

立法會
Legislative Council

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LegCo Panels on Manpower and Security

**Minutes of Joint Meeting held on
Tuesday, 21 December 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 James TIEN Pei-chun, JP

*Hon David CHU Yu-lin

Hon HO Sai-chu, SBS, JP

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 CHAN Kam-lam

Hon LEUNG Yiu-chung

Members of Panel on Security

Hon James TO Kun-sun (Chairman)

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

Hon Howard YOUNG, JP

**Member
attending** : Hon Christine LOH

**Members
absent**

: Members of Panel on Manpower

Hon LEE Kai-ming, SBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon Michael HO Mun-ka
Dr Hon LEONG Che-hung, JP
Hon SIN Chung-kai
Hon YEUNG Yiu-chung
*Hon Andrew CHENG Kar-foo
Hon SZETO Wah

Members of Panel on Security

Hon Albert HO Chun-yan
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam, JP
Hon WONG Yun-kan
Hon LAU Kong-wah

* Also member of Panel on Security

**Public Officers
attending**

: Item II

Mr Joseph WONG, GBS, JP
Secretary for Education and Manpower

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

Mr Timothy TONG
Deputy Secretary for Security

Mr Francis CHENG
Assistant Secretary for Security

Mr Matthew CHEUNG, JP
Commissioner for Labour

Mr P T CHOY
Deputy Director of Immigration

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

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

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I. Election of Chairman

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

II. Follow-up on review of the driving duties by foreign domestic helpers (FDHs)

(LC Paper No. CB(2)683/99-00(01))

2. At the invitation of the Chairman, Secretary for Education and Manpower (SEM) briefed members on the revised measure on driving duties by foreign domestic helpers (FDHs). He said that under the revised measure, a general ban on driving duties by FDHs would be imposed with effect from 1 January 2000. A special arrangement, which would be administered by the Immigration Department (ImmD), would be introduced to provide for individual employers, who had genuine need for their FDHs to perform driving duties incidental to and arising from domestic duties, to apply for permission to do so. He stressed that the revised measure was more stringent than the present arrangement on driving duties of FDHs. The Administration would step up enforcement action against suspected cases of malpractice. Where there was sufficient reason to believe that a malpractice had occurred but there was insufficient evidence to pursue the case in court, ImmD would impose administrative sanctions such as banning employers from participating in the special arrangement.

3. In response to the Chairman, SEM said that for contracts commencing from 1 January 2000, FDHs would not be allowed to perform driving duties upon renewal of their employment contract unless approval was given by D of Imm for performing driving duties incidental to and arising from domestic duties.

4. Miss CHAN Yuen-han said that labour unions generally considered that the new measure was even worse than the present arrangement, as some FDHs would be formally permitted to perform driving duties. She said that the papers provided by the Administration in the past indicated that the Administration had completed the consultation process before arriving at the original decision of a total ban on driving duties by FDHs. She asked why the original decision was suddenly changed by the Executive Council (ExCo). The Chairman added that the Administration had reiterated at the joint meetings of the Panels on Security and Manpower on 4 and 18

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November 1999 that the Administration would not change its decision of a total ban on the driving duties of FDHs. He asked why the Administration had changed its decision in such a short period of time. SEM responded that the revised measure was drawn up jointly by the Education and Manpower Bureau (EMB) and the Security Bureau (SB). ExCo was only informed of the revised measure. He added that although the revised measure would meet the expectations of labour unions to a lesser extent than a total ban, it was still an improvement over the present arrangement on driving duties by FDHs. The Administration had had regard to the interests of local drivers in arriving at the revised measure. He added that at the joint meetings on 4 and 18 November 1999, there were divided and strong views among Members on the implementation of a total ban on driving duties by FDHs. A number of submissions were also received after the meetings.

