

立法會

Legislative Council

LC Paper No. CB(2)442/18-19(08)

Ref : CB2/PL/MP

Panel on Manpower

Background brief prepared by the Legislative Council Secretariat for the meeting on 18 December 2018

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

Purpose

This paper provides background information on the Administration's review of the levels of compensation 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") ("the three Ordinances"), and summarizes the major views of various committees of the Legislative Council ("LegCo") on the subject.

Background

2. ECO provides for the payment of statutory compensation to injured employees and family members of deceased employees for specified 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 compensation to persons who suffer from noise-induced deafness by reason of employment in the specified noisy occupations.

3. According to the established mechanism, the levels of compensation under the three Ordinances are reviewed every two years. Adjustments are generally made in the light of the wage and price movements as well as other relevant factors in the review period. The last review was conducted in 2016.

Deliberations of Members

Adjustment mechanism for levels of compensation

4. Some members considered that instead of making adjustment to the levels of compensation items under the three Ordinances with reference to the price and wage movements, the Administration should take into account the actual needs of the eligible claimants in proposing adjustments so as to ensure adequate compensation and protection for employees.

5. The Administration advised that apart from upward adjustments to the amounts of most compensation items with reference to the established indicators including the Nominal Wage Index ("NWI") and the Consumer Price Index (A) ("CPI(A)"), special adjustments were also proposed to the amounts of certain compensation items having regard to the actual needs of the eligible claimants. For instance, the aggregate financing limit for hearing assistive devices ("HADs") under ODCO had been increased by 44.44% from \$36,000 to \$52,000 in 2015. In the adjustment exercise covering 2009 to 2011, the Administration had taken into account the rise in funeral expenses in the period, and substantially adjusted upwards the maximum amount of funeral expenses from \$35,000 to \$70,000 under both ECO and PMCO. In the adjustment exercise covering 2014 and 2015, it was proposed that the amount be further increased from \$76,220 to \$83,700 with reference to the price movement reflected by CPI(A) in the period.

6. Some members expressed grave concern that in the light of the biennial review of the levels of compensation under the three Ordinances, the adjustments lagged behind the actual economic situation and caused considerable financial hardship to the eligible claimants. They called on the Administration to consider reviewing the levels of compensation on an annual basis so as to ensure that the payments of statutory compensation and other benefits to eligible claimants could catch up with the inflation.

7. The Administration explained that the existing review mechanism for the levels of compensation under the three Ordinances was agreed by the Labour Advisory Board ("LAB"). The review exercise involved some necessary procedures, notably, collation of latest statistics in relation to the wage and price movements in the review period, including NWI, CPI(A), benefits provided under the Comprehensive Social Security Assistance Scheme and other relevant factors, as well as consultation with the relevant stakeholders, including the Hong Kong Federation of Insurers, the Occupational Deafness Compensation Board ("ODCB") and the Pneumoconiosis Compensation Fund Board ("PCFB") on the impact of the proposed adjustments to the levels of compensation. Thereafter, the review findings and the proposal had to be discussed by LAB

prior to submission to the Panel on Manpower for deliberation. After having secured support from various stakeholders, the Administration would introduce the relevant amendment proposal into LegCo for approval. The Administration therefore considered the biennial review cycle appropriate.

Adequacy of levels of compensation

Levels of compensation under ECO and PMCO

8. Some members noted with concern that the monthly earnings of construction workers of specific work types far exceeded the ceiling of monthly earnings (i.e. \$28,360) for the purpose of calculating compensation for death and permanent total incapacity under ECO. These members asked whether the Administration would consider adjusting the ceiling of compensation items further upwards for specific industries, such as the construction industry.

9. The Administration explained that since the statutory employees' compensation mechanism was based on a no-fault system whereby compensation was payable by employers to employees concerned irrespective of any fault of the parties and the industries concerned, it was necessary to strike a reasonable balance between the rights and benefits of employees and the affordability of employers. Adjustment to the ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity under ECO had been made in the light of the wage movement as reflected by NWI. This apart, compensation claims could be made to the court for Common Law damages as well. The compensation so determined by the court would not be subject to the limit as stipulated under ECO.

10. Some members expressed concern that the daily rates of maximum medical expenses reimbursable under ECO and PMCO,¹ which were linked to public healthcare service fees and charges, were inadequate for meeting the medical expenses charged by the private healthcare sector. Some members considered that having regard to the sound financial position of PCFB and the fact that the number of the patients concerned was declining, the Administration should consider providing subsidy under the Pneumoconiosis Compensation Fund to occupational disease sufferers to allow them to seek timely medical treatment in the private healthcare sector and to procure necessary medical appliances. Some members also expressed grave concern that breathing

¹ The maximum daily rate of reimbursable medical expenses for in-patient or out-patient treatment under ECO and PMCO is \$300 and the maximum daily rate of reimbursable medical expenses for in-patient and out-patient treatment received on the same day is \$370.

apparatus used by patients suffered from pneumoconiosis or mesothelioma was not a reimbursable item under the Second Schedule to PMCO.² These members called on the Administration to include breathing apparatus in the list of medical appliances as soon as possible.

11. The Administration advised that the daily maximum rates for medical expenses under ECO and PMCO were set to cover the costs for consultation, medicine, injection and dressing, physiotherapy and hospitalization, etc. on any one day in a public hospital or clinic. In the absence of a standard fee structure in the private healthcare sector, the Administration considered it appropriate to adopt the charges for public healthcare services as the basis for medical expenses under ECO and PMCO. The Administration further advised that the Labour Department ("LD") and PCFB were studying the list of medical appliances in the Second Schedule to PMCO as to whether its coverage should be expanded to include other types of medical appliances. The study was expected to be completed in 2018. LD aimed to consult PCFB and LAB in the fourth quarter of 2018 on the proposal to expand the medical appliances under PMCO, and then submit the proposal to LegCo as soon as possible. While pending the relevant legislative process, LD would liaise with PCFB to explore any possibility in financing the use of medical appliances not yet listed in PMCO subject to the statutory ambit of PCFB and PMCO.

