

立法會
Legislative Council

LC Paper No. CB(2)1374/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Thursday, 17 February 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon LI Fung-ying, SBS, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
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 LEUNG Kwok-hung
- Members attending** : Hon Miriam LAU Kin-ye, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon WONG Yuk-man
- Member absent** : Hon Alan LEONG Kah-kit, SC

Public Officers attending : Item IV

Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare

Mr Paul TANG Kwok-wai, JP
Permanent Secretary for Labour and Welfare

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Miss Mabel LI Po-yi
Assistant Commissioner for Labour (Development)

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Miss Josephine SO
Senior Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1005/10-11)

The minutes of the meeting held on 16 December 2010 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1014/10-11(01) and (02))

Regular meeting in March 2011

2. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 17 March 2011 at 2:30 pm -

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- (a) Progress of preparation for the implementation of statutory minimum wage; and
- (b) Overview of Labour Department's labour administration work in 2010.

3. The Chairman reminded members that the item in paragraph 2(a) was deferred from this meeting to give way to the discussion on the proposed Work Incentive Transport Subsidy ("WITS") Scheme under agenda item IV. He said that at the last Panel meeting on 20 January 2011, Mr WONG Kwok-hing had expressed concern on whether and how the anticipated implementation of statutory minimum wage ("SMW") would affect the wages as well as employment terms and conditions of workers currently employed under Government outsourced service contracts. The Administration had been requested to also brief the Panel under this agenda item the measures to be taken to ensure that the rights of employees of Government outsourced service contractors would remain unchanged after the implementation of SMW. Since the Administration had advised that it would study the impact of the Minimum Wage Ordinance (Cap. 608) on Government outsourced service contracts, the Chairman asked whether the Administration had completed its study and was ready to revert to the Panel on the outcome of the study at the meeting in March 2011.

4. Secretary for Labour and Welfare ("SLW") responded that the Administration was studying the arrangements concerning the mandatory wage requirement for non-skilled workers engaged in Government service contracts after the implementation of SMW. The Administration would endeavour to brief the Panel on the subject at the earliest possible opportunity, prior to the implementation of SMW on 1 May 2011.

Review of the Employment Ordinance in respect of the requirement of "continuous contract"

5. Mr LEUNG Yiu-chung enquired about the progress of the review conducted by the Administration on the definition of "continuous contract" under the Employment Ordinance (Cap. 57) ("EO") and its timetable for completing the review.

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6. SLW responded that the Labour Department had commissioned the Census and Statistics Department ("C&SD") to collect further statistical data of employees who were not engaged under a "continuous contract", including their distribution and proportion in the labour market, as well as their occupational characteristics. The Administration would conduct a review of the definition of "continuous contract" in the light of the survey findings and recent developments in the labour market. As "continuous contract" was the basis for determining an employee's eligibility for various employment rights and benefits under EO, any amendment to this statutory definition would have far-reaching implications to the labour market and the community as a whole. It would therefore be prudent and necessary for the Administration to conduct an in-depth and thorough study on the subject before arriving at any recommendation. Given the complexity of the subject, the review would take some time to complete. Nevertheless, the Administration would strive to complete the data compilation and analysis of the survey findings in mid-2011 and revert to the Panel within the current term of the Administration.

III. Proposal to conduct an overseas duty visit to study the experience in the implementation of standard working hours
(LC Paper No. FS11/10-11)

7. The Chairman referred members to the fact sheet prepared by the Research Division of the Legislative Council Secretariat entitled "Standard Working Hours in Selected Places".

8. Members considered that the experience of South Korea and the United Kingdom in implementing standard working hours or regulating working hours might be worth studying through undertaking an overseas duty visit in the summer recess to either one or both of these countries.

9. Members agreed that the duty visit would be conducted in the last week of July 2011.

10. The Chairman said that further details of the proposed visit would be considered at the next Panel meeting.

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IV. Work Incentive Transport Subsidy Scheme

(LC Paper Nos. CB(2)680/10-11(01), CB(2)1014/10-11(03), CB(2)1035/10-11(01) and CB(2)1070/10-11(01))

11. SLW took Members through the Administration's supplementary information paper which highlighted the Administration's further enhancements to the proposed WITS Scheme as set out in the discussion paper submitted to the Finance Committee ("FC") for funding approval on 18 February 2011.

