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立法會
Legislative Council

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seen by the Administration)

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**Bills Committee on
Education (Amendment) Bill 1999**

**Minutes of Meeting
held on Monday, 31 January 2000 at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon YEUNG Yiu-chung (Chairman)
Hon Cyd HO Sau-lan
Prof Hon NG Ching-fai
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
- Members Absent** : Hon CHOY So-yuk
Hon SZETO Wah
- Public Officers Attending** : Mr Joseph LAI
Deputy Secretary for Education and Manpower (3)
- Mr Gordon LEUNG
Principal Assistant Secretary for Education
and Manpower (6)
- Mr K K CHONG
Senior Assistant Director of Education (Operations)
- Mr CHENG Man-yiu
Assistant Director of Education (Schools)
- Ms Betty CHOI
Senior Government Counsel

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Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2) 6

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Stanley MA
Senior Assistant Secretary (2) 6

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I. Election of Chairman

Mr YEUNG Yiu-chung was elected Chairman of the Bills Committee.

II Meeting with the Administration

[Legislative Council Brief Ref : EMB CR2/2041/99 III and LS52/99-00]

2. The Chairman welcomed representatives of the Administration to the meeting.

3. At the invitation of the Chairman, Deputy Secretary for Education and Manpower (3) (DS(EM)3) briefed members on the general background and legislative proposals as set out in the Legislative Council (LegCo) Brief. The Chairman then invited members to raise questions on the general issues of the Bill and asked the Administration to respond accordingly. The gist of discussion is summarised below.

Retirement age and extension of service

4. Mr CHAN Kam-lam expressed support in principle for the legislative proposal to set a retirement age of 60 for teachers and principals in aided schools. However, he asked whether the Administration would consider allowing a serving teacher or principal to remain in employment on the condition that the School Management Committee (SMC) concerned had made a recommendation to the Director of Education (D of E) for an extension of service and the maximum aggregate period for such extension was five consecutive school years.

5. DS(EM)3 responded that the retirement age of 60 as proposed in the Bill had been adopted under the Codes of Aid for over 25 years. The enactment of the Bill would incorporate the retirement age in the Education Ordinance (Cap. 279) and give legal backing to the retirement policy. He stressed that D of E would give due regard to the SMC's recommendation in exercising her discretion to grant an extension of service. He pointed out that since SMCs

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might have different criteria for making recommendations, empowering D of E to exercise discretion could ensure fair and consistent standards for approving extension of service. He added that the main criterion for approval, among other things, was whether there was a suitable candidate to succeed the serving teacher or principal.

6. Mr CHAN Kam-lam pointed out that the requirement of the approval of D of E for every application might create the impression that Government did not trust SMC. He held the view that the SMC concerned would have already considered the interest of the school as well as the performance of the serving principal or teacher and his physical fitness before making its recommendation. He suggested that the Administration should provide SMCs with flexibility in retaining the service of experienced teachers and principals. He added that unlike manual workers, most teachers and principals at the age of 60 were experienced and capable. A rigid implementation of the retirement policy would result in experienced teachers and principals of good health being forced to leave the profession, thereby affecting the quality of teaching.

7. DS(EM)3 responded that Government had no doubt that many teachers and principals at the age of 60 were fit and capable, and would continue to contribute to education. He pointed out that like other public and private organisations, a healthy staff turnover in schools was essential to revitalise the teaching workforce and create opportunities for career advancement of serving staff. He stressed that the Administration would not rigidly implement the retirement policy to require all serving teachers and principals to retire at the age of 60. If an SMC could not find a suitable candidate to succeed a serving teacher or principal after a recruitment exercise, the SMC could make a recommendation to D of E for extension of service. However, a suitable candidate should be fairly assessed against reasonable requirements of a teacher or principal and not be compared with the incumbent.

8. The Chairman remarked that if allowing extension of service was to address recruitment difficulties, D of E should only approve a serving teacher or principal who had attained the age of 60 to remain in employment for a period of not more than one school year. He sought clarification on the basis of setting a maximum aggregate period of five consecutive school years for extension of service. DS(EM)3 said that he agreed that it was very unlikely that an SMC could not identify a suitable candidate in two to three years. However, the Administration considered that the existing practices which were stipulated under the Codes of Aid had been in force for over 25 years. They were generally accepted by teachers and principals in aided schools and should be maintained as far as possible.

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9. Mr LEUNG Yiu-chung pointed out that the current Codes of Aid had in practice set the retirement age at 65 by permitting a serving teacher or principal to continue in service until he reached the age of 65. With reference to the age threshold of 65 for long-service payment and old age allowance, Mr LEUNG queried why the retirement age of teachers and principals in aided schools, and that of civil servants, was not set at 65. He further enquired whether there were official documents explaining the reasons for setting the retirement age at 60 and allowing teachers and principals to extend services up to the age of 65.

