

For discussion on
22 July 1999

Legislative Council Panel on Manpower

Review of the Driving Duties of Foreign Domestic Helpers

Introduction

This paper seeks members' views on a proposal to impose a total ban on driving duties by Foreign Domestic Helpers (FDHs).

Background

2. At present, FDHs are not permitted to work as full-time chauffeurs. The 'Schedule of Accommodation and Domestic Duties' (the Schedule) to the standard employment contract for FDHs stipulates that **'Application for entry visa to work as full-time chauffeur will not be approved.'** However, the Schedule also permits FDHs to perform driving duty **if it is incidental to and arising from domestic duties.**

3. Since 1993 there have been complaints from trade unions of local drivers that an increasing number of FDHs was being deployed by their employers to perform full-time driving duties and thus adversely affecting the employment opportunity and wage level of local drivers. The Motor Transport Workers General Union wrote to the Commissioner for Labour in October 1998 claiming that a survey carried out by the Union had revealed that out of 1,375 chauffeur jobs, 407 had been taken up by FDHs. The Union and some Legislative Council Members have been calling for a total ban on driving duties by FDHs. The local media has also expressed concern over the matter, particularly given the current high unemployment.

Enforcement Constraints

4. It is Government's existing policy not to permit FDHs to work as full-time chauffeur as local drivers are available. The current minimum wage for FDHs, at \$3,670 per month is also lower than the market rate for local chauffeurs. If they were allowed to undertake full-time chauffeur duties, the employment opportunity of local chauffeurs would be adversely affected. On the other hand, some employers have found it convenient, where FDHs are capable of driving, to require them to undertake driving duties incidental to and

arising from domestic duties e.g. driving the employer's children to and from school, driving to the market etc. This is permitted under the current arrangement.

5. The provision permitting FDHs to undertake driving duties incidental to and arising from domestic duties, while well intentioned, has rendered enforcement action against suspected cases of FDHs having been deployed as full-time chauffeurs difficult. This is because the term "incidental to and arising from domestic duties" could give rise to many grey areas. For example, a FDH found driving could claim that the duty was incidental to or arising from a domestic duty. At the same time, it is very difficult to prove that a FDH was performing driving duty on a full-time basis.

6. Under the present situation, the Immigration Department can only take action against the employer and/or the FDH when they are found to have committed an offence under section 42(1) of the Immigration Ordinance or an offence under section 18 of the Immigration Service Ordinance. That is, when they are found to have knowingly furnished false information to an immigration officer for the purpose of obtaining an employment visa for the FDH, or misled any member of the Immigration Service by giving false information or made false statements in order to conceal the real purpose of employing the FDH to work as a full-time chauffeur. It is necessary to have evidence that the FDH and his employer had knowledge that the representation was false before the actual making of the representation to an immigration officer. In most of these cases, the only available evidence come from the admissions of the FDH and his employer. Since they are consenting parties to the offence, such evidence is extremely difficult to obtain.

Considerations

7. The Administration has just completed a matching exercise comparing the records of the Immigration Department and the Transport Department. The results show that as at 3 July 1999, there are 2,367 FDHs (1,955 males and 412 females) in Hong Kong holding valid local driving licences. Among them, 177 FDHs had their licences issued for the first time between 1974 and 1989. As for the remaining 2,190 FDHs, their driving licences were issued for the first time between 1990 and 1999 as follows:-

| Year | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999* |
|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| No. of D/L issued | 81 | 139 | 166 | 244 | 234 | 342 | 222 | 217 | 370 | 175 |

(Note: * Figure up to 3 July 1999)

The figures indicate that the number of FDHs applying for the issue of local driving licences has increased steadily in recent years. Most of these FDHs are male.

8. At the same time, during the first 6 months of 1999, 3,533 job registrants were looking for driver vacancies at the Local Employment Service of the Labour Department, but only 306 were placed.

9. Given that the FDHs are engaged mainly to perform domestic duties such as household chores, minding of children and elderly care, it is not essential that they should perform driving duties. This is demonstrated from the fact that of the over 184,100 FDHs in Hong Kong, only 2,367 or 1.2% currently possess driving licences. A ban on driving duties by FDHs should not therefore cause undue inconvenience to local employers. Furthermore, as FDHs are not permitted to perform full-time chauffeur duties, a ban on driving duties by FDHs should not result in loss of jobs or other hardships caused to FDHs.

Proposed course of action

10. It is proposed to impose a total ban on driving duties by FDHs. This would prevent local chauffeurs jobs from being taken up by FDHs. It would also facilitate enforcement action.

11. If implemented, the ban can be introduced through an appropriate immigration endorsement on the FDHs' passports from a commencement date and applicable to new contracts signed after that date. We have sought legal advice and obtained confirmation that no legislative amendment would be required to implement this change. FDHs employed under existing contracts will still be allowed to continue taking up incidental driving duties in accordance with the existing contract. There will also be a transitional period of six weeks starting from the commencement date during which the Immigration Department will continue to accept existing standard employment contracts.

12. Since the proposed ban would affect those employers who are currently deploying their FDHs on driving duties incidental to and arising from domestic duties, the Administration will consult the FDH employers' associations on their views before making a final decision. We will also consult other interested parties including FDH employees' groups.

Advice Sought

13. Members are requested to give their views and comments on the Administration's proposal to impose a total ban on driving duties by FDHs.

Education and Manpower Bureau
20 July 1999