12. SLW said that having carefully considered the views of Members and the community and taken into account the need to have a more equitable and sustainable scheme, the Administration took the initiative to further enhance the WITS Scheme with two improvements as follows -

- (a) the Administration proposed to raise the income threshold for two-member households from \$8,500 to \$12,000, which was some 84% of the median income for two-member households; and
- (b) to cater for the needs of more part-time workers, especially grass-root women workers and domestic helpers, the Administration proposed to provide a half-rate subsidy of \$300 to qualified applicants who worked less than 72 hours but at least 36 hours per month.

13. SLW said that based on figures in the second quarter of 2010, the above relaxation measures would bring the total number of potential eligible applicants up to 436 000, representing an increase of 58 500 persons over the enhanced scheme announced by the Administration on 11 February 2011 and 106 000 persons from the original proposal announced in December 2010.

14. SLW further said that the Administration had carefully considered the suggestion of adopting a "dual-track" approach for the means test, i.e. allowing applicants to choose to be means-tested either on an individual or household basis. The Administration's conclusion was that a household-based means test was more equitable than one that assessed only the individuals' income and assets. It was because a household-based approach would enable a full assessment of the overall economic situation of the household and would accord with the aim of the Administration to identify low-income households as the target

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recipients. A household-based means test was also in line with other standing Government financial assistance schemes. SLW also pointed out that it was neither practicable nor appropriate to adopt a "dual-track" approach as it could not help screen out those who had less financial need, and there was a greater risk of abuse and confusion in the implementation of the scheme.

15. SLW informed Members that subject to the approval of FC on 18 February 2011, the Administration planned to start receiving WITS applications from October 2011 onwards. For the first round of application, 1 April 2011 would be taken as the effective date for subsidy payment. This meant that when the WITS Scheme was formally launched and open to applications in October 2011, applicants could either immediately apply for WITS for the previous six months dating back to April 2011 or submit an application later covering a longer payment period. The payments would be effected by automatic bank transfers from the Government to individual recipients direct. SLW further said that the Administration would conduct a comprehensive review of the WITS Scheme based on the experience of the first three years of implementation. A mid-term review would be carried out in October 2012, having regard to the experience gained during the first year of operation.

16. Mr WONG Sing-chi questioned the rationale behind the Administration's decision of not adopting a "dual-track" approach for the means test. He said that although Members belonging to the Democratic Party were in support of the Administration's proposal to launch the WITS Scheme to benefit low-income earners, they remained of the view that the "dual-track" approach should be adopted to allow applicants the choice of undergoing a means test on an individual or household basis. Expressing concern about the definition of "household", Mr WONG asked whether a cohabiting couple could claim themselves as members of a two-member household for the purpose of applying WITS, if they found that undergoing a means test based on the income threshold for two-member household was a more beneficial option for them as compared with that for one-member household.

17. In response, SLW advised that the concept of "household" was adopted under the WITS Scheme for the purpose of means-testing. It was defined based on economic considerations. Specifically, it meant a unit which constituted person(s) with close economic ties and living on the same premises, including -

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- (a) core family members, i.e. the applicant's spouse, parents, grandparents, unmarried children (including adopted children and children/grandchildren under the applicant's guardianship), unmarried grandchildren, unmarried siblings; and/or
- (b) those who shared the provisions for a living, irrespective of their relationship under the law.

18. Dr LAM Tai-fai considered that reviews on the WITS Scheme should be conducted more frequently, say, once a year, so as to facilitate the assessment of the effectiveness of the scheme in encouraging employed members of low-income families to stay in employment and relieving their burden in work-related travel expenses. He asked whether the Administration had set any specific target on the number of applications to be received and approved in the first three years of implementation.

