

立法會
Legislative Council

LC Paper No. CB 1009/99-00
(These minutes have been seen
by the Administration)

Ref: CB2/MP+SE/1

LegCo Panels on Manpower and Security

**Minutes of Joint Meeting held on
Thursday, 18 November 1999, at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Members of Panel on Manpower

Hon LAU Chin-shek, JP (Chairman)
Hon LEE Kai-ming, SBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, JP
*Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon Michael HO Mun-ka
Hon LEE Cheuk-yan
*Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han
Hon CHAN Wing-chan
Hon LEUNG Yiu-chung
Hon SIN Chung-kai

Members of Panel on Security

Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Deputy Chairman)

Members attending : Hon Edward HO Sing-tin, JP
Hon Christine LOH
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon Mrs Miriam LAU Kin-ye, JP

Members absent : Members of Panel on Manpower

Hon Cyd HO Sau-lan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP
Hon YEUNG Yiu-chung
*Hon Andrew CHENG Kar-foo
Hon SZETO Wah

Members of Panel on Security

Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam, JP
Hon WONG Yun-kan
Hon Howard YOUNG, JP
Hon LAU Kong-wah

* Also member of Panel on Security

Public Officers attending : Item II

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Mr Herman CHO
Principal Assistant Secretary for Education
and Manpower

Mr K S SO
Principal Assistant Secretary for Security

Mr TSANG Kin-woo, JP
Assistant Commissioner for Labour

Mr LAW Yiu-tung
Principal Immigration Officer

**Attendance by
invitation** : Item II

Hong Kong Employers of Overseas Domestic Helpers
Association

Mrs YUNG MA Shan-ye, Betty
Chairperson

Mr Joseph LAW
Vice-Chairperson

Traffic Services Employees Association

Mr BUTT Yil-cheung
External Vice-Chairman

Mr HU Shun-gen
Secretary

Mr CHOW Kwok-hung
Organization Officer

Motor Transport Workers General Union

Mr LI Wing-sang
Chairman

Mr TANG Pak-chuen
Director, Kowloon Branch

**Clerk in
attendance** : Mrs Sharon TONG
Chief Assistant Secretary (2)1

**Staff in
attendance** : Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

I. Election of Chairman

Mr LAU Chin-shek was elected Chairman of the joint meeting.

II. Review of the driving duties by foreign domestic helpers (FDHs)

(LC Paper Nos. CB(2)2601/98-99(05), CB(2)246/99-00, CB(2)273/99-00, CB(2)396/99-00 and CB(2)415/99-00(01))

2. Members noted the submissions of the Employers' Federation of Hong Kong (EFHK) and the Joint Business Group on Labour Situation (JBGLS), which were tabled at the meeting.

(Post-meeting note : The submissions were circulated to members after the meeting vide LC Paper No. CB(2)438/99-00 on 19 November 1999.)

Enforcement against FDHs performing full-time driving duties

3. Referring to the submissions of EFHK and JBGLS, Mrs Selina CHOW said that the business community and many expatriates were opposed to the proposed total ban on the driving duties by FDHs. She questioned whether it was appropriate to impose a total ban merely because of enforcement difficulties. She asked whether the Administration had strictly enforced the existing policy on ban on full-time driving by FDHs and whether any prosecutions had been made.

4. Principal Assistant Secretary for Security (PAS(S)) said that under the existing policy in which FDHs were allowed to performing driving duties incidental to and arising from domestic duties, enforcement against FDHs performing full-time driving duties was very difficult. It was very difficult to prove beyond doubt that the driving duty was not incidental to and arising from domestic duties. With the proposed ban, it would be easier to take actions against FDHs performing full-time driving duties. He assured that cars driven by foreigners would not be stopped on the streets for the purpose of undertaking random checks. He added that from a security point of view, full-time driving by FDHs was not a problem to be addressed with priority. The problem was not serious in comparison with other offences, such as unapproved employment or overstaying, of FDHs. However, the Administration had to decide whether the proposed ban should be implemented to protect the employment opportunity of local workers or the existing policy should be continued so as to avoid inconvenience to some FDH employers.

5. Mr David CHU said that to address the problem of full-time driving of FDHs, enforcement should be stepped up rather than imposing a total ban. He suggested that the Administration should focus its surveillance on a few number of suspected FDHs at a time. PAS(S) responded that even a 24-hour surveillance on suspected FDHs might not be of much assistance, as FDHs could still defend that their driving duties were incidental to and arising from domestic duties.

Action

6. In response to Mr LEUNG Yiu-chung, PAS(S) said that enforcement against FDHs performing full-time chauffeur duties was very difficult under the existing policy. It would become much easier if the total ban was implemented.

