

OCCUPATIONAL DEAFNESS (COMPENSATION)
(AMENDMENT) BILL 2009

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Labour and Welfare

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 3 | By deleting subclause (2) and substituting –
“(2) Section 2 is amended by repealing the definition of
“noise-induced deafness” and substituting –
““noise-induced deafness” (噪音所致的失聰) means –
(a) binaural hearing loss; or
(b) monaural hearing loss;”.”. |
| 3(4) | By adding –
““binaural hearing loss” (雙耳聽力損失) 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,
and being the average of hearing losses measured by
audiometry over the 1, 2 and 3 kHz frequencies;”. |
| 4 | By renumbering the clause as clause 4(1). |
| 4 | By adding –
“(2) Section 5(1)(db) is amended by adding “, or who have
suffered,” after “suffering”.”. |
| 6 | In the proposed section 14A(2)(a), by deleting “5 years” and substituting “3 |

ALL PASSED

years”.

6 In the proposed section 14A(2)(a)(i), by deleting “or”.

6 In the proposed section 14A(2)(a)(ii), by deleting the semicolon and substituting “or, where there was more than one such previous unsuccessful application, the date of the last such application; or”.

6 In the proposed section 14A(2)(a), by adding –

“(iii) if the latest successful application was made for compensation for which the entitlement arose under section 48(5), the date of the self-arranged audiometric test mentioned in section 48(5)(a) or, where there was more than one such test, the date of the last such test;”.

7(1) In the proposed section 15(1), by deleting “or (3)” and substituting “, (3) or (5)”.

7(3) In the proposed section 15(2), by adding “and (9)” after “section 48(4)”.

New By adding –

“7A. Referral to Medical Committee

Section 19 is amended by adding “or 48(5)(a)” after “section 16(2)”.

8(2) By deleting everything after “by repealing” and substituting ““The Board shall” and substituting “Subject to section 48(4) and (9), the Board must”.

8(3) By deleting “noise-induced deafness other than monaural” and substituting “binaural”.

8(4) In the proposed section 20(2A), by adding “or (9)” after “section 48(4)”.

ALL PASSED

8(4) In the proposed section 20(2B)(b), in the English text, by adding “the” before “better”.

8(5) By deleting everything after “by repealing” and substituting ““shall make a determination under subsection (1) or (2)” and substituting “must make a determination under subsection (1), (2) or (2A) or section 48(4) or (9)”.”.

13 By adding –

“(1A) Section 27B(1)(a) is amended by repealing “is” and substituting “has at any time been”.

(1B) Section 27B(1) is amended by adding –

“(aa) has at any time been entitled to compensation pursuant to a decision made under section 23;”.

(1C) Section 27B(1)(b) is amended by repealing “is” and substituting “has at any time been”.

(1D) Section 27B(1)(c) is amended by adding “at any time” after “has”.

(1E) Section 27B(1)(c) is amended, in the English text, by adding “or her” after “his”.

(1F) Section 27B(1) is amended by repealing everything after “the Board for any expenses” and substituting “he or she has reasonably incurred in the acquisition, fitting, repair or maintenance of a hearing assistive device used by him or her in connection with his or her ear that suffers, or has suffered, from noise-induced deafness.”.”.

13 By deleting subclause (2) and substituting –

“(2) Section 27B is amended by adding –

“(1A) A person who fulfils the conditions specified in subsection (1)(a), (aa), (b) or (c) may apply to the Board for payment by the Board directly

ALL PASSED

to the device provider of any expenses he or she may reasonably incur in the acquisition, fitting, repair or maintenance of a hearing assistive device used or to be used by him or her in connection with his or her ear that suffers, or has suffered, from noise-induced deafness.”.”.

13 By adding –

“(3A) Section 27B(2)(a)(iii) is amended, in the English text, by adding “or her” after “him”.

(3B) Section 27B(2)(b) is amended, in the English text, by adding “or her” after “him”.”.

14 In the proposed section 27C(2), by adding “, irrespective of the number of applications under section 15 that the applicant has made” after “the applicant under that section”.

15(2) In the English text, by deleting everything after “is amended” and substituting “by repealing “shall be in a specified form and shall” and substituting “based on an entitlement arising under section 27B(1) must be in a specified form and must”.”.

15 By adding –

“(2A) Section 27D(2) is amended, in the English text, by repealing “shall” and substituting “must”.”.

18 By adding –

“(2A) Section 27G(2) is amended, in the English text, by repealing “shall” and substituting “does”.”.

18 By adding –

“(4) Section 27G(4) is amended, in the English text, by

ALL PASSED

repealing “shall” and substituting “is to”.”.

22 By adding before subclause (1) –

“(1A) Section 48(1) is amended, in the English text, by repealing “Notwithstanding” and substituting “Despite”.

(1B) Section 48(1)(b) is amended by adding “or she” after “he”.

(1C) Section 48(1)(b) is amended, in the English text, by adding “or her” after “his”.

(1D) Section 48(1) is amended by repealing everything from “Ordinance, if –” to “the Board that –” and substituting –

“Ordinance –

(i) on satisfying the Board that he or she –”.

