

立法會
Legislative Council

LC Paper No. CB(2)1199/20-21
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 16 March 2021, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon LUK Chung-hung, JP (Chairman)
Hon CHAN Chun-ying, JP (Deputy Chairman)
Hon YIU Si-wing, BBS
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon POON Siu-ping, BBS, MH
Hon CHUNG Kwok-pan
Hon SHIU Ka-fai, JP
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan, JP
Dr Hon Pierre CHAN
Hon Vincent CHENG Wing-shun, MH, JP

Members absent : Hon WONG Kwok-kin, SBS, JP
Dr Hon CHIANG Lai-wan, SBS, JP

Public Officers attending : Items III and IV
Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

Item V

Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

Mr Jeff LEUNG Wing-yan, JP
Deputy Commissioner for Labour
(Occupational Safety and Health)

Mr WU Wai-hung, JP
Assistant Commissioner for Labour (Occupational Safety)

Mr WAN Chi-ping
Chief Occupational Safety Officer (System and Support)
Labour Department

Item VI

Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

Mr Chris SUN Yuk-han, JP
Commissioner for Labour

Mr Raymond HO Kam-biu, JP
Assistant Commissioner for Labour (Development)

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Information paper issued since the last meeting
(LC Paper No. CB(2)878/20-21(01))

Members noted that the Administration's response to issues raised in the letter dated 4 February 2021 from Mr Tony TSE regarding the proposal to raise penalties of occupational safety and health ("OSH") legislation had been issued since the last meeting.

Action

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)862/20-21(01) and (02))

Regular meeting in April 2021

2. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 20 April 2021:

- (a) Major findings of the 2020 Annual Earnings and Hours Survey;
- (b) Major findings of the Thematic Household Survey on employees engaged under employment contracts with short duration or working hours in 2019-2020; and
- (c) Abolition of using employers' mandatory contributions under the Mandatory Provident Fund System to "offset" severance payment and long service payment.

3. Given that the Administration would introduce the Employment (Amendment) Bill 2021 into the Legislative Council ("LegCo") on 17 March 2021, the Chairman suggested and members agreed that it would not be necessary for the Administration to provide members with an update on the progress of the proposal to increase progressively the number of statutory holidays under the Employment Ordinance (Cap. 57) ("EO") at future meetings of the Panel.

III. Update on the proposal to abolish the offsetting arrangement under the Mandatory Provident Fund System

4. At the invitation of the Chairman, the Under Secretary for Labour and Welfare ("USLW") provided members with an update on the preparatory work for abolishing the "offsetting" arrangement under the Mandatory Provident Fund ("MPF") System ("the "offsetting" arrangement"), as detailed in his speaking note.

(Post-meeting note: The speaking note of USLW was issued to members vide LC Paper No. CB(2)888/20-21 on 17 March 2021.)

Action

IV. Update on the proposal to increase progressively the number of statutory holidays under the Employment Ordinance

5. At the invitation of the Chairman, USLW provided members with an update on the proposal to increase progressively the number of statutory holidays under EO, as detailed in his speaking note.

(Post-meeting note: The speaking note of USLW was issued to members vide LC Paper No. CB(2)888/20-21 on 17 March 2021.)

V. Refining the notification requirements for construction works under the Construction Sites (Safety) Regulations
(LC Paper No. CB(2)862/20-21(03))

6. USLW briefed members on the Labour Department ("LD")'s legislative amendment proposal to refine the statutory notification mechanism for construction works, as detailed in the Administration's paper.

The legislative proposal

7. Mr POON Siu-ping said that the Federation of Hong Kong Electrical and Mechanical Industries Trades Unions was in support of the legislative proposal to address the potential risk of constructional injuries and fatalities. Mr Wilson OR welcomed the proposal to refine the statutory notification mechanism for construction works and make necessary improvement.

