

For meeting
on 18 December 2018

Legislative Council Panel on Manpower

Adjustment of the levels of compensation under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance, and expansion of the list of medical appliances under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance

Purpose

This paper briefs Members on the Labour Department's proposal to increase the amounts of a total of 18 compensation items under the Employees' Compensation Ordinance (Cap. 282) (ECO), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) (PMCO) and the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO), and to expand the list of medical appliances under PMCO.

Background

Levels of compensation under ECO, PMCO and ODCO

2. ECO provides for the payment of statutory compensation to injured employees and family members of deceased employees for prescribed occupational diseases, injuries or deaths caused by accidents arising out of and in the course of employment. PMCO provides for the payment of compensation to persons and their family members in respect of incapacity or deaths resulting from pneumoconiosis and/or mesothelioma. ODCO provides for the payment of compensation to persons who suffer from noise-induced deafness (OD persons) by reason of employment in the noisy occupations specified under the Ordinance.

3. According to the established mechanism, the levels of compensation under ECO, PMCO and ODCO are adjusted every two years where appropriate. Broadly speaking, for most of the compensation items, adjustments (if required) to the amounts are normally made in the light of the wage movement as reflected by the Nominal Wage Index (NWI) or the price movement as reflected

by the Consumer Price Index (CPI)(A) in the relevant period. The amounts of some compensation items (e.g. compensation for care and attention under PMCO and minimum monthly earnings under ECO, etc.) are adjusted having regard to other relevant factors.

List of medical appliances under PMCO

4. Under Section 12A of PMCO, an eligible person who suffers from pneumoconiosis and/or mesothelioma is entitled to the reasonable expenses of the use or supply of medical appliances where such use or supply is reasonably necessary in connection with any incapacity arising from the above diseases suffered by him/her. Expenses for medical appliances are payable under PMCO only in respect of those appliances specified in Part II of the Second Schedule of the Ordinance which at present include (a) wheelchair; (b) oxygen concentrator and its accessories; and (c) oxygen cylinder and its accessories. In response to views of patients and concern groups on expanding the list of medical appliances under PMCO to cover breathing apparatus and sputum suction device, the Labour Department proposes to amend Part II of the Second Schedule of PMCO to expand the list of medical appliances.

Proposal

5. Based on the relevant information for 2016 and 2017, as well as some latest information obtained, we propose to adjust the amounts of a total of 18 compensation items under ECO, PMCO and ODCO, comprising 14 items with adjustments proposed in accordance with the established indicators/factors and four items with adjustments proposed taking into account other factors apart from the established indicators.

Adjustment of amounts of compensation items under the relevant Ordinances

14 compensation items proposed to be adjusted based on the established indicators/factors

(a) Compensation items to be adjusted according to wage movement

6. Under the established mechanism, the amounts of the following seven compensation items under ECO and ODCO are to be adjusted according to the wage movement reflected by NWI:-

Five items under ECO

- (i) ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity;
- (ii) minimum amount of compensation for death;
- (iii) minimum amount of compensation for permanent total incapacity;
- (iv) compensation for employees requiring attention by another person;
- (v) minimum amount of surcharge on late payment of compensation;

Two items under ODCO

- (vi) maximum sum for calculating the amount of compensation for permanent incapacity; and
- (vii) minimum sum for calculating the amount of compensation for permanent incapacity.

7. According to the information from the Census and Statistics Department (C&SD), NWI increased by 3.7% and 3.8% in 2016 and 2017 over the preceding year respectively. The cumulative rate of wage movement reflected by NWI in 2016 and 2017 was +7.64%. Details of the calculation are at Note 1 of Annex I. We propose that the levels of compensation for the above seven items be adjusted upwards by 7.64% in accordance with the wage movement in the period.

(b) Compensation items to be adjusted according to price movement

8. According to the established mechanism, the amounts of the following five compensation items under ECO and PMCO are to be adjusted with reference to the price movement reflected by CPI(A):-

Three items under ECO

- (i) maximum amount of the cost of supplying and fitting a prosthesis or surgical appliance (PSA);
- (ii) maximum amount of the cost of the repair and renewal of PSA;
- (iii) maximum amount of funeral expenses;

Two items under PMCO

- (iv) maximum amount of funeral expenses; and
- (v) compensation for pain, suffering and loss of amenities (PSLA) which is a monthly payment payable to patients until they pass away.