(1E) Section 48(1)(i)(A) is amended by repealing “he”.

(1F) Section 48(1)(i)(B) is amended by repealing “he”.”.

22 By deleting subclause (1) and substituting –

“(1) Section 48(1)(ii) is repealed and the following substituted –

“(ii) if the application is made within 12 months beginning on the commencement of sections 1 to 20 of the amending Ordinance, that is to say, 6 March 1998.”.

(1AA) Section 48(1) is amended, in the Chinese text, by repealing “則除第 14(3)、17 及 29 條另有規定外，他有權” and substituting “該人有權”.”.

22 By deleting subclause (3) and substituting –

“(3) Section 48(2)(a) is amended by repealing everything from “or (3) of the pre-amended Ordinance” to “shall continue” and

ALL PASSED

substituting “or (3) of the pre-amended 1998 Ordinance, then sections 8(c), 15(4) to (6) and 31 of the pre-amended 1998 Ordinance continues”.

(3A) Section 48(2)(b) is amended by repealing everything from “or (3) of the pre-amended Ordinance” to “shall continue” and substituting “or (3) of the pre-amended 1998 Ordinance has been provided to the Board, then sections 16(1), 19 and 20(1) of the pre-amended 1998 Ordinance continues”.

(3B) Section 48(2)(c) is amended by repealing everything after “for compensation under” and substituting “section 15 of the pre-amended 1998 Ordinance and the Board has not determined the percentage of permanent incapacity of the claimant under section 20, the Board must make such determination in accordance with Schedule 4 to the pre-amended 1998 Ordinance.”.

22

By deleting subclause (4) and substituting –

“(4) Section 48(3) is repealed and the following substituted

–

“(3) Despite section 14(1) and subject to sections 14(3) and 29, a person is entitled to such compensation as is determined by the Board under this Ordinance if –

- (a) the person has not been awarded any compensation;
- (b) the person has made a previous application for compensation under the pre-amended 2010 Ordinance that was refused under section 22(1)(a) of that Ordinance on the ground that he or she suffered from sensorineural hearing loss of not less than 40 dB

ALL PASSED

in only one ear (“previous unsuccessful application”); and

- (c) there is no evidence proving that the sensorineural hearing loss was not due to noise.

(4) In relation to a claimant applying for compensation based on an entitlement arising under subsection (3), the Board must determine the noise-induced deafness of the claimant having regard to –

- (a) the result of the hearing test or medical examination as stated in the notice sent under section 22 in respect of the claimant’s previous unsuccessful application mentioned in subsection (3)(b) or, where there was more than one such previous unsuccessful application, the last such application;
- (b) any advice of the Medical Committee given in respect of the deafness of the claimant;
- (c) the result of any medical examination that the Board may have required the claimant to undergo under section 16(1); and
- (d) any investigations and inquiries into any other matter concerning the claimant’s deafness or the claimant’s occupational history that the Board may have made

ALL PASSED

under section 16(1).

(5) Despite section 14(1) and subject to sections 14(3) and 29, a person who has at any time suffered noise-induced deafness is entitled to such compensation as is determined by the Board under this Ordinance if –

- (a) the person provides the Board with a report of a self-arranged audiometric test in relation to which report or test the requirements specified in subsection (6) are met;
- (b) the person has had –
 - (i) at least 10 years of employment in aggregate in any noisy occupation in Hong Kong before the date of the self-arranged audiometric test; or
 - (ii) at least 5 years of employment in aggregate in any noisy occupation specified in paragraphs (c), (j), (k) and (y) of Schedule 3 in Hong Kong before the date of the self-arranged audiometric test;
- (c) the person has at any time been employed under a continuous contract in any noisy occupation in Hong Kong within the 12 months before the date of the

ALL PASSED

self-arranged audiometric test;

- (d) the person has not been awarded any compensation; and
- (e) there is no evidence proving that the sensorineural hearing loss was not due to noise.

(6) The requirements referred to in subsection (5)(a) are that –

- (a) the report must show the date on which the self-arranged audiometric test was conducted;
- (b) the report must show that the person suffered from –
 - (i) hearing loss amounting to not less than 40 dB in only one ear, being the average of hearing losses measured by audiometry over the 1, 2 and 3 kHz frequencies; or
 - (ii) any hearing loss that the Medical Committee may, under subsection (8), infer from the report to amount to the hearing loss mentioned in subparagraph (i);
- (c) the report does not indicate that the person mentioned in paragraph (f) has opined that the result of the self-arranged audiometric test is unreliable;
- (d) the self-arranged audiometric test

ALL PASSED

was conducted in Hong Kong within the period from 1 July 1995 to the date immediately before the date on which the 2010 Amendment Ordinance is published in the Gazette;

- (e) if the person has undergone one or more hearing tests arranged by the Board in connection with the person's application for compensation that was refused under section 22(1)(a) or, where there was more than one such application, the last such application, the self-arranged audiometric test was conducted after –
 - (i) the date of the hearing test on the result of which the Board's decision to refuse the application ("first decision") was based;
 - (ii) if the person has, under section 23, requested the Board to review the first decision, the date of the hearing test on the result of which the Board's decision to refuse to vary or reverse the first decision ("second decision") was based;
 - (iii) if the person has, under

ALL PASSED

section 28, appealed to the District Court against the second decision, the date of the hearing test on the result of which the District Court's decision to refuse to vary or reverse the second decision was based; and

- (f) the self-arranged audiometric test was conducted, or the result of the test was certified by a person belonging to a category of persons designated under section 36(1)(b).

