

**Joint meeting of the LegCo Panels on Manpower and Security
on 4 November 1999**

**The Administration's responses to the submission from the
Hong Kong Employers of Overseas Domestic Helpers Association
on the ban on driving duties by foreign domestic helpers**

Background

Foreign domestic helpers (FDHs) are not allowed to work as full-time chauffeurs. However, under the existing standard employment contract, they are permitted to perform driving duties if these are incidental to and arising from domestic duties.

2. For some time now, the Government has received repeated complaints that some employers have deployed their FDHs to undertake full-time chauffeur duties and that the problem is becoming increasingly serious. Clearly, this is against the existing rules and undermines the employment prospects of local chauffeurs/drivers.

3. The Government has examined various options in an attempt to tackle the malpractice whilst, at the same time, allowing employers to retain the flexibility of engaging FDHs for incidental driving duties. Unfortunately, no viable solution could be found. The present arrangement whereby FDHs are allowed to undertake incidental driving duties has given rise to grey areas which make enforcement action virtually impossible. In the absence of a feasible alternative, we have concluded that a total ban is the only practical solution.

4. The LegCo Manpower Panel was consulted at its meeting on 22 July 1999 and unanimously supported the Government's proposal to introduce a total ban on driving duties by FDHs. After further consultation with labour unions, FDH employers' association, FDH bodies and foreign consulates, the Government announced on 30 September 1999 its decision to implement a total ban. With effect from 1 January 2000, the Immigration Department will only accept applications made under a new standard employment contract which prohibits the performance of driving duties.

5. The ban will be imposed as a condition of stay in the passport of FDHs by the Immigration Department. FDHs permitted to work under existing

contracts will not be affected. The ban will apply to them when their contracts expire and new ones are signed.

Responses to specific points raised by the Association

(a) The amendment to the standard employment contract for FDHs regarding the ban on driving duties has been initiated by the Education and Manpower Bureau as a matter of employment policy. However, the processing of applications for FDHs to enter or remain in Hong Kong to take up employment and the enforcement of the compliance with conditions of stay are the responsibility of the Immigration Department. Assistance from other law enforcing agencies, including the Police, will be sought as and when necessary. These come under the policy purview of the Security Bureau.

(b) 'Domestic servant' as defined under section 2 of the Employment Ordinance (EO) includes a garden servant, chauffeur and boatboy and any other personal servant of a like class. This term is referred to only in sections 31B(3) and 31RB which provide that the provisions on severance and long service payments will apply to an employee who is employed as a 'domestic servant' in, or in connection with, a private household as if the household were a business and the maintenance of the household were the carrying on of the business by the employer.

This definition of 'domestic helper' seeks only to ensure that domestic servants, like other employees, are entitled to severance and long service payments under the EO if they fulfil the required qualifications. It is not related in any way to the issue of whether or not FDHs should be allowed to take up driving duties in Hong Kong. The ban on driving duties by FDHs has nothing to do with the definition of 'domestic servant' in the EO and does not require any amendment to EO. The ban will be implemented through administrative measure, on which we do not normally consult the Labour Advisory Board.

(c) While FDHs will be banned from performing driving duties under the employment contract, they will continue to be allowed to drive in Hong Kong when this is not duty-related, for example driving for pleasure on their day off. There is no question of the ban on

driving duties violating human rights protection under the Basic Law.

- (d) The conditions of stay and terms of employment for FDHs are determined by the Government in the light of our immigration and employment policies and are subject to revisions as and when necessary. However, such revisions will only apply to new employment contracts entered into by the two parties from a cut-off date. We do not accept that the ban on driving duties by FDHs erodes the freedom of life style by the FDHs and their employers.
- (e) The standard employment contract for FDHs set out in clear terms the conditions of employment for FDHs in Hong Kong, including the contract period; the minimum allowable wage; entitlements to food and lodging, holidays, passages, medical benefits; conditions regarding termination of the contract; etc. It lays down the rights and responsibilities for both the employers and the FDHs.