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**Paper for the House Committee meeting
on 16 March 2001**

**Report of the Bills Committee on
Education (Amendment) Bill 2000**

Purpose

This paper reports on the deliberations of the Bills Committee on Education (Amendment) Bill 2000.

Background

2. The object of the Education Ordinance (Cap. 279) and the Education Regulations (Cap. 279 sub. leg. A) is to regulate the operation of schools and teaching therein. They were last reviewed and amended in 1993. The Bill seeks to update a number of provisions in the Ordinance and the Regulations which have been rendered inadequate or outdated by new developments.

The Bill

3. The more important proposals in the Bill are highlighted below -
- (a) the Director of Education (D of E) will be empowered to delegate to any of his directorate officers his power to exempt certain schools or their owners, managers, teachers or pupils from the Ordinance;
 - (b) the person recommended by the school management committee to be the principal of a school will be allowed to perform the functions of a principal in the interim period after the recommendation has been submitted to D of E for approval;
 - (c) the right of appeal in respect of an attendance order (requiring a parent to cause his child to attend school) will be made to the Administrative Appeals Board instead of to the Board of Review, which will be dissolved;

- (d) inspectors of schools will be empowered to require for the purposes of the inspection, persons found in school premises in the course of inspection to produce proof of identity, residential address and contact telephone number;
- (e) D of E will be able to suspend the operation of schools by public announcements on radio, television or newspaper if there is any immediate risk of danger to persons in any school premises due to bad weather;
- (f) a new offence of publishing advertisements containing false or misleading information about schools will be created, punishable with a fine of \$100,000 and the penalty of two existing offences prohibiting false advertisements in relation to their premises and prohibiting false claims that the schools are registered will also be raised to the same level;
- (g) fire drills will be required in school once every 6 months instead of monthly and the need to recharge fire extinguishers annually will be removed provided that fire installations are kept in good condition at all times;
- (h) the requirement to gazette inclusive fees (school fees and miscellaneous fees) will be removed and the timing for their collection will be rationalised;
- (i) the requirement to register pupils' associations will be removed;
- (j) D of E will be empowered explicitly to stipulate the maximum number of pupils permitted in every classroom; and
- (k) an offence under the Ordinance may be prosecuted up to six months from the date of discovery of the offence instead of merely from the date of its commission.

The Bills Committee

4. At the House Committee meeting on 2 February 2001, members agreed that a Bills Committee be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

5. Under the chairmanship of Hon CHEUNG Man-kwong, the Bills Committee has held two meetings with the Administration to discuss the Bill.

Deliberations of the Bills Committee

6. The main deliberations of the Bills Committee are summarised in the following paragraphs.

Time limit for making prosecution

7. Members note that contravening provisions under the Ordinance and the Regulations are summary offences. In the absence of any specific provisions, prosecution action has to be taken within six months after an offence is committed pursuant to section 26 of the Magistrates Ordinance (Cap. 227). In case an offence is only discovered by D of E six months after it was committed, no prosecution can be taken. The Administration has advised that according to past experience, many of the offences were not discovered by D of E within the six-month limit. For example, schools charging fees higher than the approved level might not be discovered by the Education Department (ED) until a complaint was lodged six months after the offence was committed. To better protect parents and students by enabling ED to enforce the law more effectively, clause 15(e) of the Bill seeks to allow prosecution to be instituted within six months from the date when D of E discovered the commission of an offence under the Ordinance.

8. Members are of the view that while they support relaxation of the time limit to facilitate prosecution work against unlawful acts by schools, they are concerned that the proposal may give too much flexibility to D of E to the effect that he can institute prosecution selectively. These members also consider that the proposed relaxation of time limit may give rise to unfairness. They are worried that in theory a person may be prosecuted after many years for commission of an offence and the penalty for that offence may become very severe at the time of prosecution. These members have further raised queries over the interpretation of "date of discovery of the offence by the Director" in clause 15(e).