19. SLW responded that in view of the significant financial implications and the new approach adopted to assist low-income households, a comprehensive review of the WITS Scheme, including its objectives, eligibility criteria, *modus operandi* and effectiveness, would be conducted having regard to the experience gained during the first three years after its implementation. To address the glitches at the initial stage of operation, the Administration would conduct a mid-term review with the experience of the first year of implementation.

20. Regarding the planned target for the number of applications under the WITS Scheme, SLW said that it was difficult to have an accurate estimate of the take-up rate and the actual number of persons who would benefit from the scheme, as the Administration did not have information regarding the household asset position of those 436 000 employed persons who could meet the criteria for household income levels and working hours in the second quarter of 2010 according to the General Household Survey conducted by C&SD. Assuming that 50% of those 436 000 persons, i.e. 218 000 persons, would apply for WITS and could meet all the eligibility criteria, the Administration estimated that the implementation of the WITS Scheme would require a non-recurrent commitment of \$4,805 million for the first three years of operation. SLW emphasized that the WITS Scheme was a territory-wide scheme without any deadline for application. As a long-term commitment to assist the working poor, the Administration would not set any ceiling on the number of applications to be approved under the scheme.

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21. Mr Frederick FUNG, Mr Ronny TONG and the Deputy Chairman expressed concern that the Administration did not have a clear intent for the WITS Scheme. They held the view that the eligibility criteria, in particular the household-based means test requirement, had reflected that the Administration was unclear as to whether the scheme should be intended as a work incentive or a form of welfare measure to address the problem of working poverty and assist the working-poor households. Mr FUNG and Mr TONG further said that the income limits for different household sizes were set at too low a level, making those households with more members in employment less likely to benefit from the scheme even though some of the employed members might only earn SMW. They considered the further enhanced WITS Scheme far from satisfactory, especially when applicants were required to undergo a comprehensive means test covering both income and assets before the granting of WITS.

22. The Deputy Chairman considered the eligibility criteria for WITS too rigid. She said that the need to pass a restrictive income and assets assessment would discourage needy low-income employees from making application. She held the view that the Administration should drop the means test requirement, in particular the asset threshold requirement.

23. In response, SLW pointed out that at present, other Government assistance schemes which required means testing, such as student financial assistance, medical fee waiver, public rental housing, legal aid and Comprehensive Social Security Assistance ("CSSA"), all adopted a household approach. Bureaux and departments concerned would set appropriate criteria for their means tests having regard to their policy objectives and other relevant factors in order to identify the target beneficiaries. For the purpose of the WITS Scheme, different income and asset thresholds for households of different sizes were set having regard to income statistics and the prevailing thresholds for comparable financial assistance schemes. The asset limits under the WITS Scheme were not stringent as they were two to three times of those under the CSSA Scheme for the same household size.

24. Mr CHEUNG Kwok-che shared the views that the further enhanced WITS Scheme had departed from the original policy objective of assisting low-income employees to stay in employment, thereby achieving self-reliance. In his view, the scheme had evolved to become a designated channel for providing the working-poor households with "living subsidies". Mr CHEUNG expressed concern whether there was serious abuse of the Transport Support Scheme ("TSS"), thus triggering

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the proposed adoption of more stringent thresholds for the granting of WITS. Regarding the asset thresholds for different household sizes, he enquired about the criteria employed by the Administration for determining the limits.

25. SLW reiterated that to ensure that public resources were channelled to low-income earners genuinely in need, applicants should be means-tested on a household basis. It was the view of the Administration that a household-based means test was more equitable than one that assessed only the individuals' income and assets because the overall economic situation of the household was taken into consideration. There would also be less room for abuse through transfer of assets among different household members. SLW said that the possibility of abuse was relatively higher under TSS, and there were four fraudulent cases leading to convictions up to January 2011.

26. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong considered the further enhanced WITS Scheme generally acceptable, since the Administration had addressed most of the concerns raised by Members. Expressing deep concern about the possibility that some low-income employees who were qualified recipients of transport subsidy under TSS might be left out from the new scheme owing to the difference in the approaches adopted for income and assets assessment under the two schemes, Mr IP asked whether consideration could be given to deferring the replacement of TSS and extending the pilot TSS for a further year.

