

Education (Amendment) Bill 2000
Submission by the Administration

Purpose

This paper responds to four issues raised by Members of the Bills Committee, and proposes minor refinements to five provisions in the Bill.

Time limit for making prosecution (clause 15)

2. Clause 15(e) of the Bill provides that -

“No prosecution for an offence under this Ordinance shall be commenced after the expiration of 6 months from

(a) the date of commission of the offence; or

(b) the date of discovery of the offence by the Director,

whichever is the later.”

3. At the meeting of the Bills Committee on 15 February, some Members expressed concerns over the interpretation of “date of discovery of the offence by the Director”. There were also queries on whether it was necessary to apply the provision to all offences under the Education Ordinance. Further, a Member asked whether the clause might create any “retrospective” effect.

4. Under section 26 of the Magistrates Ordinance, Cap. 227, in the absence of any specific provisions, prosecution action on summary offences has to be taken within six months after an offence is committed. Offences under the Education Ordinance and the Education Regulations (hereafter “the Ordinance” and “the Regulations” respectively) are summary offences, and therefore the prosecution of these offences are subject to the six-month time limit.

5. As explained in the Legislative Council Brief issued on 20 December 2000, the rationale for clause 15(e) is that some offences may not be brought to the attention of the Education Department (ED) within the six-month time limit. We have in mind in particular two types of

offences, i.e. over-enrollment of students and over-charging/improper collection of school fees. In the past few years, there were a number of high profile cases relating to these two types of offences. Prosecution action was taken against the offenders in a number of these cases. However, in one case, prosecution could not be initiated because by the time the offence came to light, it was already more than six months after the offence was committed.

6. Over-enrollment and over-charging/improper collection of school fees are offences which are of great concern to the community and the Legislative Council. However, the nature of these offences is such that they may not be easily detectable. To enable ED to enforce the law more effectively on the one hand, and having regard to comments by the Bills Committee on the other, we propose to further revise clauses 15 and 26 so that –

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

7. On the interpretation of “date of discovery of the offence by the Director”, as explained at the meeting of the Bills Committee on 15 February, it is not necessary for an offence to come to DE’s personal attention before the six-month time limit starts to run. Indeed, similar provisions can be found in a number of ordinances in Hong Kong, for example, the Lifts and Escalators (Safety) Ordinance, Cap 327 (s.28), and the Builders’ Lifts and Tower Working Platforms (Safety) Ordinance, Cap 470 (s.49). That said, taking into account comments of the Bills Committee, we propose to make it clear in the law that the time limit will start to run when an offence has come to the attention of DE or an inspector of schools ^(Note).

^(Note) Under section 79 of the Ordinance, the Chief Executive may by notice in the Gazette appoint by name or office any officer of ED to be an inspector of schools. In practice, they are mostly professional officers in the Department.

8. To put the proposals in paragraphs 6 and 7 into effect, we propose to move a Committee Stage Amendment along the line in **Annex A**.

9. Members may also wish to note that the proposed six-month time limit will not apply to offences committed before enactment of the Bill, i.e. the Bill will not carry any “retrospective” effect. To avoid any ambiguity, we propose to move a Committee Stage Amendment along the line in **Annex B**.

Advertisements containing false or misleading information (clause 14)

10. At the meeting on 15 February, Members also asked the Administration to provide concrete examples of advertisements containing false or misleading information.

11. False advertisements are those containing information which is **incorrect or untrue**. In the past, ED has come across advertisements of schools claiming that some of their teachers are doctoral degree holders when in fact these teachers do not possess any post-graduate qualifications. Such advertisements may be considered as false.

12. Misleading advertisements are those containing **information which may make one believe something which is not true**. ED has previously come across an advertisement whereby the school operator claims that its schools are feeder-linked with a sixth form college without any elaboration, when in fact only two of the six schools run by the operator are so feeder-linked. People therefore may be misled by the advertisement.

Dissolution of the Board of Review (clauses 8, 9, 16 and 30)

13. A comparison between the Administrative Appeals Board and the Board of Review in terms of their powers and functions is at **Annex C**.

14. According to past records, it takes an average of four months for the Administrative Appeals Board to hear and determine an appeal.

Power of inspectors of schools to request personal particulars (clause 10)

15. In the course of inspecting a school and in ascertaining whether the Ordinance or the Regulations is complied with, inspectors of schools may need to establish the personal particulars of individuals present in the school premises for taking necessary follow up actions (e.g. commencing prosecutions). At present, the inspectors do not have any statutory authority to require the individuals to provide the particulars. The policy intention of clause 10 (**Annex D**) is to empower school inspectors to require individuals found in school premises to produce proof of identity and personal particulars when the inspectors have reasonable suspicion that the Ordinance or the Regulations are not being complied with by the individuals (c.f. paragraph 9 of the LegCo Brief on the Bill issued on 20 December 2000). This power will facilitate further investigation or prosecution by the authorities.