8. Mr Wilson OR sought clarification as to whether the 68 construction fatal accident cases that happened between 2009 and 2018 involving work duration of less than six weeks or employment of not more than 10 workers would be regarded as higher risk construction works under the proposal in paragraph 6 of the Administration's paper. Mr POON Siu-ping sought information on the number of such construction fatal cases that were relatively higher risk construction works. The Chairman enquired about the rationale for expanding the scope of notification to the four types of relatively higher risk construction works only in the Administration's proposal.

9. In response to members' concerns, DC for L (OSH) advised that as some construction works with short duration or engaging fewer workers

Action

might involve operations carrying relatively higher potential risk, the Administration proposed to expand the scope of notification to four types of relatively higher risk construction works involving work duration of less than six weeks or employment of not more than 10 workers. LD had examined 182 construction fatal accident cases that happened from 2009 to 2018 and found that 68 cases involved work duration of less than six weeks or employment of not more than 10 workers. Notably, about 50% of these fatalities (i.e. 33 cases) could be grouped under the four types of relatively higher risk construction works to be included in the revised statutory notification mechanism, while the rest of these 68 construction fatal accident cases involved a wide distribution of work types. The Chairman called on the Administration to consider further expanding the scope of notification to cover a wider range of higher risk construction works.

10. While expressing support for the legislative proposal, Mr KWOK Wai-keung and Ms Alice MAK were concerned about the effectiveness of the proposal in preventing the occurrence of construction fatal accidents.

11. USLW advised that the Government attached great importance to each and every industrial fatality and would strive to improve the occupational safety performance, including expanding the scope of the notification mechanism, strengthening the inspection and enforcement work and taking forward further legislative amendment exercise as necessary. The Government would closely monitor and review the effectiveness of the legislative proposal in enhancing work safety after its coming into operation. DC for L (OSH) added that it was expected that the proposed expansion of the scope of notification to include the four types of relatively higher risk construction works would contribute positively to the occupational safety performance of the construction sector. Under the revised statutory notification mechanism, LD would be able to obtain the necessary information for risk assessment of the construction works and make arrangement for early inspection to construction sites carrying relatively higher risk. This would help prevent the occurrence of construction accidents.

Risk assessment and safety inspections

12. Mr POON Siu-ping sought information on the estimated increase in the number of construction works to be reported under the revised statutory notification mechanism and enquired about the impact on the

Action

related inspection and enforcement work. Ms Alice MAK was concerned whether LD had sufficient manpower to cope with the additional inspection and enforcement work arising from the revised notification mechanism.

13. Mr KWOK Wai-keung was concerned whether LD could duly conduct prior risk assessment of the construction works after adjusting the notification deadline from "within seven days after the commencement of the works" to "before the commencement of the works" and conduct on-site safety inspection under the revised notification mechanism. Mr KWOK asked about the difference between the average time required for making arrangement for the site inspection upon receipt of notification from contractors concerned under the existing and the revised statutory notification mechanism.

14. The Chairman asked about the requisite information to be submitted when notifying LD of the construction works under the revised statutory notification mechanism and how risk assessment of construction works would be conducted for making a decision as to whether inspection to the workplaces was needed.

15. Responding to members' concerns, DC for L (OSH) advised that it was expected that the number of notified construction works would increase significantly under the revised statutory notification mechanism, in particular works of truss-out scaffolds in view of several thousands of such works each year. LD had all along adopted a risk-based approach in conducting inspections with priority accorded to higher risk workplaces. Besides, LD would review the information submitted under the notification mechanism to identify higher risk workplaces for early inspection.

16. Assistant Commissioner for Labour (Occupational Safety) ("AC for L (OS)") added that although it would be difficult to specify the time needed for carrying out risk assessment of the construction works upon receipt of notification from the contractors concerned, it could be completed within a short period of time. Under the existing statutory notification mechanism, inspection would be conducted to the worksites so notified, which were mainly of medium- to large-scale and priority would be given to those worksites with higher risk. LD at present was unable to conduct comprehensive risk assessment of all construction works before they commenced. In this regard, it was proposed under the revised notification mechanism that in addition to furnishing LD with

Action

information as specified in the notification form, such as name of the contractor and location of the construction site, contractors concerned were also required to provide details of the nature of the works to be carried out in the first 14 days of the work, such as whether heavy mechanical equipment would be used. LD would review such information which would enable LD to effectively identify higher risk workplaces for early inspection. It was envisaged that there would be an increase in the number of small-scale construction works to be notified to LD. LD would continue to adopt a risk-based approach to conduct risk assessment and inspections to these worksites. The occupational safety performance of the small-scale construction works would also be enhanced as contractors concerned would be required to notify LD of the construction works, irrespective of whether inspection would be conducted to these worksites. DC for L (OSH) advised that LD would seek additional resources under the established mechanism if such needs arose.

