

立法會
Legislative Council

LC Paper No. CB(2)605/09-10
(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 Wednesday, 11 November 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon PAN Pey-chyou (Chairman)
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, 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

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**).

Transitional arrangements

2. The Administration briefed members on its proposal to make the transitional arrangements more flexible for netting in monaural hearing loss cases, as detailed in its paper (LC Paper No. CB(2)211/09-10(01)). The Administration informed members that it would proceed with the preparation of the necessary Committee Stage amendments (CSAs) to the Occupational Deafness (Compensation) (Amendment) Bill 2009 (the Bill).

Ceiling of first-time reimbursable amount of hearing assistive devices

3. The Administration advised that in view of members' concern, it had no objection to increase the ceiling of the first-time reimbursable amount for expenses in connection with hearing assistive devices and would propose the amount be revised from HK\$9,000 to HK\$12,000.

The aggregate length of employment required for making applications for further compensation

4. The Administration advised that having considered members' views and the practice of certain overseas countries in similar context, it would propose to lower the aggregate length of employment in any noisy occupation in Hong Kong required for making applications for further compensation from five to three years. The Administration undertook to provide a paper to explain in detail the proposed CSAs to the Bill.

Follow-up actions to be taken by the Administration

5. The Bills Committee requested the Administration -

- (a) to provide a written response on whether and how the Occupational Deafness Compensation Board would exercise flexibility in vetting the occupational requirements of the applications so that the applicants would not be unduly excluded from the coverage of the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO) because of overly stringent criteria; and
- (b) to consider refining the drafting of the proposed new section 14A and the proposed section 20(2) with a view to making them easier to comprehend.

6. Members expressed concern about the use of "must" in clauses 8(3) and 8(4) of the Bill which respectively proposed to amend section 20(2) of ODCO and to add the proposed new section 20(2A) and (2C). Noting that "shall" would continue to be used in other sections of ODCO, including section 20(1), members queried whether the simultaneous appearance of "must" and "shall" in the same section would cause confusion and problems in interpretation by the public and the courts in future. Members considered that it would be more consistent to use the same wording (either "shall" or "must") in the same section of an ordinance. They enquired about the rationale for preferring "must" to "shall" and requested the Administration to provide a written response.

7. Regarding the proposed use of "he or she" and "his or her noise-induced deafness" in the proposed new section 27B(1A) while "he" and "his noise-induced deafness" would continue to be used in section 27B(1), members had similar concern whether it would be more consistent to use the same phrase/expression in the same section of an ordinance. They asked about the reason for using "he or she" and "his or her" only in the English text of the new section 27B(1A), while corresponding renditions were not used in the Chinese text of the same section. Members requested the Administration to provide a written response on this aspect.

II. Date of next meeting

8. The Bills Committee agreed to hold the next meeting on 30 November 2009 at 2:30 pm to continue examination of the Bill from clause 14.

9. The meeting ended at 10:30 am.

**Proceedings of meeting of the
Bills Committee on
Occupational Deafness (Compensation) (Amendment) Bill 2009
on Wednesday, 11 November 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000310	Chairman	Opening remarks	
000311 - 001330	Admin Chairman	<p>Briefing on the Administration's proposal to make the transitional arrangements more flexible for netting in monaural hearing loss cases (LC Paper No. CB(2)211/09-10(01))</p> <p>The Administration advised that subject to members' support for the proposal set out in the paper, the Administration would proceed with the preparation of the necessary Committee Stage amendments to the Occupational Deafness (Compensation) (Amendment) Bill 2009 (the Bill)</p>	
001331 - 002130	Chairman Hon LI Fung-ying Admin	<p>Whether and how the Occupational Deafness Compensation Board (ODCB) would exercise flexibility in vetting the occupational requirements of the applications so that the applicants would not be unduly excluded from the coverage of the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO) because of overly stringent criteria</p> <p>Whether the Administration would consider the suggestion of the Hong Kong Occupational Deafness Association that compensation should be paid to persons with occupational deafness (OD persons) on a monthly basis</p> <p>The Administration explained that the main objective of ODCO was to provide persons with permanent incapacity arising from occupational deafness with a one-off compensation as in the cases of employees who had contracted other occupational diseases. This was in line with the local employees' compensation</p>	Admin to provide a written response (paragraph 5(a) of the minutes refers)

