

Administration's Response to Issues Raised at the Meetings on 2, 3, 9, 10, 11, 16, 17 and 23 June 2004

Issues	Members' Concerns	Administration's Response
<i>Proposed section 40AS - Filling of vacancies to maintain full composition</i>	Specify the procedures for the appointment of a manager by the Permanent Secretary for Education and Manpower (PSEM) in case an incorporated management committee (IMC) fails to fill a vacancy in the office of a manager in accordance with new section 40AS. (2.6.2004)	The relevant provisions have been specified in the guides for manager election.
<i>Proposed section 40AY - Permanent Secretary's nominee may attend meeting</i>	Refine the drafting of the proposed Committee Stage amendment (CSA) to proposed section 40AY to the effect that PSEM should obtain the agreement of an IMC before nominating a public officer to attend its meeting. (2.6.2004)	There could be technical difficulties if PSEM has to obtain the agreement of an IMC before nominating a public officer to attend its meeting, which may result in failure in execution.  We have revised the provision to specify that PSEM shall, by notice in writing to the IMC, nominate a representative to attend the meeting.
<i>Proposed section 40BE – Disclosure of pecuniary or other personal interests</i>	Consider allowing public access to the records of IMC meetings in respect of any disclosures of pecuniary or personal interests by managers at IMC meetings in accordance with section 40BE. (2.6.2004)	The proposal has been accepted and corresponding amendments have been made.
<i>Section 30 – Grounds for refusal to register manager</i>	Consider specifying the criteria for PSEM to refuse the registration of an IMC manager in accordance with section 30. (2.6.2004)	The criteria have been specified in the guides for manager election.

Issues	Members' Concerns	Administration's Response
	<p>Refine the drafting of section 30(1A)(b)(ii) to the effect that PSEM would not refuse the registration of an IMC manager on the ground that he was aged 70 or above, if he was certified physically fit to perform the functions of an IMC manager by a registered medical practitioner.</p> <p>(2.6.2004)</p>	<p>Amendments have been made to specify that PSEM may refuse to register an applicant as a manager of a school if he has attained the age of 70 years and fails to produce a medical certificate issued by a registered medical practitioner within 2 months before the date of his application certifying that the applicant is physically fit to perform the functions of a manager.</p>
<p><b><i>Proposed section 40BM - Incorporation</i></b></p>	<p>Refine the drafting of proposed section 40BM(4) to the effect that no compensation was payable by the Government to a supervisor or manager who ceased to be so employed by a SSB after the establishment of an IMC.</p> <p>(2.6.2004)</p>	<p>The proposal has been accepted and corresponding amendments have been made.</p>
<p><b><i>Schedule 1</i></b></p>	<p>Consider specifying the arrangements for the continuation of existing contracts or service agreements between the contractors or service providers and an aided school after the establishment of an IMC.</p> <p>(2.6.2004)</p> <p>Inform school sponsoring bodies (SSBs) on the impact of the transitional provisions for the establishment of IMC under proposed section 40BO on school operation and advise them not to enter into non-government funded contracts or service agreements for more than a certain period, say one year, after the</p>	<p>The proposal has been accepted and corresponding amendments have been made to Schedule 1.</p> <p>We have issued a circular to inform schools and SSBs about the transitional arrangement of contracts.</p>

Issues	Members' Concerns	Administration's Response
	enactment of the Bill. (3.6.2004)	
<i>Government schools</i>	Explain the criminal liability of managers of government schools. (3.6.2004)	<p>Government schools are government organizations. The facilities, management, and daily operation of the schools are all controlled and regulated by the relevant government internal regulations. Such regulations are comparable to the Education Ordinance and the Education Regulations. As the chairpersons, principals and teacher representatives of the School Management Committee (SMC) are civil servants, their offences would be regulated by legal statutes applicable to civil servants and controlled or punished in accordance with government regulations.</p> <p>Comparing the legal responsibilities of IMC managers with those of the SMC managers, we have found that some provisions on offences and penalties in section 87 of the Education Ordinance and regulations 101&amp; 102 of the Education Regulations involve the legal responsibilities of any person or any manager of the IMC. Situations mentioned in these provisions might also happen in government schools. Nevertheless, in respect of government schools, these provisions are actually the duties or responsibility areas of the principals. As such, when appointing non-civil servants as SMC members, we will clearly stipulate that they are not allowed to deal with</p>

