

# **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 19 June 2018**

#### **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 former 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"). SWHC submitted its report to the Government on 27 January 2017.

## **Past discussions by Members**

### Concerns over legislating for SWH

5. Some members took a strong view that the Administration should focus its work on addressing the phenomenon of long working hours by legislative means. Acknowledging the various complicated and difficult issues to be dealt with 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.

6. 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.

7. 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.

8. 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.

### Work of SWHC

9. 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"<sup>1</sup> under exploration by SWHC 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.

10. According to the Administration, 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.

11. Some members expressed support for exploring the "small frame"<sup>2</sup> by SWHC on the premise of the "big frame". 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.

12. 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 were concerned how the Administration would take forward the subject of formulating a working hours policy in the absence of the employee representatives on SWHC.

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<sup>1</sup> 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).

<sup>2</sup> See footnote 1 above.

13. 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 Administration would carefully consider the views of SWHC and the community in a holistic manner, and would strive to map out within the last term Government the working hours policy direction that suited the socio-economic situation of Hong Kong.

#### Recommendations of SWHC

14. After SWHC had submitted its report to the Government in January 2017, which set out its recommendations on the working hours policy direction, members were concerned about how the Administration would take forward SWHC's recommendations. The Administration briefed the Panel at its meeting in June 2017 on the working hours policy framework and the proposed measures. The Panel also received views from deputations at the meeting.

15. Members noted that SWHC recommended, among others, that a legislative approach should be adopted to mandate employers to enter into written employment contracts with lower-income grassroots employees, which would include terms on working hours and overtime compensation arrangements. SWHC had left it to the Government to define the scope of the lower-income grassroots employees. Members were advised that the Administration fully accepted SHWC's recommendations and proposed that the wage line of lower-income grassroots employees be set at monthly wages of \$11,000.

16. Members expressed diverse views on the Administration's proposal to legislate for written employment contracts with specification of working hours and overtime compensation terms for the lower-income grassroots employees. Some members expressed strong dissatisfaction and disappointment at the Administration's decision of not to pursue legislating for SWH. They considered that the Administration's proposal could hardly address the problem of long working hours and uncompensated overtime work generally faced by employees in various trades and industries. Moreover, the number of employees to be covered under the Administration's proposal was too small if the wage line was set at monthly wages of \$11,000. These members took a strong view that it was necessary to legislate for SWH (with a working hours standard of 44 hours per week and overtime pay rate of 1:1.5) to safeguard the rights of employees.

17. Some other members, however, considered that the Administration's proposal was a practical first step to take forward the working hours policy in Hong Kong, which had given due regard to the affordability of enterprises and the need to protect the rights of grassroots employees. These members stressed that they opposed an across-the-board working hours regulation or SWH legislation, which in their view, would undermine the flexibility of operation and increase the manpower cost of enterprises, particularly the small-to-medium ones.

18. According to the Administration, it would report to LAB the working hours policy framework and proposed measures to take forward SWHC's recommendations. It would then proceed to examine and iron out the contents of the legislative proposals and the implementation arrangements and seek LAB's views. The Administration would also commence the formulation of sector-specific working hours guidelines through the tripartite committees<sup>3</sup> of LD to provide guidance on suggested working hours standards, overtime compensation methods and good working hours management measures, etc. for reference and adoption by employers and employees. The Administration would review the effectiveness and impact of the recommendations after two years of implementation, including whether there was a need for SWH legislation and, if so, its contents and relevant arrangements.

19. The Administration will brief the Panel on the way forward for working hours policy at the meeting on 19 June 2018.

### **Relevant papers**

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

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<sup>3</sup> Currently, LD runs nine industry-based tripartite committees (covering catering, construction, theatre, logistics, property management, printing, hotel and tourism, cement and concrete, and retail sectors) comprising representatives from employers, employees and the Government to promote tripartite dialogue and collaboration at the industry level. Two new tripartite committees would be set up to draw up the guidelines for cleaning services and elderly homes sectors where long working hours are relatively more common.

**Relevant papers on standard working hours**

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

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
	17.3.2015 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	15.12.2015 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	23.1.2017 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20.6.2017 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Council meeting	23.6.2010	<a href="#">Motion on "Legislating for 'standard working hours'"</a>
	1.12.2010	<a href="#">Official Record of Proceedings (Question 3)</a>
	15.2.2012	<a href="#">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"</a>
	17.10.2012	<a href="#">Motion on "Legislating for the regulation of working hours"</a>
	3.6.2015	<a href="#">Motion on "Enacting legislation on standard working hours"</a>
	31.5.2017	<a href="#">Question 5</a>