27. SLW said that the Administration had considered the suggestion of extending the pilot TSS beyond the formal implementation of the WITS Scheme. However, in the light of the practical difficulties and confusion which might arise in connection with the concurrent implementation of both schemes, the Administration was of the view that the pilot and time-limited TSS should cease after the implementation of the WITS Scheme. SLW stressed that the WITS Scheme was intended to be a long-term measure to assist those working poor most in need. The Administration had to ensure that the scheme was implemented in a fair and equitable manner to ensure that public funds were used prudently.

28. Mr LEUNG Yiu-chung criticized the Administration for insisting on its own stance, without taking heed of Members' suggestion to adopt a "dual-track" approach for the means test. He held the view that despite the improvements made to the income threshold for two-member household and the working hour requirement, the further enhanced WITS

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Scheme had the shortcoming of driving some eligible recipients under the existing TSS out of the net. He strongly requested the Administration to retain the individual-based mechanism for applying transport subsidy and allow applicants the choice of undergoing a means test on an individual or household basis, in implementing the WITS Scheme.

29. In response, SLW stressed that the Administration had taken on board Members' views and proposed to further enhance the WITS Scheme. In doing so, there was a need to strike a reasonable balance between devising a scheme to assist more low-income earners on the one hand, and ensuring the prudent and equitable use of public resources on the other. The Administration believed that with the implementation of the relaxation measures, more low-income earners would benefit from the WITS Scheme.

30. Ms Miriam LAU said that whilst Members of the Liberal Party welcomed the Administration's proposed enhancements to the WITS Scheme, they in general considered that there was room for further improvement. Ms LAU hoped that the Administration would, in its future review of the scheme, explore the feasibility of adopting the "dual-track" approach and streamlining the means test procedures.

31. Ms Miriam LAU further said that since there was a possibility that some low-income workers who were qualified recipients of transport subsidies under the existing TSS might be left out from the proposed WITS Scheme owing to the difference in the approaches adopted for assessing applicants' income and assets under the two schemes, serious consideration should be given to assisting those TSS recipients who could not benefit from the new scheme as a result of the new requirements. Her view was echoed by Mr WONG Kwok-hing.

32. Mr WONG Kwok-kin and Dr PAN Pey-chyou said that Members belonging to the Hong Kong Federation of Trade Unions shared the view that the further enhanced WITS Scheme still had a lot of room for improvement. They considered that the Administration should address those key issues of concern raised by Members, including the "dual-track" approach and the means test requirement, after the scheme was put into operation in October 2011.

33. SLW responded that the Administration would closely monitor the implementation of the WITS Scheme. Apart from conducting a comprehensive review based on the experience of the first three years of implementation, a mid-term review would be carried out having regard to

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the experience gained during the first year of operation. In response to Members' enquiry on whether assistance would be provided to the working poor who might be left out from the new scheme, SLW replied that the Administration would provide assistance to those in need through existing welfare and employment measures.

34. Mr Andrew LEUNG said that Members belonging to the Economic Synergy supported the funding proposal. They, however, considered that the Administration should make every effort to further improve the scheme. While noting that the main objective of the newly proposed WITS Scheme was to help the low-income earners and encourage them to stay in employment, Mr LEUNG asked whether the scheme was designed to also assist the unemployed to encourage these people to "go out" and seek employment, so as to achieve self-reliance.

35. In reply, SLW said that the Administration proposed to provide qualified applicants who worked for less than 72 hours but at least 36 hours per month with a half-rate subsidy of \$300. This relaxation measure could provide an incentive for part-time workers to work longer hours.

36. Mr CHAN Kin-por shared the view that the scheme had evolved into a system which provided "wage subsidies" for low-income earners. He, however, said that the WITS Scheme, as presently proposed, was acceptable for the purpose of "setting the machine in motion". In his view, a comprehensive review was necessary. Apart from evaluating whether the policy objective of the scheme had been met, the review should also cover an assessment of the economic benefits from launching the scheme in terms of stimulating consumer spending and creating job opportunities.