17. Ms Alice MAK said that the Hong Kong Federation of Trade Unions called on the Government to take follow-up action duly so as to prevent the occurrence of accidents on construction sites.

Admin

18. At Mr KWOK Wai-keung's request, the Administration agreed to provide information on whether work site inspections had been conducted to the construction sites concerned in respect of the construction fatal cases in the past five years; and if so, the number of construction sites inspected and the number of construction sites where no inspection was conducted.

Exemption

19. Mr POON Siu-ping sought elaboration on the emergency situation under which contractors would be allowed not to notify LD of the commencement of the works. Mr POON further enquired whether the Administration would consider drawing up relevant guidelines for the reference of contractors concerned.

20. DC for L (OSH) responded that contractors under certain emergency situation (such as for saving human life, protecting public health, preventing personal injury, preventing damage to property, preventing serious interruption or disruption to a public transport system or utility service) would be allowed not to notify LD of the construction works before their commencement. The contractors, however, should

Action

furnish LD with the relevant information within 48 hours after the commencement of the works. DC for L (OSH) further advised that LD would consider formulating guidelines in respect of the emergency situation and exemption under the revised statutory notification mechanism.

Penalty

21. The Chairman was concerned about the penalty for non-compliance with the requirements under regulation 56(1) of the Construction Sites (Safety) Regulations (Cap. 59I) ("CSSR") under the existing and revised statutory notification mechanisms. DC for L (OSH) advised that currently, a person who was guilty of an offence under regulation 56(1) of CSSR would be liable to a fine of \$10,000. The Administration proposed to increase the fine to three times of the current level in the context of the legislative proposal relating to raising the deterrent effect for non-compliance with the OSH legislation.

Consultation and implementation of the legislative proposal

22. Mr Wilson OR enquired whether the Government would conduct extensive consultation with the industry practitioners on the legislative proposal and its publicity plan in respect of the revised statutory notification mechanism.

23. DC for L (OSH) responded that apart from consulting the Panel on the legislative proposal, LD had previously met with relevant trade associations and labour unions, including scaffolding associations, and listen to their views on the proposed amendments. The industry practitioners in general were in support of the legislative proposal and had made some specific suggestions on refining the legislative proposal, such as further expanding the scope of the notification mechanism to include other types of higher risk construction works, meaning of and exemptions under emergency situation, as well as means of notifying LD of the construction works.

24. In respect of Mr Wilson OR's enquiry about the implementation and publicity of the revised statutory notification mechanism, DC for L (OSH) advised that the Government would carefully analyze and consider the views collected for further refining the legislative proposal, if necessary. Subject to the stakeholders' views and progress of law drafting, the Government would introduce the relevant subsidiary

Action

legislation into LegCo as soon as practicable. DC for L (OSH) further advised that LD would make use of the existing channels, including sending letters to the stakeholders on the amendments to CSSR and uploading relevant information onto LD's website, as well as organize seminars for the industry practitioners as appropriate. Mr OR called on LD to step up its online publicity efforts. The Chairman appealed to the Administration to strengthen its publicity efforts in respect of the consequences of non-compliance with the revised statutory notification mechanism.

Other issues

25. Apart from refining the statutory notification mechanism for construction works, Ms Alice MAK was concerned about LD's work to raise industry practitioners' awareness of work safety so as to further enhance the occupational safety performance.