Issues	Members' Concerns	Administration's Response
		the tasks that might relate to these provisions in order to avoid committing the offences.
	Explore the feasibility of allowing parents to participate in the selection of the first principal of a government school. (3.6.2004)	<p>The principle to maintain a fair and impartial selection of principals in government schools is in line with the requirements of the Education (Amendment) Bill 2002 (the Bill) and meets the public's general expectation. In the selection process of principals for government schools, the requirements are more stringent than those stipulated in the Bill. Details of the arrangement are as follows:</p> <ul style="list-style-type: none"> <li>i. The performance appraisal of government school principals and teachers is conducted annually in accordance with the relevant regulations for civil servants. The lines of reporting are three-tier, comprising officers of higher ranks. To perform the appraisal assessment for a principal, the appraising officer should be familiar with the work of the appraisee and is required to consult the chairperson of the SMC as well. Besides, the Education and Manpower Bureau (EMB) has a Moderation Panel to ensure that all the appraisal assessments of principals and teachers of government schools are conducted in a subjective and fair manner.</li> <li>ii. The appointment of a government school teacher as a</li> </ul>

Issues	Members' Concerns	Administration's Response
		<p>government school principal should go through the promotion mechanism for civil servants. If there are vacancies of principals in government schools, the EMB will set up a promotion board with 2 school principals and 2 to 3 officers of other grades as board members. The board members are required to recommend suitable candidates to the Public Service Commission for endorsement before the candidates can be promoted to take up the headship posts. In the process of assessment, the board members have to study carefully the candidates' appraisal reports in the last 3 years as well as whether the candidates possess the core competencies of a principal.</p> <p>Hence, we consider it unnecessary to change the existing arrangement for the selection of principal of government school.</p>
<b><i>Regulation 66 – Prohibition of collections without permission of Permanent Secretary</i></b>	Refine the drafting of regulation 66 to reflect more clearly the policy intent. (9.6.2004)	Amendments have been made to specify that the relevant provisions are not applicable to IMC schools.
<b><i>Regulation 88 – Size of classes</i></b>	Consider exempting aided schools with IMC from regulation 88(c), i.e., no more than 45 pupils should be taught at one time by one teacher, except in the special cases with the permission of PSEM. (9.6.2004)	Amendments have been made to specify that the relevant provisions are not applicable to IMC schools.

Issues	Members' Concerns	Administration's Response
<i>Regulation 89 – Hours of instruction</i>	Consider exempting IMC schools from regulation 89. (9.6.2004)	Amendment has been made to delete this regulation.
<i>Regulation 92 – Syllabus and time-table subject to approval of Permanent Secretary</i>	Consider deleting regulation 92(3) or specifying the criteria for PSEM to order the inclusion or exclusion of certain instruction from any syllabus; and examine whether regulation 92(8) and (9) was consistent with the Hong Kong Bill of Rights Ordinance. (9.6.2004)	We are of the view that it may cause unnecessary disputes if we specify the criteria. Some people may query whether those circumstances not specified are considered irrelevant, and thus challenge the decisions of PSEM. Hence, no amendment would be made to this regulation.
<i>Regulation 10 – Structural alterations</i>	Consider whether the consent of PSEM in writing should be required for any alteration to the latrine accommodation or the sanitary arrangements of a school, or in the ventilation or lighting of its classroom. (9.6.2004)	We have consulted the Department of Health and they considered it inappropriate to delete those regulations which have implications on pupils' hygiene and health. As such, no amendment would be made to this regulation.
<i>Regulation 37 – Notice requiring safety equipment against fire</i>	Set out the necessary rules and procedures that IMCs have to follow in order to comply with the fire safety requirements in regulation 37. (9.6.2004)	The Fire Services Ordinance does not provide for any requirements for schools. EMB will liaise with the Fire Services Department to discuss whether it is necessary to set out the requirements.
<i>Regulation 64 – Accounts</i>	Consider whether the word “vouchers” in regulation 64(c) includes receipts transmitted by electronic means. (9.6.2004)	In accordance with section 5(2) of the Electronic Transactions Ordinance (Chapter 553), if a rule of law permits information to be or given in writing, an electronic record satisfies that rule of law if the information contained in the electronic record is accessible so as to be usable for subsequent reference. As such, electronic

