

立法會
Legislative Council

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

**Minutes of meeting
held on Thursday, 15 February 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 YEUNG Yiu-chung
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Audrey EU Yuet-mee, SC, 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 Election of Chairman

Mr CHEUNG Man-kwong was elected Chairman of the Bills Committee.

II Meeting with the Administration

[Legislative Council Brief File Ref : EMBCR 2/3231/90 pt 9]

2. The Deputy Secretary for Education and Manpower (3) (DS/EM(3)) said that as the Education Ordinance (the Ordinance) and the Education Regulations (the Regulations) had not been reviewed since 1993, new developments had rendered some provisions in the Ordinance and the Regulations inadequate or outdated. The purpose of the Bill was to amend, update and clarify the sections concerned to ensure better operation of schools.

3. The Chairman informed members that when the Administration consulted the LegCo Panel on Education on the relevant legislative proposals, the Panel had suggested that a higher level of penalty should be imposed in order to achieve greater deterrent effect. The Administration had therefore raised the level of penalty for schools publishing advertisements containing false or misleading information from \$25,000 to \$100,000 in the Bill. Upon the Chairman's enquiry on whether other amendments were made, the Deputy Law Draftsman (DLD) pointed out that after having discussed with the legal adviser of the Secretariat, clause 25(b) was amended

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so that the Director of Education (D of E) might “specify” instead of “limit” the maximum number of pupils permitted in every classroom.

Definition of “school”

4. Ms Audrey EU enquired whether private tutorials on calligraphy or painting given at domestic premises for over 20 pupils needed to be registered, and whether exemption could be granted if a similar class for 15 pupils was conducted on preparation for court proceedings. The Senior Assistant Director of Education (Support) (SAD of E (S)) explained that the Registration Section of the Education Department (ED) would determine whether the nature of the class/tutorial fell under the definition of “school” in the Ordinance. If yes, registration with the Education Department (ED) would be required. Section 9 of the Ordinance provided exemption from registration under some circumstances.

5. The Chairman enquired about the factors determining whether a school needed to be registered, such as the number of pupils or the content of the course. SAD of E (S) explained that a school as defined under the Ordinance had to meet two requirements. Firstly, the number of pupils had to be 8 or more at any one time or 20 or more in a day. Secondly, the nature of the course had to be educational. If these two requirements were met, registration would be required. As to whether a course was educational, ED would look at three factors, namely the purpose of the course; the content of the course; and how the course was operated.

6. Ms Audrey EU opined that many people would conduct tutorial classes at domestic premises but it seemed unclear in law whether they should apply for school registration under section 10 or exemption under section 9(5). The Chairman expressed a similar concern about the clarity in law.

7. DS/EM(3) explained that “school” was defined under section 3 as “an institution, organisation or establishment which provided for 20 or more persons during any one day or 8 or more persons at any one time, any nursery, kindergarten, primary, secondary or post secondary education or any other educational course by any means, including correspondence delivered by hand or through the postal services”. Section 9(5) also provided that the following types of schools might be exempted from the Ordinance -

- (a) any school which provided education consisting only of a series of lectures, or a course of instruction in a particular subject or topic;
- (b) any school which provided less than ten hours of academic instruction each week; and

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- (c) the owners, managers, teachers or pupils of any school referred to in (a) and (b) above.

He further pointed out that the Registration Section of the ED would provide advice as to whether school registration was required or exemption could be sought on the basis of the operation. Although there was no definition of “educational course” in the Ordinance, the ED would consider each case individually. In deciding whether a course fell within the ambit of the Ordinance, the ED would consider the nature, purpose and contents of the course.

8. Ms Audrey EU enquired why the Administration had to limit the number of pupils in a class, say 20 in a day. DS/EM(3) explained that the limit was set long time ago; however, the spirit of the Ordinance was to safeguard the quality of education and that of the Regulations was to ensure the safety and hygiene conditions of schools. The exemption mechanism was there to provide flexibility especially for small-scale school operators.

Time limit for making prosecution

9. As the Bill proposed that the D of E could initiate prosecutions within six months from the date when he discovered the commission of an offence under the Ordinance, Ms Cyd HO expressed concern that the proposed provision seemed to have retrospective effect. Ms HO also observed that similar amendments were proposed in other bills. She enquired whether there was an overall policy to amend all ordinances concerned in order to allow the Administration greater flexibility in taking prosecution actions.

