

立法會

Legislative Council

LC Paper No. LS76/05-06

Paper for the Bills Committee on Accreditation of Academic and Vocational Qualification Bill

Purpose of the paper

At the meeting of the Bills Committee on the Accreditation of Academic and Vocational Qualifications Bill held on 16 May 2006, members requested the Legal Service Division to review the Secretary for Education and Manpower's ("the Secretary") power under clauses 3, 4, 7 and 17 of the Bill in implementing the Qualifications Framework ("QF").

Comments

2. Clause 3 provides for the establishment of the QF and the Qualifications Register ("QR") by the Secretary. It gives a wide power to the Secretary to decide as to when to establish the QF or QR.

3. Clause 4 provides for the functions and powers of the Accreditation Authority. In particular, clause 4(1)(a) provides that the functions of the Accreditation Authority are subject to the direction of the Secretary, to develop and implement the standards and mechanism for academic or vocational qualifications accreditation to underpin the QF. It does not provide that the Secretary shall have regard to certain factors when giving the direction.

4. Clause 7 provides for the maintenance of the QR. In particular, the QR Authority may, subject to the prior approval of the Secretary, determine fees to be charged for the entry of specified particulars into the QR. In this respect, members may note that clause 16 provides for determination and approval of fees. Clause 16(1) provides that the amount of any fee determined under the Bill shall not be

limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to the matter to which such fee relates, and different fees may be determined for the same type of matter in order to provide for particular circumstances or particular cases. Clause 16(3) further provides that in approving any fee under the Bill, the Secretary may approve the amount of the fee proposed to be charged in relation to the relevant matter or may approve a maximum fee that may be charged in relation to such matter or any type of matter. Thus, when approving fees under the Bill, the Secretary has to follow certain criteria. Whether those criteria are adequate is a policy matter for members to decide.

5. Clause 17 empowers the Secretary, by order published in the Gazette, to amend Schedules 1 (specifies the Hong Kong Council for Academic and Vocational Accreditation to be the Accreditation Authority and the QR Authority), 2 (contains a list of self-accrediting operators) and 3 (descriptions of qualifications that may be entered into the QR) to the Bill. In particular, paragraph 4 of Schedule 3 provides that a qualification in relation to an industry, obtainable from an appointed assessment agency appointed in relation to that industry where the appointed assessment agency determines, within any conditions or restrictions imposed by the Secretary under clause 8(1)(c), that the qualification meets a QF standard. Clause 8(1)(c) provides that the Secretary may impose conditions or restrictions in appointing or re-appointing an assessment agency. Members may note that an order published under clause 17 to amend the Schedules has legislative effect. Hence, it is a subsidiary legislation within the meaning of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). It means the Secretary's power to amend the Schedules is subject to scrutiny by LegCo.

Conclusion

6. One of the major concerns of the Bills Committee is about the timetable for implementation of the QF. Some members of the Bills Committee have stressed that the QF should not be implemented in industries where consensus has not been reached with the relevant labour unions. In response, the Administration has reiterated its intention to establish only a legislative framework in relation to the QF in the Bill. The Administration has further assured, though not reflected in the Bill, that the QF in a particular industry will not be implemented unless there is consensus among the employers, employees and labour unions or employee representatives.

7. From a legal point of view, the Secretary's power in some of the relevant clauses, i.e. clauses 7 and 17, have already have been subject to limits. It would be a policy consideration for members to decide whether those limits are adequate or not. In other relevant clauses, i.e. clauses 3 and 4, in order to restrain the Secretary's powers, members may consider adding certain conditions precedents to be satisfied before the Secretary could exercise his powers. For example, clause 3 could be amended by requiring the Secretary to establish or maintain the QF:—

- (a) after consultation with specified bodies or organisations; or
- (b) if he is satisfied that certain conditions have been met.

Members may also consider adding more details about the content of the QF, for example by providing for different levels of qualifications.

Prepared by

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