

Education (Amendment) Bill 1999

This paper sets out the Administration's response to the various issues raised by Members of the Bills Committee at the meeting on 31 January 2000, and a joint statement made by a number of deputations as set out in LC Paper No CB(2) 783/99-00(01)

I. Response to joint statement by deputations

Exemption for principals who are already 60 or above when the Bill comes into effect

Deputations' argument

2. The deputations argue that the existing ordinance confers tenure of office to principals and that principals may not be dismissed before the age of 70 except under a set of clearly defined grounds. Therefore, serving principals who are already 60 or above when the Bill comes into effect should be exempted, on ground of fairness.

Administration's response

3. Until the court ruling in June 1999, retirement of teachers and principals has all along proceeded in accordance with the policy set out in the Code of Aid. The Bill merely seeks to provide a clear statutory basis for the policy in the light of the Court ruling. If serving teachers and principals were exempted, it would be unfair to principals and teachers who have retired at 60 over the past years in accordance with the provision of the Code of Aid.

4. Moreover, the Bill already provides a mechanism for School Management Committees (SMCs) to apply to the Director of Education (DE) if they wish to retain their serving principals/teachers who are 60 or over, and the Director will consider the applications on the merits of each case. The Administration considers that the mechanism provided in the Bill is adequate to meet the need and interests of schools.

Temporary teachers

Deputations' argument

5. The deputations suggest that the Bill should be amended to exclude temporary teachers.

Administration's response

6. The Administration agrees that there should be flexibility for aided schools to employ temporary teachers who are over 60 years old. Subject to discussions at the Bills Committee, the Administration is prepared to consider a Committee Stage Amendment to the effect that aided schools may employ a person who is over 60 years old to discharge the duties of a teacher when the latter is, for whatever reason, temporarily unable to discharge his teaching duties.

Teachers whose employment does not involve Government grant

Deputations' argument

7. The deputations suggest that teachers whose employment does not involve Government grant should be excluded from the Bill.

Administration's response

8. The Administration welcomes school sponsoring bodies to provide resources additional to public funds in the running of aided schools. The Administration however cannot see the practical need for providing in the Bill an exemption for teachers whose employment does not involve Government grant. If sponsoring bodies wish to employ teachers in addition to the approved teaching staff establishment, they already have the flexibility to do so, as long as the extra teachers are below 60 years old.

9. If schools would like to continue to employ serving teachers who are already 60 years, the Bill already provides a mechanism to apply for their continued employment, irrespective of whether their employment is public-funded or not.

10. The only group of teachers who may conceivably be affected are teachers who are over 60 years old, are to be newly employed, and whose employment is to be non-public funded. The Administration doubts if, in practice, there are many teachers who fall under this category.

11. It should be noted that there are various avenues for retired teachers to contribute to education in various capacities. They can be employed to teach in non-Government and non-aided schools (such as Direct Subsidy Schools and private schools) which are growing in number. In aided schools, they may take up non-teacher capacities such as teacher trainers, consultants or mentors, or help schools out in curriculum tailoring, school administration, and extra-curricula activities, etc. The Government welcomes sponsoring bodies of aided schools to provide resources to employ retired teachers in these non-teacher capacities.

Practical arrangements

Deputations' argument

12. The deputations feel that there is no indication at all of how the Director makes decisions on applications to extend a principal/teacher's service beyond 60. A set of objective conditions should be clearly published to ensure transparency and to give guidance to SMCs which have to submit the applications for extension. The deputations also feel that the views of the SMCs should be fully respected as they are in the best position to judge the suitability of extensions. The recent policy of devolution of responsibility to SMCs should include a delegation to SMCs of the authority to extend or otherwise the service of teachers reaching retirement age.

Administration's response

13. We fully subscribe to the principle of transparency. If the Bill is passed, the Education Department will issue a circular requesting SMCs of aided schools which wish to apply for the continued service of their principals/teachers beyond 60 to go through a selection exercise.

14. The circular will set out recommended steps including the establishment and composition of a selection board, the

recommended criteria to be adopted for selecting the principal/teacher, and the procedures to take to ensure that the selection process is open, fair and transparent.

15. To uphold the spirit of the retirement policy, if a candidate is found to meet the minimum requirements for the post, the SMC should accept this candidate and the incumbent principal/teacher should retire.

16. If no candidate during the selection process meets the minimum requirements, then the SMC may consider extending the service of the incumbent principal/teacher and make an application to DE accordingly.

