

立法會 *Legislative Council*

LC Paper No. LS 52/99-00

Paper for the House Committee Meeting of the Legislative Council on 7 January 2000

Legal Service Division Further Report on Education (Amendment) Bill 1999

Members may recall that the Legal Service Division made a report to the House Committee on 17 December 1999 on the Bill (LC Paper No. LS39/99-00 refers). The purpose of the Bill is to give legal effect to the retirement policy set out in the codes of aid for primary schools, secondary schools and special schools ("the Codes"). The House Committee has agreed to defer the decision on the Bill pending clarifications from the Administration.

2. We note that the proposals in Clause 7 of the Bill and the provisions in the Codes are different in the following aspects :

- (a) The Codes do not prohibit the employment of a person as a teacher or principal of an aided school who is aged 60 or above when his employment commences (see new section 58A(1)).
- (b) The Codes provide that the Director of Education ("the Director") may permit a teacher to continue in service *for a period of one school year* after the end of that in which he reaches 60, and for further periods *each of one school year* up to the end of the school year in which he reaches 65 (italics added). The new section 58B, however, allows an application to be made for *a period of not more than one school year*, i.e. an extension for a period shorter than one school year may be allowed.
- (c) The Codes prescribe that permission of the Director may be granted subject to the submission of a satisfactory medical certificate as to fitness. The Bill does not specify such requirement.

3. The Administration has clarified that the proposals in the Bill would reflect the implementation of the current policy in the Codes. Copies of the correspondences exchanged are at the Annex. We would advise Members that under the new section 58A(1), employment of a person aged 60 years or above as a new principal or new teacher is strictly prohibited whereas under the Codes, the Director may approve such appointment.

4. The Administration does not see the need for a transitional provision in the Bill. On the basis of past experience, they believe that there would be sufficient time for a school management committee to file an application for extension of service, and for the Director to consider such application before the commencement of the next school year following the passage of the Bill. The mechanism to apply for continuation of services mentioned in paragraph 8 of the Administration's reply refers to Clause 9 of the Bill, which empowers the Director to permit, on such conditions as she thinks fit, a person to continue to be employed as a teacher or principal of the aided school pending an appeal.

5. Three deputations have made a joint written submission requesting the setting up of a Bills Committee. A copy of the submission has been circulated to Members on 5 January 2000 (LC Paper No. CB(2)777/99-00 refers).

6. Other than the difference between the new section 58A(1) and the Codes referred to in paragraph 3 above, the legal and drafting aspects of the Bill are in order.

Encl

Prepared by

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Legislative Council Secretariat
5 January 2000
Bill/LS/B/18/99-00

Annex

LS/B/18/99-00
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8 December 1999

BY FAX
Fax No. : 2801 7732
Total no. of page(s) : 2

(Attn. : Mr. Gordon Leung
Principal Assistant Secretary)

Dear Mr Leung,

Education (Amendment) Bill 1999

I am scrutinizing the legal and drafting aspects of the above Bill on behalf of Members and shall be grateful if you would clarify the following :

Codes of Aid

Paragraph 2 of the LegCo Brief sets out section 57 of the code of aid for secondary schools ("Code of Aid") and states that similar provisions are stipulated in the code of aid for primary schools and code of aid for special schools. Please let me have a copy of each of the three codes of aid for perusal.

New section 58A(1) under Clause 7

The new section 58A(1) prohibits the employment of a person aged 60 years or above as a teacher or principal of an aided school if such employment commences after the commencement of that section. This falls outside the scope of section 57 of the Code of Aid. Is this a new policy introduced by the Bill or is it currently set out in other provisions of the codes of aid?

New section 58B(1) under Clause 7

Section 57 of the Code of Aid provides that the Director may permit a teacher to continue in service *for a period of one school year* after the end of that in which he reaches 60, and for further periods *each of one school year* up to the end of the school year in which he reaches 65 (italics added). The new section 58B, however, allows an application to be made for

a period of not more than one school year, up to a maximum aggregate period of 5 consecutive school years. Please clarify whether it is the policy to empower the Director to permit the continuation of employment of a teacher or principal of an aided school for a period shorter than one school year. If so, would this policy be different from that in the codes of aid?