(7) If it is not reasonably practicable to ascertain the date of the hearing test mentioned in subparagraph (i), (ii) or (iii) of subsection (6)(e), that subparagraph is to be construed as if the reference to that date were a reference to the date of the Board's decision or the District Court's decision mentioned in that subparagraph.

(8) If the hearing losses as shown in the self-arranged audiometric test mentioned in subsection (5)(a) were not measured by audiometry over the 1, 2 and 3 kHz frequencies –

- (a) the report of the self-arranged audiometric test must contain information that makes it possible for the Medical Committee to infer the average hearing loss of the person over the 1, 2 and 3 kHz frequencies; and

ALL PASSED

- (b) the Medical Committee may, if it considers it appropriate, infer the average hearing loss of the person over the 1, 2 and 3 kHz frequencies relying on the information given in the report.

(9) In relation to a claimant applying for compensation based on an entitlement arising under subsection (5), the Board must determine the noise-induced deafness of the claimant having regard to –

- (a) the report mentioned in subsection (5)(a) or, where there was more than one such report, the last such report;
- (b) any advice of the Medical Committee given in respect of the deafness of the claimant;
- (c) the result of any medical examination that the Board may have required the claimant to undergo under section 16(1); and
- (d) any investigations and inquiries into any other matter concerning the claimant's deafness or the claimant's occupational history that the Board may have made under section 16(1).

(10) Subsection (5) does not apply to a person who is entitled to apply for compensation for which the entitlement arises under subsection (3) or section 14.

ALL PASSED

(11) A person who has applied for compensation for which the entitlement arose under section 14 (“existing application”) must not apply for compensation for which the entitlement arises under subsection (3) or (5) if –

- (a) the existing application is still pending;
- (b) the existing application has been refused by the Board under section 22 but there is –
 - (i) a pending review by the Board under section 23 in respect of the existing application; or
 - (ii) a pending appeal to the District Court under section 28 concerning the Board’s review under section 23 in respect of the existing application.

(12) If a person’s existing application has been refused by the Board under section 22, and –

- (a) the person makes an application for compensation for which the entitlement arises under subsection (3) or (5) (“section 48 application”); and
- (b) before the section 48 application is disposed of, the person –
 - (i) requests a review by the Board under section 23 in respect of the existing

ALL PASSED

application; or

- (ii) appeals to the District Court under section 28 concerning the Board's review under section 23 in respect of the existing application,

then, the Board must not process the section 48 application until the review or appeal is disposed of.

(13) If before the commencement of the 2010 Amendment Ordinance, a claimant had applied for compensation under the pre-amended 2010 Ordinance but the Board had not at that commencement determined the noise-induced deafness of the claimant under section 20 of the pre-amended 2010 Ordinance, then, on or after that commencement, the Board must make the determination under this Ordinance.

(14) In this section –

- (a) “pre-amended 1998 Ordinance” (《修訂前的 1998 年條例》) means this Ordinance as in force immediately before the commencement of sections 1 to 20 of the amending Ordinance, that is to say, 6 March 1998;
- (b) “pre-amended 2010 Ordinance” (《修訂前的 2010 年條例》) means this Ordinance as in force immediately before the commencement of the 2010 Amendment Ordinance;

ALL PASSED

- (c) “2010 Amendment Ordinance” (《2010年修訂條例》) means the Occupational Deafness (Compensation) (Amendment) Ordinance 2010 (of 2010).”.

New By adding –

“22A. Noisy Occupations

Schedule 3 is amended by repealing “[ss. 2 & 39]” and substituting “[ss. 2, 14, 39 & 48]”.

23(5) In the proposed section 5(a) of Schedule 5, by adding “or, where there was more than one such previous unsuccessful application, the date of the last such application” after “section 48(3)(b) of this Ordinance”.

23 By adding –

“(6) Schedule 5 is amended by adding –

“6. In calculating the amount of compensation payable to a claimant on the basis of the noise-induced deafness of the claimant determined under section 48(9) of this Ordinance, “relevant date of application” (提出申請的有關日期) means –

- (a) for the purposes of sections 1 and 3(a), the date of the self-arranged audiometric test mentioned in section 48(5)(a) of this Ordinance or, where there was more than one such test, the date of the last such test; and
- (b) for the purposes of section 3(c), the date of the commencement of

ALL PASSED

section 48(9) of this
Ordinance.”.”.

24

By adding –

“(1A) Schedule 7 is amended, in section 1, by repealing
“\$9,000” and substituting “\$12,000”.”.

ALL PASSED