17. The applications submitted by the SMCs will be considered by a panel tasked to advise the Director. The panel will consist of officials of the Education Department and other members appointed by the Director, who may include members of the teaching profession, academics and other lay persons.

18. Any person who feels aggrieved by the Director's decision may, as proposed by the Bill, appeal to the Appeals Board under the Education Ordinance.

II. Other information required by Members

Past statistics on applications for extension of service

19. Statistics for the past five years are at Annex.

Civil service arrangements

20. In accordance with the Civil Service Regulations, all civil servants are normally required to leave the service when they reach their normal retirement age, the current maximum of which is 60. Only if there are very exceptional circumstances (e.g. operational needs or staff succession) will management consider further employment beyond the normal retirement age, subject to such employment not causing any promotion blockage.

21. The number of cases of further employment beyond normal retirement age is small and is subject to approval by the Civil Service Bureau.

22. Further employment beyond normal retirement age is normally approved year by year and is subject to review. Most cases will last for two to three years. Further employment beyond normal retirement age for staff at or above Master Pay Scale Point 26 is, as for the appointment of such staff, subject to advice by the Public Service Commission.

Education and Manpower Bureau
February 2000

Annex

Extension of Service of Principals and Teachers of aided schools in the Past Five Years

Principals

	1995/96	1996/97	1997/98	1998/99	1999/2000
Reach retirement age	90	69	87	98	103
No. of applications for extension of service	52	60	75	91	74
No. of applications approved	52	59	70	71	24*
Considerations for granting approval/rejecting application	<ul style="list-style-type: none"> ● recommended by SMC; ● with satisfactory medical certificates. 	<ul style="list-style-type: none"> ● recommended by SMC; ● the needs and special features of the schools; ● special circumstances of each case, including factors which render the timely 	<ul style="list-style-type: none"> ● recommended by SMC; ● the needs and special features of the schools; ● special circumstances of each case, including factors which render the timely 	<ul style="list-style-type: none"> ● recommended by SMC; ● the needs and special features of the schools; ● special circumstances of each case, including factors which render the timely 	<p>* ED approved 24 applications before the Court ruling in June 1999 along the criteria adopted in the past few years. Subsequent to the Court ruling, ED has approved no more applications, but according to a survey conducted by ED, SMCs had approved another 24 extensions on their own.</p>

		<p>recruitment of new principals impossible, or leadership posts of the schools left vacant etc.;</p> <ul style="list-style-type: none"> ● with satisfactory medical certificates. 	<p>recruitment of new principals impossible, or leadership posts of the schools left vacant etc.;</p> <ul style="list-style-type: none"> ● with satisfactory medical certificates. 	<p>recruitment of new principals impossible, or leadership posts of the schools left vacant etc.;</p> <ul style="list-style-type: none"> ● with satisfactory medical certificates. 	
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Teachers

	1995/96	1996/97	1997/98	1998/99	1999/2000
Reach retirement age	350	386	306	299	279
No. of applications for extension of service	133	98	66	85	78
No. of applications approved	132	70	56	25	1
Considerations for granting approval/rejecting application	<ul style="list-style-type: none"> ● supported by SMC; ● schools encountered difficulty in recruiting suitable teachers for the subjects concerned; ● performance of the teacher ● extension of service of the teachers did not 	<ul style="list-style-type: none"> ● supported by SMC; ● schools encountered difficulty in recruiting suitable teachers for the subjects concerned; ● performance of the teacher; ● extension of service of the teachers did not block the promotion of other teachers; 	<ul style="list-style-type: none"> ● supported by SMC; ● schools encountered difficulty in recruiting suitable teachers for the subjects concerned; ● performance of the teacher; ● extension of service of the teachers did not block the promotion of other teachers; 	<ul style="list-style-type: none"> ● supported by SMC; ● schools encountered difficulty in recruiting suitable teachers for the subjects concerned or because of the remote location of the schools concerned; ● extension of service of the teachers did not block the promotion of other teachers; 	<ul style="list-style-type: none"> ● Majority of senior management including the school head and senior teachers are due to retire and no suitable candidate can be found through open recruitment.

	<ul style="list-style-type: none">block the promotion of other teachers;● with satisfactory medical certificates.	<ul style="list-style-type: none">● with satisfactory medical certificates.● with satisfactory medical certificates.		
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