5. Mr CHAN Wing-chan said that the Hong Kong Federation of Trade Unions protested against the Administration's sudden change of the proposed total ban on the driving duties of FDHs. He considered that this was an obvious example of conspiracy between the Administration and the business sector. He asked whether the change was due to pressure from the business sector. SEM reiterated that the revised measure was proposed jointly by EMB and SB, which would bear full responsibility for the decision. As the special arrangement would provide the Administration with a record of FDHs allowed to perform driving duties incidental to and arising from domestic duties, enforcement would be much easier. He stressed that the employment of local drivers would be better protected under the revised measure.

6. Mr James TIEN said that the change reflected the importance of a full consultation. It also reflected that conspiracy between the Administration and labour unions was not workable. He considered that as the majority of members of the Panel on Manpower were labour union representatives, consultation with the Panel might not be adequate. In this connection, the Chairman said that only 10 out of 21 members of the Panel on Manpower had labour union background.

7. Mr James TIEN asked whether an employer would not be regarded as abusing the special arrangement if all the conditions and requirements stated in paragraph 5 of the Administration's paper were complied with. SEM responded that permission would be given for a FDH to perform driving duties incidental to and arising from domestic duties if the requirements stated in paragraph 5 of the Administration's paper were complied with. It would amount to malpractice under the special arrangement if a FDH was found to perform full-time driving duties. Prosecution against the FDH and employer concerned would be made by the Administration if there was sufficient evidence for taking such an action. Where there was insufficient evidence to pursue the case in the court, administrative sanctions such as withdrawing the permission for the FDH concerned to perform driving duties arising from domestic duties would be considered. In response to a further question from Mr TIEN, SEM said that as if the permission was granted by the Administration through administrative arrangement, it would have the right to withdraw the permission. Deputy Director of Immigration

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(DD of Imm) added that the permission was granted by virtue of section 11 of the Immigration Ordinance (Cap. 115) (IO).

8. Mrs Selina CHOW expressed support for the Administration's revised measure. She asked how the Administration would ensure that applications would be processed fairly and impartially. She also asked about the channel for lodging an appeal in respect of D of Imm's decision. DD of Imm responded that permission for performing driving duties incidental to and arising from domestic duties would be granted if the FDH concerned had to perform domestic duties for most of his or her time and satisfied the requirements stated in paragraph 5 of the Administration's paper. Permission would normally be given in about one week's time. ImmD would issue leaflets on the revised measure. Persons dissatisfied with a decision of D of Imm could write to D of Imm requesting the reconsideration of his application. He could also lodge an appeal to the Chief Executive (CE) in Council under section 53 of IO. In response to Mrs CHOW, he said that the reconsideration of an application by D of Imm would normally take a short period of time, while the consideration of an appeal by the CE in Council would normally take a few months.

9. Mr James TO requested the Administration to explain the severe inconvenience caused by a total ban on the driving duties of FDHs. He expressed concern about how the Administration would investigate into suspected cases of malpractice and prevent abuse. He asked whether a FDH who drove his employer's children to school could also drive a child who lived next door to the same school. SEM explained that the driving duties of a FDHs should only be incidental to and arising from domestic duties. Domestic duties which were stated in the contract of employment, included miscellaneous housework, cooking, taking care of the aged family members and children. He stressed that an application under the special arrangement could only be submitted with the consent of the FDH concerned. The special arrangement would facilitate effective monitoring and enforcement against abuse, as the Administration would have a full record of FDHs permitted to perform driving duties arising from domestic duties together with the licence plate numbers of designated vehicles. DD of Imm added that the Administration would mainly act on complaints. A complaint hotline would be set up to enable members of the public to report suspected cases of malpractice to ImmD. Where necessary, legal advice would be sought on borderline cases in deciding the actions to be taken.

10. Mr James TO asked whether a salary of \$3,670 for FDHs who performed domestic duties as well as driving duties incidental to and arising from domestic duties would affect the employment of local drivers. SEM responded that the monthly salary of \$3,670 was a minimum salary. An employer could pay a higher salary to his FDH. He stressed that under the special arrangement, FDHs would be permitted to perform driving duties incidental to and arising from domestic duties, such as driving the employer's children to school or aged parents to hospital for medical treatment. He added that only around 2 000 FDHs out of nearly 190 000 FDHs in Hong Kong were holding local driving licences. Although different people might have different views on whether the performing of driving duties by FDHs would

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affect the employment of local drivers, he believed that the new measure would have a positive effect on the employment of local drivers.

