

Accreditation of Academic and Vocational Qualifications Bill

Proposed Committee Stage Amendments

This paper sets out additional Committee Stage Amendments (CSAs) proposed by the Administration in the light of the discussion at the Bills Committee meeting held on 14 February 2007.

A. Proposed CSAs

Advertisements relating to the Qualifications Framework (QF) and the Qualifications Register (QR)

Information required in an advertisement under clause 13(1)

2. Clause 13(1) of the Bill states that no person shall publish or cause to be published an advertisement which claims, represents or holds out that a qualification obtainable from a granting body or from the completion of a learning programme is recognized under the QF unless-

“(a) all of the following information is contained in the advertisement-

- (i) the name of the qualification;
- (ii) the name of the relevant granting body;
- (iii) the description of the relevant learning programme, and the name of the relevant operator (if different from the granting body), if applicable;
- (iv) the relevant level of the QF under which the qualification is recognized;
- (v) the registration number assigned by the QR Authority for the entry of qualification in the QR;
- (vi) the validity period of the entry; and

(b)”.

3. At the last meeting, Members commented that since a contravention of clause 13(1) would constitute an offence, the Administration should seriously consider whether the number of information items to be contained in an advertisement relating to the QF and QR could be reduced.

4. Having carefully considered Members' comments, we are of the view that any QF- or QR-related advertisement must contain the following three items of information -

QF Level of the relevant qualification (Clause 13(1)(a)(iv))

QF level provides important information on the order of a qualification against the seven-level QF hierarchy. This is particularly important since qualification titles are not yet standardized in Hong Kong and courses of different QF levels may be offered under the same title (e.g. Certificate, Diploma), thus causing confusion to learners. It is therefore important to specify the QF level of the qualification in the advertisement to enhance the comparability and transparency of individual qualifications.

Registration number of the relevant qualification (Clause 13(1)(a)(v))

The registration number of a qualification enables the public to verify the information contained in the advertisement against that in the QR and ascertain whether or not the qualification is recognized under the QF.

Validity period of the relevant qualification (Clause 13(1)(a)(vi))

A qualification is registered on the QR for a specified period, i.e. the validity period. A qualification obtained by a learner is recognized under the QF only if a learner enrolls for that qualification within the specified validity period. It is therefore important that the validity period of the entry of the relevant qualification is clearly stated in the advertisement so as to provide clear information to learners.

Defence Provision under clause 13(4)(a)(iii)

5. At the Bills Committee meeting held on 14 February 2007, the Assistant Legal Adviser (ALA) of the Bills Committee suggested and Members agreed that to improve the proposed CSA to clause 13(4)(a)(iii), the Administration could make reference to the defence provision under section 43 of the Sex Discrimination Ordinance (Cap.480).

6. Having regard to Members' views, we agree to amend clause 13(4)(a)(iii) of the Bill to the effect that it shall be a defence for the relevant person charged with an offence under clause 13(3) if he proves that he published the advertisement in reliance on a statement made to him by the person who caused it to be published to the effect that the publication would not constitute an offence under clause 13(3) and it was reasonable for him to

rely on the statement.

Fees charged by the Hong Kong Council for Academic Accreditation which require the approval of the Secretary for Education and Manpower (“SEM”) (proposed section 13 added by clause 34)

7. As we have earlier proposed and Members agreed to amend section 5(2)(e) of Cap. 1150 (added by clause 25(8) of the Bill) so that HKCAA’s accreditation fees will be subject to SEM’s prior approval, we propose to amend proposed section 13(2)(d) of Cap. 1150 to the effect that HKCAA is required to submit a schedule of its accreditation fees and review fees to be determined under sections 5(2)(e) and (ea) of Cap. 1150 for the next financial year for SEM’s prior approval.

Drafting Improvements on the Proposed Part 3 (Appeal Board)

8. Arising from the suggestions made by a Member at the last Bills Committee meeting, we have improved the presentation of the proposed Part 3 (Appeal Board) of the Bill by re-arranging some of the provisions under this Part. The improvements (marked up for Members’ reference) are set out in clauses 9 to 12E of the revised draft of the CSAs proposed by the Administration at **Annex**. We have not proposed substantive amendments to this Part of the Bill.

B. Other Issues

Resources required for development of Specifications of Competency Standards

9. At the last Bills Committee meeting, the Administration was requested to provide information on the resources required for Industry Training Advisory Committees (ITACs) to draw up their respective Specifications of Competency Standards (SCSs).

