would be calculated with reference to the hearing loss level, age and earnings of the claimant when the latest application, which was rejected, was made</p>	
013137 - 013459	Chairman Hon IP Kwok-him Admin	The Administration advised that like all other claims made under ODCO, if a claimant suffering from MHL was able to provide documentary evidence, the average earnings of the 12 months' employment immediately preceding the application which was rejected would be adopted for calculating compensation. In the event that a claimant was unable to provide such documentary evidence, the Bill proposed that the median monthly employment earnings of the total employed population of Hong Kong published by the Census and Statistics Department for the quarter immediately before the commencement of the Bill would be adopted instead	

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013500 - 014041	Chairman Admin Hon IP Wai-ming ALA2	<p>Clause-by-clause examination of the Bill (LC Paper Nos. CB(2)1948/08-09(02) & (03) and CB(2)2306/08-09(01))</p> <p>Briefing by the Administration on the object of the Bill</p> <p>Examination of the long title of the Bill</p> <p>Examination of the short title and timing for commencement of the Bill</p>	
014042 - 015539	Chairman Admin Hon IP Wai-ming ALA2 Hon Alan LEONG	<p>Examination of clause 3 which sought to amend section 2 of ODCO to -</p> <ul style="list-style-type: none"> (a) amend the definition of "applicant"; (b) include "monaural hearing loss" in the definition of "noise-induced deafness" and (c) add the definitions of "device provider", "direct payment of expenses" and "monaural hearing loss" <p>Examination of clause 4 on functions and powers of ODCB; whether it was also necessary to add "direct payment of expenses" to section 8 of Cap. 469 relating to payments by ODCB from the Occupational Deafness Compensation Fund (the Fund)</p> <p>Discussion on the need to include "monaural hearing loss" in the definition of "noise-induced deafness"; the principle of making minimal change to the existing law</p> <p>The Administration advised that section 8(f) of Cap. 469 provided that ODCB could pay from the Fund any other sums required or permitted to be paid by ODCB under the Ordinance. The proposed amendment to allow ODCB to make direct payment of expenses in relation to HADs on behalf of the</p>	

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		claimant did not seek to include an additional item of benefit. It only served to provide an alternative method of payment with no changes made to the existing reimbursement arrangements for expenses in relation to HADs. Hence, the Administration considered it not necessary to amend section 8 which already covered such expenses	
015540 - 020344	Chairman Admin Hon IP Wai-ming	Briefing by the Administration on clause 5 which sought to amend section 14 of Cap. 469 on entitlement to compensation; adding "for the first time" after "compensation" to the heading of section 14; repealing everything before "("previous application")" in section 14(2)(d) and substituting "if he has previously made an application for compensation for which the entitlement arose under this section"; adding "on or after 6 March 1998" before "; and" to section 14(2)(d)(ii) Responding to Hon IP Wai-ming's enquiry, the Administration advised that clause 22 would amend section 48 of ODCO to provide for transitional arrangements to net in workers with MHL whose applications for compensation had previously been rejected by ODCB	
020345 - 020440	Chairman Hon IP Wai-ming	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
6 November 2009