

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

The Administration's Response

**A Proposal to Make the Transitional Arrangements
More Flexible for Netting in Monaural Hearing Loss Cases**

Introduction

This paper sets out the Administration's proposal in response to Members' concern that the transitional arrangements for monaural hearing loss (MHL) cases under the Occupational Deafness (Compensation) (Amendment) Bill 2009 (the Bill) should be made more flexible to net in those persons who did not file any applications to the Occupational Deafness Compensation Board (ODCB) after having obtained results of self-arranged hearing tests showing MHL.

Background

2. At present, the Occupational Deafness (Compensation) (Ordinance) (ODCO) provides for compensation to employees who meet the occupational requirements and are confirmed to be suffering from noise-induced hearing loss to both ears. The Bill proposes that employees of specified noisy occupations who can satisfy the occupational requirements and have MHL should also be entitled to compensation. The Bill has made provision for transitional arrangements whereby some 500 claimants who have previously made applications to ODCB and found to be suffering from MHL can also be entitled to compensation.

3. At the meetings of the Bills Committee held on 22 June 2009 and 28 July 2009, some Members suggested that there might be persons who had not made applications to ODCB after they underwent self-arranged hearing tests and obtained results showing MHL, as they were aware that MHL was not compensable under the existing ODCO. As such, these persons would not be entitled to compensation under the existing transitional arrangements of the Bill. Since some of them might have already left employment and failed to fulfil the occupational requirements, they would also not be able to apply to ODCB for compensation after the Bill came into effect. Members opined that the proposed transitional arrangements should be made more flexible such that these special cases could also be netted in for compensation. The Administration undertook to consider if feasible and practical arrangements could be made to address Members' concerns.

Principles Underpinning the Extension of the Transitional Arrangements

4. Having considered the views expressed by Members and concerned organisations, the Administration is of the view that as long as the principles of fairness and reasonableness underpinning the present Occupational Deafness Compensation Scheme (ODC Scheme) are not compromised, the transitional arrangements can be made more flexible to benefit these special cases. Nevertheless, under the guiding principles, these MHL persons should still be subject to the occupational and medical requirements stipulated in ODCO, as in the case of other claimants.

5. As the objective of ODCO is to provide compensation for an occupational disease, namely, occupational deafness, it is considered essential that the claimants meet the occupational requirements before they could be entitled to compensation. All claimants have all along been required to be employed to work in Hong Kong for a designated number of years in aggregate in any specified noisy occupations. They should also have at any time been employed under a continuous contract in any specified noisy

occupations within the 12 months before the date of application.

6. As for the medical requirements, the claimants should be confirmed to have suffered from noise-induced hearing loss at a specified level. ODCB is empowered under ODCO to arrange hearing tests for the claimants to assess their level of hearing loss. In order to uphold the objectivity and reliability of such hearing tests, ODCB has designated the test standards and the categories of persons who can perform the tests. Claimants are also required to attend the hearing tests at hearing test centres appointed by ODCB. As stipulated under ODCO, the claimants' hearing losses are measured by audiometry over the 1, 2 and 3 kHz frequencies.

7. To net in these special cases in the transitional arrangements for compensation, there is a need to preserve a broadly uniform and comparable standard for a fair determination of the claimants' noise-induced hearing loss due to employment. Nonetheless, to make the proposal viable, some built-in flexibility would also be needed to cater for the unique circumstances of these cases.

The Proposal

8. At the meeting of the Bills Committee held on 12 October 2009, the Administration presented a proposal to introduce more flexibility into the transitional arrangements. This proposal would be applicable to persons who have self-arranged hearing test results showing MHL, but not those persons who are eligible for making applications to ODCB by virtue of any other relevant provisions under ODCO after the commencement of the relevant provisions of the Bill. Specifically, the proposal will be applied exclusively to the following two categories of employees:-

- (a) Persons who have never filed any applications for compensation to ODCB; or
- (b) Persons who have filed applications to ODCB but were not awarded compensation, and if they have undergone hearing tests arranged by ODCB in connection with their past applications in which they failed to meet the noise induced deafness requirements of ODCO, their self-arranged hearing tests must have been conducted after the date of the hearing tests adopted by ODCB for rejecting their applications.

9. At the meeting, the Administration also explained the need to subject these persons to eligibility criteria largely on par with those required of other claimants. Nevertheless, some flexibility measures would be adopted such that the results of self-arranged hearing tests of these persons can be accepted for determining their hearing loss level. The eligibility criteria for these cases are set out as follows:-

A. Occupational requirements

- (a) Before the self-arranged hearing test was taken, the claimant has had the designated number of years of employment in aggregate in specified noisy occupations; and
- (b) Within the 12 months before the self-arranged hearing test confirming his MHL was taken, the claimant has been employed under a continuous contract in any specified noisy occupations.

B. Medical requirements

- (a) The report on the self-arranged hearing test produced by the MHL claimant to support his application for compensation was dated to

show when the test was conducted. The hearing test was conducted on or after 1 July 1995 and before the enactment of the Bill;

- (b) The self-arranged hearing test was conducted in Hong Kong and certified by any categories of persons designated by ODCB for performing hearing tests;
- (c) The report on the self-arranged hearing test does not contain comments by the certifying person that it is unreliable or the hearing loss is not noise-induced; and
- (d) The report on the self-arranged hearing test is able to show the hearing loss level of the claimant and that he/she suffered from MHL as defined in the Bill. If the report does not contain the required information on the hearing loss level of the claimant, i.e. average hearing loss over 1, 2 and 3 kHz measured by audiometry, the claimant has to provide the relevant audiogram of the hearing test. In such cases, the Occupational Deafness Medical Committee¹ would advise the Board whether it is feasible, and if so, to determine from the audiogram the hearing loss levels of the claimant at 1, 2 and 3 kHz respectively.

10. The amount of compensation for these claimants would be determined in line with the parameters adopted for MHL claimants provided under the current transitional arrangements of the Bill. The amount would be calculated with reference to the claimant's hearing loss level, age and earnings at the time when he underwent the hearing test certifying his MHL.

¹ The Occupational Deafness Medical Committee comprises four medical practitioners and one audiologist. The four medical practitioners are respectively nominated by the Hospital Authority, the Department of Health, the Hong Kong College of Otorhinolaryngologists of the Hong Kong Academy of Medicine (HKAM), and the Hong Kong College of Community Medicine of HKAM.. The audiologist is nominated by the Hong Kong Society of Audiology.

Way forward

11. With Members' support of the above proposal, the Administration would proceed with the preparation of the necessary Committee Stage Amendments to the Bill.

Labour and Welfare Bureau
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