26. In response, DC for L (OSH) said that enhancing construction workers' OSH had always been the top priority of LD. LD had been keeping close tabs on the OSH risk levels in the construction industry and formulating and adjusting the strategies of inspection and enforcement. LD would also strengthen its publicity and promotion efforts, as well as education and mandatory safety training in a timely manner in order to foster OSH culture and enhance OSH performance. Notably, LD was currently engaged in the legislative amendment exercise to raise the deterrent effect of penalties for non-compliance with the OSH legislation.

VI. Creation of one supernumerary post of Chief Labour Officer (D1) in the Labour Department ("LD") to implement and oversee various new measures to enhance statutory maternity leave and strengthen support to LD for the implementation of new strategies and policies

(LC Paper Nos. CB(2)862/20-21(04) and (05))

27. At the invitation of the Chairman, USLW briefed members on LD's proposal to create one supernumerary post of Chief Labour Officer ("CLO") (D1) in LD with duration of three years to implement and oversee various new measures to enhance statutory maternity leave ("ML") and strengthen support to LD for the implementation of new strategies and policies ("the staffing proposal") as detailed in the Administration's paper.

Action

28. Members noted a background brief entitled "Enhancement of statutory maternity leave" prepared by the LegCo Secretariat.

Reimbursement of Maternity Leave Pay Scheme

29. Mr SHIU Ka-fai enquired about the eligibility for the additional four weeks' maternity leave pay ("additional MLP") (i.e. MLP for the 11th to 14th weeks) as well as the documentary proof to be submitted by employers concerned when seeking reimbursement of the additional MLP under the new Reimbursement of Maternity Leave Pay ("RMLP") Scheme.

30. USLW advised that the Employment (Amendment) Ordinance 2020 ("Amendment Ordinance") took effect on 11 December 2020 under which eligible female employees whose confinement occurred on or after that day were entitled to 14 weeks' statutory ML. Assistant Commissioner for Labour (Development) ("AC for L (D)") added that the eligibility for the additional four-week ML under EO remained the same as that for the first 10 weeks' statutory ML. The Preparatory Office for Reimbursement of Maternity Leave Pay ("PORMLP") was working in close collaboration with the processing agent and pressing ahead with the preparatory work for the RMLP Scheme with a view to implementing the RMLP Scheme as soon as practicable in the first half of 2021. While the specific details on the application procedures under the RMLP Scheme would be made available in due course, the initial thinking was that an employer seeking reimbursement of the additional MLP paid to his/her employee would be required to complete an application form and provide the necessary information, including documentary proof of the pregnancy of the employee concerned and proof of payment for the additional MLP.

Need for a Chief Labour Officer post

31. Ms Alice MAK said that the Hong Kong Federation of Trade Unions was in support of the proposed creation of a supernumerary CLO post for implementing and overseeing the RMLP Scheme and assisting in the formulation and execution of the abolition of the "offsetting" arrangement. That said, in the light of the worsening economic situation and the fact that the administration of the RMLP Scheme had already been outsourced to a private sector processing agent, Ms MAK called on the Administration to first critically examine the viability of absorbing the duties of the proposed CLO post by internal redeployment of resources as far as possible.

Action

32. Mr POON Siu-ping highlighted the zero growth in the civil service establishment in the 2021-2022 Budget and that bureaux and government departments were encouraged to enhance efficiency through re-prioritization of tasks, internal redeployment of resources, and streamlining of work processes. Mr POON was concerned about the impact on the implementation of the RMLP Scheme if the proposed creation of the CLO post was not supported by the Finance Committee ("FC"). Ms Alice MAK echoed the concern. Specifically, Mr POON enquired whether it would affect LD's plan of setting up the RMLP Division in the first half of 2021 and asked about the viability of taking up the duties of the proposed CLO post by a Senior Labour Officer in LD.

