

## **Information Paper**

### **Revisions to the fines provisions in the Education Ordinance and the Education Regulations**

#### **Purpose**

This paper sets out a proposal to amend the Education Ordinance and the Education Regulations to increase the fines for offences to maintain the deterrent effect.

#### **Background**

2. The fines provisions in the Education Ordinance and the Education Regulations have not been revised for a long time, with some dating back to 1971 while the most up-to-date provision was made in 1993. The recent spate of incidents of kindergartens over-enrolling, over-charging and operating without registration has given rise to concerns that the existing levels of fines are not adequate to deter kindergartens from committing these offences. There have been repeated calls from Members for Government to step up enforcement action and to impose heavier penalties on kindergartens which fail to comply with regulatory requirements. The Ombudsman also conducted a direct investigation on the existing system of registration and inspection of kindergartens. The Ombudsman has recommended, inter alia, that consideration be given to increasing the penalty for contravention of the Education Ordinance and Regulations. Furthermore, cases of unregistered tutorial schools revealed in recent years have caused public concern about the proliferation of unregistered tutorial schools. The Ombudsman also conducted a direct investigation on the registration procedures for tutorial schools. Amongst other recommendations, the Ombudsman considered that the fines in the Education Ordinance should be revised to take into account the effect of inflation from 1971 to the present. More generally, there is a growing expectation in the community for Government to deal stringently with any schools (be they kindergartens, tutorial schools or other types of schools) which act against the law.

3. In view of the above developments, we have conducted a review of the fines provisions in the Education Ordinance and the Education Regulations. The opportunity is also taken to convert the fines to the appropriate levels

according to the standard scale of fines under the Criminal Procedure (Amendment) (No. 2) Ordinance 1994 (see paragraphs 4 and 5 below).

**Criminal Procedure (Amendment) (No. 2) Ordinance**

4. The Criminal Procedure (Amendment) (No. 2) Ordinance 1994, enacted in July 1994, introduced a system of scale of fines for all fines not exceeding \$100,000. Under this system, all maximum fines are placed on a standard scale of six levels as follows :

\$1	to \$2,000	-	Level 1
\$2,001	to \$5,000	-	Level 2
\$5,001	to \$10,000	-	Level 3
\$10,001	to \$25,000	-	Level 4
\$25,001	to \$50,000	-	Level 5
\$50,001	to \$100,000	-	Level 6

5. The object of this system is to enable all maximum fines to be revised in future by a single legislative measure, as from time to time the existing maxima become outdated because of the changing value of money.

**Revisions to Fines Provisions**

6. The penalty provisions now existing in the Education Ordinance and the Education Regulations are summarised at Annex.

7. We propose that the fines in sections 18A(2), 63(3), 63(5), 76(4), 76(5), 78, 84(3), 86A(3), 86B(2), 87(1), 87(2), 87(3), 87(3A) and 89(6) of the Education Ordinance be revised on the basis of inflation.

8. For section 87(1), since the proposed new fine after inflation adjustment will exceed the maximum fine of Level 6 (i.e. \$100,000), we propose that it remains in the form of a monetary value (i.e. \$211,000, rounding up to \$250,000).

9. Section 84(3) of the Education Ordinance provides that the Chief Executive in Council may make regulations on various aspects of school operations and standards, and that such regulations may provide that contravention of these regulations shall be an offence punishable by a fine not

exceeding \$5,000 and a term of imprisonment not exceeding two years. Regulation 102 provides that a person found guilty of an offence under any provision in the Education Regulations shall be liable to a fine of \$5,000 and to imprisonment for one year. It is proposed that the fines provision in section 84(3) be increased from \$5,000 to \$42,000 (see paragraphs 7 and 10). Consequentially, we propose that the fines provision in regulation 102 be similarly increased from \$5,000 to \$42,000.