7. Miss Christine LOH said that the Administration had advised at the last joint meeting that enforcement against full-time driving by FDHs would still be difficult even with the proposed ban. In view of this, one would find it very difficult to support the proposed ban. Deputy Secretary for Education and Manpower (DSEM) responded that the Administration had carefully examined whether there were better solutions to the problem before deciding on the proposed ban. While enforcement might be complicated during the transitional period when some FDHs under existing contract would be permitted to perform incidental driving duties, it would be easier after two years when all FDHs would be banned from driving duties. Miss Christine LOH said that the proposed ban would not create job opportunities for local drivers. Although a trade union had said at the last joint meeting that a very experienced driver could not find a driving job even though he was prepared to accept a monthly salary of \$7,000, she had been informed by an employer that he was experiencing difficulty in recruiting drivers at a monthly salary of \$7,000. She said that problems encountered by local drivers and employers might be due to a failure in reaching an agreement on employment conditions.

8. Mr Kenneth TING said that instead of imposing a total ban on the driving duties of FDHs, the Administration should step up its enforcement against full-time driving by FDHs. He questioned why the Administration had found it difficult to take action and investigate into alleged cases, whereas labour unions had successfully gathered much information about full-time driving by FDHs. PAS(S) responded that the Administration was not reluctant to take actions. However, under the existing policy, a FDH could defend that his or her driving duty was incidental or arising from domestic duties, thus resulting in enforcement difficulties.

9. Mr CHAN Wing-chan shared the Administration's view that it would be very difficult to take actions against FDHs performing full-time driving duties if the existing policy of allowing them to perform driving duties incidental to and arising from domestic duties was continued.

10. Mr LEE Kai-ming said that labour unions had supplied to the Administration much information on FDHs performing full-time chauffeur duties. He asked whether the latter had taken actions to protect the employment of local drivers and to ensure priority to the employment of local workers. DSEM responded that the Labour Department (LD) had referred complaints received to the Immigration Department (ImmD) for investigation. To his knowledge, prosecutions had not been made since it was very difficult to prove beyond doubt that the driving duty was not incidental to and arising from domestic duties. He stressed that it had always been the Administration's policy that priority should be given to the employment of local drivers.

Action

11. Mr Edward HO said that FDHs should be permitted to perform driving duties incidental to and arising from domestic duties but prohibited from undertaking full-time driving duties. He asked whether the Administration had taken any actions against FDHs performing full-time driving duties and prosecuted the FDHs concerned. He considered that the Administration should step up its enforcement against full-time driving by FDHs.

12. PAS(S) responded that the Administration had investigated into complaints about FDHs performing full-time driving duties. As legal advice indicated that there was insufficient evidence, no prosecution had been made in the past.

Statistics on FDHs holding local driving licences and FDHs performing full-time driving duties

13. In response to Mr CHAN Kwok-keung, DSEM said that as at 3 July 1999, there were 2 367 FDHs holding local driving licences in Hong Kong. Among them 177 FDHs had their licences issued for the first time before 1990. This indicated that there was a substantial increase of FDHs holding local driving licences since 1990.

14. As regards statistics on the number of FDHs performing full-time driving duties, Mr BUTT Yil-cheung said that a survey revealed that 24 of 70 family drivers in Villa Monte Rosa were FDHs. In Evergreen Villa, 8 out of a total of 28 drivers were FDHs. He added that the problem was first found in the late 1980s and had become more serious since 1993. Mr LI Wing-sang added that a survey revealed that 13 out of 50 family drivers in Grenville House, and 20 of 40 drivers in Carlos were FDHs. He added that a survey carried out by the Motor Transport Workers General Union revealed that 407 of 1 375 chauffeur jobs were taken up by FDHs. There were also complaints that some local drivers were forced to retire or resign and the resulting vacancies were subsequently filled by FDHs.

15. Miss Christine LOH asked whether the trade union had spoken to the foreign drivers to verify their FDH status in the surveys. Mr BUTT Yil-cheung said that the possibility of a non-FDH foreign driver being mistaken as a FDH was very low since members of the trade union had been working in the respective housing estates for a very long time. He added that membership of the Traffic Services Employees Association (TSEA) was not confined to local Chinese drivers. There were two Pakistani members in TSEA.