Issues	Members' Concerns	Administration's Response
		receipts should be considered as a kind of "vouchers".
<b>Regulation 99A – Business or trading operations</b>	<p>Explain the definition and scope of operating business or trading operations on school premises. (9.6.2004)</p> <p>Review the need for PSEM to give permission in writing for aided schools to operate business or trading undertaking on school premises; clarify the allocation of the profits to IMC or SSBs generated from such operation, consult SSBs on the impact of the regulation on school operation, and provide guidelines to schools for compliance with the regulation 99A. (9.6.2004)</p>	Amendments have been made to specify that the relevant provisions are not applicable to IMC schools.
<b>Regulation 21 – Safety precautions</b>	<p>Refine the drafting of regulation 21 to reflect more clearly the policy intent that non-teaching staff such as laboratory technicians should not give instructions in the use of tools, the operation of machines or the conduct of science experiments. (9.6.2004)</p>	The proposal has been accepted and corresponding amendments have been made.
<b>Regulation 63 – Formal receipts</b>	<p>Examine whether the requirement to issue formal receipts in writing for all payments received from pupils was still feasible in the light of the various methods of payment adopted by schools nowadays. (10.6.2004)</p>	Amendments have been made to specify that the relevant provisions are not applicable to IMC schools.

Issues	Members' Concerns	Administration's Response
<i>Regulation 97 – Expelled or suspended pupil not to enter school premises without permission</i>	Consider repealing regulation 97(2) which restricted a pupil who had been suspended from a school under regulation 96(1) from entering or remaining in the school premises without the permission of the PSEM. (10.6.2004)	We have accepted the proposal and regulation 97(2) has been repealed.
<i>Proposed section 40AE – Powers of incorporated management committee</i>	Refine the drafting of proposed CSA to section 40AE(1) to specify that an IMC should operate in accordance with the vision and mission, and the general educational policies and principles set by the SSB concerned. (10.6.2004)	The proposal has been accepted and corresponding amendments have been made.
<i>Proposed section 40AW – Constitution of incorporated management committee</i>	Refine the drafting of proposed section 40AW(3C) to the effect that the PSEM might require IMCs to amend their constitutions to secure compliance with law and general education policies. (11.6.2004)	The proposal has been accepted and corresponding amendments have been made.
<i>Proposed section 40AY – Permanent Secretary's nominee may attend meeting</i>	Refine the drafting of proposed section 40AY to the effect that PSEM should serve a written notice to an IMC for the nomination of a public officer to attend an IMC meeting. (11.6.2004)	The proposal has been accepted and corresponding amendments have been made.
<i>Proposed section 40BC - Dissolution</i>	Consider establishing a mechanism to provide flexibility in the transfer of non-government funds or properties held by an IMC school immediately before its dissolution to other schools operated by the same SSB. (11.6.2004)	Amendments have been made to relevant provisions, specifying that before the dissolution of an IMC, if any property which has been donated to the committee remains after settling the liabilities, the property will be returned to



