

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

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**Bills Committee on
Education (Amendment) Bill 2000**

**Minutes of meeting
held on Monday, 5 March 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon CHEUNG Man-kwong (Chairman)
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon Eric LI Ka-cheung, JP
Dr Hon YEUNG Sum
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon YEUNG Yiu-chung
Hon Abraham SHEK Lai-him, JP

Public Officers Attending : Mr Joseph LAI
Deputy Secretary for Education and Manpower (3)

Mr Patrick LI
Principal Assistant Secretary for Education and
Manpower (2)

Mr H F LEE
Senior Assistant Director of Education (Support)

Mrs S M YU
Senior Education Officer, Education Department

Mr Gilbert MO
Deputy Law Draftsman

Miss Shirley WONG
Government Counsel, Department of Justice

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Ms Joanne MAK
Senior Assistant Secretary (2)2

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I. Matters arising from the last meeting
[Paper No. CB(2)985/00-01(01)]

At the Chairman's invitation, Deputy Secretary for Education and Manpower (3) (DS/EM(3)) briefed members on the Administration's written response to the issues raised by members at the last meeting. Members noted that the Administration also proposed some minor refinements to five provisions in the Bill. A gist of the deliberations is summarised in paragraphs 2 - 8.

Time limit for making prosecution

2. DS/EM(3) said that in the light of members' query as to whether it was necessary to apply the proposed provision in Clause 15(e) of the Bill to all offences under the Education Ordinance (Cap. 279), the Administration proposed to revise Clauses 15 and 26 to the effect that -

- (a) over-enrolment and over-charging/improper collection of school fees may be prosecuted within six months from the date of discovery of the offence by the Director of Education (D of E); and

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- (b) prosecution for all other offences under the Ordinance and the Regulations may only be taken within six months after an offence is committed.

He explained that over-enrolment and over-charging/improper collection of school fees were offences which were of great concern to the community and the Legislative Council but the nature of these offences was such that they might not be easily detectable.

3. With reference to some members' concern expressed at the last meeting about the interpretation of "date of discovery of the offence by the Director", DS/EM(3) reiterated that it was not necessary for an offence to come to the personal attention of D of E before the six-month time limit started to run. Members noted that similar provisions could be found in a number of ordinances in Hong Kong. For example, the Lifts and Escalators (Safety) Ordinance (Cap. 327) and the Builders' Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470). The Administration proposed to put forward a Committee Stage amendment (CSA) to make it clear in law that the time limit would start to run when an offence had come to the attention of D of E or an inspector of schools. Members further noted that the proposed six-month time limit would not apply to offences committed before enactment of the Bill, i.e. the Bill would not carry any "retrospective" effect. To avoid any ambiguity, the Administration would move a CSA accordingly.

4. The Assistant Legal Adviser 5 (ALA5) confirmed that the drafting aspect of the CSAs put forward by the Administration was in order. However, he drew members' attention that although an inspector of schools was defined in section 79 of the Education Ordinance, the Bill did not stipulate explicitly the ranks and number of staff and who would be appointed as inspectors of schools. The Chairman informed members that section 79(a) of the Education Ordinance provided that the Chief Executive might by notice in the Gazette appoint by name or office any officer of the Education Department (ED) to be an inspector of schools. The Chairman then sought clarifications on the ranks and number of the inspectors of schools appointed so far.

5. DS(EM)3 responded that inspectors of schools were professional staff in ED who included all staff of the directorate grade, curriculum officers, education officers and the Assistant Operation Commander of the Central Compliance Team etc. At the Chairman's request, DS(EM)3 undertook to provide a list of inspectors of schools (including the total number and their ranks) for members' reference.

Adm

6. In response to Ms Audrey EU's enquiry, Senior Assistant Director of Education (Support) (SAD of E (S)) said that over-enrolment and over-

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charging/improper collection of school fees were normally brought to the attention of inspectors of schools during course of school inspections or through public complaints. Mr Tommy CHEUNG asked whether the Administration would consider setting up a hotline to handle complaints on overcharging and over-enrolment. SAD of E (S) responded that staff in each regional office of ED would receive complaints.

7. The Chairman expressed concern as to how the date of the discovery of the offence by D of E or an inspector of schools would be explicitly determined. Deputy Law Draftsman was of the view that when D of E or an inspector of schools received a complaint with details on a particular day, the date of that day should be considered as the date of discovery. In cases where further investigation was required, the date of discovery might not be determined until such time when the complaints had been verified and found substantiated. It would be up to the court to decide in cases of dispute.

