

Amend the Occupational Deafness (Compensation) Ordinance to---

- (a) amend the long title;
 - (b) provide for the reimbursement of expenses incurred in relation to hearing assistive devices;
 - (c) add 4 new noisy occupations;
 - (d) revise the scale of percentage of permanent incapacity prescribed by reference to noise-induced deafness;
 - (e) revise the maximum and minimum levels of compensation;
 - (f) disregard no-pay leave in the computation of a claimant's period of employment for the purpose of determining his earnings;
 - (g) empower the Occupational Deafness Compensation Board to conduct or finance programmes for the rehabilitation of persons suffering from noise-induced deafness by reason of employment;
 - (h) amend certain procedural requirements concerning the payment of compensation; and
 - (i) provide for related matters.
- Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Occupational Deafness (Compensation) (Amendment) Ordinance 2002.

2. Long title amended

The long title to the Occupational Deafness (Compensation) Ordinance (Cap. 469) is amended by adding "and other benefits" after "compensation".

3. Interpretation

Section 2 is amended by adding---

"applicant" (申請人) means a person who makes an application for reimbursement of expenses under section 27D;

"hearing assistive device" (聽力輔助器具) means a device prescribed in Schedule 6 and any component or accessory of such device;

"reimbursement of expenses" (付還開支) means the reimbursement of any expenses under Part VIIA;"

4. Functions and powers of the Board

Section 5(1) is amended---

(a) in paragraph (c), by adding "or reimbursement of expenses" after "compensation";

(b) in paragraph (da), by repealing "and" at the end;

(c) by adding---

"(db) to conduct or finance programmes for the rehabilitation of persons suffering from noise-induced deafness by reason of employment; and".

5. Payments by the Board from the Fund

Section 8 is amended by adding---

"(aa) reimbursement of expenses;"

6. Functions of Medical Committee

Section 13 is amended---

(a) in paragraph (d), by repealing "; and" and substituting "or 27E(3)(b)(i);";

(b) by adding---

"(da) to recommend to the Board categories of persons that may be designated un

der section 36(1)(e); and".

7. Determination of compensation

Section 21 is amended by adding "as in force on the date of the determination of such amount, irrespective of the date of the application under section 15 to which the determination relates" after "5".

8. Payment of compensation

Section 25 is amended---

(a) in subsections (1) and (2), by repealing "subsection (7)" and substituting "section 30A";

(b) by repealing subsection (3) and substituting---

"(3) Compensation that remains unpaid at the expiry of the period prescribed in subsection (1) or (2) shall carry simple interest as from the date of such expiry until such time as it is paid, calculated at the rate determined from time to time by the Chief Justice for the purposes of section 49(1)(b) of the High Court Ordinance (Cap. 4).";

(c) by repealing subsections (4) to (8).

9. Part added

The following is added---

"PART VIIA

Reimbursement of Expenses in Relation to

Hearing Assistive Devices

27B. Reimbursement of expenses in relation to hearing assistive devices

(1) A person who---

(a) is entitled to compensation pursuant to a determination made under section 21;

(b) is entitled to compensation pursuant to a court order made under section 28; or

(c) has been paid by the Government a pension or gratuity under any Ordinance in consequence of incapacity resulting from noise-induced deafness which arose in the course of his employment, may on application to the Board be reimbursed by the Board for any expenses he has reasonably incurred in the acquisition, fitting, repair or maintenance of a hearing assistive device used by him in connection with his noise-induced deafness.

(2) The following expenses are not reimbursable under subsection (1)---

(a) expenses incurred before the date on which---

(i) a certificate was issued to the person under section 24(1);

(ii) the court order referred to in subsection (1)(b) was made; or

(iii) any pension or gratuity referred to in subsection (1)(c) was first paid to him; and

(b) expenses met by any grant, sponsorship or donation given to him by any person for the purpose of the acquisition, fitting, repair or maintenance of a hearing assistive device.

(3) Expenses incurred in relation to a hearing assistive device that is a hearing aid shall not be reimbursed under subsection (1) unless advice in writing indicating that the applicant reasonably requires the use of the hearing aid has been given by a person belonging to a category of persons designated under

section 36(1)(e).

27C. Limits of reimbursement of expenses

(1) The amount of expenses that may be reimbursed to an applicant for the first time in respect of an application under section 27D in relation to the acquisition and fitting of a hearing assistive device shall not exceed the amount prescribed for the purposes of this subsection in Schedule 7, as in force on the date of the determination by the Board under section 27E(1)(b) in respect of such application.

(2) The amount of expenses that may be reimbursed to an applicant shall not in aggregate exceed the amount prescribed for the purposes of this subsection in Schedule 7, as in force on the date of the first determination by the Board under section 27E(1)(b) in respect of the applicant.

