

立法會
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**Paper for the House Committee meeting
on 3 March 2000**

**Report of the Bills Committee on
Education (Amendment) Bill 1999**

Purpose

This paper reports on the deliberations of the Bills Committee on the Education (Amendment) Bill 1999 (the Bill).

Background

2. Aided primary, secondary and special schools are managed and operated in accordance with the provisions of the relevant Codes of Aid. Section 57 of the Code of Aid for Secondary Schools stipulates the following -

- a) A teacher shall retire at the end of the school year in which he reaches the age of 60.
- b) Notwithstanding (a) above, the Director of Education (D of E) may, on the recommendation of the School Management Committee (SMC) and subject to the submission of a satisfactory medical certificate as to fitness, permit a teacher to continue in service for a period of one school year after the end of that in which he reaches the age of 60, and for further periods each of one school year, up to the end of the school year in which he reaches the age of 65.

Similar provisions are stipulated in the Code of Aid for Primary Schools, as well as the Code of Aid for Special Schools.

3. In February 1999, a principal of an aided secondary school and a manager, on behalf of SMC of the same school, sought declaration from the High Court that section 57 of the Code of Aid for Secondary Schools regarding retirement of teachers at 60 contravened the Education Ordinance (Cap. 279) and was of no effect. The Court ruled on 25 June 1999 that Government could not enforce the retirement policy

as stated in the Code of Aid for Secondary Schools since Government was not a contracting party in the employment of the principal concerned (i.e. on privity of contract grounds). The ruling is taken to be equally applicable to principals of aided primary and special schools.

4. To enable the Administration to enforce the retirement policy, it is proposed that the Education Ordinance be amended to give legal backing to the retirement policy.

The Bill

5. The Bill seeks to -

- a) prohibit the employment of a person as a teacher or principal of an aided school if the person is aged 60 or above when his employment commences;
- b) provide that unless permitted by D of E, no person shall continue to be employed as a teacher or principal of an aided school if the person will be aged 60 or above before the commencement of a school year;
- c) provide that D of E may, upon application by the SMC, permit a serving teacher or principal of an aided school to continue to be employed for a period of not more than one school year, with a maximum aggregate period of five consecutive years; and
- d) provide for a right to appeal against the decision of D of E to the Appeals Board and the Chief Executive in Council.

The Bills Committee

6. At the House Committee meeting on 7 January 2000, members agreed that a Bills Committee be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon YEUNG Yiu-chung, the Bills Committee has held four meetings with the Administration to discuss the Bill. The Hong Kong Association of Sponsoring Bodies of Schools, Grant Schools Council, Hong Kong Special Schools Council, Hong Kong Subsidized Primary Schools Council and Hong Kong Subsidized Secondary Schools Council have made two joint submissions expressing disagreement with the proposals in the Bill. Their representatives also gave their views at one of the meetings of the Bills Committee.

Deliberations of the Bills Committee

8. The main deliberations of the Bills Committee are summarised in the following paragraphs.

Setting the retirement age of 60

9. The Administration has advised that the objective of setting a retirement age for teachers and principals is to ensure a healthy staff turnover which is important for revitalising the workforce and keeping the schools intellectually active. It also helps to meet the reasonable expectation of staff for career advancement. The retirement age is set on the basis of staff and organisation management considerations.

10. While members in general support the policy of setting the retirement age at 60 and permitting an extension of service until the age of 65 at the discretion of D of E, a member is of the view that if the SMC so recommends, D of E should allow a serving teacher or principal to remain in employment and the maximum aggregate period for extension is five consecutive school years. The Administration has pointed out that SMCs may have different criteria for making recommendation. Empowering D of E to exercise discretion can ensure fair and consistent standards for approving extension of service, and D of E will give due regard to the SMC's recommendation in exercising the discretion.

11. The member maintains the view that the SMC concerned would have already considered the interest of the school as well as the performance of the serving teacher or principal and his physical fitness before making its recommendation. The Administration should provide SMCs with flexibility in retaining the service of experienced teachers or principals. The Administration has responded that a SMC will ultimately be given the power to extend the employment of a serving teacher or principal reaching the retirement age when the SMC is formed in accordance with the school-based management mode. It is the Administration's preliminary plan to commence the implementation of school-based management mode in the year 2001 and to achieve full implementation in three years' time.

12. Some members have queried the rationale for setting the retirement age of 60, given that the age threshold for long-service payment and old age allowance was 65. The Administration has explained that the retirement age of 60 for aided school teachers and principals has been stipulated in the Code of Aid for many years. It is in line with the practice in the civil service and that in over 80% of the private organisations covered by the Fringe Benefit Survey conducted in 1999 by the Standing Commission on Civil Service Salaries and Conditions of Service.

