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Dear Mr TSO,

Occupational Deafness (Compensation) (Amendment) Bill 2009

Thank you for your letter of 17 June 2009. Our reply to your questions is provided below.

Clause 4

The proposed amendment to allow the Occupational Deafness Compensation Board (ODCB) to make direct payment of expenses in relation to hearing assistive devices (HADs) on behalf of the claimant does not seek to include an additional item of benefit. It only serves to provide an alternative method of payment with no changes made to the existing reimbursement arrangements for expenses in relation to HADs. Hence we consider it not necessary to amend section 8 which already covers such expenses.

Clause 6

No changes have been made to the policy for the ODCB to pay

compensation to the Government if the Government has paid a pension or gratuity to a claimant in respect of his permanent incapacity resulting from noise-induced deafness and the claimant is otherwise entitled to compensation from the ODCB if he has not received such pension or gratuity from the Government. The “permanent incapacity” in section 27 makes no specific reference to first time compensation or further compensation and is meant to also include the additional permanent incapacity sustained by the employee concerned owing to his continued employment in a specified noisy occupation in Hong Kong.

Clauses 8(3) and (4), and 15(3)

Drafting style for legislation needs to be modernized in the light of plain language principles. It is preferable to use “must” instead of “shall” to impose an obligation as this is more in line with ordinary speech. The drafting practice therefore now requires that opportunity is to be taken to use “must” in provisions (whether sections or subsections) being inserted or amended.

Clause 13(2)

Drafting style for legislation needs to be modernized in the light of plain language principles and with the aim to minimizing assumptions regarding the gender of human referents. The drafting practice now requires that opportunity is to be taken to use gender-neutral terms or avoid using merely a specific gender pronoun in provisions (whether sections or subsections) being inserted or amended.

Clause 17

It is appropriate for the word “and” to be used at the end of the new section 27F(7)(a). It is because section 27F(7) is only to stipulate collectively those events referred to in section 27F(6). The use of the words “events” and “are” in the leading sentence of section 27F(7) clearly explains this.

Clause 18

Section 27G(1) and (3) is proposed to be amended for the new arrangements for the direct payment of expenses in relation to HADs by the ODCB. The current Occupational Deafness Compensation Ordinance (ODCO)

specifies that once the ODCB has determined that the applicant is entitled to an amount of reimbursement for the expenses incurred for the purchase, repairing or maintenance of HAD, the ODCB should make such payment to the applicant within a period of 21 days beginning on the date when the notice of determination by the ODCB on the amount of reimbursement is issued. This 21 days' period covers the period of 14 days allowed for the applicant to apply for a review of the ODCB's determination on the amount reimbursable to the applicant for expenses in relation to the HAD. There is no change to these stipulations in the newly amended Section 27G.

As regards the new arrangements for the ODCB to make direct payments to the device providers in respect of an applicant's HAD, the date on which such payment shall be made is different from that for the reimbursement arrangements because the ODCB may not have full control over the direct payment arrangements which involve more parties. In a reimbursement case, the applicant has paid the money for expenses in relation to the HAD before he applies for reimbursement. Therefore, before the ODCB receives the application for reimbursement, the transaction in respect of the HAD has been completed and the applicant is generally content with the HAD as purchased, repaired or maintained. However, in a direct payment application, the transaction is yet to take place. The ODCB needs to make efforts to ensure that the rights of the applicant to get a properly functioning HAD have been duly protected.

Clause 23(5)

Under the ODCO, the amount of compensation which a claimant is entitled to is calculated with reference to three factors, one of which is his monthly earnings. The monthly earnings of a claimant shall be:

- (a) if a claimant is able to provide documentary evidence on the earnings received by him in respect of his employment for 12 months in aggregate immediately preceding the relevant date of application in noisy occupations in Hong Kong, the average monthly earnings for those 12 months; and
- (b) in any other case, the median monthly employment earnings of the total employed population of Hong Kong published by the Census and Statistics Department for the quarter immediately before the relevant

date of application.

Under the new section 5(a) of Schedule 5 which stipulates the date by reference to which the calculation of the monthly earnings of a claimant covered by the new section 48(3) and (4) is determined, the "relevant date of application" refers to the date of previous unsuccessful application mentioned in section 48(3)(b) if the claimant is able to provide documentary evidence of his earnings in respect of his employment in specified noisy occupations in Hong Kong.

However, if the claimant is unable to provide documentary evidence on his earnings, the Bill proposes that the median monthly employment earnings of the total employed population of Hong Kong published by the Census and Statistics Department for the quarter immediately before the commencement of the new section 48(4) would be adopted. The Bill provides for this stipulation because the cases to be covered by the new section 48(3) and (4) may involve applications which were received over a span of more than ten years. It is desirable to adopt one single median monthly earnings for claimants coming under this arrangement so that they could readily understand how their compensation would be calculated.

Yours sincerely,



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for Secretary for Labour and Welfare

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