

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

**Supplementary Information on
Improvement Items under
the Occupational Deafness (Compensation) Ordinance**

Introduction

The Occupational Deafness (Compensation) (Amendment) Bill 2009 (the Bill), which was introduced into the Legislative Council on 3 June 2009, seeks to amend the Employees' Compensation Insurance Levies Ordinance (ECILO) (Cap. 411) and the Occupational Deafness (Compensation) Ordinance (ODCO) (Cap. 469). In amending ODCO, improvements would be made to benefit persons with occupational deafness. This paper serves to provide Members with supplementary information on the proposed improvement items under ODCO.

Compensation and Benefits for Persons with Occupational Deafness

2. ODCO provides compensation and benefits for people who suffer from noise-induced deafness by reason of their employment. It is mainly financed by the Levy collected by the Employees' Compensation Insurance Levies Management Board (ECILMB). The compensation provided by ODCO is paid in a lump sum. The current eligibility criteria for compensation, as specified by ODCO, are set out at Appendix.

3. Information on details of the three proposed improvement items to ODCO is provided in the following paragraphs.

(i) *Providing compensation for employees suffering from monaural hearing loss*

4. At present, an employee of specified noisy occupations is entitled to compensation under ODCO if he can satisfy, among others, the disability requirement of having sensorineural hearing loss amounting to not less than 40 decibel (dB) in each ear, where such loss is due in the case of at least one ear to noise and being the average of hearing losses over the 1, 2, and 3 kHz frequencies. The Bill proposes that those employees of specified noisy occupations who suffer from monaural hearing loss (MHL), i.e. having only one ear with sensorineural hearing loss of not less than 40 dB, and where such loss is due to noise and being the average of hearing losses over the 1, 2, and 3 kHz frequencies, would also be entitled to compensation under ODCO.

5. Under the Bill, the compensation amount of successful MHL claimants would be calculated along the same line as that for people with hearing loss in both ears. Factors such as the claimant's age, his monthly earnings and the percentage of permanent incapacity would be taken into account. ODCO provides that the hearing loss of a claimant, as reflected in terms of dB, is to be translated into a percentage of permanent incapacity in accordance with Schedule 4 of ODCO. While Schedule 4 of ODCO makes reference to the average hearing loss of 40dB or above in both ears, the percentage of permanent incapacity of MHL cases would be taken as half of the percentage shown in Schedule 4 that correlates to the average hearing loss at the specified frequencies for the worse ear of the claimant and the column of "40 to below 45 dB" average hearing loss for the better ear. After the percentage of permanent incapacity of the MHL persons has been determined, the amount of compensation would be calculated according to the formula specified in Schedule 5 of ODCO in the same way compensation is calculated for people with hearing loss in both ears.

6. For MHL cases, a transitional arrangement would be put in place to include some 500 MHL persons whose applications for compensation have been rejected prior to the passage and commencement of this Bill

because the average hearing loss at the specified frequencies of one of their ears could not meet the compensation criteria. Under the Bill, claimants of these rejected cases, as long as they can fulfil the requirement that their hearing loss is due to noise, would also be compensated even if they would not be able to fulfil the requirement of employment in any specified noisy occupations under a continuous contract in the twelve months prior to their application for compensation under this transitional arrangement. The amount of compensation payable to them 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. Details are as follows :

- (a) *Hearing loss level*: The claimants do not have to undergo hearing tests again. The percentages of their permanent incapacity would be determined with reference to the levels of their hearing loss determined in the last hearing tests by which ODCB adopted in rejecting their latest applications by reason of their MHL;
- (b) *Age*: In calculating compensation, age of the claimant at the time when he submitted the latest application which was rejected because of his MHL would be adopted; and
- (c) *Earnings*: Like all other claims under ODCO, if a claimant is able to provide documentary evidence, the average earnings of the 12 months' employment immediately preceding the application which was rejected would be adopted. In the event that a claimant is unable to provide such documentary evidence, the Bill proposes that the median monthly employment earnings of the total population of Hong Kong published by the Census and Statistics Department for the quarter immediately before the commencement of these provisions would be adopted instead.

(ii) *Increasing the maximum reimbursable amount for expenses incurred in purchasing, repairing and replacing hearing assistive devices*

7. The benefit item of reimbursement of expenses in connection with hearing assistive devices (HADs) was introduced in 2003. Any person who has been awarded compensation under ODCO may apply to ODCB for reimbursement of any expenses reasonably incurred in the acquisition, fitting, repair or maintenance of a HAD. Under ODCO, reimbursable HADs include :

- (a) hearing aids;
- (b) telephone amplifier specially designed for use by persons with hearing difficulties;
- (c) desktop telephone with flashing light or other visual device to indicate ringing; and
- (d) any device the use of which by a person suffering from noise-induced deafness is determined by the ODCB, upon the advice of the Occupational Deafness Medical Committee, to be reasonably necessary in connection with such deafness.

