

Investigation of Offences under the Accreditation of Academic and Vocational Qualifications Bill

At the meeting of the Bills Committee on the Accreditation of Academic and Vocational Qualifications Bill (the Bill) held on 19 December 2006, the Administration was requested to explain with examples the need for the powers of investigation provided for under clause 15 of the Bill.

Offence Provisions under the Bill

2. To safeguard the credibility and integrity of the Qualifications Framework (QF) and the Qualifications Register (QR), we have proposed provisions to regulate advertisements relating to the QF and the QR. Clause 13 of the Bill provides that it is an offence for any person to publish or cause to be published an advertisement which wrongly claims, represents or holds out that a qualification is recognized under the QF, or that a person or body is an appointed assessment agency. Clause 14 creates an offence of making misleading or false representation or furnishing misleading or false information. Any person who commits an offence described above is liable on conviction to a fine at level 5 (\$50,000).

Investigation of Offences

3. It is necessary to introduce provisions under the Bill to provide for the investigation of the offences under clauses 13 and 14. Under clause 15(1), where a warrant has been issued by a magistrate in respect of any premises, an inspection officer or a police officer may –

- (a) at any time, using such force as may be necessary, enter and search such premises;
- (b) detain any person found in such premises, during such period as is reasonably required to permit any such search to be carried out, where that person might prejudice the purpose of such search if he were not so detained; and
- (c) inspect, seize and detain anything which is or appears to him to be or to contain, or to be likely to be or to contain, evidence of the commission of an offence under this Ordinance.

4. Inspection officers will be public officers authorized by SEM in writing either generally or in any particular case for the purposes of clause 15. At the meeting of the Bills Committee on 19 December 2006, Members enquired whether the appointment of inspection officers was necessary as investigation could be conducted by the Police. It is important to note that the Police have advised that they may not be able to accord priority to the investigation work under the Bill. Hence, it is necessary to appoint non-police officers to conduct investigation under the Bill. Experienced investigators currently enforcing the Education Ordinance (Cap. 279) will be appointed as inspection officers. The investigation powers set out in paragraph 3(a) to (c) above will not be exercised lightly as an inspection officer or a police officer is required to obtain a warrant from a magistrate before exercising such powers.

Powers of Investigation in other Ordinances

5. The investigation powers specified in the Bill are similar to those specified in other Ordinances under EMB's purview, namely the Education Ordinance (Cap. 279) and the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493). Non-police officers are appointed to exercise the investigation powers under these Ordinances.

Education Ordinance (Cap. 279)

6. Section 80 of the Education Ordinance (Cap. 279) provides that the Permanent Secretary for Education and Manpower ("PSEM") and any inspector of schools may inspect any school for the purposes of ascertaining whether the Ordinance is being complied with and whether the school is being conducted satisfactorily. The Ordinance also provides that PSEM and any inspector of schools may require any manager or teacher of a school to produce any book, document or other article relating to the management of, teaching in or any other activity of the school. They may remove for further examination any book, document or other article which is suspected to be evidence of commission of an offence under the Ordinance. The above investigation powers can be exercised without a warrant.

7. Under the Education Ordinance, inspectors of schools are any officers of the EMB appointed by the Chief Executive¹ by notice in the

¹ The power of appointment of inspectors of schools has been delegated to the Chief Secretary for Administration, SEM, PSEM, Deputy Secretary for Education and Manpower and Principal Assistant Secretary for Education and Manpower.

Gazette. While the inspectors are responsible for the investigation under the Ordinance, they may seek the Police's assistance when there is obstruction during the investigation.

Non-Local Higher and Professional Education (Regulation) Ordinance (Cap. 493)

8. Section 24(1) of the Non-Local Higher and Professional Education (Regulation) Ordinance (Cap. 493) provides that where a warrant has been issued by a magistrate in respect of any premises, a prescribed officer may enter and search such premises at any time; detain any person found in such premises (during such period as is reasonably required to permit any such search to be carried out, where that person might prejudice the purpose of such search if he were not so detained); and inspect, seize and detain anything which is or appears to be or to contain, or to be likely to be or contain, evidence of the commission of an offence under the Ordinance.

9. A "prescribed officer" means-

- (a) any public officer authorized in writing for the purposes of section 24 by the Registrar of Non-local Higher and Professional Education Courses ("the Registrar") either generally or in any particular case;
- (b) any inspection officer (i.e. any public officer appointed by the Registrar by notice in the Gazette); or
- (c) any police officer.

While a non-police officer described in paragraph 9(a) to (b) above must obtain a warrant before exercising the investigation powers set out in paragraph 8, the Ordinance empowers a police officer to exercise the investigation powers without a warrant if the relevant premises is not used wholly or mainly for residential purposes and constituting a separate household unit and that the police officer has reason to believe that an offence under the Ordinance is being or has been committed in the premises, etc.

Film Censorship Ordinance (Cap.392)

10. Besides the above Ordinances, the Film Censorship Ordinance (Cap. 392) also empowers non-police officers to conduct investigation.

Section 23 of the Ordinance provides that the Film Censorship Authority (i.e. Commissioner for Television and Entertainment Licensing) may authorize in writing any public officer to be an inspector for the purposes of the Ordinance. An inspector may at any time enter any place in which he has reason to believe that an offence under the Ordinance is being or has been committed. The inspector may in that place seize a film, packaging or advertising material which appears to him to be evidence of an offence under the Ordinance. He may also require any person found in that place to furnish to him his residential address, business address, telephone number of his residence and telephone number of his place of business.

11. An inspector may exercise the above investigation powers without a warrant. However, a warrant is required before entering and searching any domestic premises.

Conclusion

12. The investigation measures proposed under clause 15 of the Bill are not uncommon. There are precedents of appointment of non-police inspection officers for enforcement. Comparatively speaking, there are more safeguards under the Bill, as an inspection officer or a police officer must obtain a warrant before exercising the relevant powers.

Education and Manpower Bureau
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