Section 57 of the Code of Aid prescribes that permission of the Director may be granted subject to the submission of a satisfactory medical certificate as to fitness. The Bill does not specify such requirement. Is submission of a medical certificate no longer required?

The proposed section 58B does not contain the matters that the Director has to consider when determining whether or not to grant permission. Would those matters listed in paragraph 7 of the LegCo Brief remain relevant?

Has the Administration considered the need for a transitional provision in the event there is insufficient time for the management committee of an aided school to make an application under section 58B or for the Director to determine whether or not to permit such application before the commencement of the next school year following the passage of the Bill?

New section 51(2) under Clause 3

The Chinese rendition for "permitted teacher" is "准用教員". Please consider amending the term "教員" which appears twice in the Chinese text of the proposed section 51(2).

Registered teachers

Please confirm that the Administration has no intention to amend the age for refusal to register a teacher from 70 to 60 under section 46 of the Education Ordinance (Cap. 279).

I would appreciate it if you could let me have your reply before 14 December 1999 to facilitate my reporting on the Bill to the House Committee on 17 December 1999.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

c.c. D of J (Ms Betty Choi, SGC)
LA

14 December 1999

Ms Bernice Wong
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
8 Jackson Road
Central
Hong Kong

Dear Ms Wong

Education (Amendment) Bill 1999

Thank you for your letter dated 8 December 1999. I would like to respond to your queries as follows.

New section 58A(1) under clause 7

2. Appointment of principals is subject to the approval of the Director of Education (sections 53 and 57 of Education Ordinance; section 50 of the Code of Aid for Primary Schools; section 47 of the Code of Aid for Secondary Schools; section 57 of Volume I of Code of Aid for Special Schools and section 55 in Volume II (for practical schools and skills opportunity schools)).

3. Section 49 of the Code of Aid for Primary Schools; section 46 of the Code of Aid for Secondary Schools; and section 56 (Volume 1) and section 54 (Volume 2) of the Code of Aid for Special Schools require that the Director of Education be notified of all appointments of staff. Sections 52(a), 49(a), 59(a) and 57(a) of the respective Codes of Aid provide that for each appointment an application for approval of salary for grant purposes shall be made to the Director in the prescribed form.

4. At present, the Director of Education, in the spirit of the retirement policy stated in the various Codes of Aids, as a general rule refuses applications from schools to newly employ a person aged 60 or above to be a principal, and applications for salary grant to newly employ a person aged 60 or above to be a principal or teacher,

unless there are compelling reasons or such employment are of a temporary nature (e.g., as substitute teachers). Therefore the new section 58A(1) is not a new policy.

New section 58B(1) under clause 7

5. At present, the Director of Education may not necessarily approve the continuation of service for exactly one school year after the principal or teacher reaches 60. According to Education Department records, some applications (and hence their approval) were for less than one year. Even for applications which were for one year, the Director had, having considered the merits of each case, approved periods of less than one year. The new section 58B(1) is a more precise reflection of the current policy.

6. We envisage that under the new section 58B(1), after the school management committee has submitted an application, the Director of Education will, if necessary, seek further evidence from the school management committee to enable her to decide whether the application should be approved and, if so, under what terms and conditions. In exercising her powers to approve or refuse an application, the Director of Education is expected to consider all relevant factors, including those specified in paragraph 7 of the LegCo Brief.

7. We also envisage that a school management committee will be required to provide a satisfactory medical certificate as to the fitness of the principal/teacher. This requirement will be set out in circulars issued by the Education Department to schools from time to time.

8. The Education Department has been advising schools to plan well ahead for staff succession. Most schools take heed of the Department's advice and do not run into succession problems. If there should be any case which needs special consideration, the Bill already provides for a mechanism to apply for continuation of services. On the basis of past experience, our assessment is that it should not take long for a school management committee to file an application for extension of service, or for the Education Department to consider the application. Therefore, the Administration does not see the need for further transitional arrangements.

New section 51(2) under clause 3

9. The Administration is of the view that the meaning of the new section 51(2) under clause 3 in the Chinese text of the Bill is sufficiently clear without amending the term “教員”to “准用教員”.