9. Based on the information from C&SD, CPI(A) increased by 2.8% and 1.5% in 2016 and 2017 over the preceding year respectively. The cumulative rate of price movement reflected by CPI(A) for 2016 and 2017 was +4.34%. Details of the calculation are at Note 2 of Annex I. We propose that the levels of compensation for the above five items be adjusted upwards by 4.34% according to the price movement in the period.

(c) Compensation item to be adjusted according to the benefits provided under the Comprehensive Social Security Assistance (CSSA) Scheme

10. The current amount of minimum monthly earnings specified in ECO for the purpose of calculating periodical payments during work injury sick leave is \$4,090, which is set with reference to the standard rate and other payments (i.e. rental allowance, water charges allowance and long-term supplement) for a single and able-bodied adult under the CSSA Scheme in the relevant period. As at April 2018, the rate of the same benefit items under the CSSA Scheme increased to \$4,496. We propose to adjust upwards the minimum monthly earnings under ECO to \$4,500 (rounded to the nearest \$10), i.e. an increase of \$410 (or 10.02%) over the present level of \$4,090 (see Note 3 of Annex I).

(d) Compensation item to be adjusted according to the monthly wage and food allowance for a foreign domestic helper (FDH)

11. The amount of monthly compensation for care and attention under PMCO is set with reference to the minimum allowable monthly wage and food allowance for an FDH working in Hong Kong in the relevant period. The current amount is \$5,210. In September 2018, the monthly cost for hiring an FDH was adjusted upwards to \$5,595 (i.e. minimum allowable monthly wage at \$4,520 and food allowance at \$1,075 per month). We propose to adjust upwards the amount of compensation for care and attention under PMCO to \$5,600 per month (rounded to the nearest \$10), i.e. an increase of \$390 (or 7.49%) over the present level of \$5,210.

Four compensation items proposed to be adjusted taking into account other factors apart from the established indicators

(e) Compensation items to be adjusted with reference to the amount of damages for bereavement under the Fatal Accidents Ordinance

12. In 1993, amendment was made to the then Pneumoconiosis (Compensation) Ordinance (i.e. the present PMCO) to introduce the item of compensation for bereavement. The amount was fixed at \$70,000 at that time,

referencing to the sum of damages of the same name then payable under the Fatal Accidents Ordinance (Cap. 22) (FAO). The sum of damages for bereavement under FAO was adjusted to \$150,000 with effect from April 1997 while the compensation for bereavement under PMCO has since 1998 been reviewed together with various compensation items under PMCO according to the established mechanism and the adjustment has been made by reference to the price changes as reflected by CPI(A) (i.e. from \$100,000 in 1998 adjusted to the prevailing amount of \$121,230). In view that the Legislative Council passed on 11 July 2018 the Government's resolution to increase the sum of damages for bereavement under FAO from \$150,000 to \$220,000 which took effect from 13 July 2018, it is proposed to adjust the level of bereavement compensation under PMCO with reference to the latest sum of damages for bereavement under FAO. As compared to the current level of compensation for bereavement (i.e. \$121,230), the proposed upward adjustment to \$220,000 represents an increase of 81.47% (or \$98,770).

13. Under Section 5 of PMCO, the minimum amount of compensation for death is pegged to the level of compensation for bereavement. In line with the proposed revision of compensation for bereavement under PMCO, it is also proposed that the minimum amount of compensation for death be revised to \$220,000, an increase of 81.47% (or \$98,770) over the prevailing level at \$121,230.

(f) Financing limits for hearing assistive devices (HADs) under ODCO to be adjusted having regard to the operational experience of the Occupational Deafness Compensation Board (ODCB)

14. Under ODCO, any person who has at any time been entitled to compensation for permanent incapacity may apply to ODCB for the direct payment or reimbursement of expenses reasonably incurred in the acquisition, fitting, repair or maintenance of HADs¹. In the 2017 adjustment exercise, the Government adjusted the financing limits for HADs based on the price movement reflected by CPI(A). In the current exercise, with a view to enhancing protection for OD persons under the HAD financing scheme, we propose to take into account the experience of ODCB in administering the HAD financing scheme for the adjustment of the financing limits involving HAD expenses. Our major considerations are as follows.

¹ Schedule 6 of ODCO provides that HADs include (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; and (4) any device the use of which by a person suffering from noise-induced deafness is determined by ODCB, upon the advice of the Occupational Deafness Medical Committee, to be reasonably necessary in connection with such deafness.

