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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 May 2011**

Performance of driving duties by foreign domestic helpers

Purpose

This paper provides background information on the performance of driving duties by foreign domestic helper ("FDHs") and summarizes the discussions of Members on the issue.

Existing policy concerning the employment of FDHs

2. Since the shortage of local full-time live-in domestic helpers in the 1970s, FDHs have been allowed to enter Hong Kong to take up full-time domestic duties. FDHs are admitted into Hong Kong to work for a specific employer at a specified residence under a standard two-year contract.
3. The terms and conditions of employment of an FDH are set out in a standard employment contract ("SEC"), which imposes a mandatory live-in requirement to reflect the policy intention to admit live-in FDHs to make up for the shortage of local workers who provide such services.
4. Under the existing policy, an FDH should only perform domestic duties at his/her employer's residence and to serve the number of members of the employer's household as stated in the SEC. An FDH should only perform domestic duties for the employer as listed in the schedule of accommodation and domestic duties attached to the SEC. The five broad categories of domestic duties are household chores, cooking, looking after aged persons in the household, baby-sitting and child minding. Other domestic duties may be specified in the SEC but are subject to approval by the Immigration Department ("ImmD").

Imposition of a total ban on driving duties by FDHs

5. The Administration announced its plan to implement a total ban on driving duties by FDHs in September 1999. The Panel on Manpower and Panel on Security held joint meetings on 4 and 18 November 1999 to discuss the proposed ban.

6. While expressing support for the proposed ban, some members considered that it would be very difficult to take actions against FDHs performing full-time driving duties if the policy of allowing them to perform driving duties incidental to and arising from domestic duties was to be continued. They also considered that the employment opportunities of local drivers should be protected.

7. Some other members, however, considered that FDHs should not be barred from taking up driving duties simply because of the difficulties in ascertaining whether an FDH's driving duties were incidental to and arising from domestic duties. They urged the Administration to step up enforcement action against suspected cases of FDHs being deployed as full time chauffeurs while continuing to allow FDHs to perform driving duties incidental to and arising from domestic duties.

8. The Administration advised that enforcement against FDHs performing full-time driving duties was very difficult, given the difficulty in proving beyond doubt that the driving duty was not incidental to and arising from domestic duties.

Special permission for FDHs to perform driving duties

9. Taking into account the views of members and other interested parties on its proposal to impose a total ban on driving duties by FDHs, the Administration announced in December 1999 that a general ban on driving duties of FDHs would still be imposed with effect from 1 January 2000. However, a special arrangement would be introduced to provide for individual employers who had a genuine need for their FDHs to perform driving duties incidental to and arising from domestic duties to apply for permission to do so.

10. Under the special arrangement, the employer must provide, in the FDH's application form, full justifications and supporting information on the need of driving service to be performed by his FDH incidental to and arising from any of the five broad categories of domestic duties. The relevant FDH must be a live-in helper and possess a valid Hong Kong driving licence, whereas the

vehicle concerned must be registered under the name of the employer or his/her spouse. Both the employer and FDH must sign on the application form, declaring that they agree to and abide by the specified arrangement of driving duties. The special permission will become one of the conditions of stay imposed by ImmD on FDHs. An FDH who performs driving duties without special permission is in breach of his condition of stay. According to the Immigration Ordinance (Cap. 115), an FDH is liable to a fine of \$50,000 and imprisonment of two years on conviction. The employer may be liable to the same maximum penalty for aiding and abetting the breach of condition of stay by an FDH. In addition, an employer and FDH who provide false information in the application for special permission are liable on summary conviction to a fine of \$100,000 and imprisonment of two years.

11. At the joint meeting of the Panel on Manpower and Panel on Security on 21 December 1999, the Administration briefed members on the special arrangement. The Administration advised that it would step up enforcement action against suspected cases of malpractice.

12. Some members expressed support for the special arrangement. However, some other members were dissatisfied with the Administration's sudden change in the decision of imposing a total ban. They considered that the new measure was even worse than the original arrangement as some FDHs would be formally permitted to perform driving duties. It would be very difficult for the Administration to enforce the special arrangement. There was concern that the employment opportunities and livelihood of local drivers would be affected.

13. The Administration advised that as a record of FDHs allowed to perform driving duties incidental to and arising from domestic duties would be made available under the special arrangement, enforcement would be much easier.

Relevant papers

14. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

**Relevant papers on
Performance of driving duties by foreign domestic helpers**

Committee	Date of meeting	Paper
Panel on Manpower	22.7.1999 (Item VI)	Agenda Minutes
Panel on Manpower and Panel on Security	4.11.1999 (Item III)	Agenda Minutes
Panel on Manpower and Panel on Security	18.11.1999 (Item II)	Agenda Minutes
Panel on Manpower and Panel on Security	21.12.1999 (Item II)	Agenda Minutes
Legislative Council	22.11.2000	Official Record of Proceedings Pages 77 - 78 (Question)
Legislative Council	14.1.2004	Official Record of Proceedings Pages 29 - 37 (Question)
Legislative Council	16.2.2011	Official Record of Proceedings Pages 33 - 42 (Question)