Registered teachers

10. The Administration can confirm that there is no intention to amend the age for refusal to register a teacher from 70 to 60 under section 46 of the Education Ordinance (Cap. 279)

Copies of Codes of Aid

11. Copies of the relevant sections of the Codes of Aid for Primary, Secondary and Special Schools are at Annexes A, B and C respectively for your reference.

Yours sincerely

(Gordon Leung)

for Secretary for Education and Manpower

Encl.

c.c. (w/e)

D of E (Attn: Mr K K Chong)

D of J (Attn: Ms Betty Choi)

Director to prescribe the rate of repetition

46. The Director may after consultation with the schools councils from time to time prescribe a maximum rate of repetition either generally or at particular education levels.

Teaching Practice Arrangements

Schools to accept teaching practice arrangements

47. Schools should co-operate, whenever possible, in the training of teachers by accepting for teaching practice student teachers undergoing training from the Colleges of Education and the Universities. Consultation among the institutions concerned should be arranged prior to the placement of students.

Use of School Premises

Use of school premises

48. (a) The premises of an aided school shall be used only for the approved activities of such school, except as may be permitted in writing by the Director.

(b) Classrooms and ancillary facilities should be made available at the request of the Director for the operation of part-time and evening courses run by the Education Department. In making his requests, the Director will take into consideration any special difficulties and existing commitments and fully consult the school authorities concerned. In this connection, appropriate remuneration will be made regarding hire charges, electricity charges, expenses on consumable goods and overtime payment for the relevant staff.

Appointment and Dismissal of Staff

Director to be notified of appointment and dismissal of staff

49. (a) Appointment and dismissal of staff shall be in accordance with regulations 76, 77 and 78 of the Education Regulations 1971, in conformity with this Code of Aid and in accordance with such instructions and the Director may from time to time issue.

(b) All appointments, resignations and dismissal shall be promptly notified to the Director. Such notification shall be in writing, stating the effective dates and indicating, where applicable, the period of notice given.

Director to approve appointment of Principal (Head)

50. The approval of the Director is required for the appointment of a Principal (Head) of an aided school. Such appointments shall be made in accordance with the conditions shown in Appendix 13.

- Teachers and other staff to be medically examined
51. (a) All teachers (other than supply teachers) shall, before appointment, undergo a medical examination by a registered medical practitioner and a chest X-ray examination at a Government institution or by a registered medical practitioner.
- (b) Serving registered teachers on transfer from one aided school to another without break of service will not be required to attend an X-ray examination or present a medical certificate on appointment.
- (c) The Director may exempt teachers and other staff from pre-employment X-ray examination for cases mentioned in Appendix 15.
- Application for approval of salaries
52. (a) For each appointment, an application for approval of salary for grant purposes shall be made to the Director in the prescribed form and shall be accompanied by such documents as the Director may require.
- (b) If such appointment is to fill a vacancy caused by resignation, the application shall be accompanied by a notification of the name of the person resigning. If such appointment is an increase in the total number of staff employed, the application shall be accompanied by a notification of the authority for such an increase.
- Head of school to verify qualifications, experience and date of birth
53. (a) The Head of an aided school shall inquire into, examine and verify the certificates and testimonials of an applicant for appointment as a teacher, and shall verify any previous experience claimed by such applicant, making reference for this purpose to the Head of the school at which such applicant may last have been employed.
- (b) The Head of an aided school shall verify the date of birth of any person employed as a teacher in such school, and shall require such person to produce for inspection the Hong Kong Identity Card, a birth certificate, or such other documents as may appear necessary for this purpose.
- Qualifications of teachers
54. Qualifications required for eligibility for employment in an aided school as a teacher are shown in Appendix 13.
- Temporary employment of unqualified persons as teachers
55. Subject to the approval of the Director, the Management Committee of an aided school may, if a qualified person is not available to fill a vacancy in the teaching staff, temporarily employ an unqualified person as a teacher. The salary for such an unqualified teacher shall be as stated in Appendix 3.

Teaching Practice Arrangements

Schools to accept teaching practice arrangements

44. Schools should co-operate, whenever possible, in the training of teachers by accepting for teaching practice student teachers under-going training in the Hong Kong Institute of Education and the Universities. Consultation among the institutions concerned should be arranged prior to the placement of students.

