

立法會
Legislative Council

LC Paper No. CB(2)2276/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Tuesday, 4 May 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 Albert HO Chun-yan
- Hon LEE Cheuk-yan
- 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 Vincent FANG Kang, SBS, JP
- Hon WONG Kwok-hing, MH
- Hon Jeffrey LAM Kin-fung, SBS, JP
- Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Hon WONG Ting-kwong, BBS, JP
- Hon Ronny TONG Ka-wah, SC
- Hon Cyd HO Sau-lan
- 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
- Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Dr Hon PAN Pey-chyou
- Hon Paul TSE Wai-chun
- Dr Hon Samson TAM Wai-ho, JP

- Members absent** : Hon LEUNG Yiu-chung
Hon CHIM Pui-chung
- 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
Chief Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department
- Ms Queenie TANG Yuen-shan
Senior Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department
- Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice
- Ms Roxana CHENG Pui-lan
Senior Assistant Solicitor General
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
- Mrs Eleanor CHOW
Senior Council Secretary (2) 4
- 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. The Bills Committee requested the Administration to -
 - (a) provide a response to the issues raised in the submission from the Equal Opportunities Commission (LC Paper No. CB(2)1478/09-10(01));
 - (b) regarding paragraph 20 of the Administration's paper, advise on the reasons for proposing a transitional arrangement for persons with disabilities ("PWDs") already in employment and the feedbacks from stakeholders on the proposed transitional arrangement;
 - (c) reconsider whether there was a need for the proposed transitional arrangement for PWDs already in employment;
 - (d) advise on the status and effect of the certificate of assessment in the event that the employer or the PWD refused to sign the certificate as required in section 5(2)(c) of Schedule 2; and
 - (e) advise on the circumstances under which the employer would be exempted from the Disability Discrimination Ordinance.
3. The Administration would advise the Legislative Council Panel on Manpower of the party responsible for bearing the cost for assessment of the degree of PWDs' productivity before the statutory minimum wage came into operation.

II. Date of next meeting

4. The Bills Committee noted that the next meeting would be held on 13 May 2010 at 8:30 am.
5. The meeting ended at 7:28 pm.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Tuesday, 4 May 2010, 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000217	Chairman	Opening remarks	
000218 - 000232	Chairman Admin	Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 29 April 2010 (LC Paper No. CB(2)1455/09-10(01))	
002233 - 002849	Chairman Hon WONG Kwok-hing Admin	Proposed transitional arrangement for persons with disabilities ("PWD") already in employment as set out in paragraph 20 of the Administration's paper; Committee Stage amendments to the Bill to give effect to the proposal; the Administration's response that the proposal had been worked out in collaboration with the rehabilitation groups and the Equal Opportunities Commission ("EOC") had been engaged throughout these discussions, and the arrangement for payment of assessment cost would be finalised prior to implementation of the statutory minimum wage ("SMW") regime; reasons for not having a re-assessment mechanism (paragraphs 11 and 12 of LC Paper No. CB(2)1455/09-10(01))	
002850 - 003715	Chairman Hon LEE Cheuk-yan Admin	Whether the Administration would consider subsidizing the difference if a PWD was paid below the SMW rate in accordance with the outcome of productivity assessment; reasons for the proposed transitional arrangement for PWDs already in employment as set out in paragraph 20 of the Administration's paper; whether the options provided in the proposed transitional arrangement could achieve its purpose	

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		<p>The Administration responded that it had no plan to provide wage subsidy (which was also not the policy intent of the Bill) to top up the difference between SMW and the wage level of the PWD determined according to his assessed productivity. The proposed transitional arrangement sought to minimise the impact of the SMW legislation on PWDs who were already in employment and earning below the SMW rate, particularly those with more severe disabilities. The right to invoke the option was vested in the serving PWD employees themselves and not the employers</p>	
<p>003716 - 005313</p>	<p>Chairman Hon CHEUNG Kwok-che Admin SALA2</p>	<p>Example quoted by Hon CHEUNG Kwok-che that an employer, after the productivity assessment of a PWD, decided to dismiss him because the provision of access-free facilities to facilitate the PWD to work was too costly; the requirement for the certificate of assessment to be signed by the PWD, the employer and the approved assessor; questions raised by Hon CHEUNG Kwok-che on whether the dismissal would infringe the Bill or the Disability Discrimination Ordinance ("DDO")</p> <p>Response of the Administration that the exemption from DDO relating to dismissal proposed in the Bill was limited to the situation where the reason for the dismissal was the outcome of the assessment and the purpose of the exemption was to help minimise any possible adverse impact of SMW on the employment opportunities of PWDs</p> <p>Advice of SALA2 that the lack of access-free barrier facilities might affect the productivity of the PWD during assessment</p>	

