

Bills Committee on Minimum Wage Bill

Administration's Response to Issues Raised at the Bills Committee Meeting Held on 19 November 2009

Introduction

This paper provides information requested by Members of the Bills Committee at its meeting held on 19 November 2009 to examine the Minimum Wage Bill.

Secondary legislation in the United Kingdom

2. A Member asked about secondary or delegated legislation and the amending powers of Parliament in the United Kingdom (UK). We have conducted desktop research on the Internet and the relevant information is provided below.

3. In the UK, secondary legislation consists mostly of statutory instruments. Whether a statutory instrument is subject to Parliamentary procedure is determined by the parent Act. According to the procedure applied to them, most statutory instruments can be classified into the following categories:

(a) *Instruments subject to negative resolution procedure*

These instruments are made and then laid before Parliament. They come into force, or continue in force, unless either House of Parliament (or the House of Commons only, in the case of instruments dealing with financial matters) passes a motion calling for their annulment within a certain period of time. This time period is usually 40 days including the day on which the instrument is laid before both Houses.

(b) *Instruments subject to affirmative resolution procedure*

These instruments require approval of Parliament (or the House of Commons only, in the case of instruments dealing with financial

matters). The affirmative procedure takes one of three forms, depending on the parent Act.¹

(c) *Instruments subject to no express form of Parliamentary scrutiny*

These include: (i) instruments required to be laid before Parliament but not subject either to approval or annulment or to any other kind of scrutiny procedure; and (ii) instruments not required to be laid before Parliament.

4. Neither House of Parliament has the power to amend secondary legislation except in the small number of cases where the parent Act specifically provides for such amendment. For the National Minimum Wage Act 1998 which introduced the minimum wage system, there is no specific provision to provide for the power of Parliament to amend the National Minimum Wage rates proposed by the UK government.

Information on statutory minimum wage legislation in other jurisdictions

5. Another Member asked whether the statutory minimum wage (SMW) legislation in the United States (US), Australia and European countries exempts employees who have already graduated and are in their first job.

6. We have studied the SMW systems in the US, Australia, the UK, France and Ireland through information trawled from the research report on the minimum wage system in selected places prepared by the Research and Library Services Division of the Legislative Council Secretariat, desktop research on the Internet as well as study visits to some jurisdictions. We understand that the minimum wage legislation in these jurisdictions has not exempted from the coverage of their SMW systems those employees who are in their first job after graduation.

¹ These include:

- (i) an instrument is required to be laid in draft before both Houses and will not be made unless both Houses agree to resolutions approving the draft instrument;
- (ii) an instrument is made and has immediate effect, but will not continue in force beyond a specified period unless both Houses agree to the appropriate resolutions approving the instrument;
- (iii) an instrument is made by a Minister and laid before Parliament but will have effect only after resolutions have been passed approving it.

7. It is noted that in the US, the Fair Labor Standards Act has prescribed the federal minimum wage provisions whereas many individual states have also enacted their own minimum wage laws. In case where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages. We do not have information as to whether any of the states have exempted from their minimum wage legislation employees during their first job after graduation.

Labour and Welfare Bureau
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