

## **Bills Committee on Minimum Wage Bill**

### **Administration's Responses to Issues Raised at the Bills Committee Meetings Held on 3, 5, 8 and 10 June 2010**

#### **Introduction**

This paper provides the Administration's responses to the issues raised by Members of the Bills Committee at its meetings held on 3, 5, 8 and 10 June 2010 when examining the Minimum Wage Bill (the Bill).

#### **Information on the requirement to keep records of working hours by the employer in the United Kingdom**

2. A Member asked the Administration to provide information on the obligation of the employer to keep records of working hours under the statutory minimum wage (SMW) regime in the United Kingdom (UK). According to our desktop research on the Internet, under the National Minimum Wage Regulations 1999 in the UK, the employer has to keep employment records sufficient to establish that he is remunerating a worker at a rate at least equal to the national minimum wage in a pay reference period. Any employer who fails to keep the relevant records is liable to prosecution and a fine upon conviction.

#### **Exemption of live-in domestic workers**

3. The Administration was asked whether boat-boys or domestic workers engaged under different employment conditions would be exempted from the coverage of SMW. In the Bill, exemption from the SMW regime is provided for live-in domestic workers under clause 6(3), and the definition of "domestic worker" is clearly stipulated in clause 2.

4. Clause 2 of the Bill provides:

“ “domestic worker” (家庭傭工) means a domestic helper, carer, chauffeur, gardener, boat-boy or other personal helper employed in,

or in connection with, a household.”

5. Clause 6(3) provides:

“This Ordinance does not apply to a person who is employed as a domestic worker in, or in connection with, a household and who dwells in that household free of charge.”

6. Clause 6(3) seeks to provide a clear, objective and generic principle to set out the kind of live-in domestic workers who are exempted from the Bill. The provisions of the Bill are aligned as closely as possible with those of the Employment Ordinance (EO) in order to ensure their consistency. It is noted that in the EO, those provisions pertaining to domestic servants do not specify a definition for a boat-boy or a household either. As a matter of fact, the employment terms of individual employees depend largely on the agreement between the parties concerned. Therefore, as boat-boys or domestic workers may have different terms and conditions of employment, the question as to whether they are employed in or in connection with a household and dwell free of charge in their employing household, and thus exempted from the coverage of SMW, must be decided by reference to all the facts and circumstances of individual cases.

### **Employees to be paid no less than minimum wage**

7. A Member enquired whether it would be regarded as one wage period or two wage periods for the purpose of computing minimum wage when wages are paid to an employee twice in a month (the so-called “大細糧”, literally meaning “big and small pay”). It should be noted that when the employer and the employee have a clear understanding that the wage period is one month, the wage period should be taken to be one month even though the employer pays wages twice in a wage period.

### **Clause 5(4) and 5(5) of the Bill**

8. The Administration was asked to provide an example on the application of clause 5(4) of the Bill. Clause 5(4) provides:

“A payment of arrears of wages in respect of an earlier wage period made to an employee in any wage period must not be counted as part of the wages payable in respect of the wage period in which it is

paid.”

9. Taking an example for illustration, an employer defaults the payment of an allowance of \$200 (being part of the wages) in respect of the wage period of February, and such arrears of wages of \$200 are subsequently effected to the employee in April. In determining whether the employee is remunerated not less than the SMW under the Bill, the payment of \$200 being arrears of wages is not counted as part of the wages payable in respect of the wage period of April under clause 5(4); this allowance of \$200 remains part of the wages payable in respect of the wage period of February.

10. Regarding clause 5(5), the Administration has explained in its papers submitted to the Bills Committee (LC Paper No. CB(2)978/09-10 (01), CB(2)1103/09-10(01), CB(2)1183/09-10(01) and CB(2)1261/09-10 (01)) as to how commission payment is dealt with in the Bill. We have carefully considered Members’ views and suggestions on clause 5(5) so as to ensure clarity and certainty to employers and employees in reckoning commission payment for the purpose of computing whether employees are remunerated not less than the SMW under the Bill.

Labour and Welfare Bureau  
June 2010