Time marker	Speaker	Subject(s)	Action Required
		The Administration was requested to consider the circumstances under which the employer would be exempted from DDO	Admin to consider
005214 - 005902	Chairman Hon WONG Sing-chi Admin	Qualifications and criteria of the approved assessor (paragraphs 17-19 of LC Paper No. CB(2)1455/09-10(01)); whether an appeal mechanism should be put in place to enable a PWD to appeal against an assessment result; whether an opportunity should be provided for re-assessment in the event of improved productivity of the PWD; the Administration explained the reasons for not putting in place an appeal or re-assessment mechanism (paragraphs 11 and 12 of LC Paper No. CB(2)1455/09-10(01))	
005903 - 011307	Chairman Hon IP Wai-ming Admin	Safeguards to prevent a PWD from being forced to invoke the assessment mechanism; consultations on the proposed transitional arrangement for PWDs already in employment with relevant stakeholders including EOC; transitional arrangement for PWDs already in employment; whether a PWD who was already in employment and had opted to retain the current contractual wage level when SMW came into operation could invoke the productivity assessment at a later stage when his disabilities changed and affected his productivity in performing the existing work (paragraph 20 of LC Paper No. CB(2)1455/09-10(01))	Admin to advise on the consultation process and feedbacks from stakeholders on the proposed transitional arrangement for PWDs already in employment
011308 - 012120	Chairman Hon Ronny TONG Admin	How the productivity of a PWD was assessed; independence of the approved assessor; reasons for setting the minimum hourly wage rate of a PWD during the trial period of employment at 50% of the SMW rate (paragraphs 6-9 and	

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		<p>17-19 of LC Paper No. CB(2)1455/09-10(01)); response of the Administration that a PWD could invoke the assessment mechanism in the event of change of work; the requirement for the certificate of assessment to be signed by the PWD, the employer and the approved assessor (paragraphs 13-15 of LC Paper No. CB(2)1455/09-10(01))</p>	
<p>012121 - 012928</p>	<p>Chairman Hon Albert HO Admin</p>	<p>Differences between the assessment of loss of earning capacity for work injury cases and the assessment mechanism for PWDs proposed under the Bill; reasons for allowing PWDs already in employment to opt for retaining the current contractual wage level and whether it would undermine the protection provided to PWDs (paragraph 20 of LC Paper No. CB(2)1455/09-10(01))</p> <p>Referring to the example quoted by Hon CHEUNG Kwok-che, the Administration explained that whether the employer who dismissed the PWD would be liable for an offence under DDO on the ground of not providing reasonable accommodation would depend on facts of the case including whether the PWD in performing his duties had fulfilled the inherent job requirement, whether the cost of providing reasonable accommodation had imposed unjustifiable hardship on the employer and other relevant factors</p>	
<p>012929 - 013637</p>	<p>Chairman Hon LI Fung-ying Admin</p>	<p>Requirement and role of an approved assessor; cost of productivity assessment and the party to pay for the cost; transitional arrangement for PWDs already in employment as set out in paragraph 20 of the Administration's paper; reasons for</p>	

Time marker	Speaker	Subject(s)	Action Required
		proposing the transitional arrangement for PWDs already in employment; operation of the transitional arrangement	
013638 - 015156	Chairman Hon Audrey EU Admin Hon LEE Cheuk-yan	The requirement for the certificate of assessment to be signed by the PWD, the employer and the approved assessor; response of EOC to issues raised by members at the Bills Committee meeting on 29 April 2010 (LC Paper No. CB(2)1478/09-10(01)); circumstances under which a PWD could seek redress under DDO if an employer dismissed him after the productivity assessment; the employer and the PWD would accept the assessment result in order to continue with the employer-employee relationship; the Administration explained that the exemption from DDO provided to employers in clause 23 of the Bill pertained to termination of employment on account of the assessment outcome only and the proposal was in conformity with the Basic Law including the provisions on human rights (paragraph 36 of the Legislative Council Brief)	Admin to advise on the status and effect of the certificate of assessment in the event that the employer or the PWD refused to sign the certificate and respond to the submission from EOC
015157 - 015911	Chairman Dr Hon PAN Pey-chyou Admin	Support for the special arrangement for PWDs expressed by Dr Hon PAN Pey-chyou; whether an employer who dismissed a PWD because the latter declined to invoke the assessment mechanism would infringe DDO; response of the Administration that whether the employer had infringed DDO would depend on facts of the case including whether the PWD could fulfil the inherent job requirement, whether the provision of additional facilities to enable the PWD to work had imposed unjustifiable hardship on the employer and other relevant factors; exemption for dismissal on account of the	

