

立法會
Legislative Council

LC Paper No. CB(2)955/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Thursday, 7 January 2010, at 4:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

- Members absent** : Hon Albert HO Chun-yan
Hon Vincent FANG Kang, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Cyd HO Sau-lan
Hon Tanya CHAN
Hon WONG Yuk-man
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Public Officers attending** : Mr Alan WONG Kwok-lun, JP
Deputy Commissioner for Labour (Labour Administration)
- Mr FONG Ngai
Assistant Commissioner for Labour (Policy Support and Strategic Planning)
- Miss Mabel LI Po-yi
Senior Labour Officer (Statutory Minimum Wage)
Labour Department
- Ms Queenie TANG Yuen-shan
Labour Officer (Statutory Minimum Wage)
Labour Department
- Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice
- Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice
- Clerk in attendance** : Mr Raymond LAM
Chief Council Secretary (2) 1
- Staff in attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2
- Miss Florence WONG
Senior Council Secretary (2) 5
- Ms Camy YOONG
Clerical Assistant (2) 1
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I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Regarding the proposed exemption of live-in domestic workers from the Minimum Wage Bill (the Bill), the Administration was requested to -
 - (a) explain the justifications for and legal tenability of the proposed exemption, including whether clause 6(3) of the Bill should include a reference to the distinctive working pattern, and the complete range of in-kind benefits, of live-in domestic workers;
 - (b) provide information on the relevant statutory minimum wage (SMW) legislation of Canada and the United Kingdom regarding the exclusion, if any, of live-in domestic workers from the SMW regime; and
 - (c) explain the reasons for not providing a monthly SMW for live-in domestic workers in the Bill.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 28 January 2010 at 4:30 pm.
4. The meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
11 February 2010

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 7 January 2010, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000401	Chairman	Opening remarks	
000402 - 000851	Admin	The Administration's response to issues raised at the Bills Committee meeting held on 17 December 2009 [LC Paper No. CB(2)655/09-10(01)]	
000852 - 001501	Chairman Hon LEE Cheuk-yan SALA2	Hon LEE Cheuk-yan queried whether the proposed exemption of live-in domestic workers (the exemption) contained in clause 6(3) of the Minimum Wage Bill (the Bill) was compatible with Article 22 of the Hong Kong Bill of Rights and suggested that the Bills Committee should consider seeking external legal advice in this respect	
001502 - 002257	Chairman Hon Miriam LAU Admin	<p>Whether the element "live-in" constituting distinctive working pattern made the proposed exemption of live-in domestic workers legally tenable. There was a need to ensure that the exemption had sufficient ground and did not violate any constitutional protection of human rights</p> <p>Response of the Administration that it had carefully considered all relevant factors and circumstances, and had sought legal advice before proposing the exemption from the statutory minimum wage (SMW) regime. The exemption was legally tenable as the conditions of live-in domestic workers and other workers were not analogous and there was a justifiable difference between them taking into account the distinctive working patterns and enjoyment of in-kind benefits by the former</p>	The Administration to provide information on the relevant SMW legislation of Canada and the United Kingdom regarding the exclusion, if any, of live-in domestic workers from the SMW regime

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002258 - 002810	Chairman Hon Tommy CHEUNG Admin	<p>Whether all "live-in" workers were excluded from the Bill</p> <p>The Administration responded that only live-in workers involved in domestic work were excluded from the Bill and details of justifications for the exemption were set out in the Legislative Council (LegCo) Brief</p> <p>Hon Tommy CHEUNG said that he remained unconvinced that the exemption was legally tenable</p>	
002811 - 003213	Chairman Hon LI Fung-ying Admin	<p>Whether the 1 400 local live-in domestic workers were also excluded from the SMW regime, and whether their employment terms were different from those for the foreign domestic helpers (FDHs)</p> <p>The Administration explained that live-in domestic workers, local or foreign, were exempted from the Bill given their distinctive working patterns and enjoyment of in-kind benefits</p>	
003214 - 003428	Chairman Dr Hon PAN Pey-chyou	Whether the Administration's justification for the exemption was legally tenable	
003429 - 004204	Chairman Hon Paul TSE Admin	<p>Suggestion of inviting the Equal Opportunities Commission (EOC) to give views on the exemption</p> <p>The Administration advised that the explanations set out in the LegCo Brief and paragraphs 3 to 9 of the Administration's paper were made in the light of independent and expert legal advice which had considered all relevant factors including but not limited to the anti-discrimination legislation currently in place. The Administration did not consider it necessary to seek views from EOC</p>	

