

立法會

Legislative Council

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Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 20 June 2017**

Standard working hours

Purpose

This paper summarizes the major concerns and views expressed by members at the Panel on Manpower ("the Panel") and its Subcommittee on Issues Relating to Standard Working Hours on the subject of standard working hours ("SWH") since the Fifth Legislative Council ("LegCo").

Background

2. In the Chief Executive ("CE")'s 2010-2011 Policy Address, it was stated that the Government would embark on a policy study on SWH so as to lay a solid and objective foundation for the public discussion on the issue. The Labour Department ("LD") was assigned the task and released the Report of the Policy Study on Standard Working Hours in late November 2012.

3. The Government announced in April 2013 the formation of the Standard Working Hours Committee ("SWHC"), which was tasked to follow up on the Government's policy study on SWH, promote understanding of this subject and related issues, and advise CE on the working hours situation in Hong Kong including whether a statutory SWH regime or any other alternatives should be introduced.

4. According to the Administration, SWHC has since the establishment completed a number of tasks, which included a territory-wide working hours survey and the first-stage consultation in 2014, and a three-month public consultation exercise on the policy directions for working hours from April to June 2016 ("the second-stage consultation").

Past discussions by Members

Concerns over legislating for SWH

5. On whether the issue of long working hours would be addressed by legislative means, members were advised that SWHC had not come to a view on the policy direction on SWH, including whether legislative means was the way forward. SWHC would deliberate thoroughly on SWH which was highly complex and involved a myriad of interrelated and controversial social and economic issues, and identify the way forward. The Administration kept an open mind on the matter which would be further studied by SWHC.

6. Expressing disappointment at the SWHC's slow work progress and the Administration's lack of stance on legislating for SWH, some members took a strong view that SWHC should focus its work on addressing the phenomenon of long working hours by legislative means instead of merely studying whether a statutory SWH regime should be established. Moreover, it was incumbent upon CE to honour his election pledge to establish a statutory regime in Hong Kong. Acknowledging the various complicated and difficult issues to be dealt with by SWHC relating to the introduction of a working hours policy, including the policy design and the parameters involved, some members held the view that consideration should be given to establishing an SWH regime in phases.

7. Some members, however, pointed out that employers expressed stronger reservations towards the introduction of SWH in Hong Kong than the introduction of statutory minimum wage. Apart from the potential increase in the wage bill, employers were particularly concerned about the need and flexibility to maintain adequate manpower to accomplish urgent and important tasks if working hours limits were set. These members considered that the Administration should fully address the concerns of the employers and deliberate relevant issues thoroughly before taking forward the matter.

8. Some members called on the Administration to consider amending the Employment Ordinance (Cap. 57) ("EO") to the effect that the number of contractual working hours and overtime pay rates should be spelt out expressly in the employment contracts. These members pointed out that most employers objected to implementation of a uniform working hours standard and considered that different working hours arrangements were already in place in response to the work nature and requirements of different sectors or occupations.

9. Members were assured that the Administration was mindful of the complexity of the working time regime which involved a wide range of complex issues with widespread and far-reaching implications for the overall labour market, manpower demand, employment relations, work culture, family life, employees' health at work, business environment, economic development

and business competitiveness. The Administration recognized fully the need to examine the subject of SWH in-depth before deciding on the way forward. SWHC would study and discuss the various issues of concern thoroughly and objectively in the deliberation of the policy direction.

Second-stage consultation of SWHC

10. Members noted that SWHC launched a three-month public consultation exercise on the policy directions for working hours from 25 April 2016 ("the second-stage consultation"). Members were advised that with reference to the findings of the territory-wide working hours survey and the first-stage consultation completed in 2014, SWHC had deduced several principles and suggestions on working hours policy directions, including (a) an in-principle agreement to explore a legislative approach to mandate written employment contracts specifying working hours arrangements of employees in general ("big frame" as referred to by SWHC); and (b) exploring, on the premise of the "big frame", whether there was a need for other suitable measures to further protect grassroots employees with lower income, lower skills and less bargaining power ("small frame" as referred to by SWHC). In view of this, SWHC would collect views on the following four working hours policy directions in the second-stage consultation, including (a) only implementing the "big frame"; (b) only implementing the "small frame"; (c) on the premise of implementing the "big frame", to implement the "small frame" as well; and (d) not to implement the "big frame" nor "small frame" but recommend implementing other policies/measures pertaining to working hours.

11. Some members took the view that there was no need for SWHC to conduct the second-stage consultation on the future directions of a working hours policy. Instead, the consultation should collect views on how to legislate for SWH, including the number of weekly working hours and overtime pay rates. These members also cast doubt about the effectiveness of the "big frame" under exploration in addressing the long working hours situation, especially for those employees who did not have bargaining power on the employment terms and conditions put forward by employers.

12. The Administration advised that currently, EO did not oblige employers and employees to sign written employment contracts, nor to specify employees' working hours arrangements. The "big frame" should be a step forward to mandatorily require employers and employees in general to enter into written employment contracts, specifying clearly such terms relating to working hours, for instance, the number of working hours, overtime work arrangements and modes of overtime compensation. SWHC was of the view that the "big frame" would help protect employees from entering into unreasonable employment terms and conditions.