27D. Application for reimbursement of expenses

(1) An application for reimbursement of expenses shall be in a specified form and shall be made within a period of 12 months beginning on the date on which the expenses were incurred.

(2) An application made under subsection (1) shall be accompanied by--

--

(a) the original receipt issued in respect of the expenses to which the application relates; and

(b) if the expenses relate to a hearing aid, the advice referred to in section 27B(3), unless the advice has already been sent to the Board.

27E. Determination of application

(1) The Board shall consider any application made under section 27D, and shall determine in accordance with sections 27B, 27C and 27D---

(a) whether or not the applicant is entitled to reimbursement of any expenses; and

(b) if he is entitled to reimbursement of any expenses, the amount of that reimbursement.

(2) The Board shall by notice in writing inform an applicant of its determination under subsection (1).

(3) For the purposes of making a determination under subsection (1), the Board may---

(a) require an applicant to undergo such test or examination as it considers necessary, at the cost of the Board;

(b) refer any information relevant to an application to---

(i) the Medical Committee;

(ii) a designated medical practitioner; or

(iii) a person belonging to a category of persons designated under section 36(1)(e),

for advice as to whether the use by the applicant of the relevant hearing assistive device or the repair or maintenance of such device is or was reasonably required.

(4) Where an applicant fails without reasonable excuse to undergo a test or examination required under subsection (3)(a), the Board may determine that he is not entitled to any reimbursement of expenses.

27F. Review of determination

(1) An applicant in respect of whom a determination has been made und

er section 27E(1) may request the Board to review the determination.

(2) A request under subsection (1) shall---

(a) be in writing;

(b) be sent to the Board within a period of 14 days beginning on the date of the notice issued to him under section 27E(2); and

(c) state the reasons for requesting the review.

(3) The Board may, if it thinks fit, extend the time limit mentioned in subsection (2)(b).

(4) Upon receipt of a request under subsection (1), the Board shall review its determination and may, after the review, confirm, vary or reverse the determination.

(5) The Board shall by notice in writing inform the applicant of the result of its review.

(6) No request for review shall be made under subsection (1) in respect of any amount of reimbursement of expenses the payment of which has been made by the Board and received by the applicant.

27G. Payment of reimbursement of expenses

(1) Subject to section 30A, where an applicant is entitled to any amount pursuant to a determination made under section 27E(1)(b), the Board shall pay the amount to the applicant within a period of 21 days beginning on the date of the notice issued to him under section 27E(2).

(2) Where a request has been made for the review of a determination of the Board under section 27F(1), subsection(1) shall not apply in respect of any amount payable under the determination.

(3) Subject to section 30A, any amount payable to an applicant at the conclusion of a review shall be paid within a period of 21 days beginning on the date of the notice issued under section 27F(5).

(4) Any amount of reimbursement of expenses that remains unpaid at the expiry of the period prescribed in subsection (1) or (3) shall carry simple interest as from the date of such expiry until such time as it is paid, calculated at the rate determined from time to time by the Chief Justice for the purposes of section 49(1)(b) of the High Court Ordinance (Cap. 4).

27H. Death of applicant

Where an applicant to whom any amount is payable pursuant to a notice issued under section 27E(2) or 27F(5) dies before the amount is paid to him, that amount shall be payable to his estate."

10. Appeal

Section 28 is amended---

(a) by adding---

"(1A) An applicant who is dissatisfied with the result of a review conducted under section 27F(4) may appeal to the District Court.";

(b) in subsection (2), by repealing everything after "months from" and substituting "the date of the written result of review issued under section 23(2), or of the certificate issued under section 24(3) or of the notice issued under section 27F(5) (as the case may be).".

11. Offence

Section 30(1) is amended by adding "or reimbursement of expenses" after "compensation".

12. Section added

The following is added---

"30A. Priority of payment

(1) If in the opinion of the Board, the available funds of the Fund are insufficient to pay all amounts of compensation and reimbursement of expenses within the periods prescribed for their payment, the Board shall apply the available funds in payment of the compensation and reimbursement of expenses in order of priority of the dates of the certificates or notices issued under section 24(1), 24(3), 27E(2) or 27F(5) (as the case may be).

(2) Where the dates of any 2 or more certificates or notices referred to in subsection (1) are the same, the order of priority of payment for the purposes of that subsection is to be determined by reference to the dates of birth of the relevant claimants or applicants, with the amount payable in relation to the claimant or applicant who was born earlier being paid first.

(3) Where the Board has come to the opinion described in subsection (1), it shall attach to any certificate or notice referred to in that subsection a statement indicating that the compensation or reimbursement of expenses to which the certificate or notice relates is payable in the manner described in subsections (1) and (2)."

13. Compensation or reimbursement of expenses not to be assigned, charged or attached

Section 32 is amended by adding "or reimbursement of expenses" after "compensation" where it twice appears.