10. The following table shows the respective existing monetary maxima in the relevant provisions, the year in which they were last adjusted, the rate of inflation since the last adjustment, as well as the proposed maxima together with the corresponding level of the proposed fines –

<b>Section/ Regulation</b>	<b>Existing fine</b>	<b>Date of last adjustment</b>	<b>Rate of inflation as at 2000 since last adjustment</b>	<b>Adjustment for maximum after inflation</b>	<b>Proposed fine</b>	<b>Corresponding level of proposed fine*</b>
S18A(2)	\$5,000	1993	+30.7%	\$7,000	\$7,000	Level 3 (\$10,000)
S63(3)	\$5,000	1990	+73.0%	\$9,000	\$9,000	Level 3 (\$10,000)
S63(5)	\$5,000	1990	+73.0%	\$9,000	\$9,000	Level 3 (\$10,000)
S76(4)	\$5,000	1990	+73.0%	\$9,000	\$9,000	Level 3 (\$10,000)
S76(5)	\$5,000	1990	+73.0%	\$9,000	\$9,000	Level 3 (\$10,000)
S78	\$5,000	1990	+73.0%	\$9,000	\$9,000	Level 3 (\$10,000)
S84(3)	\$5,000	1971	+745.0%	\$42,000	\$42,000	Level 5 (\$50,000)
S86A(3)	\$10,000	1993	+30.7%	\$13,000	\$13,000	Level 4 (\$25,000)
S86B(2)	\$10,000	1993	+30.7%	\$13,000	\$13,000	Level 4 (\$25,000)
S87(1)	\$25,000	1971	+745.0%	\$211,000	\$250,000	N.A.
S87(2)	\$10,000	1971	+745.0%	\$85,000	\$85,000	Level 6 (\$100,000)
S87(3)	\$5,000	1971	+745.0%	\$42,000	\$42,000	Level 5 (\$50,000)
S87(3A)	\$5,000	1990	+73.0%	\$9,000	\$9,000	Level 3 (\$10,000)
S89(6)	\$5,000	1971	+745.0%	\$42,000	\$42,000	Level 5 (\$50,000)
R102	\$5,000	1982	+199.1%	\$15,000	\$42,000	Level 5 (\$50,000)

\* The figures in brackets denote the maximum fine for the relevant level as provided in the Criminal Procedure (Amendment) (No.2) Ordinance 1994.

11. We plan to effect the above revisions by way of a resolution, as provided for in Section 100A of the Interpretation and General Clauses Ordinance (Cap 1). We will move the resolution at a LegCo sitting in May/June this year.

12. We do not propose any change to the imprisonment terms specified in sections 18A(2), 63(3), 63(5), 76(4), 76(5), 78, 84(3), 87(1), 87(2), 87(3), 87(3A), 89(6) and regulation 102.

13. We wish to flag for Members' attention that sections 87(1)(e) and (f) and sections 87(3)(h), (i), (j) and (k) relate to section 69(3), whilst section 87(1)(g) relates to section 69(4). The whole of section 69, including subsections (3) and (4), was in fact repealed in 1993. Since section 69 has been repealed, the situations proscribed by sections 87(1)(e), (f) and (g), and sections 87(3)(h), (i), (j) and (k) are no longer offences and the continued existence of these provisions is redundant. We will take action to repeal these provisions at the next opportunity when the Education Ordinance is amended.

### **Advice Sought**

14. Members are invited to comment on the proposal set out in paras. 7 - 12.

Education and Manpower Bureau  
March 2000

**Summary of existing penalty provisions**  
**in the Education Ordinance and the Education Regulations**

<b>Section/ Regulation</b>	<b>Offence</b>	<b>Penalty</b>	<b>Date of Enactment</b>
S18A(2)	A supervisor of a school causing/allowing post secondary education to be provided at the school without the approval of the Director of Education	Fine : \$5,000 and Imprisonment : 3 months	1993
S63(3)	<ul style="list-style-type: none"> <li>• Any person being summoned refusing to attend any hearing of the Appeals Board to give evidence or to produce any document or other thing in his possession; or</li> <li>• Any person being examined refusing or neglecting to answer any question put to him by the Appeals Board, or to produce any document or other thing in his possession when required to do so</li> </ul>	Fine : \$5,000 and Imprisonment : 3 months	1990
S63(5)	Any person behaving in an insulting manner or using threatening or insulting expression to the Appeals Board; or wilfully disrupting the proceedings of the Appeals Board	Fine : \$5,000 and Imprisonment : 3 months	1990
S76(4)	Any person refusing to attend as a witness or refusing or neglecting to produce any document or any other thing at a hearing of the board of review when summoned, or to answer any questions put to him by the board	Fine : \$5,000 and Imprisonment : 3 months	1990
S76(5)	Any person behaving in an insulting manner or using threatening or insulting expression to the board of review; or wilfully disrupting the proceedings of the board	Fine : \$5,000 and Imprisonment : 3 months	1990