15. From 1 January 2016 to 31 December 2017, ODCB recorded 12 HAD applications with a claim amount exceeding \$16,470 (i.e. the prevailing financing limit for first-time applications for HADs), of which 83.3% (or 10 applications) involved a claim amount ranging from \$16,471 to \$19,000. We understand from ODCB that various models of hearing aids are available in the market with functions designed to suit the needs of individual OD persons, such as those with sophisticated amplifying function for better sound reception and others with tinnitus management feature. To allow OD persons to have a wider choice of HADs to cater for their individual needs, we propose adjusting upwards the financing limit for first-time HAD applications by 15.36% from \$16,470 to \$19,000.

16. From the launching of the HAD financing scheme in 2003 up to 31 December 2017, a total of 1 482 OD persons had been approved financial assistance for HADs, of which two persons (0.13%) had already exhausted the aggregate financing limit of \$57,110, whereas another 55 persons (3.71%) had been approved an aggregate amount ranging from \$40,001 to \$57,109. Having regard to the experience of ODCB in administering the HAD financing scheme, we envisage that these 55 persons are likely to exhaust the aggregate financing limit in the near future.

17. Taking into account the estimated average annual HAD expenses of an OD person as well as the biennial adjustment where appropriate, we propose raising the aggregate financing limit from \$57,110 to \$79,000 by 38.33%, such that those OD persons who have exhausted the aggregate financing limit can have their entitlement to the financial assistance revived, whereas those approaching the limit can continue their entitlement to the financial assistance.

Expansion of the list of medical appliances under PMCO

18. As regards the proposal of expanding the list of medical appliances under PMCO to cover the breathing apparatus and sputum suction device, the Labour Department in collaboration with the Pneumoconiosis Compensation Fund Board (PCFB) has undertaken a study. The study involved collection of information from patients, relevant associations and trade unions, consultation with the Department of Health and the Hospital Authority for their expert advice on whether the proposed medical appliances are effective for the treatment of pneumoconiosis and/or mesothelioma patients, the accessories and any ancillary devices involved, cost incurred, etc., as well as the safety and precautions of using the appliances so as to ensure the safety of pneumoconiosis and/or mesothelioma patients when using these appliances. Subsequent to the study,

it is proposed to expand the list of medical appliances specified in Part II of the Second Schedule of PMCO to include the following two items: 1) non-invasive positive pressure ventilation device, including humidifier if necessary, and its accessories; and 2) sputum suction device and its accessories.

Proposal in brief

19. In sum, having regard to the background and relevant information set out in paragraphs 2 to 18 above, it is proposed (with details set out at Annex II) that:

- (a) the levels of compensation for five items under ECO and two items under ODCO be adjusted upwards by 7.64% in accordance with the wage movement reflected by NWI in 2016 and 2017 (paragraphs 6 to 7);
- (b) the levels of compensation for three items under ECO and two items under PMCO be adjusted upwards by 4.34% according to the price movement reflected by CPI(A) in 2016 and 2017 (paragraphs 8 to 9);
- (c) the amount of minimum monthly earnings for the calculation of periodical payments under ECO be increased by 10.02% from \$4,090 to \$4,500, in accordance with the standard rate and other payments for a single and able-bodied adult under the CSSA Scheme as at April 2018 (paragraph 10);
- (d) the amount of monthly compensation for care and attention under PMCO be increased by 7.49% from \$5,210 to \$5,600 based on the minimum allowable monthly wage and food allowance for an FDH in September 2018 (paragraph 11);
- (e) the amount of compensation for bereavement under PMCO be increased by 81.47% from \$121,230 to \$220,000 with reference to the sum of damages for bereavement under FAO, and the minimum amount of compensation for death under PMCO be increased to \$220,000 correspondingly (paragraphs 12 and 13);
- (f) the financing limit for first-time applications for HADs under ODCO be increased by 15.36% from \$16,470 to \$19,000, and the aggregate financing limit be increased by 38.33% from \$57,110 to \$79,000, with reference to the experience of ODCB

in administering the HAD financing scheme (paragraphs 14 to 17); and

- (g) the list of medical appliances under Part II of the Second Schedule of PMCO be expanded to cover 1) non-invasive positive pressure ventilation device, including humidifier if necessary, and its accessories; and 2) sputum suction device and its accessories (paragraph 18).