14. Designations by the Board

Section 36(1) is amended---

(a) in paragraph (d), by repealing the full stop and substituting a semicolon ;

(b) by adding---

"(e) the categories of persons who may give an advice under section 27B(3) or 27E(3)(b)(iii)."

15. Amendment of Schedules

Section 39 is amended---

(a) in subsection (2), by repealing "and 5" and substituting ", 5 and 7";

(b) by adding---

"(3) The Secretary may, by notice in the Gazette, amend Schedule 6."

16. Noisy occupations

Schedule 3 is amended---

(a) in paragraph (x), by repealing "or" at the end;

(b) in paragraph (y), by repealing the full stop and substituting a semicolon ;

(c) by adding---

"(z) work wholly or mainly in the immediate vicinity of a place where the electrocution of pigs takes place;

(za) playing mahjong (as the major duty) inside a mahjong parlour licensed under section 22(1)(b) of the Gambling Ordinance (Cap. 148);

(zb) work wholly or mainly in the immediate vicinity of the dancing area of a place commonly known as a "discotheque"; or

(zc) work in controlling or operating instruments or systems for playing back

and broadcasting pre-recorded music in a place commonly known as a "discotheque".
".

17. Schedule substituted
Schedule 4 is repealed and the following substituted---
"SCHEDULE 4 [ss. 20, 39 & 48]

Percentage of Permanent Incapacity by Reference
to Noise-Induced Deafness
".

18. Amount of compensation
Schedule 5 is amended---

- (a) in section 1(a)(ii), by repealing "248,000" and substituting "341,000";
- (b) in section 1(b), by repealing Table 2 and substituting---

"TABLE 2

Age	Sum
under 40	\$2,016,000
40 to under 56	\$1,512,000
56 and above	\$1,008,000";

- (c) in section 3B---
 - (i) in paragraph (b), by repealing "or" at the end;
 - (ii) in paragraph (c), by repealing the comma and substituting a semicolon;
 - (iii) by adding---

"(d) the claimant's having obtained his employer's consent to the absence subject to a condition that no earnings are accrued for the claimant during such absence,".

19. Schedules 6 and 7 added
The following are added---
"SCHEDULE 6 [ss. 2 & 39]

Hearing Assistive Device

- 1. Hearing aid.
- 2. Telephone amplifier specially designed for use by persons with hearing difficulty.
- 3. Desktop telephone with flashing light or other visual device to indicate ringing.
- 4. Any device the use of which by a person suffering from noise-induced deafness is determined by the Board, upon the advice of the Medical Committee, to be reasonably necessary in connection with such deafness.

SCHEDULE 7 [ss. 27C & 39]

Limits of Reimbursement of Expenses

- 1. The amount prescribed for the purposes of section 27C(1) is \$6,000.
- 2. The amount prescribed for the purposes of section 27C(2) is \$15,000."

20. Transitional
Section 9 of this Ordinance shall not apply in respect of expenses of the acquisition, fitting, repair or maintenance of a hearing assistive device incurred before the commencement of that section.

Explanatory Memorandum

The main provisions of this Bill are as follows---

- (a) clause 2 amends the long title to the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("the principal Ordinance");
- (b) clause 4 amends section 5 of the principal Ordinance to add 2 new functions of the Occupational Deafness Compensation Board;
- (c) clause 6 amends section 13 of the principal Ordinance to add 2 new functions of the Occupational Deafness Medical Committee;
- (d) clause 9 adds a new Part VIIA which provides for the following matters concerning the reimbursement of expenses in relation to hearing assistive devices--
 - (i) entitlement to reimbursement of expenses (new section 27B);
 - (ii) limits of the amount of reimbursement of expenses (new section 27C);
 - (iii) application procedure (new section 27D);
 - (iv) determination of application (new section 27E);
 - (v) review of determination of application (new section 27F); and
 - (vi) payment of reimbursement of expenses (new section 27G);
- (e) clause 10 amends section 28 of the principal Ordinance to provide for an appeal channel for an applicant who is dissatisfied with the result of the review of his application for reimbursement of expenses;
- (f) clause 11 amends section 30 of the principal Ordinance to create an offence of providing false information in an application for reimbursement of expenses;
- (g) clause 12 adds a new section to provide for the priority of payment of compensation and reimbursement of expenses where there are insufficient funds to make all payments within the prescribed time limits;
- (h) clause 16 amends Schedule 3 to the principal Ordinance to add 4 noisy occupations;
- (i) clause 17 amends Schedule 4 to the principal Ordinance which sets out the percentage of permanent incapacity by reference to hearing loss;
- (j) clause 18 amends Schedule 5 to the principal Ordinance to revise the minimum and maximum levels of compensation;
- (k) clause 19 creates a new Schedule 6 which prescribes kinds of hearing assistive devices for the purposes of the new Part VIIA, and a new Schedule 7 which prescribes the limits of reimbursement of expenses.