16. Mr LEE Cheuk-yan expressed concern that statistics provided by the trade unions revealed that about 25% of family drivers had been replaced by FDHs. He asked the Administration about the number of complaints received, the number of prosecutions made and the number of successful prosecutions against FDHs performing full-time driving duties. PIO responded that about 1 600 investigations had been made in 1998 about FDHs taking up unapproved employment and overstaying. Out of these, about 800 prosecutions had been made. However, there

Action

were no statistics specific to FDHs performing full-time driving duties. There had been no prosecution relating to full-time driving of FDHs. He added that ImmD and LD had jointly looked into the problem since late 1995. Legal advice, which had been sought on a number of occasions, revealed that there was insufficient evidence to prosecute the FDHs concerned.

Scope of domestic duties

17. Mr Ronald ARCULLI questioned why the Administration had proposed a total ban on the driving duties of FDHs despite the fact that full-time driving of FDHs was not serious in comparison with other offences of FDHs such as other unapproved employment or overstaying. He asked the Administration to provide the definition of domestic duties under the Immigration Ordinance (Cap. 115) (IO). He considered that the legislative intent of section 11 of IO, which empowered D of Imm to impose any condition of stay on FDHs, could not be the protection of the employment opportunity of local workers. Employment contracts for FDHs were intended for the protection of FDHs rather than local workers. PAS(S) responded that the Administration's immigration and manpower policies had always been closely related. In allowing FDHs to work in Hong Kong, regard should be made to the protection of the employment of local workers. DSEM added that although a domestic servant was defined under the Employment Ordinance to include a garden servant, chauffeur, boatboy and any other personal servant of a like class, it was necessary in the determination of immigration policy on FDHs to have regard to the Administration's policy on importation of labour, under which local workers should be given priority in employment. He added that with a decrease in the number of "amahs" in the late 1970s, FDHs were admitted to perform domestic duties formerly carried out by "amahs", which included washing of clothes, taking care of old and young family members, and cooking.

18. In response to Mr Ronald ARCULLI, DSEM said that local family drivers were allowed to perform other domestic duties in addition to driving. Mr Ronald ARCULLI suggested that the Administration should seek legal advice on whether the Administration's differential treatment of FDHs and local workers was in contravention of the Hong Kong Bill of Rights Ordinance (Cap. 383). He reiterated that the legislative intent of section 11 of IO could not have been the protection of the employment of local workers. PAS(S) responded that legal advice had been sought on the issue before a decision was made on the proposed ban.

19. Dr LUI Ming-wah said that while FDHs should be prohibited from performing full-time driving duties, they should be allowed to continue performing driving duties incidental to and arising from domestic duties. He said that the purpose of admitting FDHs to work in Hong Kong was to relieve housewives from domestic work so that they could go out for work. He considered that in order to increase Hong Kong's competitiveness, employees' ability should be fully utilized. He expressed concern that the Administration was starting to interfere into the determination of job duties. He said that it would be unfair to allow local domestic helpers to perform driving

Action

duties while prohibiting FDHs from performing driving duties.

20. DSEM reiterated that FDHs had been admitted mainly for performing domestic duties formerly carried out by "amahs", such as washing of clothes and cooking, within the home of their employers. A majority of the 180 000 FDHs in Hong Kong were performing such duties. The proposed ban was consistent with the original intention for the admission of FDHs to work in Hong Kong. If FDHs were to be fully deployed, problems might arise as FDHs might then be allowed to work in shops or offices. He added that the Administration's policy of protecting local workers and giving priority to the employment of local workers was also widely adopted in other countries.

Consultation on the proposed ban

21. Mr Ronald ARCULLI said that many foreign investors had expressed concern that if a ban on driving duties by FDHs was imposed on the ground of enforcement difficulties against full-time driving by FDHs, other bans might be imposed in the future merely because of enforcement difficulties in other areas. There was also concern that the Administration was interfering into private contracts. He said that an experienced solicitor had said that it was inappropriate for D of Imm to implement labour policy through IO and it was undesirable for labour policy to be biased either towards local workers or foreign workers. He also questioned why associations of foreign investors had not been consulted on the issue. DSEM responded that the Panel and all the parties concerned had been consulted on the proposal. All the views received had been carefully considered before a decision was made by the Administration. PAS(EM) added that after consultation with the Panel on 22 July 1999, the Administration had consulted 16 FDH employees associations, embassies relating to FDHs and the Hong Kong Employers of Overseas Domestic Helpers Association. It had not consulted business associations since only the parties directly related to FDHs were consulted. Mr Ronald ARCULLI said that the Administration had only selectively implemented proposals supported by Panels or committees of LegCo. He said that the Administration should also have consulted business associations on the issue. He requested the Administration to provide detailed information on the parties consulted in writing.