Scope of application of the retirement policy

13. Members share the deputations' views that the retirement policy should not be applicable to teachers whose employment does not involve Government grant.

Members have also expressed concern that rigid enforcement of the retirement policy will create operational difficulties for schools, particularly those in remote areas, which need to employ temporary teachers. Taking into members' views, the Administration has agreed to move Committee stage amendments (CSAs) to the effect that aided schools may employ a person who is over 60 years old under either one of the following circumstances -

- a) as a temporary replacement of a teacher who is unable to perform his duties; or
- b) where the person is filling a post that falls outside the teaching staff establishment of the school approved by D of E from time to time.

14. Members note that Direct Subsidy Schools are not regulated by any Code of Aid and they are not required to follow aided schools in retirement policy. Members consider that it is unfair to exempt Direct Subsidy Schools from the retirement policy given that they are also publicly funded.

15. The Administration has explained that greater flexibility and autonomy is provided to Direct Subsidy Schools in order to encourage pluralistic development in education. Direct Subsidy Schools have the autonomy to determine the terms of appointment, salary levels, policies on promotion and retirement, etc. It is inappropriate to single out the difference in retirement policy between Direct Subsidy Schools and aided schools. The Administration is of the view that the present regulatory regime of Direct Subsidy Schools is appropriate and does not see the need to extend the application of the Bill to these schools.

16. Notwithstanding the Administration's explanation, some members maintain the view that the application of the Bill should be extended to Direct Subsidy Schools and will consider moving CSAs to such effect.

Assessment and appeal mechanism

17. Members are of the view that objective, transparent and clearly prescribed procedures and criteria must be available in the whole process of assessment and appeal in respect of applications for extension of service. A member has suggested that an independent review committee should be set up to make recommendations to D of E on applications for extension of service. The committee should comprise members primarily selected from the education sector. In making recommendations to D of E for approval, the committee should assess the applications on the basis of clearly prescribed procedures and consistent criteria.

18. The Administration has advised that if the Bill is passed, ED will issue a circular requesting SMCs of aided schools which wish to apply for the continued service of their principals/teachers beyond the age of 60 to first conduct a selection exercise to find suitable replacement for these principals/teachers. The circular will

set out recommended steps including the establishment and composition of a selection panel, the recommended criteria to be adopted by the panel for selecting the teacher/principal, and the procedures to be taken to ensure that the selection process is open, fair and transparent. If no suitable replacement can be found after the selection exercise, the SMC may then make an application for extension of service to D of E. These applications will be considered by a panel tasked to advise D of E on whether the applications should be approved. The panel will consist of officials of ED and non-officials such as teachers, academics and other lay persons appointed by D of E. Some members have suggested that the recommended steps should be stipulated in the law. The Administration does not consider it necessary on the grounds that these recommended steps are only administrative arrangements.

19. Members note that the recommended procedures of the selection exercise will allow an ED representative to join the selection panel as an observer if necessary. Some members are of the view that SMCs should be entrusted to conduct the selection exercise in accordance with the recommended procedures and criteria on their own. These members consider that such an arrangement is not only difficult to implement but is also unreasonable given the fact that the applications for extension are subject to the review of the panel and the approval of D of E. They expect that the panel will recommend rejecting an application if it has identified any irregularity or inconsistency in respect of the procedural propriety of the whole selection process and the selection panel's assessment.

20. The Administration is of the view that D of E needs to be able to collate information which he considers necessary to enable him to make a decision. D of E therefore needs to have the flexibility to send his officers to observe the selection exercise as necessary. In practice, the Administration envisages that ED will only concentrate on those cases where -

- a) ED has been invited by the SMC concerned to observe the selection exercise;
- b) ED has received reports that the selection exercise is not conducted in an open, fair and/or transparent manner; or
- c) The school concerned has been the subject of previous complaints of not selecting staff in an open, fair and/or transparent manner.

21. At a member's request, the Administration has undertaken to give an undertaking at the resumption of the second reading debate on the Bill that D of E will send an observer only under the three circumstances as described in paragraph 20 above.

22. Members have also expressed concern as to whether there would be reasonable time at the different stages of application and appeals for schools to make arrangements. The Administration has confirmed that in the event that an appeal

against the D of E's decision straddles two school years, D of E will consider all relevant factors, including the interests of the school and students, operational requirements of the school, the reasonable time required for a school to find a suitable replacement, and any other special circumstances relating to the school when exercising the discretion to allow the continued employment of the teacher/principal concerned during and after the appeal process. In general, the Administration envisages that D of E would allow the teacher/principal to stay on until there is a natural break in the school calendar, such as the end of a major school holiday or school term.