Issues	Members' Concerns	Administration's Response
		the donor unless the donor indicated at the time of the donation that he did not wish to reclaim the property in the event of the dissolution of the committee. In other words, SSB may reclaim the properties donated to the IMC and apply them to other sponsored schools.
<p><i>Section 22 – Grounds for cancellation of registration or provisional registration of school</i></p> <p><i>Section 31 – Grounds for cancellation of registration of manager</i></p>	<p>Consider specifying the requirements and procedures for PSEM to cancel the registration or provisional registration of a school if it appears to PSEM that the school is not being managed satisfactorily or that the education of the pupils is not being promoted in a proper manner. (16.6.2004)</p> <p>PSEM may cancel the registration of a manager of a school if it appears to her that the school is not being managed satisfactorily or that the education of the pupils is not being promoted in a proper manner under section 31(1)(e). It is advised to revise this section in order to reflect more clearly the policy intent. (16.6.2004)</p>	<p>No amendment would be made to these provisions because there are great difficulties in generalising all “unsatisfactory” circumstances in the Ordinance. The provisions serve as a "safety-valve" and would only be applied under special and emergent circumstances in order to avoid the situation become uncontrollable which necessitates further drastic measures. Such power has not been abused by PSEM. In the execution of such power, PSEM must base on the principles of natural justice. Also, his decisions will be subject to judicial review.</p>
<p><i>Proposed section 40CB – Schools scheduled to open within 6 months from commencement date</i></p>	<p>Re-consider whether an aided school which has established an IMC within the transition period should be given an option to dissolve the IMC if it subsequently opts to become a Direct Subsidy Scheme (DSS) school under the proposed CSA to section 40CB(2). (16.6.2004)</p>	<p>The proposal has been accepted and amendments have been made to allow an aided school with an IMC to change to a DSS school without an IMC.</p>

Issues	Members' Concerns	Administration's Response
<b><i>Section 41 – Appointment of managers by Permanent Secretary</i></b>	<p>Delete or refine the drafting of proposed section 41(1)(d). (16.6.2004)</p> <p>Specify in section 41(1) that PSEM could only appoint not more than two persons as managers of a school for such period as she considers appropriate. (16.6.2004)</p>	<p>We have accepted the proposal and proposed section 41(1)(d) has been repealed.</p> <p>We should not specify the maximum number of appointed managers in the Ordinance as PSEM may have to appoint different professionals or representatives of different governmental departments to serve on an IMC in order to assist the school in formulating policies to meet their diverse needs. The term of office of these appointed managers would depend on the situation, and should not be specified in the Ordinance.</p>
<b><i>Section 66 – Permission to operate school or to act pending appeal</i></b>	<p>Clarify the date for an amendment to an IMC constitution to take effect if it had been objected by PSEM under proposed section 40AW(3) and (3A), but the decision of PSEM was subsequently reversed by an Appeal Board. (11.6.2004)</p> <p>Clarify the date for an amendment to an IMC constitution to take effect if it had been objected by PSEM but the decision of PSEM was subsequently reversed by an Appeal Board. (16.6.2004)</p>	<p>We have amended the relevant provisions, specifying that in case PSEM objects to an amendment of an IMC constitution, but his decision is subsequently reversed by an Appeal Board, the amendment will then take effect on the date on which the reversal is upheld or the original effective date, whichever is the later.</p>
<b><i>Section 83 – Power of the Permanent Secretary to close school or give directions in</i></b>	<p>Explain the justifications for PSEM to issue an order to close school or give directions if it appears to her that the conduct of teachers or pupils is or has been unsatisfactory (section 83(1)(b)).</p>	<p>No amendment would be made to this provision because there are great difficulties in generalising all “unsatisfactory” circumstances in the Ordinance. The</p>