10. DS/EM(3) clarified that the amendments were made subsequent to some past experience where over-charging and over-enrolment were found in kindergartens. He explained that contravening provisions under the Ordinance and the Regulations were summary offences. In the absence of any specific provisions, prosecution action had to be taken within six months after an offence was committed. However, as the Administration usually received relevant complaints at a very late stage, say over six months after the offence had been committed, no prosecution action could be taken. In order to protect the public by enforcing the law more effectively, such amendments were necessary.

11. As far as retrospective effect was concerned, DLD explained that the proposed six-month time limit would not apply to offences committed before enactment of the Bill. Six months was the general time limit for prosecution after the commitment of minor offences while no specific time limit was set for more serious ones. By empowering the D of E to take prosecution actions within six months after he had discovered commission of the offence was to ensure that the

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party committed the offence could still be penalised even the act was discovered at a late stage. He also said that such amendments would be made according to the nature of the offence in individual ordinances and no policy was made across the board.

12. Ms Cyd HO asked why the Administration did not consider extending the time limit for instituting prosecutions from six months to two or three years after the offence had been committed. She considered having a specific time limit more appropriate. Ms HO was also concerned that the proposed provision might give too much flexibility to the D of E to the effect that he could selectively institute prosecutions. Ms Audrey EU shared Ms HO's view. She also asked about the way to ascertain the actual date of discovery of an offence by the D of E.

13. The Chairman also pointed out that Regulation 38 had stated that fire drills were to be carried in a school at least once a month. While he understood that the Administration meant to retain the power of the D of E to initiate prosecution in over-charging and over-enrolment cases beyond the six months' time limit by the proposed provisions, he queried whether it was the policy intent to extend the time limit for prosecution even in respect of minor offences. Mr Tommy CHEUNG shared the Chairman's concern. He pointed out that the provision might give rise to unfairness because in theory a person might be prosecuted after many years for commission of an offence and the penalty for that offence might become very severe at the time of prosecution.

14. DS/EM(3) responded that the Administration had sought to strike a right balance in making the proposed amendment to the time limit for prosecution. The Administration considered that a school committing the offence of over-charging over a long period should deserve punishment even the offence was discovered after six months of its commission.

15. As regards Ms Cyd HO's concern that the D of E might institute the prosecutions selectively at a later time, DLD said that he could not see the reason for the delayed prosecution because the longer the delay, the lower the possibility of conviction. In addition, the defendant might also query the reason for not instituting the prosecutions within six months after D of E had discovered commission of the offence. In that case, evidence would have to be shown to prove that the D of E had only known about the offence after six months. He explained that some offences might not be obvious and the D of E might only get to know about them through complaints from the public. As such, the date of discovery also depended very much on when or whether the affected parties would alert the ED or not. Without the proposed provisions in the Bill, a school might be free from prosecution if commission of the offence was not known within the six months' time limit.

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16. At the invitation of the Chairman, Assistant Legal Adviser 5 (ALA5) advised that similar provisions might be found in other legislation where difficulties were encountered in prosecuting minor offences within six months from their commission date. In theory, the D of E could have discovered an offence after a very long time. He suggested that members might wish to consider whether the proposed provision had struck a right balance or whether a time limit for prosecution should be specified so that people who had committed minor offences would not be liable for prosecution for an indefinite period.

17. In the light of the views expressed at the meeting, the Chairman suggested that the Administration should consider either -

- (a) stipulating the maximum period “after discovery of the commission of the offence” during which the D of E can institute prosecution; or
- (b) limiting application of the proposed relaxation of the time limit for initiating prosecution to offences of a certain nature under the Ordinance.

18. In response to members’ questions about the interpretation of “date of discovery of the offence by the Director”, DLD said that it was not necessary for an offence to be discovered by the D of E personally before the six-month time limit started to run and the offence could be discovered by staff of the Department. Ms Audrey EU expressed doubt at the interpretation. She was also concerned whether the delegation of power would be limited to certain ranks within the Department. Mr Tommy CHEUNG expressed a similar view. In the light of members’ queries, the Administration agreed to clarify in writing the issues raised.