Use of School Premises

Use of school premises

45. (a) The premises of an aided school shall be used only for the approved activities of such school, except as may be permitted in writing by the Director.
- (b) Classrooms and ancillary facilities should be made available at the request of the Director for the operation of part-time and evening courses run by the Education Department. In making his requests, the Director will take into consideration any special difficulties and existing commitments, and will fully consult the school authorities concerned. In this connection, appropriate remuneration will be given in respect of hire charges, electricity charges, expenses on consumable goods and overtime payment for the relevant staff.

Appointment and Dismissal of Staff

Director to be notified of appointment and dismissal of staff

46. (a) Appointment and dismissal of staff shall be in accordance with regulations 76, 77 and 78 of the Education Regulations 1971, in conformity with this Code of Aid and in accordance with such instructions as the Director may from time to time issue.
- (b) All appointments, resignations and dismissal shall be promptly notified to the Director. Such notification shall be in writing, stating the effective dates and indicating, where applicable, the period of notice given.

Director to approve appointment of Principal

47. The approval of the Director is required for the appointment of a Principal of an aided school. Such appointments shall be made in accordance with the conditions shown in Appendix 15.

Teachers and other staff to be medically examined

48. (a) All teachers (other than supply teachers), workshop teachers, and laboratory technicians shall, before appointment, undergo a medical examination by a registered medical practitioner and a chest X-ray examination at a Government institution or by a registered medical practitioner.

- (b) Serving registered teachers on transfer from one aided school to another without break of service will not be required to attend an X-ray examination or present a medical certificate on appointment.
- (c) The Director may exempt teachers and other staff from pre-employment X-ray examination for cases mentioned in Appendix 16.
- Application for approval for salaries 49. (a) For each appointment an application for approval of salary for grant purposes shall be made to the Director in the prescribed form and shall be accompanied by such documents as the Director may require.
- (b) If such appointment is to fill a vacancy caused by resignation, the application shall be accompanied by a notification of the name of the person resigning. If such appointment is an increase in the total number of staff employed, the application shall be accompanied by a notification of the authority for such an increase.
- Principal to verify qualifications, experience and date of birth 50. (a) The Principal of an aided school shall inquire into, examine and verify the certificates and testimonials of an applicant for appointment as a teacher, and shall verify any previous experience claimed by such applicant, making reference for this purpose to the Principal of the school at which such applicant may last have been employed.
- (b) The Principal of an aided school shall verify the date of birth of any person employed as a teacher in such school, and shall require such person to produce for inspection the Hong Kong Identity Card, a birth certificate, or such other documents as may appear necessary for this purpose.
- Qualifications of teachers, workshop teachers and laboratory technicians 51. Qualifications required for eligibility for employment in an aided school as a teacher, workshop teacher or laboratory technician, are shown in Appendix 15.
- Preference to be given to persons possessing professional qualifications 52. The Management Committee of an aided school shall, in considering the appointment of teaching staff, seek to give preference to persons who, in addition to the minimum qualification for employment, possess a professional qualification in education.

- (b) Classrooms and ancillary facilities should be made available at the request of the Director for the operation of part-time and evening courses run by the Education Department. In making his requests, the Director will take into consideration any special difficulties and existing commitments, and make full consultation with the school authorities concerned. In this connection, appropriate remuneration will be made regarding hire charges, electricity charges, expenses on consumable goods and overtime payment for the relevant staff.

Appointment and Dismissal of Staff

Director to be notified of appointment and dismissal of staff

56. (a) Appointment and dismissal of staff shall be in accordance with regulations 76, 77 and 78 of the Education Regulations 1971, in conformity with this Code of Aid, and in accordance with such instructions as the Director may from time to time issue.

- (b) All appointments, resignations and dismissals shall be promptly notified to the Director. Such notification shall be in writing, stating the effective dates and indicating, where applicable, the period of notice given.

Director to approve appointment of head

57. The approval of the Director is required for the appointment of a head of an aided special school. Such appointments shall be made in accordance with the conditions shown at Appendix 5.