Economic/Financial Implications

20. For the current exercise covering 2016 and 2017, we propose to increase the amounts of a total of nine compensation items under ECO, including a 7.64% increase in the amounts of five items, a 4.34% increase in the amounts of three items and an upward adjustment of the minimum monthly earnings for calculating periodical payments by \$410. We have consulted the insurance sector on the possible impact on the premium level of employees' compensation (EC) insurance and claim costs that may result from the abovementioned proposal to increase the levels of compensation under ECO. The Accident Insurance Association of the Hong Kong Federation of Insurers (HKFI) replied that in view of the Competition Ordinance (Cap. 619)², it is not in the position to advise on the possible impact of the proposal on EC insurance premium and claim costs.

21. For background information, in the exercise covering 2012 and 2013, we also proposed increasing the amounts of the above nine compensation items under ECO, including increasing the amounts of five items by 10.56%, the amounts of three items by 8.88% and the minimum monthly earnings for calculating periodical payments by \$200. According to the actuarial study engaged by HKFI in 2014, it was estimated that the combined impact of the increases of the amounts of nine compensation items under ECO in that exercise might result in an increase of EC insurance premium by 0.555% to 1.664%³.

² The Competition Ordinance commenced full operation on 14 December 2015.

³ Taking an enterprise which was paying an annual EC insurance premium at \$100,000 as an example, the extra EC insurance premium payable per year might lie between \$555 to \$1,664. Nonetheless, the changes in the EC insurance premium payable by individual enterprises would be subject to various factors, including the industries, occupations of their employees and the EC claims history of the enterprises, etc.

22. As for the proposed increases in the amounts of the relevant compensation items and the proposed expansion of the list of medical appliances under Part II of the Second Schedule of PMCO mentioned above, PCFB advised that the revisions would not have significant financial implications for the Pneumoconiosis Compensation Fund. Moreover, ODCB advised that the proposed adjustment of the amounts of compensation items and HAD financing limits under ODCO would have manageable financial implications for the Occupational Deafness Compensation Fund.

Consultation with the Labour Advisory Board (LAB)

23. The proposal was discussed at the meeting of LAB held on 30 November 2018. After deliberations, all Members present unanimously supported the proposal set out in paragraph 19, and requested early implementation of the relevant amendments so as to provide better protection promptly for injured employees, sufferers of occupational diseases and family members of employees or persons who die of work injuries or occupational diseases.

Way Forward

24. The amounts of a total of 18 compensation items under the three Ordinances and the list of medical appliances under PMCO as mentioned in paragraph 19 above may be revised by resolutions of the Legislative Council (LegCo). We plan to submit an amendment proposal to LegCo by the first quarter of 2019, and subject to its passage, we will implement the revisions as soon as possible.

25. Members are invited to note and give views on the above proposal.

Labour and Welfare Bureau
Labour Department
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Note 1

Change in wage rate reflected by NWI in 2016 and 2017 is calculated as follows:

Change in NWI for 2016	= +3.7% (i.e. 1.037)
Change in NWI for 2017	= +3.8% (i.e. 1.038)
Change in NWI for 2016 and 2017	= $[(1 \times 1.037 \times 1.038) - 1] \times 100 \%$
	= +7.64%

Note 2

Change in commodity prices reflected by CPI(A) in 2016 and 2017 is calculated as follows:

Change in CPI(A) for 2016	= +2.8% (i.e. 1.028)
Change in CPI(A) for 2017	= +1.5% (i.e. 1.015)
Change in CPI(A) for 2016 and 2017	= $[(1 \times 1.028 \times 1.015) - 1] \times 100 \%$
	= +4.34%

Note 3

Levels of benefits under the CSSA Scheme

<i>Item</i>	<i>Monthly rate as at April 2018</i>
Standard rate for a single and able-bodied adult	\$2,455
Rental allowance for a single person	\$1,835
Water charges allowance for a single person	\$24.5
Long-term supplement for a single person	\$181.7
Total	\$4,496

Current minimum monthly rate for calculation of periodical payments under ECO
= \$4,090 per month

% change if adjusted the minimum monthly rate to \$4,500 according to the relevant benefit levels under the CSSA Scheme as at April 2018 (rounded to the nearest \$10)
= $(\$4,500 - \$4,090) \div \$4,090 \times 100\% =$ **+10.02%**