9. In order to strike a right balance, members have suggested that the Administration should consider either

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

10. The Administration has reiterated that over-enrolment and over-charging or improper collection of school fees are offences which are of great concern to the community. However, the nature of these offences is such that they may not be easily detectable. To address members' concerns, the Administration proposes to revise clauses 15 and 26 so that -

- (a) over-enrolment and over-charging or improper collection of school fees may be prosecuted within six months from the date of discovery of the offence by D of E; and
- (b) prosecution for all other offences under the Ordinance and the Regulations may only be taken within six months after an offence was committed.

11. On the interpretation of "date of discovery of the offence by the Director", the Administration has explained that it is not necessary for an offence to be discovered by D of E personally before the six-month time limit starts to run. Indeed, similar provisions can be found in a number of ordinances, 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).

12. In the light of members' queries, the Administration will propose Committee Stage amendments (CSAs) to clause 26 to make it clear that the time limit will start to run when an offence is discovered by D of E or an inspector of schools. In response to members' enquiry about the definition of an inspector of schools, the Administration has advised that 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 including Assistant Directors in the Department. The Administration has also assured members that ED will have a documentation mechanism to record the date of discovery by D of E or an inspector of schools to avoid any possible dispute in the future.

13. In response to a member's concern that the proposed provision in the Bill seems to have "retrospective" effect, the Administration has explained that the proposed six-month time limit will not apply to offences committed before enactment of the Bill. To avoid any ambiguity, the Administration proposes to make it clear in clause 16 that no prosecution for an offence under regulation 61, 62, 65, 66 or 87(2) which is committed before the commencement of section 26 shall be commenced after the expiration of six months from the date of commission of the offence.

Control over schools' advertising

14. Members note that there are increasing complaints about schools' advertisements making false claims or providing misleading information on, for example, course contents and teachers' qualifications. However, D of E can only take action against schools making false advertisements in relation to their premises under section 86B, and on unregistered schools falsely claiming to be registered with ED under section 86A of the Ordinance. The maximum penalty which can be imposed for these offences is a fine of \$25,000. To better protect students and parents, the Administration proposes to widen the scope of control such that it will be an offence for schools to publish any advertisements containing false or misleading information relating to the schools.

15. Members further note that when the Administration consulted the LegCo Panel on Education before introduction of the Bill, the Panel suggested that a higher level of penalty, instead of the maximum level originally proposed, should be imposed in order to achieve greater deterrent effect. The Administration therefore proposes to impose a higher level of penalty of a fine of up to \$100,000 for the proposed offence in the Bill. The same penalty level will also apply to the offences under the existing sections 86A and 86B.

16. The Administration has explained to the Bills Committee that 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 who in fact do not possess any post-graduate qualification are doctoral degree holders. Such advertisements may be considered as false. Misleading advertisements are those containing information which may make one believe something which is not true. ED has previously come across an advertisement placed by a school operator claiming that its schools are feeder-linked with a sixth form college without any elaboration. In fact only two of the six schools run by the operator are feeder-linked. People therefore may be misled by the advertisement.

Review of attendance orders

17. Members note that in accordance with the policy of providing nine years' free and universal education to children aged between six and 15, D of E at present may under section 74 of the Ordinance serve upon a child's parent an attendance order requiring him to cause the child to attend schools. D of E is also empowered to vary the attendance order. A parent aggrieved by an attendance order or any variation of an attendance order may apply to the Board of Review set up under section 75 of the Ordinance for a review.

18. The Administration has advised that only four cases have gone before the Board of Review since the relevant provisions were introduced in 1971. Following a review of education-related executive and advisory bodies in 1998, Government proposes to dissolve the Board of Review and to provide for a right of appeal to the Administrative Appeals Board.

19. A member opines that while she is in support of streamlining executive and advisory bodies, she is concerned that the waiting time to be listed for hearing by the Administrative Appeals Board may be unduly long, thereby affecting the interest of the aggrieved person adversely. The Administration has subsequently informed the Bills Committee that 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

20. Members note that in the course of inspecting a school and in ascertaining whether the Ordinance or the Regulations are 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 is to empower inspectors of schools 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 individual. This power will facilitate further investigation or prosecution by the authorities.