Adm

22. Mr James TIEN stressed that the Liberal Party was opposed to the Administration's proposed ban. He said that the Liberal Party did not express views on the issue at the Manpower Panel meeting on 22 July 1999 because the Administration stated at that time that it would consult the parties concerned. He said that there had not been any issue which had arouse so much attention from expatriates. He added that members of the International Business Committee had expressed their deep concern about the issue at a recent bi-monthly meeting with the Chief Secretary for Administration (CS for A). In response to Mr James TIEN, DSEM said that he was not aware of the response given at that meeting by CS for A.

Action

23. Mr LEE Kai-ming said that FDHs were not allowed to perform driving duties before early 1990s. The Administration had not consulted labour unions before making its decision in the early 1990s to allow FDHs to perform driving duties incidental to and arising from domestic duties. He asked whether the Administration had reviewed its mistake in the past, which had resulted in FDHs deployed for duties such as driving, working in retail shops and delivery companies, and how it would respond to the pressure from the business sector. DSEM said that he was not aware of whether labour unions were consulted before the policy change in 1990s. To his knowledge, the decision was made on the grounds that FDHs would not perform full-time driving duties and cases in which FDHs performing driving duties incidental to and arising from domestic duties should be very rare.

24. Miss Christine LOH said that the widespread concerns expressed after the announcement of the proposed ban reflected that consultation had not been comprehensive enough. The Administration was not even aware of the existing extent of abuse. She asked whether the Administration would reconsider the proposed ban. She added that it was inappropriate for the Administration to compare the duties of FHDs with those of "amahs" in the old days. DSEM responded that the Administration had consulted the parties concerned and carefully examined the issue in the light of views received before arriving at its decision. The proposed ban would be implemented as planned on 1 January 2000. Nevertheless, the Administration was prepared to consider any other specific proposals on the issue.

Other issues

25. Miss CHAN Yuen-han said that the proposed ban was necessary in view of the enforcement difficulties. Referring to the submissions of the EFHK and JBGLS, she expressed concern that there might be misconception that labour unions were hindering foreign investment in Hong Kong. She stressed that labour unions in Hong Kong had no intention to hinder foreign investment in Hong Kong.

26. Miss CHAN Yuen-han and Mr CHAN Wing-chan asked whether the Administration would change its proposal in the face of objection from some business associations. DSEM responded that the new proposal was formulated after consultation with the parties concerned and after due consideration had been given to other alternative. It was consistent with the Administration's policy of giving priority to the employment of local workers. As announced by the Administration on 30 September 1999, the proposed ban would be implemented on 1 January 2000.

27. In response to Mr David CHU, DSEM said that after implementation of the proposed ban, FDHs would still be allowed to apply for driving licences since they would still be allowed to drive in Hong Kong when the driving was not duty-related, such as driving for pleasure on their rest days. However, the performing of driving duties incidental to and arising from domestic duties should no longer be found in two years' time. If a FDH was found to be driving with his or her employer in the car, the Administration would follow-up the case.

Action

28. Mrs Selina CHOW said that the Administration had not provided sufficient justifications for the proposed ban. Consultation on the issue had also been insufficient. She considered that the proposed ban would not create employment for local drivers, as most of the employers concerned belonged to the middle class who could not afford to employ a full-time local driver. The proposed ban would only bring about inconvenience to families employing FDHs. She reiterated that the Administration should step up its enforcement and gather more evidence on offenders. She added that the 2 000 FDHs in possession of driving licences should not be penalized merely because a small proportion of them were performing full-time driving duties. While agreeing that the proposed ban might not necessarily create employment for local drivers, DSEM said that there were FDHs being employed as full-time drivers. If these families had a need for full-time driver, they should consider employing a full-time local driver. He added that out of about 180 000 families employing FDHs, only about 2 000 had employed FDHs with a driving licence. The number of families affected by the proposed ban should be relatively small. Mr LEE Cheuk-yan said that the living of a few hundred or more drivers whose full-time driving jobs were taken up by FDHs was obviously more important than the convenience of around 2 000 families.

29. Miss CHAN Yuen-han reiterated that domestic helpers should only perform domestic duties and the employment opportunity of local drivers should be protected.

30. Mr Ronald ARCULLI and Mrs Selina CHOW suggested that each member present should indicate his or her own stand on the issue for record purpose. The Chairman, Mr Michael HO, Mr LEE Cheuk-yan, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Wing-chan and Mr SIN Chung-kai expressed support for the proposed ban, while Mrs Selina CHOW, Mr Kenneth TING, Mr James TIEN, Mr David CHU, Mr HO Sai-chu and Mr Ronald ARCULLI opposed to the proposed ban. Miss Christine LOH and Mrs Miriam LAU, who were not members of the Panels, also opposed to the proposed ban.

31. There being no other business, the meeting ended at 4:25 pm.