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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 8 OF 2001

L.S.

TUNG Chee-hwa
Chief Executive
11 April 2001

An Ordinance to amend the Education Ordinance and the Education Regulations to dispense with prescribed forms, to empower the Director of Education to delegate his power to grant exemption, to dispense with the requirement to issue certificates of registration to school managers, to enable a teacher who has been recommended for approval to be a principal to perform principal's functions, to substitute the Administrative Appeals Board for the board of review, to empower the Director of Education and inspectors of schools to request production of proof of identity and contact details, to extend the period within which prosecution may be brought, to dispense with control of pupils' associations, to enable the Director of Education to suspend operation of a school by public announcement, to increase the fine for false advertising by unregistered schools, to prohibit certain false or misleading advertisements, to change the requirement as regards fire drills and fire equipment in schools, to dispense with the requirement of publishing inclusive fees in the Gazette, to provide for issuing certificates setting out inclusive fees, to provide for collection of inclusive fees on an equal monthly basis and impose restriction on advance collection, to state expressly the Director of Education's existing implied power under the Education Ordinance and the Education Regulations to limit the number of pupils permitted in individual classrooms, to effect repeal which is consequent upon previous amendments, to make minor technical amendments and to make necessary transitional provision and consequential amendments connected therewith including consequential amendments to the Societies Ordinance and Administrative Appeals Board Ordinance.

[]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Education (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Education and Manpower by notice published in the Gazette.

Education Ordinance

2. Interpretation

Section 3 of the Education Ordinance (Cap. 279) is amended—

- (a) in the definition of “principal”, by adding “, subject to section 58AA,” after “means”;
- (b) by repealing the definition of “pupils’ association”;
- (c) by adding—
 - ““proof of identity” (身分證明文件) has the meaning assigned to it by section 17B(1) of the Immigration Ordinance (Cap. 115);
 - “specified form” (指明格式) means a form specified by the Director;”.

3. Delegation of Director’s powers

Section 5(2) is amended by repealing everything after “may” and substituting—

“authorize any officer of the Education Department—

- (a) to exercise any function of the Director under any provision of this Ordinance other than section 9(5); or
- (b) at the directorate rank to exercise any function of the Director under section 9(5).”.

4. Sections amended

Sections 11(a), 18(1), 28, 44(a), 45(2), 49(2), 50(1)(a) and 74(1) are amended by repealing “prescribed” and substituting “specified”.

5. Registration of manager

Section 29(2) is repealed.

6. Section added

The following is added immediately after section 58—

“58AA. Performance of functions of principal by candidate

(1) A teacher who is not a principal of a school and who has been recommended under section 53(1) or 57(1) for approval to be the principal of the school may, as long as he is a registered teacher or permitted teacher, perform the functions of the principal until the recommendation—

(a) is approved under section 53(2) or 57(2), as the case may be;
or

(b) is refused under section 54.

(2) A teacher performing any function of a principal under subsection (1) shall be regarded for the purposes of this Ordinance (except sections 55 and 56) as the principal.”.

7. Interpretation of Part VII

Section 73 is amended by repealing the definition of “board”.

8. Sections substituted

Sections 75, 76 and 77 are repealed and the following substituted—

“74A. Appeals

A parent aggrieved by—

(a) an attendance order; or

(b) any variation of an attendance order under section 74(2),
made in respect of him may appeal to the Administrative Appeals Board.”.

9. Enforcement of order

Section 78 is amended by repealing the proviso and substituting—

“Provided that if an appeal is made against an attendance order or a variation of an attendance order under section 74A, no offence shall be committed by reason of a failure to comply with the attendance order or the attendance order as varied, as the case may be, until the appeal has been disposed of, withdrawn or abandoned.”.

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 whom he reasonably believes to be guilty of an offence under this Ordinance 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.”.

11. Powers of Director to close school or give directions in cases of danger or misconduct

Section 83 is amended—

- (a) by adding—

“(1A) Notwithstanding subsection (1), if it appears to the Director that there is any immediate danger or immediate risk of danger to persons in any school premises due to bad weather, he may, by making public announcements on radio, television or newspapers or by such other means as he thinks fit, suspend the operation of the school in the school premises.”;

- (b) in subsection (6)(a), by repealing “to” and substituting “, (1A) or”.

12. Regulations

Section 84(1) is amended—

- (a) in paragraph (h), by adding “and the number of pupils permitted in classrooms” after “classes”;
- (b) in paragraph (l), by repealing “, and of pupils’ associations”;
- (c) in paragraph (s), by repealing “in the Gazette”.

**13. Control of false advertising
by unregistered schools**

Section 86A(3) is amended by repealing “4” and substituting “6”.

**14. Control of false advertising by registered
or provisionally registered schools**

Section 86B is amended—

(a) in subsection (1), by repealing everything after “advertisement” and substituting—

“that—

(a) alleges that the school is operating in, or authorized to operate in, premises other than the premises specified in the certificate of registration or provisional registration of the school; or

(b) contains any other information otherwise concerning the school which to his knowledge is false or misleading in a material particular.”;

(b) in subsection (2), by repealing “4” and substituting “6”.