10. As at end of February 2007, the Administration has set up ITACs in 12 industries. In 2006-07, the estimated expenditure in providing secretariat support for the 12 ITACs and developing SCSs for the respective industries is about \$12 million. In 2007-08, the estimated expenditure for supporting ITACs and related work is about \$15 million.

C. Next Step

11. Members are invited to comment on the revised draft of the CSAs (at **Annex**) which has incorporated the latest amendments described in this paper (and marked up for Members' reference).

Education and Manpower Bureau
March 2007

ACCREDITATION OF ACADEMIC AND VOCATIONAL QUALIFICATIONS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education
and Manpower

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------------|--|
| enacting formula | In the Chinese text, by deleting “訂” and substituting “定”. |
| 2 | (a) By deleting the definitions of “business” and “review committee”. (b) In the Chinese text, in the definition of “營辦者”, by deleting “團體;” and substituting “團體。”. |
| 3 | (a) In subclause (1), by deleting everything after “qualifications” and substituting a full stop. (b) By adding - “(1A) The Qualifications Framework shall be made available to the public for inspection free of charge at such place and in such form and at such reasonable times as the Secretary may specify.”. |

- 4(4)(a) By adding "subject to the prior approval of the Secretary," before "determine".
- 5 (a) In subclause (3), in the Chinese text, by deleting "估評" and substituting "評估".
- (b) In subclause (4), by adding "and shall state in the notice the reason for the decision" after "body".
- 7 (a) By adding -
- "(3A) The QR Authority may -
- (a) correct any error in the Qualifications Register, including any omission from the Qualifications Register; and
- (b) make such amendments to the Qualifications Register as it considers necessary to record a change in the information contained in the Qualifications Register."
- (b) By adding -
- "(4A) The purpose of making the

Qualifications Register available to the public is to enable any member of the public -

(a) to ascertain what qualifications are recognized under the Qualifications Framework; and

(b) to ascertain the particulars of such qualifications.”.

(c) In subclause (5), by deleting “(1) (e)” and substituting “(1) (e) (ii)”.

(d) In subclause (6), by adding “and shall state in the notice the reason for the decision” after “body”.

8

(a) In subclause (3), by deleting everything after “agencies” and substituting a full stop.

(b) By adding -

“(3A) The list of the names of appointed assessment agencies shall be made available to the public for inspection free of charge at such place and in such form and at such reasonable times as the Secretary may specify.”.

Part 3

By deleting the Part and substituting –

“PART 3

APPEAL BOARD

9. Interpretation of Part 3

In this Part –

“appeal” (上訴) means an appeal under section

1142;

“Appeal Board” (上訴委員會) means the appeal board

established under section 10(1);

“appellant” (上訴人) means an operator,

assessment agency or granting body lodging

a notice of appeal under section 1142;

“Chairman” (主席) means the chairman of the Appeal

Board appointed under section 10(2)(a);

“Deputy Chairman” (副主席) means a deputy

chairman of the Appeal Board appointed under

section 10(2)(b);

“panel member” (備選委員) means a member of the

panel of persons appointed under section

10(2)(c);

“presiding officer” (審裁官), in relation to an appeal, means the presiding officer referred to in section 12A(1)(a).

10. Establishment of Appeal Board, etc.

(1) For the purposes of considering and deciding appeals, there is established an appeal board.

(2) The Secretary shall appoint -

(a) a person to be the chairman of the Appeal Board;

(b) one or more persons to be the deputy chairman or deputy chairmen of the Appeal Board;

and

(c) a panel of persons whom the Secretary considers suitable for selection under section 12A(1)(b) as members of the

Appeal Board.

(3) A person may be appointed under subsection (2) only if -

(a) he is a person whom the Secretary considers suitable for appointment by reason of his -

(i) expertise or experience in quality assurance or the conduct of accreditation tests; or

(ii) good standing in the field of education or training or in any industry; and

(b) he is not a member of the Accreditation Authority or of the QR Authority.

(4) A person appointed under subsection (2)

may at any time resign by notice in writing to the Secretary.

(5) An appointment under subsection (2) shall be notified in the Gazette.

(6) If the Chairman, due to absence from Hong Kong or for any other reason, is unable to act as Chairman for any period, a Deputy Chairman designated by the Chairman for the purposes of this subsection shall act in the place of the Chairman for that period.

(7) The remuneration, if any, of the Chairman, a Deputy Chairman and a panel member shall be paid at a rate that the Secretary determines.