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004205 - 004709	Chairman Hon LEUNG Kwok-hung	View of Hon LEUNG Kwok-hung that the reasons as stated in the Administration's paper did not justify the exemption. It was envisaged that only the wages of FDHs could not reach SMW eventually as the wages of local live-in domestic workers would very likely exceed the prescribed SMW rate to be proposed by the Minimum Wage Commission (MWC). He considered that the exemption might constitute race discrimination	
004710 - 005454	Chairman Hon IP Wai-ming Admin SALA2	<p>Whether the Administration would provide a formula for calculating SMW for live-in domestic workers and gauge views from stakeholders in this respect</p> <p>The Administration's response that since live-in domestic workers were employed to work and live in their employers' households and their duties were multifarious and varied day in day out, it would be extremely difficult, if at all possible, to ascertain the actual hours worked. The Administration had studied the methodology recommended by employee and FDH groups for calculating SMW for live-in domestic workers, i.e. to prescribe "standard working hours" and deduct the in-kind benefits for computation of the wages. However, the actual hours worked and the monetary value of in-kind benefits varied from one live-in domestic worker to another</p>	
005455 - 010050	Chairman Hon CHAN Kin-por Admin	<p>Whether other jurisdictions had distinguished the treatment of live-in domestic workers from other workers, and whether the justifications for the exemption were legally tenable</p> <p>Whether the Administration would further consider prescribing standard</p>	

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		<p>working hours for live-in domestic workers and deducting the monetary value of in-kind benefits for calculation of a monthly SMW rate for live-in domestic workers</p> <p>The Administration explained that it had carefully considered all relevant factors and circumstances, and the proposed exemption was legally tenable. The Administration also pointed out that the justifications for not adopting a monthly SMW rate for live-in domestic workers were set out in the LegCo Brief</p>	
010051 - 010517	Chairman Hon LEE Cheuk-yan Admin	<p>View of Hon LEE Cheuk-yan that the Administration should consider introducing a monthly SMW rate for live-in domestic workers, and the rate could be recommended by MWC</p> <p>The Administration responded that it was not the policy intent of the Bill to provide for a monthly SMW, be it for the workforce in general or any particular category of employees</p>	
010518 - 011913	Chairman Hon Audrey EU SALA2 Admin	<p>Whether introducing an hourly SMW and a monthly SMW for different occupations with proper mechanism could avoid allegation of discrimination</p> <p>SALA2 advised that in determining whether there was a discrimination, the court would take into account all factors, e.g. the test of whether the difference in arrangement was reasonable and objective, and its proportionality in connection with the policy intent</p> <p>SALA2 pointed out that some elements set out in paragraphs 7 and 8 of the Administration's paper regarding the justifications for the exemption were not relevant to clause 6(3) of the Bill</p>	

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		<p>Whether declaration of interest by LegCo Members was required in accordance with the Rules of Procedure, if the matter under discussion was related to Government policy</p> <p>The Administration explained that clause 6(3) of the Bill dealt with the applicability of the SMW regime while paragraphs 7 and 8 of the Administration's paper as well as the LegCo Brief detailed the policy objectives of and the justifications for the exemption including the differences between live-in domestic workers and other workers</p>	
011914 - 012419	Chairman Hon LEUNG Kwok-hung	Views of Hon LEUNG Kwok-hung that live-in domestic workers should not be exempted from the Bill, and that the difficulty in calculating the actual working hours was by no means an excuse for such exemption	
012420 - 012920	Chairman Hon IP Wai-ming Admin	<p>Concern about the possible judicial review challenge arising from the exemption</p> <p>The Administration explained that the exemption was legally tenable according to legal advice since live-in domestic workers were not in an analogous condition with other employees because of their distinctive working pattern and their enjoyment of in-kind benefits</p>	
012921 - 014228	Chairman Hon Emily LAU Hon WONG Sing-chi Hon LEUNG Kwok-hung	<p>Whether the Bills Committee should seek external legal advice regarding the compatibility of the exemption with constitutional protection of human rights. The Chairman advised that consideration should be given to the costs to be incurred by LegCo and that LegCo had in-house legal advisers</p> <p>Hon WONG Sing-chi and Hon LEUNG Kwok-hung were of the</p>	The Administration to explain the justifications for and legal tenability of the proposed exemption of live-in domestic workers from the Bill, including whether clause 6(3) of the Bill should include a reference to the distinctive

Time marker	Speaker	Subject(s)	Action Required
		<p>view that the Administration should consider matters of principle rather than technical issues in considering whether live-in domestic workers should be included in the Bill</p> <p>The Administration explained that paragraphs 13 to 20 of the LegCo Brief set out the details of considerations regarding the exemption</p>	<p>working pattern, and the complete range of in-kind benefits, of live-in domestic workers</p>
<p>014229 - 015417</p>	<p>Chairman Hon Audrey EU Admin</p>	<p>View of Hon Audrey EU that the Administration's explanation for not introducing a monthly SMW due to the infeasibility in assuming the initial monthly SMW for live-in domestic workers was not convincing given that it had prescribed a monthly Minimum Allowable Wage for FDHs</p> <p>The Administration explained the policy intent of the Bill to provide for an hourly-rated SMW as well as justifications for not adopting a monthly SMW for live-in domestic workers in the Bill</p>	<p>The Administration to explain the reasons for not providing a monthly SMW for live-in domestic workers in the Bill</p>
<p>015148 - 015656</p>	<p>Chairman Hon LEUNG Ka-lau Admin Hon LEUNG Kwok-hung</p>	<p>Feasibility of setting different SMW rates for different trades</p> <p>Response of the Administration that the Bill sought to provide for a minimum wage to forestall payment of excessively low wages to employees irrespective of trades</p>	
<p>015657 - 015801</p>	<p>Chairman</p>	<p>Date of next meeting</p>	