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Control over schools' advertising

19. Mr Tommy CHEUNG sought clarification regarding the differences between false claims and misleading information provided by schools and how prosecutions would be instituted. In response, DLD said that it was not easy to define false claims and misleading information. However, the court would usually refer to precedents and decide on an individual case under particular circumstances. It would be very difficult to explain what would constitute or mislead in specific terms as it would vary from case to case.

Adm

20. At the Chairman’s suggestion, DS/EM(3) agreed to provide some examples of false claims and misleading information provided by schools before the next meeting.

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Review of attendance orders

21. Ms Cyd HO noted that the Board of Review was to be substituted by the Administrative Appeals Board (AAB). She enquired about the reason for such a change and requested the Administration to provide a comparison table between the jurisdictions of the two boards. DS/EM(3) explained that the two boards had different jurisdictions. At present, the Board of Review stipulated under the Ordinance was only to handle appeals against the attendance order given by the D of E. However, records showed that there were only four appeals handled by the Board of Review since 1971. In order to streamline the structure of education-related executive and advisory bodies, the Administration proposed to dissolve the Board of Review. Future appeals against the attendance order would be directed to the AAB. The scope of the AAB's jurisdictions was so wide that it was empowered to handle appeals of cases for which no statutory appeal channels were provided elsewhere in any ordinances.

Adm

22. Ms Cyd HO said that while she was in support of streamlining executive and advisory bodies, she was concerned that the waiting time to be listed for hearing by the AAB might be unduly long since the Board was not only dealing with education issues. At her request, the Administration undertook to provide information on the jurisdictions of the two boards and the average waiting time to be listed for hearing by the AAB.

Number of pupils in a classroom

23. The Chairman enquired how the Administration determined the maximum number of pupils allowed in a classroom, whether by calculating the average area each pupil was entitled to or by other means. He was concerned whether the capacity of each classroom would be subject to constant changes if the D of E was given the power to stipulate the maximum number of pupils in each classroom under the Bill.

24. DS/EM(3) explained that it was essential for the D of E to have the authority to stipulate the maximum number of pupils permitted in every classroom in order to protect pupils' safety. Legal advice was that reading sections 18, 80, 82 and 83 of the Ordinance, and Regulations 24 and 40 together, the D of E did have the power to specify the maximum number of pupils permitted in every classroom. However, such authority was only implied and was not stated explicitly. The policy intention was to put it beyond doubt the D of E's power to stipulate the maximum number of pupils permitted in every classroom. He reiterated that the power of the D of E in this regard was already implied in the existing legislation.

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25. Given that an extraordinarily big classroom could hold a large number of pupils, the Chairman enquired whether there would be a statutory limit to the number of pupils permitted in the classroom. DS/EM(3) explained that class size referred to the number of pupils in each class which was the number of pupils being taught by one teacher. The capacity of a classroom referred to the number of pupils the room could hold. Class size was regulated under Regulation 88. As it was stipulated that no more than 45 pupils should be taught at one time by one teacher, there had to be at least two teachers in a classroom which could hold 90 pupils. On the other hand, the capacity of a classroom gave more emphasis on the safety of pupils, ventilation and hygiene.

26. The Chairman sought clarification on whether a large class with 90 pupils would still be permitted so long as there were two teaching staff. SAD of E (S) clarified that educational activities might also be held in school halls from time to time and at present, there was no control over the number of pupils permitted. However, the hall itself still had a capacity limit. Since the Administration intended to maintain the class size at 1:45 in terms of the teacher-pupil ratio, the school was expected to send for example, at least six teachers to monitor a hall housing six classes of pupils. The role of these teachers, apart from holding educational activities, was to take care of the pupils there.

27. As the Administration had suggested schools to organise educational activities for two classes at the same time in order to save manpower, the Chairman expressed concern that such act might breach the teacher-pupil ratio as stipulated in the relevant Regulation. DS/EM(3) pointed out that the focus of Regulation 88 was about the number of pupils being taught by one teacher. If teaching activities were being carried out, the school should comply with the ratio required. However, if it was just a reading lesson, the teacher might have to maintain the order of the class only. He added that the issue was outside the content of the Bill.

III Any other business

28. Members agreed to hold the next meeting at 4:30 pm on 5 March 2001.

29. There being no other business, the meeting ended at 6:15 p.m.