~~11. Appeal rules~~

~~(1) There is established a rules committee. (2) The rules committee shall consist of~~

~~(a) the Chairman;~~

~~(b) all Deputy Chairmen; and~~

~~(c) — not less than 6 and not more than
8 panel members selected by the
Secretary.~~

~~(3) — The Chairman shall preside at meetings
of the rules committee.~~

~~(4) — The quorum for a meeting of the rules
committee shall be two thirds of its members
(including the Chairman).~~

~~(5) — The rules committee may make rules —~~

~~(a) — to provide for the lodging of
appeals; and~~

~~(b) — generally for regulating the
practice and procedure of the
Appeal Board.~~

~~(6) — The power to make rules under subsection
(5) may be exercised in the name of the rules
committee at any of its meetings by a majority
of its members present, and in the case of an
equality of votes the Chairman shall have a~~

~~second or casting vote.~~

~~(7) No rule made under subsection (5) shall come into operation before the expiry of the period within which a resolution providing for the amendment of the rule may be passed in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).~~

112. Appeal to Appeal Board

(1) An operator, assessment agency or granting body aggrieved by -

- (a) a determination of the Accreditation Authority, as stated in an accreditation report;
- (b) a decision of the Accreditation Authority on the length of the validity period of a determination of the Authority, as stated in an

accreditation report;

(c) a decision of the Accreditation Authority as to the conditions or restrictions subject to which a determination of the Authority is to have effect, as stated in an accreditation report;

(d) a decision of the Accreditation Authority referred to in section 5(4);

(e) a decision of the QR Authority referred to in section 7(6); or

(f) a decision made by the Accreditation Authority or the QR Authority under section 12C~~D~~(b),

made in respect of him or it may appeal to the Appeal Board.

(2) An operator, assessment agency or granting body wishing to appeal under subsection (1) shall lodge a notice of appeal with the Appeal Board in such form as the Chairman may specify -

- (a) within 30 days of the receipt by the operator, assessment agency or granting body of a copy of the accreditation report under section 5(3) or the notice of the decision under section 5(4), 7(6) or 12C~~D~~(c), as the case may be; or
- (b) within such further period as the Chairman may allow.

12A. Members of Appeal Board

(1) For the purposes of an appeal, the Appeal Board shall consist of -

- (a) the Chairman or a Deputy Chairman, as determined by the

Chairman, who shall preside at meetings and hearings held for the appeal ("presiding officer"); and

- (b) not less than 2 and not more than 6 panel members selected by the presiding officer.

(2) If the presiding officer who is a Deputy Chairman or a panel member selected under subsection (1) (b), due to absence from Hong Kong or for any other reason, is unable to act as presiding officer or a member of the Appeal Board for the purposes of the relevant appeal for any period, the Chairman may, as the case may be -

- (a) act in the place of the presiding officer for that period or select another Deputy Chairman to act in the place of the presiding officer for that

period; or

- (b) select another panel member to act in the place of such member of the Appeal Board for that period.

(3) If the term of appointment of the presiding officer or of a panel member selected under subsection (1) (b) expires before the Appeal Board makes a decision under section 12B(2) (a) for the relevant appeal, the presiding officer or panel member may continue to act as presiding officer or a member of the Appeal Board for the purposes of that appeal until such a decision is made.

12AB. Procedure

(1) The Appeal Board may, with the consent of the parties to an appeal, consider and decide the appeal on the basis of written submissions only without holding a hearing to receive oral

representations.

(2) In considering an appeal, every question before the Appeal Board shall be determined by the opinion of the majority of the members of the Appeal Board voting on the question, and in the case of an equality of votes the presiding officer shall have a second or casting vote.

(3) Subject to subsection (4), a party to an appeal is entitled to be heard in person or through its authorized representative.

(4) A counsel or solicitor is not entitled to be heard before the Appeal Board unless -

(a) he is acting on his own behalf as a party to an appeal; or

(b) he is an officer or employee of a party to an appeal and is acting as the authorized representative of the party.

(5) Any hearing held in connection with an appeal to receive oral representations shall take place in public, but if the Appeal Board after consulting the parties to the appeal is satisfied that it is desirable to do so, it may direct that the whole or part of the hearing shall take place in private and give directions as to the persons who may be present.

12B€. Functions of Appeal Board

(1) For the purposes of an appeal, the Appeal Board may -

- (a) determine any matter of practice or procedure relating to the appeal where no provision governing such matter is made in this Ordinance or in any rules made under section 12E1(52);
- (b) receive and consider any

material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law; and

(c) by notice in writing, request any person -

(i) to produce to the Appeal Board any document or article that is relevant to the appeal and is in his custody or under his control; or

(ii) to appear before the Appeal Board and to give evidence relevant to the appeal.

