LegCo Panel on Manpower
(For Meeting on 27 January 2000)

Result of the review of the provisions on wages under the Employment Ordinance

Introduction

This paper informs Members of the result of a review of the provisions on wages under the Employment Ordinance (EO) conducted by the Labour Department, which recommends preserving the status quo.

Background

Existing provisions on wages

2. The EO requires an employer to effect wages not later than seven days after the last day of the wage period or the completion/termination of the contract of employment.

3. The Employment (Amendment) (No. 2) Ordinance 1997 ("Amendment Ordinance"), which came into force on 27 June 1997, amended the definition of "wages" to expressly include travelling allowances and attendance allowances, attendance bonus, commission and overtime pay. It also provided that overtime pay should be taken into account in calculating the wages of an employee for the purpose of reckoning various statutory benefits if his overtime pay is of a constant character *or* the monthly average of his overtime pay over a period of 12 months immediately preceding the respective date is equivalent to or exceeds 20% of his average monthly wages during the same period (i.e. the 20% rule).

4. After the amendments came into operation, the Labour Department received views from some major employers on the amendments. Their main concerns were :

(a) Owing to the employment size of these establishments and their payroll procedures, they might not be able to effect all of the overtime pay within the statutory limit of seven days after it became due.

(b) Application of the 20% rule in calculating statutory benefits incurred administrative cost because the 12-month reference period for statutory benefits payable at different points of time was constantly moving.

<u>Result of the review</u>

4. The Labour Department has reviewed the provisions on wages, and in particular the definition of wages and the 20% rule. The review has concluded that no change should be made.

Payment of wages including overtime pay within seven days

5. It is considered not appropriate to change the time limit for payment of wages for the following reasons :

(a) The Amendment Ordinance did not change the definition of "wages" in substance. Overtime pay, being remuneration for work done, has always been considered as wages although this was not spelt out explicitly in the definition before the amendment. The Amendment Ordinance had only made this clear by including overtime pay in the definition.

(b) It is a long-standing requirement under the EO for employers to effect wages including overtime pay within seven days after it becomes due. Relaxing the limit is a retrogression in wage protection.

(c) To some employees, overtime pay constitutes a regular and significant part of their income. It would not be fair to them if pay for extra work done during overtime may be delayed to a later date.

(d) The seven-day rule already gives reasonable time for employers to calculate wages, including overtime pay.

20% rule in reckoning overtime pay

6. It is also considered appropriate to maintain the 20% rule in reckoning overtime pay for the purpose of various statutory benefits for the following reasons :

(a) Overtime pay which amounts to 20% or more of an employee's wages constitutes a substantial part of his income. It is fair to include it in the calculation of statutory benefits.

(b) The use of 12 months as the reference period in applying the 20% rule can minimise the effect of seasonal fluctuations as well as possible abuses.

Views of the Labour Advisory Board (LAB)

7. We have submitted the result of the review to the LAB. At its meeting held on 30 November 1999, Members accepted the recommendation made by the review.

Labour Department
January 2000