Time marker	Speaker	Subject(s)	Action Required
		<p>system. As OD persons could generally continue working or living normally, ODCB, in the light of the special needs of OD persons, other than providing compensation also funded expenses relating to hearing assistive devices (HADs) and rehabilitation services in order to improve the communication and social capabilities of OD persons for their re-integration into society. The Administration reiterated that it could not agree to suggestions which ran counter to the prevailing principles of employees' compensation in the local context</p>	
<p>002131 - 003041</p>	<p>Chairman Hon CHAN Kin-por Admin</p>	<p>The threshold/minimum level of hearing loss for providing compensation under ODCO; how incapacity arising from occupational deafness affected a person's living and working ability; hearing tests available, such as pure tone audiometry and cerebral cortical evoked response audiometry, for the diagnosis and assessment of noise-induced deafness; accuracy and reliability of different assessment methods; conductive hearing loss versus sensorineural hearing loss</p>	
<p>003042 - 003721</p>	<p>Chairman Hon Alan LEONG Admin</p>	<p>Whether a person with monaural hearing loss (MHL) who had never filed any application for compensation with ODCB in the past was eligible for compensation under the extended transitional arrangements, if he did not possess any results of hearing tests carried out at private clinics or public hospitals and had already left employment and failed to fulfil the occupational requirements</p> <p>The need to establish a causal relationship between workers' hearing loss and their occupations; sensorineural hearing loss could be caused by various factors other than prolonged exposure to excessive noise during employment in noisy occupations; advice of the Occupational Deafness Medical Committee on whether the definite cause of a deafness could be ascertained after a long lapse of time</p>	

Time marker	Speaker	Subject(s)	Action Required
003722 - 005436	Chairman Admin Hon IP Wai-ming Hon LI Fung-ying Hon Abraham SHEK	<p>The Administration advised that in view of members' concern, it had no objection to increase the ceiling of the first-time reimbursable amount for expenses in relation to the acquisition and fitting of HADs and would propose the amount be revised from \$9,000 to \$12,000</p> <p>Basis for increasing the amount by \$3,000; whether the proposed maximum reimbursable amount of \$12,000 for first-time application was appropriate</p> <p>The Administration explained that the setting of a first-time maximum reimbursable amount on the expenses of HADs was to help ensure that applicants who had little experience in using HADs would make a prudent choice in their first-time purchase. It was noteworthy that HADs users normally needed time and effort in adapting to the use of new HADs. After the initial fitting, follow-up adjustment was also required</p> <p>Need for an adaptation period for the use of HADs; whether the current six-month period could be shortened</p>	
005437 - 011245	Chairman Admin Hon LI Fung-ying Hon IP Kwok-him Hon IP Wai-ming ALA2	<p>Continuation of clause-by-clause examination of the Bill</p> <p>Examination of clause 6 which sought to add a new section 14A to ODCO to provide that a person having been awarded compensation under ODCO was entitled to further compensation for the additional permanent incapacity resulting from the person's additional hearing loss suffered if the specified conditions were fulfilled</p> <p>The Administration advised that having considered members' views and the practice of overseas countries in similar context, it would propose to lower the application threshold for further compensation from five years of employment in aggregate in any noisy occupation in Hong Kong to three years</p>	<p>Administration to provide a written response (paragraph 4 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>of employment in aggregate. The Administration undertook to provide a paper to explain in detail the proposed Committee Stage amendments to the Bill</p> <p>Whether the Government's policy under the existing section 27 of ODCO concerning payment in respect of permanent incapacity would be affected by the new section 14A</p>	
011246 - 011505	Chairman Admin	Examination of clause 7 which sought to amend section 15 of ODCO to make the application procedure also applicable to an application for compensation based on an entitlement arising under the new section 14A or the proposed section 48(3) of ODCO	
011506 - 013020	Chairman Admin Hon IP Wai-ming Hon Alan LEONG ALA2	<p>Examination of clause 8 which sought to amend section 20 of ODCO to -</p> <p>(a) make the mechanism for determining permanent incapacity also applicable to the determination of additional permanent incapacity;</p> <p>(b) provide for the calculation of the percentage of permanent incapacity of a person suffering from MHL; and</p> <p>(c) provide for the calculation of the percentage of additional permanent incapacity suffered by a person</p> <p>The possibility of refining the drafting of the proposed new section 14A and the proposed section 20(2) with a view to making them more easier to comprehend</p>	Admin to consider members' suggestion (paragraph 5(b) of the minutes refers)
013021 - 014024	Chairman ALA2 Admin Hon Alan LEONG	Discussion on the use of "must" in clauses 8(3) and 8(4) of the Bill which respectively proposed to amend section 20(2) of ODCO and to add the proposed new section 20(2A) and (2C) to ODCO; whether it would be more consistent to use the same wording (either "shall" or "must") in the same section of an	Admin to provide a written response (paragraph 6 of the minutes refers)