23. Members note that any person who feels aggrieved by the D of E's decision may appeal to the Appeals Board under the Education Ordinance. A member queries whether the Appeals Board is in the best position to assess the ability and performance of a serving teacher or principal in respect of his application for extension of service, given that only three out of nine members of the Appeals Board come from the education sector and all the members are appointed.

Transitional period for implementation of the retirement policy

24. In view of the deputations' concern that the retirement policy may lead to staff succession problems at schools, some members have suggested that a transitional period for implementation of the retirement policy should be provided for in the Bill. However, the Administration considers that there is no need for a transitional period since the Bill seeks to give legal backing to a policy which has been in practice for many years. The Administration has pointed out that SMCs have already been advised to draw up staff succession plans. If a SMC has genuine difficulties in finding suitable replacement for a teacher or principal reaching retirement age, the Bill already provides a mechanism for the SMC to recommend to D of E that the service of the incumbent teacher/principal be extended.

25. Members have pointed out that there may be insufficient time for the SMC of an aided school to make an application for extension or for D of E to determine whether or not to permit such application before the commencement of the next school year following the passage of the Bill. Having carefully considered comments by members, the Administration agrees that as a one-off transitional arrangement, serving principals/teachers in aided schools who are over 60 years old when the 2000/01 school year commences may continue to be employed for that school year without the SMCs having to seek the D of E's approval. To this end, the Administration will propose a CSA to proposed section 58C in clause 7 of the Bill to specify that "school year" means any period after the first anniversary of the commencement of that section that begins on the first day of September in a year and ends on the last day of August in the following year.

Retention of distinguished teachers and principals reaching retirement age

26. Members have expressed concern that 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. The Administration has responded that it has no doubt that many teachers and principals at the age of 60 are fit and capable, and there are avenues for retired teachers/principals to contribute to education in various capacities. For instance, they can be employed to teach in non-Government and non-aided schools, or they can serve in non-teacher capacities in aided schools such as teacher trainers, consultants or mentors, or help out in curriculum tailoring, school administration and extra-curricular activities, etc. Some members are of the view that it is unrealistic to expect retired teachers and principals to work without remuneration. They have suggested that ED should apply funding arrangements with flexibility so that employment of retired teachers and principals under contract terms will not be counted towards the approved teaching staff establishment.

Committee stage amendments

27. The CSAs proposed by the Administration are in **Appendix II**. The Bills Committee has not proposed any amendments.

Recommendation

28. The Bills Committee recommends that, subject to the CSAs to be moved by the Administration, the second reading debate on the Bill be resumed on 15 March 2000.

Advice sought

29. Members are invited to support the recommendation of the Bills Committee in paragraph 28 above.

Legislative Council Secretariat

3 March 2000

Bills Committee on Education (Amendment) Bill 1999

Membership List

Hon YEUNG Yiu-chung (Chairman)
Hon Cdy HO Sau-lan
Prof Hon NG Ching-fai
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
Hon CHOY So-yuk
Hon SZETO Wah

Total : 9 members
Date : 31 January 2000

EDUCATION (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
2	In the proposed definitions of "practical school", "skills opportunity school" and "special school", by deleting "for that purpose" and substituting "for such purpose".
4(b)	In the proposed section 52(3), by deleting "being" and substituting "continuing to be".
5(b)	In the proposed section 54(2), by deleting everything after "a teacher" and substituting "proposed to be employed as the principal of an aided school as the principal of the school if the teacher is prohibited from being so employed by virtue of section 58A.".
6(b)	In the proposed section 56(2), by deleting "being" and substituting "continuing to be".

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(a) By deleting the proposed section 58A and substituting -

"58A. Prohibition against employment of persons of specified age as teachers or principals of aided schools

(1) Subject to subsection (2) -

(a) a person shall not be employed as a teacher or the principal of an aided school if he -

(i) would commence such employment after the commencement of this section; and

(ii) would be aged 60 years or more at the commencement of such employment;

(b) a person employed as a teacher or the principal of an aided school shall not continue to be so employed for a school year or any part thereof if he has attained the age of 60 years or more before the commencement of the school year, except in accordance with a permission under section 58B(2)(a).

(2) Nothing in subsection (1) applies to -

(a) the employment of a person as a temporary replacement of a teacher of an aided school for any period during which that teacher is unable for any reason to perform his duties as a teacher of the school; or

(b) the employment of a person as a teacher of an aided school where the person fills a post that is not within the teaching staff establishment of the school approved by the Director from time to time."

(b) In the proposed section 58B(1) -

(i) in paragraph (a), by deleting "being employed as a teacher or the principal of the school by virtue of section 58A(2)" and substituting "continuing to be so employed by virtue of section 58A(1)(b)";

(ii) in paragraph (b), by deleting "the period in which he is to continue to be employed" and substituting "the period concerned".

(c) In the proposed section 58C, by adding "the first anniversary of" before "the commencement of this section".