Teachers and other staff to be medically examined

58. (a) All teaching staff, specialist staff, artisans, cooks and workshop attendants (other than supply staff) shall, before appointment, undergo a medical examination by a registered medical practitioner and a chest X-ray examination at a Government institution or by a registered medical practitioner.

- (b) All other staff (other than supply staff) shall, before appointment, undergo a medical examination by a registered medical practitioner.
 - (c) Serving registered teachers on transfer from one aided school to another without break of service will not be required to attend an X-ray examination or present a medical certificate on appointment.
 - (d) The Director may exempt teachers and other staff from pre-employment X-ray examination for cases mentioned at Appendix 11.
- Application for approval of salaries
59. (a) For each appointment an application for approval of salary for grant purposes shall be made to the Director in the prescribed form and shall be accompanied by such documents as the Director may require.
- (b) If such appointment is to fill a vacancy caused by resignation, the application shall be accompanied by a notification of the name of the person resigning. If such appointment is an increase in the total number of staff employed, the application shall be accompanied by a notification of the authority for such an increase.
- Head to verify qualifications, experience and date of birth
60. (a) The Head of an aided special school shall inquire into, examine and verify the certificates and testimonials of an applicant for appointment of any grade of staff in the school, and shall verify any previous experience claimed by such applicant, making reference for this purpose to the applicant's former employer(s) as appropriate.
- (b) The Head of an aided special school shall verify the date of birth and the Hong Kong Identity Card Number of any person employed to any grade of staff in the school, and shall require such person to produce for inspection a birth certificate, statutory declaration, the Hong Kong Identity Card, or such other documents as may appear necessary for this purpose.

Teaching Practice Arrangements

Schools to accept teaching practice arrangements

52. Schools should co-operate, whenever possible, in the training of teachers by accepting for teaching practice student teachers undergoing training in the Hong Kong Institute of Education and the Universities. Consultation among the institutions concerned should be arranged prior to the placement of students.

Use of School Premises

Use of school premises

53. (a) The premises of an aided practical school/skills opportunity school shall be used only for the approved activities of such school, except as may be permitted in writing by the Director.
- (b) Classrooms and ancillary facilities should be made available at the request of the Director for the operation of part-time and evening courses run by the Education Department. In making his requests, the Director will take into consideration any special difficulties and existing commitments, and make full consultation with the school authorities concerned. In this connection, appropriate remuneration will be made regarding hire charges, electricity charges, expenses on consumable goods and overtime payment for the relevant staff.

Appointment and Dismissal of Staff

Director to be notified of appointment and dismissal of staff

54. (a) Appointment and dismissal of staff shall be in accordance with regulations 76, 77 and 78 of the Education Regulations 1971, in conformity with this Code of Aid, and in accordance with such instructions as the Director may from time to time issue.
- (b) All appointments, resignations and dismissals shall be promptly notified to the Director. Such notification shall be in writing, stating the effective dates and indicating, where applicable, the period of notice given.

- Director to approve appointment of principal
55. The approval of the Director is required for the appointment of a principal of an aided practical school/skills opportunity school. Such appointments shall be made in accordance with the conditions shown at Appendix 5.
- Teachers and other staff to be medically examined
56. (a) All teaching staff, specialist staff, cooks and workshop attendants (other than supply staff) shall, before appointment, undergo a medical examination by a registered medical practitioner and a chest X-ray examination at a Government institution or by a registered medical practitioner.
- (b) All other staff (other than supply staff) shall, before appointment, undergo a medical examination by a registered medical practitioner.
- (c) Serving registered teachers on transfer from one aided school to another without break of service will not be require to attend an X-ray examination or present a medical certificate on appointment.
- (d) The Director may exempt teachers and other staff from pre-employment X-ray examination for cases mentioned at Appendix 11.
- Application for approval of salaries
57. (a) For each appointment an application for approval of salary for grant purposes shall be made to the Director in the prescribed form and shall be accompanied by such documents as the Director may require.
- (b) If such appointment is to fill a vacancy caused by resignation, the application shall be accompanied by a notification of the name of the person resigning. If such appointment is an increase in the total number of staff employed, the application shall be accompanied by a notification of the authority for such an increase.
- Principal to verify qualifications,
58. (a) The Principal of an aided practical school/skills opportunity school shall inquire into, examine and