**Proposed changes in the levels of compensation under ECO
(rounded to the nearest \$10)**

Items under ECO	Existing Level (\$)	Proposed % Change	Proposed Level (\$)	Amount of Change (\$)
1. Ceiling of the monthly earnings (for calculating compensation for death and permanent total incapacity)	28,360	+7.64%	30,530	+2,170
2. Minimum amount of compensation for death	408,960	+7.64%	440,200	+31,240
3. Minimum amount of compensation for permanent total incapacity	464,360	+7.64%	499,840	+35,480
4. Compensation for employees requiring attention by another person	556,700	+7.64%	599,230	+42,530
5. Minimum amount of surcharge on late payment of compensation				
➤ initial surcharge	660	+7.64%	710	+50
➤ further surcharge	1,330	+7.64%	1,430	+100
6. Maximum amount of funeral expenses ⁴	83,700	+4.34%	87,330	+3,630
7. Maximum amount of the cost of supplying and fitting a prosthesis or surgical appliance	40,010	+4.34%	41,750	+1,740
8. Maximum amount of the cost of the repair and renewal of a prosthesis or surgical appliance	121,230	+4.34%	126,490	+5,260
9. Minimum monthly earnings (for calculating periodical payments during work injury sick leave)	4,090	+10.02%	4,500	+410

Note:

- Item 1 to item 5 are adjusted according to the wage movement reflected by NWI.
- Item 6 to item 8 are adjusted according to the price movement reflected by CPI(A).
- Item 9 is adjusted according to the rate of certain benefit items under the CSSA Scheme.

⁴ The maximum amount of funeral expenses was increased by 100% from \$35,000 to \$70,000 in the adjustment which took effect in July 2012; it was further increased to the levels of \$76,220 and \$83,700 in the subsequent adjustments which commenced in March 2015 and April 2017 respectively. According to the information on charges for funeral services recently collected by the Labour Department, the proposed further increase of the maximum amount of funeral expenses by \$3,630 to \$87,330 in the current exercise should be able to cover reasonable funeral and related expenses for a deceased person. The impact of inflation and the actual circumstances have been taken into account in proposing the level.

Proposed changes in the levels of compensation under PMCO
(Items 1, 4 and 5 rounded to the nearest \$10)

Items under PMCO	Existing Level (\$)	Proposed % Change	Proposed Level (\$)	Amount of Change (\$)
1. Compensation for pain, suffering and loss of amenities (A monthly payment payable to all patients until they pass away)	5,110	+4.34%	5,330	+220
2. Compensation for bereavement	121,230	+81.47%	220,000	+98,770
3. Minimum compensation for death (pegged to the amount of compensation for bereavement)	121,230	+81.47%	220,000	+98,770
4. Maximum amount of funeral expenses ⁵	83,700	+4.34%	87,330	+3,630
5. Compensation for care and attention (A monthly payment payable to patients requiring the care and attention of another person)	5,210	+7.49%	5,600	+390

Note:

- Item 1 and item 4 are adjusted according to the price movement reflected by CPI(A).
- Item 2 and item 3 are adjusted according to the latest amendment of the sum of damages for bereavement under FAO.
- Item 5 is adjusted according to the minimum allowable monthly wage and food allowance for an FDH.

⁵ The maximum amount of funeral expenses was increased by 100% from \$35,000 to \$70,000 in the adjustment which took effect in July 2012; it was further increased to the levels of \$76,220 and \$83,700 in the subsequent adjustments which commenced in March 2015 and April 2017 respectively. According to the information on charges for funeral services recently collected by the Labour Department, the proposed further increase of the maximum amount of funeral expenses by \$3,630 to \$87,330 in the current exercise should be able to cover reasonable funeral and related expenses for a deceased person. The impact of inflation and the actual circumstances have been taken into account in proposing the level.

**Proposed changes in the levels of compensation under ODCO and
the financing limits for HADs
(Items 1 and 2 rounded to the nearest \$10)**

Items under ODCO	Existing Level (\$)	Proposed % Change	Proposed Level (\$)	Amount of Change (\$)
1. Maximum sum for calculating the amount of compensation for permanent incapacity				
- Age under 40 (multiplying factor: 96)	2,722,560	+7.64%	2,930,880 (30,530 x 96)	+208,320
- Age 40 to under 56 (multiplying factor: 72)	2,041,920	+7.64%	2,198,160 (30,530 x 72)	+156,240
- Age 56 and above (multiplying factor: 48)	1,361,280	+7.64%	1,465,440 (30,530 x 48)	+104,160
2. Minimum sum for calculating the amount of compensation for permanent incapacity	464,360	+7.64%	499,840	+35,480
3. Financing limit for first-time HAD applications	16,470	+15.36%	19,000	+2,530
4. Aggregate financing limit for HADs	57,110	+38.33%	79,000	+21,890

Note:

- Item 1 and item 2 are adjusted according to the wage movement reflected by NWI.
- Item 3 and item 4 are adjusted according to the experience of ODCB in administering the HAD financing scheme.