

立法會

Legislative Council

LC Paper No. LS8/10-11

**Paper for the House Committee Meeting
on 19 November 2010**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 November 2010**

Date of tabling in LegCo : 17 November 2010

Amendment to be made by : 15 December 2010 (or 5 January 2011 if
extended by resolution)

PART I COMMENCEMENT OF MINIMUM WAGE ORDINANCE AND RELATED AMENDMENTS

Minimum Wage Ordinance (15 of 2010)

**Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010
(L.N. 145)**

Minimum Wage Ordinance (Commencement) Notice 2010 (L.N. 146)

**Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010
(L.N. 147)**

**Employment Ordinance (Amendment of Ninth Schedule) Notice 2010
(L.N. 148)**

Background

The Minimum Wage Ordinance (15 of 2010) (the Ordinance) was passed by LegCo on 17 July 2010 and gazetted on 23 July 2010. Section 1(2) of the Ordinance stipulates that the Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette. Section 16 of the Ordinance provides that the Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3 to specify the Statutory Minimum Wage (SMW) rate and its effective date. Section

49A(3) of the Employment Ordinance (Cap. 57) (EO) as amended by section 20 of the Ordinance empowers the Commissioner for Labour to amend the Ninth Schedule to EO by notice published in the Gazette to prescribe the monetary cap on keeping records of hours worked. The Provisional Minimum Wage Commission (PMWC), comprising members from the labour, business and academic sectors as well as public officers, was set up in February 2009 to advise the Administration on the appropriate level of the initial SMW rate. PMWC submitted its report in October 2010 and recommended that the initial SMW rate should be set at \$28 per hour.

L.N. 145

2. The initial SMW rate recommended by PMWC has been considered and adopted by the Administration. By the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010 made by the Chief Executive in Council, Schedule 3 is amended by specifying \$28 as the first prescribed minimum hourly wage rate and the day on which section 9 is to come into operation (i.e. 1 May 2011) as its effective date. That would be the rate to be used in calculating the minimum hourly wage rate for an employee under section 9 of the Ordinance.

3. Member may note that section 16(4) of the Ordinance has restricted the application of section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) to an amendment to Schedule 3 to the effect that LegCo may only “wholly revoke” a notice of amendment made by CE in Council but not amend the contents of the notice. That is to say that L.N. 145 may be repealed but not amended by LegCo.

L.N. 146

4. By the Minimum Wage Ordinance (Commencement) Notice 2010, the Secretary for Labour and Welfare appoints 12 November 2010 as the day on which the following provisions of the Ordinance are to come into operation—

- (a) sections 1, 2 and 16;
- (b) Part 3; and
- (c) Schedule 4.

The commencement of those provisions enables the gazettal of the commencement of the provisions of the Ordinance, the amendments to specify the initial SMW rate and its effective date to be made and the Minimum Wage Commission to be established.

L.N. 147

5. By the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010, the Secretary for Labour and Welfare appoints 1 May 2011 as the day on which the remaining provisions of the Ordinance (i.e. all provision other than sections 1, 2 and 16, Part 3 and Schedule 4 of the Ordinance that have already come into effect) are to come into operation.

L.N. 148

6. By the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010, the Commissioner for Labour specifies the monetary cap on keeping record of hours worked to be \$11,500 per month (the cap). Under section 49A(3)(ea) of EO, an employer is required to keep record of the total number of hours that are hours worked in the wage period by an employee who is an employee within the meaning of the Ordinance and whose wage is under the cap. The Notice is to come into operation on the day on which sections 20 and 22 of the Ordinance come into operation (i.e. 1 May 2011).

7. Members may refer to LegCo Brief (File Ref: LD SMW 1-55/1/4(C)) issued by the Labour and Welfare Bureau in November 2010 for further and background information. The PMWC report is at ANNEX E to the LegCo Brief.

PART II DECLARATION OF HISTORICAL BUILDINGS

Antiquities and Monuments Ordinance (Cap. 53)

Antiquities and Monuments (Declaration of Historical Buildings) Notice 2010 (L.N. 149)

8. By this Notice made under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) (AMO) after consultation with the Antiquities Advisory Board and with the approval of the Chief Executive, the Secretary for Development declares—

- (a) the Tung Wah Museum in Kwong Wah Hospital at 25 Waterloo Road, Yau Ma Tei, Kowloon;
- (b) the Man Mo Temple Compound at 124-126, 128 and 130 Hollywood Road, Sheung Wan, Hong Kong;
- (c) the Tang Kwong U Ancestral Hall at 32 Shui Tau, Kam Tin, Yuen Long, New Territories; and

(d) the Kam Tong Hall at 7 Castle Road, Mid-levels, Hong Kong, to be historical buildings for the purposes of AMO (the four buildings). The four buildings are delineated and shown edged red respectively on Plans No. KM8223, No. HKM8879, No. YLM7622a and No. HKM8865b, all signed and deposited in the Land Registry under section 3(4) of AMO by the Secretary for Development.

9. The definition of “monument” in section 2 of AMO includes a historical building. The effect of the Notice is that no person shall excavate or carry on building or other works, plant or fell trees or deposit earth or refuse on or in any of the four buildings, or demolish, remove, obstruct, deface or interfere with any of the four buildings except in accordance with a permit granted by the Authority under AMO. Members may refer to the LegCo Brief (File Ref: DEVB/C 30/32/1) issued by the Development Bureau in November 2010 for the heritage significance of each of the four buildings and other background information.

Concluding observations

10. No difficulties have been observed in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

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