11. Mr LEE Cheuk-yan said that the Administration had only considered the inconvenience caused to employers. It had neglected the views of labour unions and the livelihood of local drivers. It had not balanced the interests of the two sides. He considered that the new measure would not protect the interests of local drivers. On the other hand, the publicity on the issue would probably cause more employers to require their FDHs to perform driving duties. The introduction of an approval mechanism would cause the public to think that the arrangement was being legalized. He asked whether the sudden change in policy was due to submissions from some foreign businessmen to CE or the Chief Secretary for Administration (CS for A), and whether CE or CS for A had given any form of instruction on the revised measure. He questioned why ExCo had not discussed the original proposal of a total ban but subsequently discussed the revised measure. He also questioned why some ExCo Members had to temporarily withdraw from the meeting when the issue was discussed. SEM reiterated that the revised measure was jointly drawn up by EMB, SB, the Labour Department and ImmD. He said that while a large number of submissions had been received by CE, CS for A, ExCo and EMB, he had not received any instruction regarding the issue from CE or CS for A. ExCo had only been informed of the revised measure. As the procedures and discussion of ExCo were confidential, he was not in a position to provide further information. He stressed that the revised measure was an improvement over the existing arrangement. His statements were confirmed by the Deputy Secretary for Security.

12. Mr LEUNG Yiu-chung said that both local drivers and FDHs would suffer from the Administration's revised measure. He asked whether the Administration had made an analysis of the quantified effect of the revised measure on the employment of local drivers. SEM responded that the quantified effect would be reflected from the number of approvals made under the special arrangement. He added that the Administration had undertaken to carry out a review on the special arrangement one year after implementation. As there were about 2 000 FDHs holding local driving licences, he envisaged that the number of applications should not deviate a lot from this figure.

13. Mr CHAN Kwok-keung requested the Administration to report the number of applications, the districts in which the employers resided to the Panel regularly. Miss CHAN Yuen-han said that the Administration should also provide information on the effect of the revised measure on the income of local drivers other than family drivers. SEM agreed to consider the request with the relevant policy bureaux and government departments. He added that the information requested by Miss CHAN might not be easy to identify. He undertook to provide members with statistics on the number of applications received and approved in about three months after implementation of the special arrangement.

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14. Miss Christine LOH asked about the number of FDHs arrested in the past for performing full-time driving duties and how the Administration would enforce the revised measure. She also questioned whether the hotlines as stated in paragraph 8 of the Administration's paper would be of any assistance in enforcement. DD of Imm said that ImmD had received four to five complaints in the past. Due to insufficient evidence, no prosecution had been made. He added that although the Administration would mainly act on complaints under the revised measure, it would monitor the situation and investigate into suspected cases of malpractice.

15. Dr LUI Ming-wah said that the ability of FDHs should be fully exploited to enhance productivity. The measure should not affect the employment of local drivers, as the employers concerned were usually those who would not employ full-time drivers. He considered that the special arrangement would be difficult to enforce.

16. Mr James TO said that if the employer concerned was living in a remote district, allowing his FDH to perform driving duties incidental to and arising from domestic duties might affect the income of taxi drivers. He asked whether factors such as whether there were children in the employer's family and whether the employer concerned was living in a remote district would be considered in assessing an application. SEM responded that under the special arrangement, employers would be required to submit applications. The Administration would be provided with information which would facilitate enforcement. The Administration did not want to create complicated application procedures. It would not look into the very details of each case in assessing applications. He said that the Administration had not analyzed the effect of the revised measure on the income of taxi drivers. Such an analysis would be very difficult to carry out. DD of Imm added that an application would normally be approved if the conditions set out in paragraph 5 of the Administration's paper were met and the FDH concerned would be mainly involved in performing domestic duties. He added that this practice was consistent with the assessment of applications for admission of the nearly 190 000 FDHs to work in Hong Kong in the past.