<b>Section/ Regulation</b>	<b>Offence</b>	<b>Penalty</b>	<b>Date of Enactment</b>
S78	Any parent failing to comply with an attendance order without reasonable excuse	Fine : \$5,000 and Imprisonment : 3 months	1990
S84(3)	Contravening regulations made under Section 84 regarding various aspects of school standards, operations, management, fees, etc.	Fine : not exceeding \$5,000 and Imprisonment : not exceeding 12 months	1971
S86A(3) & S86B(2)	<ul style="list-style-type: none"> <li>• Any person publishing advertisement that alleges that an institution is registered or provisionally registered as a school when it was not so at the time of publication; or</li> <li>• Any person publishing advertisement with respect to a registered or provisionally registered school without including in the advertisement the registration number assigned by the Director of Education to the school; or</li> <li>• An owner or manager of a school publishing advertisement that alleges that the school is operating in premises other than those specified in the certificate of registration or provisional registration of the school</li> </ul>	Fine : \$10,000	1993

<b>Section/ Regulation</b>	<b>Offence</b>	<b>Penalty</b>	<b>Date of Enactment</b>
S87(1)	<p>Any person –</p> <ul style="list-style-type: none"><li>• being an owner or a manager or a teacher in a school which is not registered or provisionally registered; or</li><li>• being an owner or a manager of a school which is operated in premises other than those specified in the certificate of registration or provisional registration of the school; or</li><li>• refusing to produce any book or document or other article or to furnish any information when required to do so; or</li><li>• acting as a manager of a school without registration as a manager of the school; or</li><li>• teaching in a school while its registration or provisional registration is suspended; or</li><li>• obstructing the Director of Education or an inspector in carrying out or attempting to carry out an inspection of a school; or obstructing any manager appointed by the Director in the performance of his functions as a manager; or</li><li>• furnishing any false information in connection with any application under the Education Ordinance</li></ul>	Fine : \$25,000 and Imprisonment : 2 years	1971

<b>Section/ Regulation</b>	<b>Offence</b>	<b>Penalty</b>	<b>Date of Enactment</b>
S87(2)	Any person performing any function of the supervisor or the principal of a school when not being the supervisor or the principal of the school	Fine : \$10,000 and Imprisonment : 2 years	1971
S87(3)	Any person – <ul style="list-style-type: none"> <li>• being an owner or manager of a school operating in any name other than its registered name; or</li> <li>• not exhibiting the certificate of registration in a conspicuous place in each of the premises specified in the certificate; or</li> <li>• being an owner or a manager or a teacher in a school while its registration or provisional registration is suspended; or</li> <li>• managing a school while his registration as a manager of such school is suspended</li> </ul>	Fine : \$5,000 and Imprisonment : 2 years	1971
S87(3A)	Any person being a member of a management committee which refuses to admit a child related to an attendance order or expels, without the permission of the Director of Education, a child related to an attendance order and admitted to that school	Fine : \$5,000 and Imprisonment : 3 months	1990
S89(6)	Any person being the landlord or tenant of premises in which an unregistered school operates or which are not specified in the certificate of registration	Fine : \$5,000 and Imprisonment : 2 years	1971



<b>Section/ Regulation</b>	<b>Offence</b>	<b>Penalty</b>	<b>Date of Enactment</b>
R102	Contravening various specified provisions under the Education Regulations	Fine : \$5,000 and Imprisonment : 1 year	1982