33. Mr Vincent CHENG said that the Democratic Alliance for the Betterment and Progress of Hong Kong had reservation about the staffing proposal to create a directorate post in LD, which would incur an additional notional annual salary cost around \$2 million, in the light of the deteriorating economy. Mr SHIU Ka-fai and Mr CHENG queried about the need for setting up a new RMLP Division comprising the proposed CLO post, 31 civil services posts and 13 contract staff given that an outsourced processing agent with its own staff members had already been appointed at end-2020 to assist in the administration of the RMLP Scheme and that there would be only some 27 000 cases seeking reimbursement under the RMLP Scheme each year. Both members considered that the Administration should critically examine the need for the proposed CLO post and review the ranking of the division head as well as the organization and work of the RMLP Division. The Chairman also requested the Administration to further elaborate the need for the post.

34. USLW advised that members' concerns and views were noted. Drawing reference to the outsourcing of the administration of the Employment Support Scheme ("ESS") launched by the Policy Innovation and Co-ordination Office ("PICO") to a private sector processing agent, USLW highlighted that PICO still had to handle a voluminous number of enquiries concerning policy issues of ESS as well as complaints from applicants. In anticipation of handling a considerable number of enquiries relating to the RMLP Scheme and the whole range of other duties, USLW said that there was a need for the setting up of the RMLP Division to be led by the proposed CLO to monitor the processing agent and oversee the policy and implementation of the RMLP Scheme.

Action

35. Commissioner for Labour ("C for L") added that the preparatory work for the RMLP Scheme was currently overseen by AC for L (D) in addition to his own duties and responsibilities. LD had critically reviewed the possibility of internal staff redeployment to absorb the duties of the proposed CLO post before putting forward the staffing proposal. It was noteworthy that there were currently only three permanent CLO posts in LD who had already been fully stretched by their own work, and the supernumerary post of CLO (Working Hours Policy) would lapse in March 2021. It was therefore operationally not possible for the incumbent CLOs to take up the substantial duties of the proposed CLO post. In the light of the perpetual basis of the RMLP Scheme under which around some 27 000 female employees would be entitled to the additional MLP involving reimbursement of public money of around \$498 million per annum, it was considered necessary to create the proposed CLO post to supervise and closely monitor the implementation of the RMLP Scheme. In view of the complexity of the multi-faceted tasks involved in implementing and overseeing the RMLP Scheme continuously, LD needed a directorate officer of sufficiently senior ranking and with rich experience to carry out extensive and high-level policy coordination.

36. C for L pointed out that the proposed CLO post would also assist in the formulation and execution of the operational arrangements for disbursing government subsidies to employers in relation to the abolition of the arrangement for "offsetting" severance payment and long service payment with employers' mandatory contributions under the MPF System. It was believed that synergy could be achieved in the light of the relevant experience in disbursing government subsidies under the RMLP Scheme.

37. USLW and C for L advised that apart from continuously supervising the overall operation of the RMLP Scheme, the proposed CLO post was required to monitor the performance of the processing agent to ensure its compliance with the policy objectives and standards laid down in the service contract. Notably, the incumbent of the proposed CLO post would lead the RMLP Division to continuously implement various new measures to enhance ML, including system management, contract management and tendering, policy support and public engagement, financial management as well as project and system support. C for L further advised that as the appointment of the processing agent would be subject to regular tendering exercises, LD needed to have its own staff to establish and monitor the implementation

Action

arrangements for ensuring uninterrupted provision of services of the RMLP Scheme during changes of processing agents in future. USLW and C for L stressed that LD was committed to implementing the reimbursement mechanism as soon as possible following the coming into operation of the Amendment Ordinance. In the event that the proposed CLO post was not supported, the relevant work would likely be continuously taken up by AC for L (D). However, it might have adverse impact on the pace of processing the reimbursement applications, having regard to the heavy work commitment of AC for L (D).

38. Mr SHIU Ka-fai considered that the work flow in processing the reimbursement applications, including vetting the required documents and calculating the reimbursement amount, should not be complicated. He did not see the need for such a high rank officer for this purpose. The Chairman pointed out that it should be simple and straightforward for most of the reimbursement cases with salary paid on monthly basis.