13. Some members expressed support for exploring the "small frame" on the premise of the "big frame". They pointed out that as revealed from the statistics of the working hours survey conducted by SWHC in 2014, of all employees, about 60% did not have the modes of overtime compensation specified in their employment contracts/agreements. Given the controversy of the subject of SWH, they considered that the working hours issue should more appropriately be first addressed by requiring employers and employees to enter into written employment contracts with clear terms relating to working hours and overtime pay rates so as to further protect grassroots employees with lower income, lower skills and less bargaining power. In these members' view, the Administration should fully address the concerns of the employers and deliberate relevant issues thoroughly before taking forward the matter.

14. Some other members, however, expressed the view that they would only support SWHC to explore implementing the "small frame" on the premise of introducing a SWH regime. They also considered it unnecessary for SWHC to conduct the second-stage consultation, as members of labour unions and trade associations had been fully consulted on the subject during the first-stage consultation conducted in 2014. In view of this, SWHC should focus its discussion on how to legislate for SWH.

15. According to the Administration, SWHC considered that the above four directions should be able to address the aspirations and concerns of all stakeholders (including employees, employers, labour unions, trade associations and the public) and they could be considered for taking forward the working hours policy.

Way forward for the working hours issue

16. Some members expressed grave concern that the six employee representatives of the Labour Advisory Board ("LAB"), who were SWHC's ex-officio members, had walked out of the SWHC meeting on 27 November 2015. These members shared the concern of these employee representatives that the adoption of the "big frame" approach by SWHC had backtracked on the agreement to conduct future discussion on the basis of legislating for working hours of employees as made at the SWHC meeting on 18 March 2015. Members enquired about how the Administration would take forward the subject of formulating a working hours policy in the absence of the employee representatives on SWHC.

17. The Administration pointed out that the Government and the Chairperson of SWHC had been appealing to the six employee representatives of LAB to participate in the work of SWHC again. According to the Administration, the second-stage consultation would be the final round of SWHC's consultation. SWHC had engaged an independent consultant to collate, consolidate and

analyze all the views received during the second-stage consultation for SWHC's consideration. SWHC would fully consider the views collected during the second-stage consultation in preparing the report for submission to the Government. As SWHC would need more time to complete its remaining work, the Government had extended the term of SWHC to 30 November 2016. The Administration stressed that in accordance with its terms of reference, SWHC would report to CE and advise on the working hours situation in Hong Kong, including whether a statutory SWH regime or any other alternatives should be considered, upon completion of its term. The Government would thoroughly and holistically consider the recommendations to be made by SWHC in its report.

18. Members enquired how the Administration would take forward the subject upon receipt of the report from SWHC. Most members expressed grave concern that there would be insufficient time left for implementation of relevant recommendations by the current term Government, and there was reservation that the Government of the next term would duly recognize the findings and recommendations in the SWHC report and take forward the subject of SWH accordingly. There was a view that the Administration should consider introducing the relevant legislation of SWH into LegCo at the beginning of the Sixth LegCo so as to ensure that the issue would be followed up by the next term Government.

19. Members were assured that the Administration was mindful of the complexity of the working hours regime which involved a wide range of complex issues with widespread and far-reaching implications, and fully recognized the need to examine the subject of SWH in-depth before deciding on the way forward. It stressed that should a consensus on establishing a statutory SWH regime be reached in the community, the Administration would proceed with the necessary legislative work within the tenure of the current Government.

20. At the policy briefing cum meeting of the Panel on 23 January 2017, members were advised that apart from examining the relevant information collected from the two rounds of extensive public consultation, SWHC had taken into account the Consultation Report on Legislating for Standard Working hours submitted by the labour sector to CE. SWHC would submit its report to the Government within January 2017, setting out recommendations on the working hours policy direction. Upon receipt of the report, the Government would carefully consider the views of SWHC and the community in a holistic manner, and would strive to map out within the term of the current Government the working hours policy direction that suited the socio-economic situation of Hong Kong.

21. The Administration will brief the Panel on the follow-up work on the report of SWHC.

Relevant papers

22. A list of the relevant papers on LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
14 June 2017

Relevant papers on standard working hours

Committee	Date of meeting	Paper
Subcommittee to Study Issues Relating to Standard Working Hours	1.2.2016 (Item I)	Agenda Minutes
	15.3.2016 (Item I)	Agenda Minutes
	16.5.2016 (Item I)	Agenda Minutes
		Report (LC Paper No. CB(2)1657/15-16)
Establishment Subcommittee	6.6.2016 (Item 6)	Agenda Minutes
	8.6.2016 (Item 1)	Agenda Minutes
Finance Committee	8.7.2016 (Item 3)	Agenda Minutes
	11.7.2016 (Item 3)	Agenda Minutes
Panel on Manpower	15.12.2011 (Item IV)	Agenda Minutes
	18.12.2012 (Item III)	Agenda Minutes
	31.7.2013 (Item IV)	Agenda Minutes
	20.5.2014 (Item IV)	Agenda Minutes

Committee	Date of meeting	Paper
	17.3.2015 (Item V)	<u>Agenda</u> <u>Minutes</u>
	15.12.2015 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Council meeting	23.6.2010	<u>Motion on "Legislating for 'standard working hours'"</u>
	1.12.2010	<u>Official Record of Proceedings (Question 3)</u>
	15.2.2012	<u>Motion on "That this Council notes the Report of the delegation of the Panel on Manpower to study the experience in the implementation of standard working hours in the Republic of Korea"</u>
	17.10.2012	<u>Motion on "Legislating for the regulation of working hours"</u>
	3.6.2015	<u>Motion on "Enacting legislation on standard working hours"</u>
	31.5.2017	Question 5

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