8. Under the current ODCO, the reimbursable amount for each applicant should not exceed \$18,000 in aggregate. For any first application in relation to the acquisition and fitting of a HAD, the amount that would be reimbursed shall not exceed \$9,000. Any remaining sum could be used for the maintenance or acquisition of HADs until the aggregate sum of \$18,000 has been exhausted. As at end of March 2009, 725 claimants (about 30% of the total) have applied for the reimbursement of expenses for their HADs. Of these, ten have already used up the aggregate sum of \$18,000. ODCB has a set of administrative guidelines to ensure the reasonable purchase and use of a HAD by an applicant for reimbursement related to HADs.

9. Given that more claimants would likely exhaust their total reimbursable amounts in the years to come, the Bill seeks to increase the ceiling of reimbursement of expenses for HADs from the current level of \$18,000 to \$36,000.

(iii) Providing further compensation for claimants whose hearing loss deteriorates as a result of continued employment in the specified noisy occupations

10. At present, a person with occupational deafness who also fulfills the occupational and disability requirements laid down in ODCO is entitled to a one-off compensation for incapacity in the form of lump sum payment. In the Bill, persons who have already received compensation under ODCO and have continued to be engaged in any specified noisy occupations for five years or more in aggregate would be entitled to further compensation in respect of any additional permanent incapacity due to increased hearing loss.

11. For an employee to be entitled to further compensation, he would have to, like those occupational and disability requirements for first-time compensation, fulfil similar requirements such as:

- (a) having continued to work in any specified noisy occupations in Hong Kong for at least five years in aggregate after the date on which he submitted his latest application in which compensation has been awarded to him; and
- (b) had been employed under a continuous contract of employment in a specified noisy occupation within 12 months prior to his making an application for further compensation.

12. After an eligible employee has made application for further compensation, he would be arranged to undergo a hearing test to determine the level of his hearing loss. The new percentage of permanent incapacity

he is suffering would then be determined in accordance with Schedule 4 of ODCO. The part of the permanent incapacity for which compensation has been paid before would be deducted. Hence compensation will only be payable for the additional permanent incapacity. If there is no increase in the percentage of permanent incapacity, the application will be refused but the claimant may make an application again after having another 24 months of employment in aggregate in a specified noisy occupation in Hong Kong, as in the case an application for first-time compensation is rejected.

13. It is possible for a claimant to apply for further compensation for more than once if he continues to be employed or is employed again in a specified noisy occupation for five years in aggregate after he receives a further compensation.

(iv) *Introducing technical amendments to improve the operation of the reimbursement of expenses for HADs*

14. Apart from the above improvement measures, technical amendments will also be introduced to improve the reimbursement system for persons with occupational deafness to acquire HADs. At present, ODCO only provides for the reimbursement of HAD expenses incurred by persons with occupational deafness. Operational experience shows that there are some persons with occupational deafness who can ill afford to pay the expenses out of their own pocket first and then claim reimbursement afterwards. The Bill therefore seeks to allow the ODCB to pay the expenses for HAD to a supplier or service provider direct on behalf of an applicant without requiring the applicant to pay the expenses first.

15. The proposed technical amendments which aim at providing another channel for the payment of HAD expenses all fall under Part VIIA of ODCO. There would be no changes to the HAD reimbursement arrangements. For applicants who wish to use the alternative payment method, he would be required to submit the necessary quotations and, as in the reimbursement cases, receive the support of the Medical Committee for him to be fitted with the specified HAD.

Financial implications on the improvement packages

16. Apart from the proposed improvements in benefits to persons with occupational deafness, the Bill also seeks to make related amendments to ECILO and its subsidiary legislation, among which the rate of the Levy for distribution to ODCB would be reduced from 1.8% to 0.7%. Although the above three proposed improvements will incur an additional annual expenditure of about \$13 million for ODCB, given its healthy reserve, the additional expenditure can be absorbed.

Labour and Welfare Bureau

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**Eligibility Criteria for Compensation under the Occupational Deafness
(Compensation) Ordinance**

According to the existing provisions in the Occupational Deafness (Compensation) Ordinance (ODCO), an applicant shall be entitled to compensation if he can fulfil the following requirements:

a. Occupational requirement

The applicant should:

- (i) have had at least 10 years of employment in aggregate in any noisy occupation in Hong Kong or five years in four occupations that are particularly noisy. “Noisy occupations” means an occupation specified in Schedule 3 of ODCO; and
- (ii) have been employed under a continuous contract¹ in any noisy occupation in Hong Kong within the 12 months before he makes his application for compensation.

b. Disability requirement

The applicant should be suffering from noise-induced deafness which means sensorineural hearing loss amounting to not less than 40 dB in each ear, where such loss is due in the case of at least one ear to noise. The hearing loss is obtained from the average hearing loss measured by audiometry over the frequencies of 1, 2 and 3 kHz.

Re-application after refusal

2. If an application is unsuccessful and refused by the Board because the applicant fails in meeting the disability requirement, the applicant may make a new application for compensation again if he has been employed in any specified noisy occupations in Hong Kong for at least 24 months after the previous application.

¹ “Continuous contract” has the same meaning as section 3 of the Employment Ordinance which means a contract of employment under which an employee has worked for the same employer for 4 weeks or more and at least 18 hours in each of the 4 weeks.