21. The Administration has explained to the Bills Committee that clause 10 as presently worded allows inspectors of schools to request proof of identity and personal particulars from any individual present in school premises. To more accurately reflect the policy intention, the Administration proposes to move a CSA so that only people who are reasonably suspected of not complying with the Ordinance or the Regulations may be required by the inspectors of schools to produce proof of identity and personal particulars. Members express support for the proposed amendment because it will impose a reasonable restriction on the power of the inspectors of schools.

Number of pupils in a classroom

22. According to the Administration, it is essential for D of E to have the authority to stipulate the maximum number of pupils permitted in every classroom in order to protect the students' safety. Legal advice is that reading sections 18, 80, 82 and 83 of the Ordinance, and Regulations 24 and 40 together, D of E 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.

23. Members note that clause 25 proposes to add a new subsection (1) "The Director may limit the maximum number of pupils permitted in every classroom" to Regulation 87. The policy intention is to put it beyond doubt the D of E's power to stipulate the maximum number of pupils permitted in every classroom.

24. The Legal Adviser to the Bills Committee has raised a drafting point that the use of the word "limit" in clause 25 may not be entirely appropriate since "maximum number" is already the limit. The Administration has subsequently proposed to introduce a CSA to address the drafting problem by deleting "limit" and substituting "specify" in clause 25. The Bills Committee finds the proposed CSA acceptable.

Delegation of the D of E's power

25. Members note that section 5 of the Ordinance provides that the Deputy Director of Education (DDE) may exercise any function of D of E under the Ordinance. In addition, D of E (or DDE) may authorise any officer of ED to exercise any function of D of E (or DDE) under the Ordinance, the only exception being section 9(5).

26. Members further note that the Administration proposes that D of E (or DDE) may authorise officers at directorate level to exercise the power under section 9(5) in order to enable D of E and DDE to delegate the work where necessary, whilst at the same time ensuring that only senior enough officers can exercise the important power to exempt certain schools, or their owners, managers, teachers or pupils from the Ordinance.

27. Some members opine that many people will conduct tutorial classes at domestic premises but it seems unclear in law whether they should apply for school registration under section 10 or exemption under section 9(5).

28. The Administration has explained that "school" is defined under section 3 as "an institution, organisation or establishment which provides 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 provides that the following types of schools may be exempted from the Ordinance -

- (a) any school which provides education consisting only of a series of lectures, or a course of instruction in a particular subject or topic;
- (b) any school which provides less than ten hours of academic instruction each week; and
- (c) the owners, managers, teachers or pupils of any school referred to in (a) and (b) above.

29. The Administration has further pointed out that the Registration Section of ED will provide advice as to whether school registration is required or exemption can be sought on the basis of the operation. Although there is no definition of "educational course" in the Ordinance, ED will consider each case individually. In deciding whether a course falls within the ambit of the Ordinance, ED will consider the nature, purpose and contents of the course.

Committee Stage amendments

30. Apart from the CSAs discussed above, the Administration proposes to introduce an additional consequential amendment. The Administration has explained to the Bills Committee that under clause 25(a) of the Bill, the existing regulation 87 will be renumbered as regulation 87(2). Reference to "regulation 87" in regulation 102(2) therefore should also be replaced by "regulation 87(2)".

31. A full set of the CSAs to be proposed by the Administration is in **Appendix II**. The Bills Committee has not proposed any amendments.

Recommendation

32. The Bills Committee recommends that, subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed on 4 April 2001.

Advice sought

33. Members are invited to support the recommendation of the Bills Committee in paragraph 32 above.

Legislative Council Secretariat

14 March 2001

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

Membership List

Chairman	Hon CHEUNG Man-kwong
Members	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 (Total : 10 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Mr Arthur CHEUNG Ping-kam
Date	15 February 2000

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2nd working draft: 28.2.2001
3rd working draft: 1.3.2001
4th working draft: 1.3.2001
revised 4th working draft: 2.3.2001

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 -".
- 15 (a) In paragraph (d), by deleting the semi-colon and substituting a fullstop.
(b) By deleting paragraph (e).
- 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.".

<u>Clause</u>	<u>Amendment Proposed</u>
25 (b)	In the proposed regulation 87(1), by deleting "limit" and substituting "specify".
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."."
New	By adding - "26A. Penalties Regulation 102(2) is amended by repealing "87" and substituting "87(2)"."