10. DS(EM)3 responded that since the current Codes of Aid had been adopted for over 25 years, it was unable to ascertain from official documents the rationale for setting the retirement age at 60 and the adoption of 65 as the maximum age for extension of service. However, he stressed that there must have good reasons and practical needs to set such requirements at that time. He pointed out that aided schools were publicly funded and should therefore follow the civil service practice in retirement policy. According to the Fringe Benefit Survey conducted in 1999 by the Standing Commission on Civil Service Salaries and Conditions of Service, 83% of the companies surveyed in Hong Kong set the normal retirement age for employees at 60 or below. He stressed that the maximum aggregate period of five years for service extension had already provided schools with sufficient flexibility to plan their manpower succession programmes.

11. Mr. LEUNG Yiu-chung said that in principle he did not object to setting the retirement age at 60 and permitting an extension of service until the age of 65. However, he observed that in approving applications for extension of service, D of E had changed from a lenient to a strict approach in recent years. Mr. LEUNG expressed concern that D of E had too much discretionary power without proper checks and balances. Referring to paragraph 7 of the LegCo Brief, he remarked that the criteria for approving applications were too stringent for any application, particularly those from teachers.

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12. At Mr LEUNG Yiu-chung's request, Senior Assistant Director of Education (Operations) (SAD/E(O)) undertook to provide as far as possible a detailed breakdown of the numbers of applications for extension of service from teachers and principals in the past five to ten years, including the grounds for approving or rejecting the applications such as recruitment difficulty, succession problems, etc.

13. Dr YEUNG Sum expressed support for setting a retirement age for teachers and principals of aided schools but pointed out that flexibility in implementation should be provided. He said that universities would retain outstanding professors at the age of 60 or above to conduct researches and lectures under a one or two-year employment contract. He enquired whether

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similar employment terms could be offered so as to keep experienced teachers and principals at the age of 60 in the profession.

14. SAD/E(O) responded that the staff establishment of aided schools was determined by the number of classes. Teachers employed under contract terms would also be counted towards the establishment of the schools concerned. Dr YEUNG Sum maintained the view that technical difficulties could be addressed if the Education Department (ED) could apply funding arrangements with flexibility.

15. Mr CHEUNG Man-kwong enquired about arrangements for temporary teachers and schools under the Direct Subsidy Scheme (DDS). He pointed out that schools located in remote areas might have no better alternative but to employ retired teachers and principals as temporary teachers.

16. DS(EM)3 replied that schools under the DDS were not required to follow aided schools in retirement policy. He agreed that schools in remote areas should be given flexibility in appointment of temporary teachers. He added that the Administration would consult the education sector in this regard.

Assessment and appeal mechanism

17. Mr CHEUNG Man-kwong said that the crux of the matter was whether objective, transparent and clearly prescribed procedures and criteria were available in the whole process of assessment and appeal in respect of applications for extension. He was given the impression that consideration of applications for extension was based more on the applicants' relationship with the district staff of ED than on other criteria. Mr CHEUNG also queried whether the Appeals Board was in the best position to assess the ability and performance of a serving teacher or principal in respect of his application for extension, given that only three out of the nine members of the Appeals Board came from the education sector and all the members were appointed.

18. Referring to the assessment mechanism for dealing with extension of service in the civil service, Mr. CHEUNG Man-kwong was of a strong view that an independent review committee comprising members primarily be selected from the education sector should be established. In making recommendations to D of E for approval, the committee should assess applications for extension on the basis of clearly prescribed procedures and consistent criteria.

19. With reference to Mr. CHEUNG Man-kwong's proposal of setting up an independent review committee, DS(EM)3 responded that the existing mechanism had already provided for sufficient checks and balances for approving applications for service extension. He pointed out that SMCs should be the appropriate party to initiate the applications, as they were the

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employers and should be most familiar with the needs of the schools and the performance of their teachers and principals. D of E would also consider the report of ED staff on the applications before making a decision. DS(EM)3 further pointed out that there was already a three-tier assessment and appeal system for reviewing applications for extension. While applications had to be made by SMCs first, there would be a review process at the second tier for D of E to make a decision. Finally, applicants who felt aggrieved by the decision of D of E could appeal to the Appeals Board. To establish an independent review committee might lead to overlapping of duties, thereby prolonging the deliberation and decision process. At Mr. CHEUNG's request, DS(EM)3 undertook to consider his suggestion and provide written information on the mechanism for extension of service in the civil service.