Time marker	Speaker	Subject(s)	Action Required
		<p>ordinance; the rationale for preferring "must" to "shall"; whether this was a new drafting practice</p> <p>The Administration's initial reply (Page 2 of LC Paper No. CB(2)2306/08-09(01)); the Administration undertook to consider members' views and provide a written response</p>	
014025 - 014159	Admin Hon IP Wai-ming	<p>Examination of clause 9 which sought to amend section 21 of ODCO to make the mechanism for determining the amount of compensation also applicable to an application for further compensation for additional permanent incapacity</p> <p>Hon IP Wai-ming reiterated his stance 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</p>	
014200 - 014249	Admin	Examination of clause 10 on refusal of application	
014250 - 014320	Chairman Admin	Examination of clause 11 on certificate of determination of compensation, objection and review	
014321 - 014434	Admin	Examination of clause 12 which sought to amend the heading of Part VIIA of ODCO	
014435 - 020004	Admin Chairman ALA2 Hon IP Wai-ming Hon Alan LEONG Hon LI Fung-ying	<p>Examination of clause 13 which sought to amend section 27B of ODCO by adding subsection (1A) to provide that a person who was entitled to compensation under ODCO might apply to ODCB for direct payment by ODCB to the device provider of any expenses that the person might reasonably incur in the acquisition, fitting, repair or maintenance of HADs</p> <p>Discussion on the use of "he or she" and "his or her noise-induced deafness" in the proposed new section 27B(1A) which was</p>	Admin to provide a written response

Time marker	Speaker	Subject(s)	Action Required
		<p>added by clause 13(2); whether it would be more consistent to use the same phrase/ expression in the same section of an ordinance; reason for using "he or she" and "his or her" in the English text of the new section 27B(1A) only, while "he", "him" and "his" continued to be used in other subsections; rationale for not making corresponding renditions in the Chinese text of the new section 27B(1A) by repealing "他" and substituting "他或她"; whether this was a new drafting practice</p> <p>The Administration's initial reply (Page 2 of LC Paper No. CB(2)2306/08-09(01))</p> <p>Hon Alan LEONG's suggestion to improve the drafting of the Chinese text of the new heading of Part VIIA of ODCO</p> <p>Need to ensure consistency throughout the Bill, and to maintain consistency between the English text and its Chinese translation</p>	<p>(paragraph 7 of the minutes refers)</p>
020005 - 020142	Chairman Hon Alan LEONG	Date of next meeting	