8. ALA5 said that he agreed that any dispute over the date of discovery would be determined by the court. However, discovery of an offence under the proposed provision would require three conditions i.e. the person who discovered the offence had to be an inspector of schools or D of E himself; the offence must be within the scope of the Education Ordinance; and there should be some evidence that the offence was committed. He considered that the Administration should devise administrative measures to facilitate the establishment of these three conditions in order to avoid any possible dispute. At the Chairman's request, DS(EM)3 agreed to elaborate on the documentation mechanism in ED to record the date of discovery of offences on over-enrolment and over-charging/improper collection of school fees in writing.

Adm

II. Clause-by-clause examination of the Bill

9. The Bills Committee proceeded to examine the Bill clause-by-clause. The gist of discussion is summarised below.

Clause 1

10. Members did not raise any queries.

Clause 2

11. Ms Audrey EU observed that there was a discrepancy in the Chinese version "指明格式" for the English term "specified form" because the Chinese version implied "format" instead of "form" in English. Deputy Law Draftsman

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explained that the trend was to specify forms administratively rather than prescribing forms. D of E could prescribe a form but flexibility was provided for the format adopted. For instance, forms downloaded from the internet could still be accepted even though there might be a slight difference in format. He considered that the Chinese version "格式" could either mean "form" or "format" in English.

12. Ms Audrey EU was of the view that the English version should be amended as "specified format" for the sake of consistency. Deputy Law Draftsman replied that the English term "form" had all along been used in the Laws of Hong Kong which not only referred to the form itself but also the format. Any amendment in this respect might give rise to confusion. In this connection, Mr MAK Kwok-fung expressed worry that the English version "specified form" might imply that the form had to be the original one which could not be copied or downloaded from the internet.

13. At the invitation of the Chairman, ALA5 advised that the English term "form" had been used consistently in the Laws of Hong Kong but the Chinese term "表格" or "格式" had been used depending on the context of the legislation. In his view, the English term "form" could be equivalent to "format" to a certain extent. He further advised that section 37(1) of the Interpretation and General Clauses Ordinance (Cap. 1) clearly stipulated that "where any form is prescribed by or under any ordinance, deviations therefrom not affecting the substance of such forms shall not invalidate it".

14. Ms Audrey EU remained of the view that as the English version "specified form" could be interpreted as "form" or "format", the Chinese version should then be "表格" instead of "格式". ALA5 advised that from the view point of law drafting, there was no standard statutory Chinese translation for the term "form". The Administration therefore might have flexibility to adjust its meaning in Chinese on the basis of the context of the legislation. Deputy Law Draftsman pointed out that the form referred to in Clause 2 was not regulated under the Education Ordinance but prescribed by D of E only. He considered that the Administration should have flexibility in interpreting the meaning.

Clauses 3 - 8

15. Members did not raise any queries.

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Clause 9

16. In response to Dr YEUNG Sum's enquiry about the criteria adopted in issuing attendance order under section 74A of the Education Ordinance, DS/EM(3) replied that a visit would be conducted to the home of the child concerned to see if the education he received was comparable to that given at schools. If D of E was satisfied that the child would receive comparable education at home, no attendance order would be issued.

Clauses 10 - 14

17. Members did not raise any queries.

Clause 15

18. Ms Audrey EU asked whether penalty would be imposed on a daily basis if the an advertisement containing false or misleading information continued to be placed. DS/EM(3) responded that penalty would not be imposed on a daily basis. However, the one-off penalty would achieve the necessary deterrent effect.

Clauses 16 - 28

19. Members did not raise any queries.

Clause 29

20. The Chairman sought clarification on the implication of the proposed amendment on the activities organised by pupils' associations. Deputy Law Draftsman explained that the definition of a pupils' association was provided for in the Ordinance. The Bill proposed to exempt pupils' associations from the regulation of the Societies Ordinance (Cap. 151).

Clause 30

21. Members did not raise any queries.

III. Legislative timetable

22. Members agreed that subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed at the Council Meeting on 4 April 2001. Members noted that the deadlines for giving notice to resume Second Reading debate and to move CSAs were 20 March and 26 March 2001 respectively. The Chairman informed members that the Administration's

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response to members' views expressed at the meeting would be circulated to members. If no comment was received from members, he would report on behalf of the Bills Committee to the House Committee at its meeting on 16 March 2001.

[*Post-meeting note* : The Administration's response to issues raised by members at the meeting has been issued vide Paper No. CB(2)1091/00-01(01).]

23. There being no other business, the meeting ended at 6:35 pm.

Legislative Council Secretariat

18 July 2001