Financing limit for HADs under ODCO

12. Some members were concerned about the time limit for making applications for HADs and the adequacy of the aggregate financing limit for meeting the recurrent expenses for HADs as well as the financial support for persons suffering from occupational deafness ("OD persons") after they had exhausted the aggregate amount for HADs. These members suggested that consideration should be given to replacing the aggregate financing limit by setting an annual financing limit.

13. The Administration advised that in order to accord appropriate protection to OD persons under the HAD financing scheme, the reimbursable limits for acquiring HADs had been included as part of the established biennial review of the levels of compensation under the three Ordinances from 2014 onwards. Notably, the aggregate financing limit for HADs would be adjusted every two years with reference to the price movement as reflected by CPI(A) where appropriate. Having consulted ODCB which administered the HAD financing scheme, the Administration considered that the aggregate financing limit would be able to cater for the needs of OD persons in respect of the acquisition, fitting,

² The listed medical appliances are wheelchair, oxygen concentrator and its accessories, and oxygen cylinder and its accessories.

repair or maintenance of HADs. According to ODCB's experience in administering the HAD financing scheme, none of the OD persons entitled to compensation had exhausted the existing aggregate amount for HADs in 2014 and 2015.

Expenses on rehabilitation services

14. Some members considered that employees' compensation should cover expenses on rehabilitation services so as to facilitate injured employees' speedier recovery and early return to work. These members were concerned whether the Administration would consider expanding the scope of ECO and ODCO to cover expenses on occupational rehabilitation. According to the Administration, public hospitals at present provided a range of comprehensive services, including accident and emergency, outpatient, inpatient and rehabilitation, to employees suffering from work injuries. Those in need would also be referred to receive appropriate follow-up treatment and rehabilitative care (including physiotherapy and occupational therapy). Members were advised that LD, in collaboration with the insurance industry, launched the Voluntary Rehabilitation Programme in 2003 to provide injured employees with an additional channel to receive free and timely medical and rehabilitation services in the private sector. In addition, an internal working group comprising representatives of the relevant bureaux/departments and organizations had been formed to carry out a study on improving protection for employees in high-risk industries in relation to insurance, compensation for work injuries, therapy and rehabilitation.

Review of employees' compensation system

15. As the existing employees' compensation system was implemented in 1953, some members urged the Administration to conduct a comprehensive review of the scope of ECO, in particular the list of compensable occupational diseases in the Second Schedule to ECO with a view to covering more work-related diseases, such as sudden death caused by overexertion at work, heat stroke and musculoskeletal disorder.

16. Members were advised that the Administration reviewed the scope and levels of compensation under the three Ordinances from time to time and had updated the list of prescribed occupational diseases in the light of international standards. As the employees' compensation system had been based on a no-fault system whereby compensation was payable irrespective of the degree of fault of the parties concerned, in determining the scope and levels of compensation, the Administration considered it necessary to strike a reasonable balance between the interests of the employers and the employees. Any amendments to the existing system would require consultation with the relevant

stakeholders and consensus reached between employers and employees. As regards the suggestion to expand the list of prescribed occupational diseases to cover sudden death of employees due to overexertion at work, the Administration considered that the causes of sudden death other than by work accidents in the course of employment were complex and might involve a multitude of factors. Nevertheless, LD would commence a study on the subject.

17. Some members expressed concern as to whether the Administration would consider expanding the scope of ODCO to cover employees such as bus drivers, employees having to wear headset at work and airport staff working in the apron who were also exposed to noisy working environment.

18. The Administration advised that LD reviewed ODCO from time to time and came up with proposals to enhance the protection accorded by the Ordinance as appropriate. Notably, since 2003 eligible employees of four new specified noisy occupations, including slaughterhouse employees working in the immediate vicinity of electric stunning of pigs for the purpose of slaughter, mahjong parlour workers employed to play mahjong as the main duty, bartenders and waiters working near the dancing area in discotheques, and disc jockeys working in discotheques, had become eligible for compensation for occupational deafness if they met the conditions stipulated under ODCO. The findings of LD's study to assess the sound level of workplaces such as fee collection areas of tunnels, game centres and various kinds of telephone customer service centres did not indicate that noise exposure levels of employees in such workplaces reached the level for developing occupational deafness i.e. daily exposure in a working environment to a sound level at an average of 90 decibel or above for eight hours. Nevertheless, the Administration would closely monitor the situation.

Relevant papers

19. A list of the relevant papers on the LegCo website is in the **Appendix**.

Appendix

Relevant papers on the review of the levels of compensation under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance

Committee	Date of meeting	Paper
Panel on Manpower	23.2.2010 (Item III)	Agenda Minutes
	20.1.2012 (Item IV)	Agenda Minutes
	23.5.2012 (Item IV)	Agenda Minutes
	--	LC Paper No. CB(2)2311/13-14(01)
	18.11.2014 (Item V)	Agenda Minutes
	--	LC Paper No. CB(2)1944/15-16(01)
	20.12.2016 (Item IV)	Agenda Minutes
	18.7.2017 (Item III)	Agenda Minutes
Subcommittee on Proposed Resolutions under Construction Industry Council Ordinance and Pneumoconiosis and Mesothelioma (Compensation) Ordinance	--	Report