(2) After considering an appeal, the Appeal

Board shall -

(a) make a decision to -

(i) confirm, vary or reverse
the determination or
decision under appeal or
substitute any other
determination or
decision for the
determination or
decision under appeal;
or

(ii) subject to subsection
(3), direct the
Accreditation Authority
or the QR Authority, as
the case may be, to
review the determination
or decision under appeal
within such period as the

Appeal Board may

specify; and

- (b) notify the Accreditation Authority or the QR Authority, as the case may be, and the appellant in writing of its decision and the reasons for the decision.

(3) Subsection (2) (a) (ii) does not apply in relation to an appeal against a decision made under section 12CD(b).

12CD. Review of determination or decision under appeal

After receiving a notice from the Appeal Board of a decision under section 12EB(2) (a) (ii), the Accreditation Authority or the QR Authority, as the case may be, shall, within such period as the Appeal Board may specify -

- (a) review the determination or decision under appeal;
- (b) make a decision to confirm, vary or reverse the determination or decision under appeal or substitute any other determination or decision for the determination or decision under appeal; and
- (c) notify the Appeal Board and the appellant in writing of its decision and the reasons for the decision.

**12DE. Protection of Chairman, Deputy
Chairman or panel member**

The Chairman, a Deputy Chairman or a panel member, acting in good faith, shall not be personally liable for any act done or default made by him, in the exercise or purported

exercise of the powers conferred by this Part or in the performance or purported performance of the functions or duties imposed under this Part."

12E. Appeal rules

(1) There is established a rules committee consisting of -

(a) the Chairman;

(b) all Deputy Chairmen; and

(c) not less than 6 and not more than 8 panel members selected by the Secretary.

(2) The rules committee may make rules -

(a) to provide for the lodging of appeals; and

(b) generally for regulating the practice and procedure of the Appeal Board.

(3) The power to make rules under subsection

(2) may be exercised at any meeting of the rules committee by a majority of its members present, and in the case of an equality of votes the Chairman shall have a second or casting vote.

(4) No rule made under subsection (2) shall come into operation before the expiry of the period within which a resolution providing for the amendment of the rule may be passed in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

(5) The Chairman shall preside at meetings of the rules committee.

(6) The quorum for a meeting of the rules committee shall be two-thirds of its members (including the Chairman)."

13

- (a) In subclause (1), in the Chinese text, by deleting everything from “任何” to “此限” and substituting “任何廣告如聲稱、表述或顯示從某頒授 可取得的資歷或在完成某進修計劃後可取得的資歷是在資歷架構

下獲認可的，除非該廣告符合以下規定，否則任何人不得發表或安排發表該廣告”。

(b) By deleting subclause (1) (a) (i), (ii) and (iii).

(c) By deleting subclause (4) (a) (iii) and substituting -

“(iii) he published the advertisement in reliance on a statement made to him by the person who caused it to be published to the effect that the publication would not constitute an offence under subsection (3) and it was reasonable for him to rely on the statement~~he had no reason to believe that he would be committing an offence by publishing or causing to be published the advertisement; or~~”.

14

By deleting the clause and substituting -

“14. Misleading or false

statement, representation

or information

(1) A person who, either orally or in writing, makes any statement or representation or furnishes any information to a specified

authority in connection with the performance of its functions under this Ordinance which the person knows or reasonably ought to know is misleading or false in a material respect commits an offence and is liable on conviction to a fine at level 5.

(2) In subsection (1), "specified authority" (指明當局) means -

- (a) the Accreditation Authority;
- (b) the QR Authority;
- (c) a person or an organization with whom the Accreditation Authority jointly performs a function in accordance with section 4(2);
- (d) a person or group of persons to whom the performance of a function is delegated under section 4(3);
- (e) a person or an organization with whom the QR Authority jointly performs a function in accordance with section 6(2); or
- (f) the Appeal Board within the meaning of Part 3."

- 18 (a) In the heading, by deleting “, **QR Authority or review committee**” and substituting “**or QR Authority**”.
- (b) In subclause (1) -
- (i) by deleting “, a member of any review committee”;
 - (ii) in paragraph (a), by adding “or” after the semicolon;
 - (iii) by deleting paragraph (b);
 - (iv) in paragraph (c), in the Chinese text, by deleting “、委員”.
- (c) In subclause (2), in the Chinese text, by deleting “、委員”.
- 19 By deleting “establishment of the Hong Kong Council for Academic and Vocational Accreditation” and substituting “establishment of the Hong Kong Council for Accreditation of Academic and Vocational Qualifications”.
- 20 By deleting everything after “amended” and substituting “by repealing “Hong Kong Council for Academic Accreditation” and substituting “Hong Kong Council for Accreditation of Academic and Vocational Qualifications”.”.

