

LegCo Panel on Education

EDUCATION (AMENDMENT) BILL

PURPOSE

This paper briefs Members on our proposals to update the Education Ordinance and the Education Regulations (Chapter 279).

BACKGROUND

2. The Education Ordinance and the Education Regulations (hereafter “the Ordinance” and “the Regulations” respectively) were last comprehensively reviewed and amended in 1993. New developments have rendered the Ordinance and Regulations inadequate or outdated in some areas. To better meet the present day operational needs of schools and the Education Department (ED), we will be introducing an Education (Amendment) Bill to update a number of provisions in the Ordinance and the Regulations. The legislative proposals are set out in paragraphs 3 to 19 below.

PROPOSALS

Delegation of D of E’s power

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

4. In recent years, there are more and more schools (and owners, managers, teachers or pupils of these schools) meeting the conditions as proscribed in section 9(5) applying for exemption from the Ordinance. 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 this important exemption power, we propose that D of E (or DDE) may authorise officers at the directorate level to exercise the power under section 9(5).

Issue of manager's certificate

5. At present, under section 29(2), D of E is required to issue a certificate of registration of manager to the applicant upon registration. As the certificate is more a symbolic document and does not serve much practical purpose, we consider that it is not necessary to make it a legal requirement for D of E to issue the certificate.

Performance of principal's functions

6. Under sections 53 and 57, a candidate for the principal post has to be recommended by the school management committee to D of E for approval. Under section 87, apart from the principal, no other person is allowed to perform the functions of a principal. In actual practice for operational and administrative reasons, an individual who has been recommended by the school management committee to be a principal usually starts to perform the functions of a principal even though D of E has not yet given his approval. To better reflect the practice on the ground, we propose to amend the Ordinance to allow an individual to perform the functions of a principal so long as the individual is recommended by the school management committee as the principal, and the recommendation has been submitted to D of E for consideration.

Hearing of appeals against attendance orders

7. At present, in accordance with the policy of providing nine years' free and universal education to children aged between 6 and 15, D of E

may under section 74 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. Any appeals against the attendance order or variation of attendance order are heard by the Board of Review set up under section 75 of the Ordinance.

8. Since the introduction of the above provisions in 1971, the number of appeals received by the Board of Review is very small (four cases). In 1998, following a review of education-related executive and advisory bodies, Government proposed to dissolve the Board of Review and to transfer its functions to the Administrative Appeals Board^(Note). The proposal received general support. The Legislative Council was also informed of the proposal vide a Legislative Council brief issued on 14 July 1998. We propose to take the opportunity of amending the Ordinance to give effect to this proposal.

Power of inspectors of schools

9. In the course of inspecting a school and in ascertaining whether the Ordinance 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. making prosecutions). However, the inspectors do not have any statutory authority requiring the individuals to provide the particulars. We therefore propose to provide D of E and inspectors with the power to require individuals found in school premises to produce proof of identity, residential address and contact telephone number in the course of inspections when they have reasonable suspicion that the Ordinance or Regulations are not complied with by the individuals. It will be an offence (maximum penalty: a fine of up to \$10,000) if the individuals refuse to furnish the information required.

Closure of schools in bad weather

10. At present, D of E may under section 83 by order in writing suspend the operation of a school if it appears to him that there is any danger or risk of danger to persons in the school premises. Such order

^(Note) At present, we have an Administrative Appeals Board established under the Administrative Appeals Board Ordinance (Chapter 442) to hear appeals against administrative decisions made under certain statutory provisions.

must be served upon the school manager in writing and published in the gazette. However, in case of bad weather such as tropical cyclones or heavy persistent rain where schools may have to be closed quickly, it is not practicable for D of E to follow the prescribed procedures. In actual practice, D of E will make public announcements over radio, television or newspapers to advise schools to suspend classes. We propose to formalise this arrangement by amending the Ordinance accordingly.

Documents prescribed in the Ordinance

11. At present, all forms, certificates and permits for application and registration matters (for example, registration forms for teachers) and attendance orders under the Ordinance are prescribed by regulations made by the Chief Executive in Council under section 84(1)(z) of the Ordinance. Since the work is largely operational in nature, we propose to streamline the procedures by delegating the relevant power to D of E.

Control over false and misleading advertising

12. There are increasing complaints about schools making false claims or providing misleading information on, for example, the content of their courses, their teachers' qualifications, in the schools' advertisements. Under section 86B, however, D of E could only take action on schools making false advertisements in relation to their premises. To better protect students and parents, we propose to make it an offence for schools to publish any advertisements containing false or misleading information relating to the schools (maximum penalty: a fine of up to \$25,000).

Fire safety

13. Regulation 38 requires that the principal of a school should ensure that fire drill is conducted in a school at least once every month. The Fire Services Department (FSD) has advised that practising fire drills once every six months is already adequate from the fire safety angle. We therefore propose to relax the requirement of regulation 38 accordingly.

14. At present, regulation 39 requires the principal of a school to ensure that all fire extinguishers in the school premises are kept in good condition and re-charged annually. FSD has advised that requiring

principals to keep fire extinguishers in good condition is already adequate from the fire safety angle and there is no need to further require principals to re-charge fire extinguishers annually. On the basis of FSD's advice, we therefore propose to remove the requirement of re-charging fire extinguishers every year.

Gazetting and collection of school fees

15. Under regulation 60, whenever a new school fee of a school is approved by D of E, he is required to gazette the new fee for public information. We have recently started to publish school fees in school profiles to enable parents to have easy access to information relating to fees of schools. In addition, regulation 67 stipulates that schools are required to exhibit conspicuously in the school premises a certificate setting out the fee for each class. We consider that these measures are already sufficient. It is also doubtful that gazetting is an effective means to disseminate the information to parents. In the circumstances, we propose to remove the current requirement of gazetting school fees.

16. At present, under regulation 62, school fees have to be collected in either 12 or ten equal monthly payments unless otherwise permitted by D of E. Also, the first monthly payment for the new school year (which usually commences in September) could not be collected earlier than 1 August. The above requirements are not entirely applicable to schools providing non-formal education courses (e.g. tutorial schools and schools offering commercial courses etc.), the length of which varies and do not necessarily commence in September. To cater for the needs of different types of schools, we propose to change the existing requirement so that -

- (a) school fees will be collected in equal monthly payments; and
- (b) the first monthly payment will be collected no more than one month earlier than the commencement of the course.

Control over pupils' associations

17. All pupils' associations at present are required to register with D of E under regulation 72. Since activities of pupils' associations are no different from other extra-curricular activities and are supposed to be under the supervision of their own schools, we consider that the existing registration requirement is not necessary.

Maximum number of pupils

18. To protect students' safety, it is essential for D of E 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, 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. We propose to state D of E's authority explicitly and clearly in the law to avoid any possible disputes.

Making prosecution

19. As contravening provisions under the Ordinance and the Regulations are summary offences, any prosecution action has to be taken within six months after an offence is committed. In case an offence only comes to the notice of D of E six months after it is committed, no prosecution can be taken. According to past experience, however, many of the offences were not brought to the attention of ED within the six-month limit. For example, schools charging fees at a higher level than the approved one might not come to ED's notice until a parent lodged a complaint, and the complaint could be made six months after the offence is committed. To better protect parents and students by enabling ED to enforce the law more effectively, we propose to allow prosecution to be instituted within six months when contravention of provisions under the Ordinance and the Regulations comes to ED's notice.

TIMETABLE

20. We will be introducing the Education (Amendment) Bill in the current legislative session. Proposals in paragraphs 3 to 19 above will immediately come into effect after the passage of the Bill.