20. With reference to Mr. CHEUNG Man-kwong's comments on the current assessment process, SAD/E(O) said that the existing mechanism for considering applications for extension of service was fair and effective. He stressed that the applicant's relationship with ED staff had no bearing on the decision. D of E would consider each application in the light of the SMC's recommendation, the applicant's performance and physical fitness, as well as the comments of ED staff concerned both at departmental and district level.

21. Assistant Director of Education (Schools) supplemented that ED would issue a circular requesting SMCs of aided schools which wished to apply for the continued service of their teachers/principals beyond the age of 60 to go through a selection exercise. The circular would set out recommended steps including the establishment and composition of a selection board, the recommended criteria to be adopted for selecting the teacher/principal, and the procedures to be taken to ensure that the selection was open, fair and transparent. Representatives of ED would participate wherever necessary in the process and report to D of E on any irregularities identified.

22. Mr. CHEUNG Man-kwong did not agree with the Administration. He said that it was of utmost importance to ensure a fair assessment process for applications for extension. Mr. CHEUNG informed members that if a principal intended to terminate the employment of a teacher on grounds of breach of professional ethics, the case would be referred to the Council on Professional Conduct in Education for review before a decision was made; and that an appeal process was also available. He failed to see why establishing an independent review committee to make recommendation to D of E's was not feasible.

23. Prof NG Ching-fai suggested that in considering service extension of a principal, the comments of the teachers in the school concerned should be taken into account. He pointed out that higher education institutions would consult an applicant's peers before approving his or her application for extension. With reference to Mr. CHEUNG's proposal of setting an

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independent review committee, Prof NG said that the question of whether the review committee should be independent or not needed further discussion. However, he was of the view that ED should establish a standing committee to assist D of E in assessing applications for extension.

Inconsistencies between the Education Ordinance and the Codes of Aid

24. With reference to the exchanges of correspondence between the Assistant Legal Adviser (1) (ALA(1)) and the Principal Assistant Secretary for Education and Manpower [Annexes to LC Paper No.LC52/99-00], Miss Cyd HO was of the view that the Administration had failed to address all the queries raised by ALA1. Miss HO further referred to the High Court judgment delivered on 25 June 1999 [Paper No. CB(2)963/99-00(02)] which had concluded that the Codes of Aid governing the retirement age of principals was unenforceable because it was inconsistent with the Education Ordinance. She therefore urged that the Administration must reconcile any inconsistencies between the provisions of the Education Ordinance and those of the Codes of Aid.

25. In response to Miss Cyd HO's enquiry, ALA(1) made the following points on the Administration's reply -

- (a) The new section 58A(1) prohibited the employment of a person aged 60 years or above as a teacher or principal of an aided school. While the Administration had replied that it was not a new policy, D of E was given the discretion to approve such appointment under the Codes of Aid ;
- (b) Section 57 of the Codes of Aid provided that D of E might permit a teacher to continue in service for a period of one school year after the end of that in which he reached 60, and for further periods each of one school year up to the end of the school year in which he reached 65. The proposed new section 58B of the Bill, however, allowed an application to be made for a period of not more than one school year, up to a maximum aggregate period of five consecutive school years. While the Administration had replied that the new section 58B(1) was a more precise reflection of the current policy, this policy was different from that stated in the Codes of Aid; and
- (c) The Administration had replied that there was no need for a transitional provision in the event there was insufficient time for a SMC to make an application for extension or D of E to decide on such application before the commencement of the next school year following the passage of the Bill because the Bill had already provided for a mechanism to apply for continuation of

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services. However, if the mechanism referred to was the permission of D of E to enable a person to continue to be employed as a teacher or the principal of a school pending appeal, that mechanism would only be triggered off if D of E had refused the application for extension.

26. DS(EM)3 responded that the Bill sought to give legal effect to the retirement policy. After enactment of the Bill, the Administration would revise the provisions in the Codes of Aid in the light of the amendments to the Education Ordinance. He pointed out that the Codes of Aid were not stipulated in the Education Ordinance or its subsidiary legislation. Ultimately, the Education Ordinance had an overriding status over the Codes of Aid. He assured members that ED would carefully and thoroughly consider the provisions in the Codes of Aid and make appropriate amendments. Senior Government Counsel echoed the view of DS(EM)3, saying that the Codes of Aid should be reviewed after the passage of the Bill.