Time marker	Speaker	Subject(s)	Action Required
		outcome of the productivity assessment from DDO as provided in clause 23 and reasons thereof; the right to invoke the assessment mechanism to be vested in PWDs	
015912 - 020634	Chairman Dr Hon LEUNG Ka-lau Admin Hon Ronny TONG	Reasons for maintaining a simple and user-friendly assessment mechanism; validity period of the certificate of assessment; whether a PWD could request for a re-assessment of his productivity because of deteriorated or improved health or improved productivity (paragraphs 2-5 and 11-15 of LC Paper No. CB(2)1455/09-10(01))	
020635 - 021402	Chairman Hon Tommy CHEUNG Admin	Hon Tommy CHEUNG quoted the application of a different SMW rate for young people in the United Kingdom ("UK") and put forward his proposal to fix different rates expressed as a percentage of the SMW rate for PWDs based on different types of disabilities so that they needed not go through the productivity assessment; the Administration explained the consultations with stakeholders on the assessment mechanism and reasons for introducing a simple and user-friendly assessment mechanism	
021403 - 022015	Chairman Admin	The Administration explained that there would be no retrospective claims by employees and employers on the wage difference with regard to the percentage of the degree of productivity assessed during the trial period (including the extended trial period). A PWD would go through another productivity assessment if he changed to work for another employer or changed position though still working for the same employer	

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022016 - 022247	Chairman Hon IP Kwok-him Admin	The Administration explained that the duration of the trial period of employment could be shorter than four weeks if the assessment was completed earlier. PWD would decide when to conduct the assessment during the trial period	
022248 - 023122	Chairman Hon LEE Cheuk-yan Admin	<p>Views of Hon LEE Cheuk-yan on the special arrangement for PWDs -</p> <p>(a) he did not support the transitional arrangement for PWDs already in employment as proposed in paragraph 20 of the Administration's paper which in effect exempted serving PWDs from the Bill to a certain extent;</p> <p>(b) the certificate of assessment, once signed by the approved assessor, should have legal effect and both the employer and the PWD had to accept the assessment result; and</p> <p>(c) exemption provided to the employer from DDO under clause 23 for dismissing a PWD on account of the outcome of the assessment should be deleted from the Bill</p> <p>Whether an employer who required a PWD to invoke the assessment mechanism and a rehabilitation group which had referred a job to a PWD advising him to invoke the assessment mechanism would infringe DDO; reasons for requiring the employer, the PWD and the approved assessor to sign the certificate of assessment (paragraph 13 of LC Paper No. CB(2)1455/09-10(01)); legal liability of an employer if he paid the PWD below the assessed rate after the trial period of employment</p>	

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		<p>The Administration explained the reasons for the proposed exemption from DDO. It further explained that the discretion to avail themselves of the assessment could only be exercised by the PWDs, and the transitional arrangement enabled serving PWD employees to remain in their present job according to their own choice without the worry of being affected by the implementation of SMW, and thus avoid the possible impact of the SMW on their existing employment</p>	
023123 - 023617	<p>Chairman Hon CHEUNG Kwok-che Admin</p>	<p>Qualifications of the approved assessor; guidelines for approved assessors to conduct productivity assessment; assessment mechanism for PWDs adopted by other jurisdictions; duration of productivity assessment; time required to prepare the certificate of assessment; contents of the certificate of assessment</p>	
023618 - 024411	<p>Chairman Hon IP Wai-ming Admin</p>	<p>Confirmation of the Administration that the options for the transitional arrangement for PWDs already in employment as proposed in paragraph 20 of the Administration's paper were a one-off decision for serving PWDs; reasons for introducing transitional arrangement for serving PWDs; paragraph 21 of the Administration's paper explained the right to invoke the special arrangement by a PWD who received no less than SMW after the SMW came into operation when his disability changed and affected his productivity in performing his work</p> <p>Request for the Administration to re-consider the need for the transitional arrangement for PWDs already in employment as proposed</p>	<p>Admin to re-consider</p>

Time marker	Speaker	Subject(s)	Action Required
		in paragraph 20 of the Administration's paper	
024412 - 025053	Chairman Hon Miriam LAU Admin	Whether the special arrangement for PWDs would give rise to labour disputes; reasons for not following UK to make SMW applicable for all PWD employees; reasons for introducing the special arrangement for PWDs under the Bill; the Administration's response that the special arrangement would be reviewed in the light of operational experience within two years after the implementation of the SMW	
025054 - 025623	Chairman Dr Hon LEUNG Ka-lau Admin	Number of PWDs holding Registration Cards for PWDs issued by the Central Registry for Rehabilitation; eligibility criteria for applying a Registration Card for PWDs; the Administration explained that it would not subsidize the difference if a PWD was remunerated at a level commensurate with his productivity and thus paid below the SMW rate after the productivity assessment; assistance currently provided to those in need including PWDs under the Comprehensive Social Security Assistance Scheme	
025624 - 025657	Chairman	Date of next meeting	