15. Offences and Penalties

Section 87 is amended—

(a) by repealing subsection (1)(e), (f) and (g);

(b) in subsection (2)(c), by adding “or empowered under section 58AA(1) to perform the functions of the principal of the school” after “a school”;

(c) by repealing subsection (3)(h), (i), (j) and (k);

(d) by adding—

“(3B) Any person who—

(a) refuses to furnish his proof of identity, residential address or contact telephone number upon being so required under section 81B; or

(b) furnishes a false residential address or contact telephone number upon being required under section 81B to furnish his residential address and contact telephone number,

shall be guilty of an offence and shall be liable on conviction to a fine at level 3.”.

16. Transitional

(1) Any right to apply to the board of review established under the Education Ordinance (Cap. 279) for a review subsisting immediately before the commencement of section 8 shall be regarded as a right of appeal under section 74A of that Ordinance.

(2) Any application for a review under section 77(1) of the Education Ordinance (Cap. 279) which is pending immediately before the commencement of section 8 shall be—

(a) regarded as an appeal under section 74A of that Ordinance pending to the Administrative Appeals Board; and

(b) disposed of accordingly.

(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.

Education Regulations

17. Fire drills, exits

Regulation 38(1) of the Education Regulations (Cap. 279 sub. leg.) is amended—

(a) by repealing “month” and substituting “6 months”;

(b) by repealing “the monthly” and substituting “each”.

18. Fire service installation and equipment

Regulation 39 is amended—

(a) by renumbering it as regulation 39(1);

(b) in paragraph (1), by repealing everything after “fire” and substituting “service installation or equipment in the school premises is kept in good condition at all times.”;

(c) by adding—

“(2) For the purpose of this regulation, “fire service installation or equipment” (消防裝置或設備) has the meaning assigned to it by section 2 of the Fire Services Ordinance (Cap. 95).”.

19. Regulations substituted

Regulation 60 is repealed and the following substituted—

“60. Submission of particulars of inclusive fees

The supervisor of every school shall submit to the Director when required by him particulars of the inclusive fee.

60A. Certificate of inclusive fees

(1) Upon—

- (a) registering a school under section 13 or 15 of the Ordinance;
or
- (b) approving a change in the inclusive fee under regulation 65 in respect of a school,

the Director shall—

(i) cause—

- (A) the name and address of the school;
- (B) the name of the supervisor of the school; and
- (C) the particulars of the inclusive fee or the inclusive fee as changed, as the case may be,
to be printed on a certificate in the specified form; and

(ii) issue the certificate to the supervisor.

(2) For the purposes of this regulation, that part (if any) of the inclusive fee which represents a sum of money charged for providing housing or lodging accommodation, meals and cleaning services in respect of a pupil at a boarding school shall be separately identified in the particulars printed on the certificate issued under paragraph (1)(ii).”

20. Fees other than inclusive fee prohibited

Regulation 61 is amended—

(a) in paragraph (1)—

- (i) by repealing “published in the Gazette” and substituting “printed on the certificate issued under regulation 60A(1)(ii)”;
- (ii) in the proviso by repealing everything after “approval is” and substituting “kept exhibited together with the certificate kept exhibited under regulation 67.”;

(b) in paragraph (2), by repealing “published in the Gazette” and substituting “printed on the certificate issued under regulation 60A(1)(ii)”.

21. Regulation substituted

Regulation 62 is repealed and the following substituted—

“62. Method of payment

(1) Unless otherwise permitted in writing by the Director, the inclusive fees for an educational course shall be calculated on an equal monthly basis and collected on or after the first school day of each month of the period during which the educational course is conducted.

(2) Notwithstanding paragraph (1), a supervisor may require a pupil to register for an educational course by paying the first monthly instalment not earlier than one month before the commencement of the educational course.”.

22. Regulation substituted

Regulation 67 is repealed and the following substituted—

“67. Duty to exhibit certificate

The certificate issued in respect of a school under regulation 60A(1)(ii) shall be kept conspicuously exhibited at a prominent position in the school.”.

23. Part repealed

Part XI is repealed.

24. School name to be displayed

Regulation 84(1) is amended by repealing “通知” and substituting “告示”.

25. Maximum number of pupils

Regulation 87 is amended—

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

(b) by adding—

“(1) The Director may specify the maximum number of pupils permitted in every classroom.”;

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

26. Offences

Regulation 101 is amended—

- (a) in paragraph (1), by repealing “72(1),”;
- (b) in paragraph (5), by repealing “39” and substituting “39(1)”;
- (c) in paragraph (6), by repealing “87” and substituting “87(2)”;
- (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.”.

27. Penalties

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

28. Forms

Regulation 103 is repealed.

29. Forms

The Third Schedule is repealed.

Consequential Amendments**Societies Ordinance****30. Persons to which the Ordinance does not apply**

The Schedule to the Societies Ordinance (Cap. 151) is amended by repealing item (4) and substituting—

- “(4) (a) An association the affairs of which are conducted wholly or partly in any school premises and which consists wholly or mainly of persons under the age of 21 years who are undergoing primary education or secondary education in any school.
- (b) For the purposes of this item, “primary education” (小學教育), “school” (學校), “school premises” (校舍) and “secondary education” (中學教育) have the meanings assigned to them by section 3 of the Education Ordinance (Cap. 279).”.

Administrative Appeals Board Ordinance**31. Schedule amended**

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding—

- “42. Education Ordinance (Cap. 279)
- (a) An attendance order made under section 74(1).
 - (b) A variation of an attendance order made under section 74(2).”.