27. Noting that the Administration had replied that it had no intention to amend the age for refusal to register a teacher of age between 70 and 60 under section 46 of the Education Ordinance, Miss Cyd HO asked why the retirement age was set at 60 for aided schools but not for private schools. DS(EM)3 replied that private schools were not subject to civil service practice and had discretion to set their own retirement policies. Aided schools were publicly funded and should therefore follow the civil service practice. Miss HO further asked whether setting the retirement age at 60 was based on education policy or human resource management considerations. DS/EM reiterated that the objective of setting a retirement age for teachers and principals was to ensure a healthy staff turnover which was important for revitalising the workforce and in keeping the school intellectually active. It also helped to meet the reasonable expectations of staff for career advancement. He added that the retirement age was set on the basis of staff and organisation management considerations.

28. Mr CHAN Kam-lam asked whether the Administration meant to provide more employment opportunities to graduates of Hong Kong Institute of Education (HKIE) and other institutions by setting the retirement age at 60, rather than to retain experienced teachers of the age 60 or beyond.

29. DS(EM)3 responded that while the Administration believed that new graduates could find employment in schools, it was the overall supply and demand in the manpower market which determined their employment opportunities. In response to Mr. CHAN Kam-lam's enquiry, DS(EM)3 informed members that in the 1999/2000 year, there would be around 1 200 graduates in teaching from the HKIE and other institutions, and around 300-400 serving teachers would reach the retirement age before the next academic year. However, it would not be appropriate to draw a direct comparison

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between these figures because graduates might pursue careers in other fields and vacancies in schools might arise from other causes.

30. Mr LEUNG Yiu-chung stressed the importance of a balanced approach to protect the interests of both experienced and new teachers. He pointed out that given the prevailing market conditions, it was not difficult for SMCs to find suitable successors for serving teachers and principals reaching the age of 60. He queried how D of E would balance the ability and performance of the applicant vis-à-vis recruitment difficulties.

31. DS(EM)3 responded that every organisation had to undertake staff succession planning. The Bill provided that serving teachers and principals attaining the age of 60 might remain in employment for a maximum aggregate period of five consecutive school years, subject to the approval of D of E. He added that the existence of a retirement policy would provide SMCs with a time-frame to draw up staff succession plans, and teachers could also plan their retirement in advance. Allowing applications for extension enabled schools to retain teachers or principals with good ability and performance for a certain period so that their experience and knowledge could pass on. SAD/E(O) added that the primary consideration would be whether a suitable successor was available.

Retention of distinguished teachers and principals reaching the retirement age

32. Mr CHEUNG Man-kwong said that the ED's procedures for considering applications for service extension seemed to focus on principals only. He stressed that outstanding teachers at the age of 60 were equally important for the future development of schools and should be provided with equal opportunity to continue employment. Mr CHEUNG further pointed out that the majority of teachers whose service had been extended in the past taught technical and vocational subjects. Most applications from teachers of general subjects were rejected.

33. In response to Mr. CHEUNG Man-kwong's views about the need to retain distinguished teachers and principals reaching retirement age, DS(EM) and SAD/E(O) pointed out that there were various avenues for retired teachers to contribute to education in various non-teaching capacities. For instance, they could serve as teacher trainers, consultants or mentors, or assist schools in curriculum tailoring, school administration, and extra-curricular activities, etc. Some schools had appointed retired teachers with substantial experience as school supervisors.

34. Mr CHEUNG Man-kwong commented that it would not be realistic to expect retired teachers and principals to work without remuneration. He was of the view that the Administration should consider giving sufficient and reasonable remuneration for voluntary services taken up by retired teachers and

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principals. Mr CHEUNG further said that an educational body from the Mainland had recently conducted a seminar in Hong Kong. It proposed that retired teachers and principals from reputable schools should be appointed to lead and inspire changes in schools which performed less well. He requested the Administration to consider the feasibility of such an arrangement.

III. Any other business

Way forward

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35. Members agreed that the Bills Committee would invite the five educational bodies which had made a joint submission on the Bill [Paper No.CB(2)783/99-00(01)] to make representation at the next meeting. The Chairman requested the Administration to prepare a written response in advance for members' consideration. The Chairman also requested the Administration to thoroughly consider the views of members and provide the written response to the issues raised by members at the meeting.

36. DS(EM)3 thanked members for their valuable views and suggestions, particularly those relating to retention of outstanding teachers and principals. DS(EM)3 pointed out that given the High Court judgement of 25 June 1999, there were operational needs to enact the Bill as soon as possible. He urged members to expedite the scrutiny process. The Chairman said that while members appreciated the urgency of the Bill, they needed to study the Bill in a prudent manner.

Date of next meeting

37. Members agreed to hold the next meeting at 4:30 pm on 14 February 2000.

38. There being no other business, the meeting ended at 12:35 pm.

Legislative Council Secretariat

24 February 2000