17. Mrs Selina CHOW said that the examination of the effect of the revised measure on the income of taxi drivers would imply that the effect on the income of drivers of other kinds of public transport would also have to be examined. She said that the Liberal Party had always took the view that FDHs should not be allowed to perform full-time driving duties. However, they should be allowed to perform driving duties incidental to and arising from domestic duties. She added that besides employers, a large number of FDHs had also objected to a total ban on their driving duties. She asked whether employers and employees had both requested the Administration to reconsider its initial proposal of a total ban. SEM responded that besides the submissions of labour unions, submissions expressing strong views on the issue had also been received from trade associations, local and expatriate employers. He added that the Administration had tried to balance the interests of various parties in drawing up the revised measure.

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18. Mr LEE Cheuk-yan said that it was very unusual for the Administration to have such a radical change within a short period of time. He said that it would be very difficult for ImmD to enforce the new measure, which only differed from the present arrangement in that the Administration would have a list of vehicles permitted to be driven by FDHs. It would be of little use especially if no patrolling by ImmD officers would be carried out on the road and the police would not be involved in enforcement. Miss CHAN Yuen-han shared the same view. SEM responded that the revised measure would be implementable. As the special arrangement was an administrative one, the Administration could consider banning an FDH from performing driving duties arising from domestic duties if there was insufficient evidence to pursue a case in court despite there was sufficient reason to believe that a malpractice had occurred.

19. Mr LEE Cheuk-yan said that there were reports that an ExCo Member had instructed his FDH to drive to the airport and pick up his grandchild. He asked whether this duty could be regarded as a driving duty arising from domestic duties.

20. Mr James TIEN said that some LegCo Members were also reported to be deploying FDHs for full-time driving duties. He asked whether the FDH of the ExCo Member concerned would be in breach of the revised measure if the grandchild of the ExCo Member only came to Hong Kong once a year.

21. SEM responded that it would usually be necessary to examine the background and circumstances of a case. Where necessary, legal advice might have to be sought on individual cases. He said that as a general rule, FDHs would be allowed to perform driving duties incidental to and arising from domestic duties if approval had been given by D of Imm. DD of Imm added that whether a driving duty arose from domestic duties would depend on the circumstances. He added that the special arrangement would require the employer to provide the name of the FDH concerned, and the licence plate number of the designated vehicle which should be registered under the name of the employer or his spouse. Where the vehicle was registered under the name of a company, the company should certify that the vehicle was provided for the personal and family use of the person concerned.

22. Miss CHAN Yuen-han considered that it would be very difficult for the Administration to enforce the revised measure. She commented that the Administration had not balanced the interests of employers and local drivers. She said that there were reports that the decision to adopt the revised measure was made on the grounds that local drivers were reluctant to work at early hours, unwillingly to work for 24 hours a day and not good enough in English. She pointed out that local drivers had been working for foreign employers since many years ago. It was not until the past ten years that FDHs began to take up driving duties. There should not be any doubt about their ability to communicate in English. In fact, most drivers were willing to work at early hours. Demanding any worker to work for 24 hours a day would be unreasonable anywhere in the world. She added that FDHs in possession of local driving licences were mostly working for the very rich or senior

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government officials, not the middle class. SEM responded that the decision for the revised measure was not made on the basis of the three reported reasons. Although a total ban would be easier to enforce, it would cause severe inconvenience to some employers. The revised measure, which was a slight modification of the original one of a total ban, would provide better protection for the employment of local drivers.

23. Mr James TO considered that the Administration would face much difficulties in enforcing the revised measure. The rejection of an application might be subject to judicial review. The definition of the term "arising from domestic duties" was very wide and might create a loophole. The approval of applications under the special arrangement might cause the number of FDHs holding local driving licences to increase rapidly. He considered that the Administration should issue guidelines on the revised measure and seek legal advice whenever necessary.

24. The Chairman requested the Administration to issue letters to Executive Council Members, Legislative Council Members and senior government officials reminding them of the restrictions on driving duties by FDHs.

Adm

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

Legislative Council Secretariat
22 February 2000