- 21 (a) In subclause (3), by deleting everything after “Council”, and substituting “by repealing “Hong Kong Council for Academic Accreditation” and substituting “Hong Kong Council for Accreditation of Academic and Vocational Qualifications”.”.
- (b) In subclause (6), by deleting the proposed definition of “business”.

22 By deleting everything after “amended” and substituting “by repealing “HONG KONG COUNCIL FOR ACADEMIC ACCREDITATION” and substituting “HONG KONG COUNCIL FOR ACCREDITATION OF ACADEMIC AND VOCATIONAL QUALIFICATIONS”.”.

- 23 (a) In subclause (1), in the proposed section 3(1), by deleting “Hong Kong Council for Academic and Vocational Accreditation” and substituting “Hong Kong Council for Accreditation of Academic and Vocational Qualifications”.
- (b) In subclause (4), in the proposed section 3(2A) (b), by deleting “commerce, finance,”.

- 25 (a) In subclause (8), in the proposed section

5(2)(e), by adding "subject to the prior approval of the Secretary," before "determine".

(b) In subclause (14), in the proposed section 5(4), by deleting "(2)(ea)" and substituting "(2)(e) and (ea)".

26

(a) In the proposed section 5A(3), in the Chinese text, by deleting "估評" and substituting "評估".

(b) In the proposed section 5A(4), by adding "and shall state in the notice the reason for the decision" after "individual".

34

In the proposed section 13(2)(d), by deleting "5(2)(ea)" and substituting "5(2)(e) and (ea)".

35

(a) In the proposed section 17B(3)(b), by deleting "commerce, finance,".

(b) By deleting the proposed section 17C(1)(a) and substituting -

"(a) may determine any matter of practice or procedure relating to the relevant review where no provision governing such matter is made in this Ordinance or in any rules made under section 22(2)(aa);".

(c) In the proposed section 17C(1)(c)(i), by deleting "and" at the end and substituting "or".

(d) In the proposed section 17C, by adding -

"(1A) A counsel or solicitor is not entitled to be heard before a review committee unless -

(a) he is acting on his own behalf as a party to a review; or

(b) he is an officer or employee of a party to a review and is acting as the authorized

representative of the party.".

38(1) By deleting everything after "amended" and substituting "by repealing "Hong Kong Council for Academic Accreditation" where it twice appears and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".". "

39 By deleting the proposed section 23A and substituting -

"23A. Misleading or false statement, representation

or information

(1) A person who, either orally or in writing, makes any statement or representation or furnishes any information to a specified authority in connection with the performance of its functions under this Ordinance which the person knows or reasonably ought to know is misleading or false in a material respect commits an offence and is liable on conviction to a fine at level 5.

(2) In subsection (1), "specified authority" (指明當局) means -

- (a) the Council;
- (b) a person or an organization with whom the Council jointly performs a function in accordance with section 5(1)(b);
- (c) a committee to which the performance of a function is delegated under section 8(1);
- (d) a person or group of persons to whom the performance of a function is delegated under section 8(2); or

(e) a review committee.”.

44 In the proposed item 38 of Schedule 13, by deleting
“Hong Kong Council for Academic and Vocational
Accreditation” where it twice appears and
substituting “Hong Kong Council for Accreditation of
Academic and Vocational Qualifications”.

45 By deleting everything after “item 57” and
substituting “by repealing “Hong Kong Council for
Academic Accreditation” and substituting “Hong Kong
Council for Accreditation of Academic and Vocational
Qualifications”.”.

47 By deleting everything after “definition of
“Accreditation Council”,” and substituting “by
repealing “Hong Kong Council for Academic
Accreditation” where it twice appears and
substituting “Hong Kong Council for Accreditation of
Academic and Vocational Qualifications”.”.

48 (a) In the English text, by deleting “Academic”.
(b) By deleting “and Vocational Accreditation” and
substituting “Accreditation of Academic and
Vocational Qualifications”.

- (c) By deleting "5(2)(ea)" and substituting "5(2)(e), (ea)".

Schedule 1

- (a) In Part 1, by deleting "Hong Kong Council for Academic and Vocational Accreditation" where it twice appears and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".
- (b) In Part 2, by deleting "Hong Kong Council for Academic and Vocational Accreditation" where it twice appears and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".

Schedule 3

- (a) In paragraph 3(b), by adding "of the Ordinance" after "section 5(1)".
- (b) In paragraph 4, by adding "of the Ordinance" after "section 8(1)(c)".