16. Clause 10 as presently worded, however, allows school inspectors to request proof of identity and personal particulars from **all individuals** present in the school premises. To more accurately reflect the policy intention, we propose to move a Committee Stage Amendment along the line in **Annex E** so that only people who are reasonably suspected of not complying with the Ordinance or the Regulations may be required by the school inspectors to produce proof of identity and personal particulars.

Maximum number of pupils permitted (clause 25)

17. To protect students' safety, it is essential for DE to have the authority to stipulate the maximum number of pupils permitted in every classroom. Legal advice is that reading sections 18, 80, 82 and 83 of the Ordinance, and regulations 24 and 40 of the Regulations together, DE does have the power to specify the maximum number of pupils permitted in every classroom. However, such authority is only implied and is not stated explicitly. The policy intention of clause 25 (**Annex F**) is to put beyond doubt DE's power to stipulate such maximum number.

18. As verbally explained to Members at the last meeting, having further examined this clause, we think that the use of the word "limit" may not be entirely appropriate since "maximum number" should have

already been the limit. We therefore propose to move a Committee Stage Amendment at **Annex G** to replace the word “limit” with “specify”.

19. Separately, contravening regulation 87 is at present an offence and is subject to penalties stipulated under regulation 102(2) (**Annex H**). Under clause 25(a) of the Bill, the existing regulation 87 will be renumbered as regulation 87(2). As a consequential amendment, “regulation 87” in regulation 102(2) should be replaced by “regulation 87(2)”. We propose to move a Committee Stage Amendment at **Annex I** to this effect.

Education and Manpower Bureau
March 2001

EDUCATION (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
15	(a) In paragraph (d), by deleting the semi-colon and substituting a fullstop. (b) By deleting paragraph (e).
26	(a) In paragraph (c), by deleting the fullstop and substituting a semi-colon. (b) By adding - "(d) by adding - "(10) Prosecution for an offence under regulation 61, 62, 65, 66 or 87(2) shall be commenced within 6 months after the date of discovery of the offence by the Director or any inspector of schools."."

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COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

Clause

Amendment Proposed

16

By adding -

"(3) Notwithstanding regulation 101(10) of the Education Regulations (Cap. 279 sub. leg.), no prosecution for an offence under regulation 61, 62, 65, 66 or 87(2) of those regulations which is committed before the commencement of section 26 shall be commenced after the expiration of 6 months from the date of commission of the offence."

**Comparison between the Administrative Appeals Board
and the Board of Review**

	Administrative Appeals Board (Cap 442)	Board of Review (Cap. 279)
<i>Functions</i>	To hear appeals against administrative decisions made under certain statutory provisions which are listed in the Schedule of the Administrative Appeals Board Ordinance (Cap. 442) or any other decision in respect of which an appeal lies to the Board.	To consider applications for review from parents who are aggrieved by an attendance order or any variation of an attendance order issued by DE under section 74 of the Education Ordinance (Cap. 279).
<i>Powers</i>	<p>(a) To confirm, vary or reverse the decision that is appealed against or to substitute therefor such other decision or to make such other order as it may think fit.</p> <p>(b) On the determination of any appeal, to order that the case being the subject of the appeal as so determined be sent back to the respondent for the consideration by the respondent of such matter as the Board may order.</p> <p>(c) To make an award in respect of the costs of and relating to the appeal.</p>	<p>(a) To confirm the attendance order or the variation.</p> <p>(b) To cancel the attendance order or the variation.</p>

10. Section added

The following is added—

"81B. Power to request personal particulars

Where the Director or any inspector of schools enters any premises under section 81(*b*) or 81A(1) or (3), he may, for the purposes for which he enters the premises, require any person found in the premises to—

- (*a*) furnish to him for his inspection the person's proof of identity;
and
- (*b*) furnish to him the person's residential address and contact telephone number."

EDUCATION (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

Clause

Amendment Proposed

- | | |
|----|---|
| 10 | In the proposed section 81B, by adding "whom he reasonably believes to be guilty of an offence under this Ordinance" before "to -". |
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25. Maximum number of pupils

Regulation 87 is amended—

(a) by renumbering it as regulation 87(2);

(b) by adding—

"(1) The Director may limit the maximum number of pupils permitted in every classroom.";

(c) in paragraph (2), by repealing "通知" and substituting "告示".

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COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

Clause

Amendment Proposed

25(b) In the proposed regulation 87(1), by deleting "limit" and substituting "specify".

102. Penalties

(2) The supervisor or principal of a school who is guilty of an offence under regulation 101(6) by virtue of a contravention of regulation 87 shall be liable on conviction to a fine of \$250,000 and to imprisonment for one year.

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COMMITTEE STAGE

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Clause

Amendment Proposed

New

By adding -

"26A. Penalties

Regulation 102(2) is amended by repealing "87" and substituting "87(2)".