39. USLW responded that while reimbursement applications would normally be handled efficiently under the RMLP Scheme, it was expected that there would still be complex cases, such as verifications on verbal employment contracts, entitlement to MLP and calculation of MLP. C for L added that in reimbursing employers with the additional MLP, the incumbent of the proposed CLO post would have to devise a user-friendly and flexible mechanism which could accommodate different modes of wage components and calculation in the labour market for determining the exact reimbursement amount of each and every application. In addition, necessary safeguards should be put in place to ensure prudent use of public funds and prevent potential abuses.

40. In the light of processing reimbursement applications under the RMLP Scheme involving public money around \$500 million per annum, Mr KWOK Wai-keung considered that it was understandable that a CLO post was needed for discharging the relevant duties.

41. The Chairman asked about the imminent need for the CLO post if the incumbent would be tasked to formulate and execute the operational arrangements for disbursing government subsidies to employers under the abolition of the "offsetting" arrangement, which was expected to be implemented in around 2025.

Action

42. The Deputy Chairman pointed out that the proposal of creating one permanent CLO post in LD to take forward the enhanced statutory ML was not passed by FC in July 2020, but the Administration had now put forth the revised staffing proposal by turning the proposed post into a supernumerary one and adding responsibilities relating to the "offsetting" arrangement. Having regard to the perpetual basis of the abolition arrangement and the fact that the proposed CLO post would last for three years only if created, the Administration should provide more information in the latest staffing proposal on the circumstantial changes that justified the need for the proposed supernumerary CLO post.

43. USLW advised that the major responsibilities and duties of the proposed CLO post were detailed in paragraph 10 of the Administration's paper. While the Government was working on the abolition of the "offsetting" arrangement in full steam, implementation of the abolition proposal would necessitate highly complicated and controversial amendments of different pieces of legislation as well as formulation of meticulous implementation arrangements, including launching the employers' Designated Savings Account Scheme, for taking forward the proposal. The new tasks would require long-term and high-level strategies, planning and coordination work. Substantial efforts were needed to engage the relevant stakeholders, prepare the amendment bills, and map out the implementation details. The Government planned to introduce the relevant bills into LegCo in the 2021-2022 legislative session. The formulation of the implementation arrangements of the government subsidy scheme would have to be undertaken by the proposed CLO in tandem. The Administration would not rule out seeking approval to turn the post into a permanent one in the long run if so warranted. The Chairman called on the Government to expedite the relevant work on abolishing the "offsetting" arrangement without further delay.

44. Ms Alice MAK was concerned how enquiries from both employers and employees about the new RMLP Scheme would be handled and whether follow-up work would be undertaken by the RMLP Division. Mr KWOK Wai-keung sought clarification as to whether the enquiries about the new RMLP Scheme would be handled by the outsourced processing agent.

45. USLW advised that the proposed CLO would lead the newly established RMLP Division for effective implementation of the new ML regime and the RMLP Scheme, which included handling enquiries and

Action

complaints outside the service scope of the processing agent and those relating to policy issues, and collaborating with the Treasury on implementing the arrangements for effecting reimbursement payments. C for L added that the RMLP Division would collaborate with the processing agent and work out standard responses to certain common questions whereas LD's staff in the RMLP Division would handle enquiries outside the service scope of the processing agent (e.g. on the policy and implementation of the RMLP Scheme etc.). USLW appealed to members' support for the creation of the proposed CLO post.

46. Mr POON Siu-ping asked whether consideration would be given to creating the proposed supernumerary CLO post with duration of two years only. C for L said that the Administration would consider the suggestion though it would be more desirable to create the supernumerary post with duration of three years.

47. Mr KWOK Wai-keung enquired whether the Government had any long-term plan to administer and implement the RMLP Scheme by the Government direct. C for L responded that the Administration would not rule out such possibility in the long run.

48. In concluding the discussion, the Chairman said that most members raised no objection in principle to the Administration's submission of the staffing proposal to the Establishment Subcommittee ("ESC") for consideration. In view of members' concerns over the staffing proposal, the Administration might consider providing more information on the need for the post when submitting the relevant proposal to ESC for consideration.

49. There being no other business, the meeting ended at 6:18 pm.