37. SLW said that the Administration considered it advisable to kick off the WITS Scheme as early as possible, with a view to benefitting more low-income workers. He assured Members that the Administration would seriously and proactively examine, during its future reviews, whether there was any room for further enhancement.

38. Mr LEUNG Kwok-hung said that minimum wage protection was the ultimate solution to the problem of working poverty. In his view, had the initial SMW rate been fixed at \$33 per hour, a transport subsidy scheme to relieve the burden of travelling expenses on low-income employees would not be required. He expressed strong dissatisfaction

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that the Administration had distorted the relevant policy by coming up with a conceptually flawed proposal to address the problem.

(At this juncture, Mr LEUNG Kwok-hung threw plastic bottles at SLW. The Chairman persuaded Mr LEUNG to cease such act but to no avail. The Chairman suspended the meeting at 4:09 pm.)

(The meeting resumed at 4:12 pm.)

39. SLW expressed grave concern that Mr LEUNG Kwok-hung had thrown a total of four plastic bottles at him from a very short distance and such act should be condemned. He hoped that similar incidents could be avoided in future.

40. The Chairman extended his apology to SLW for the occurrence of the incident. He hoped that such incident would not happen again in any meetings of the Panel.

41. Mr Andrew CHENG queried whether the Administration was aware of public aspiration for a "dual-track" approach for the means test. He said that he would not support the funding proposal if the Administration refused to adopt a dual-track approach.

42. SLW responded that it was of paramount importance that the WITS Scheme was implemented in a fair and equitable manner to ensure that public money was used properly.

43. Mr WONG Kwok-hing noted with grave concern that under the proposed WITS Scheme, asset included land/properties, cash, bank deposits, vehicles, transferrable vehicle licences, cash value of insurance policies, investments and other readily realizable assets including those within and outside Hong Kong. He considered that the long service or severance payment awarded to an employee in the case of unreasonable dismissal and the accrued benefits derived from an employee's and his employer's contributions to a Mandatory Provident Fund scheme in respect of him should be disregarded.

44. SLW appreciated the concerns expressed by Members over the asset thresholds. He stressed that in formulating the eligibility criteria of the new scheme, the Administration had adopted a targetted approach in an endeavour to assist those who were genuinely in greater need. Against this background, the Administration decided that applicants should be means-tested on a household basis. It should be noted that the

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income and asset thresholds under the WITS Scheme were set with due regard to the standards already set for other comparable financial assistance schemes administered by the Government. Self-occupied property would not be included in determining the household asset.

45. Mr WONG Yuk-man expressed strong dissatisfaction with the Administration's making concessions at the very last minute in a bid to secure Members' support of its proposal to launch the WITS Scheme.

(Members agreed to extend the meeting by five minutes.)

46. Mr IP Wai-ming considered that despite the enhancements to the scheme, the proposed income and asset thresholds were still too high. He hoped that the expenditure pattern of low-income households would be considered by the Administration during its future reviews of the WITS Scheme and if justified, the income and asset limits for different household sizes should be raised in order to benefit more low-income families.

47. The Chairman said that it was the view of the Hong Kong Confederation of Trade Unions that the "dual-track" approach for means test was the most preferred option. The present proposal to require applicants to be means-tested on a household basis would defeat the purpose of encouraging people to work. He said that he would not support the funding proposal unless the Administration acceded to adopt a "dual-track" approach.

48. Members noted that the Administration planned to submit the funding proposal to FC for consideration at its meeting on 18 February 2011. Members did not raise any objection to the Administration's submission of a supplementary note to FC setting out the proposed further enhancement and updated financial implications.

V. Replacement holiday arrangements

(LC Paper Nos. CB(2)1007/10-11(01), CB(2)1014/10-11(04) to CB(2)1030/10-11(01))

49. Due to time constraint, the Chairman suggested and members agreed to defer the discussion of the item to the next regular meeting on 17 March 2011.

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50. The meeting ended at 4:37 pm.

Council Business Division 2
Legislative Council Secretariat
30 March 2011