Issues	Members' Concerns	Administration's Response
<i>cases of danger or misconduct</i>	(16.6.2004)  Refine the drafting of section 83(1)(c) to reflect more clearly the policy intent of the section. (16.6.2004)	provisions serve as a "safety-valve" and would only be applied under special and emergent circumstances in order to avoid the situation become uncontrollable which necessitates further drastic measures. Such power has not been abused by PSEM. In the execution of such power, PSEM must base on the principles of natural justice. Also, his decisions will be subject to judicial review.
<i>Section 84 - Regulations</i>	Clarify whether the Chief Executive in Council could by way of a regulation change the specified method and procedure for selection or transfer of principals in IMC schools in proposed section 57A. (16.6.2004)	The proposed amendments to subsidiary legislation would not affect the principal provisions of law. At the same time, in accordance with section 34 of the Interpretation and General Clauses Ordinance, all subsidiary legislation shall be laid on the table of the Legislative Council after the publication in the Gazette of that subsidiary legislation. The Legislative Council may pass a resolution to provide that such subsidiary legislation shall be amended.
<i>Schedule 1</i>	Amend paragraph 4 of Schedule 1 to the effect that transfer of books, accounts, receipts or other documents to an IMC should be restricted to those which were relevant to the functions and powers of the IMC in proposed sections 40AD(2) and 40AE. (16.6.2004)	The proposal has been accepted and corresponding amendments have been made.
<i>Regulation 18 – Pupils using roof playgrounds to be under supervision</i>	Consider deleting the word “balcony” from regulation 18. (16.6.2004)	The word “balcony” is not deleted from regulation 18 because the safety design of the “roof” has been already provided for in the Education Regulations. The

Issues	Members' Concerns	Administration's Response
		possibility of occurrence of accidents in balcony is relatively great. As pupils' lives and safety are of utmost importance, even though the retention of the restriction on balcony may result in administrative burden, we believe that schools would not oppose to this.
<b>Regulation 47 – Refreshment places</b> <b>Regulation 48 – Cleaning and colour washing</b>	Examine whether criminal liability should be imposed on the supervisor and principal of an aided school which has been found in violation of the regulations 47 and 48. (16.6.2004)	Amendments have been made to delete regulation 48 and specify that no criminal liability would be incurred in contravention of regulation 47.
<b>Regulation 56 – Boarding schools</b> <b>Regulation 57 – Medical examination in boarding schools</b>	Review whether non-compliance with regulations 56 and 57 should constitute a criminal offence. (17.6.2004)	Non-compliance with the relevant regulations would not constitute a criminal offence.
<b>Regulation 66 – Prohibition of collections without permission of Permanent Secretary</b>	Examine whether DSS schools should be exempted from regulation 66 which requires schools to seek the approval of the PSEM for collection of fees or subscription from pupils in schools. (17.6.2004)	Amendments have been made to specify that the relevant provisions are not applicable to IMC schools.
<b>Regulation 76 – Teachers' appointment or dismissal needs approval by managers</b>	Specify that the appointment of teachers under the approved establishment or a contract of not less than six months should be approved by the majority of the managers of an aided school. (17.6.2004)	The proposal has been accepted and corresponding amendments have been made.

Issues	Members' Concerns	Administration's Response
	<p>Specify that the dismissal of any teacher employed under the approved establishment or a contract of not less than six months should be approved by the majority of the managers at a meeting of the SMC or the IMC.</p> <p>(17.6.2004)</p>	
<p><b><i>Regulation 96 – Expulsion and suspensions of pupils</i></b></p>	<p>Elaborate on the powers and authority of a principal and a supervisor, in contrast with those of the PSEM, to expel or suspend a pupil from a school.</p> <p>(17.6.2004)</p>	<p>We have responded in LC Paper No. CB(2)2927/03-04(01).</p>
<p><b><i>Regulation 99A – Business or trading operations</i></b></p>	<p>Examine whether the scope of regulation 99A should cover DSS schools.</p> <p>(17.6.2004)</p>	<p>Amendments have been made to specify that the relevant provisions are not applicable to IMC schools.</p>
<p><b><i>Appeal mechanism</i></b></p>	<p>Review the operation of the appeal mechanism under the Education Ordinance with a view to improving its fairness and transparency.</p> <p>(23.6.2004)</p>	<p>In accordance with appeal mechanism under the existing Education Ordinance, a person may appeal by way of petition to the Chief Executive in Council if he objects to the decision of the Appeal Board. We will handle each appeal case in accordance with related procedures to ensure the appeal process is fair.</p>