

Information Paper

Retirement of Teachers and Principals of Aided Schools

Purpose

This paper informs Members of the Administration's proposal to amend the Education Ordinance to give legal backing to the existing retirement policy on teachers and principals of aided schools.

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 sixty.
- (b) Notwithstanding (a), the Director may, on the recommendation of the Management Committee of a school 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 sixty, and for further periods each of one school year, up to the end of the school year in which he reaches the age of sixty-five.

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 the School Management Committee 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 contravenes the Education Ordinance and is of no effect. The Court handed down its judgement on 25 June 1999 that section 57 of the Code of Aid for Secondary Schools was unenforceable against principals of aided secondary schools. The ruling is taken to be equally applicable to principals of aided primary and special schools. (See Annex for details.)

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

Arguments

5. The objective of setting a retirement age for teachers and principals is to ensure a healthy staff turnover which is important for revitalizing the work force and in keeping the school intellectually active. It also helps to meet the reasonable expectations of staff for career advancement.

6. Setting the retirement age at 60 is in line with civil service practice, since aided schools are publicly funded. Furthermore, according to the Fringe Benefit Survey conducted in 1999 by the Standing Commission on Civil Service Salaries and Conditions of Service, the normal retirement age for employees of 78% of the companies surveyed in Hong Kong is also 60. Hence, the retirement age for principals and teachers in aided schools is in line with the social norm.

7. Retirement at 60 has been stipulated in the Code of Aid for many years and is generally accepted by principals and teachers in the aided schools. Under exceptional circumstances and with proof of physical fitness, the Director of Education may exercise her discretion to grant extension of service up to 65 subject to annual review and approval. When considering an application for extension, the recommendation of the School Management Committee, the ability and performance of the principal or teacher concerned as well as any reasons furnished by the School Management Committee in support of the application are taken into account. These may include recruitment difficulties, unforeseeable circumstances giving rise to a vacancy which cannot be filled within the time available, staff succession problems etc. Each application will be considered on individual merits.

8. In the light of the court judgement in June 1999, the Administration intends to amend the Education Ordinance to embody the existing retirement policy and the established arrangements for extension of service in exceptional circumstances which are currently set out in the Codes of Aid.

Proposal

9. We intend to propose new provisions to the Education Ordinance broadly along the following lines:

- (a) a teacher/principal of an aided school shall retire at the end of the school year in which he has attained the age of 60 years, unless otherwise permitted in writing by the Director;

- (b) no person over the age of 60 shall become a teacher/principal of an aided school, unless otherwise approved in writing by the Director; and
- (c) in respect of (a), the Director may permit a teacher/principal of an aided school who has reached retirement age to continue in service for a maximum of five years, up to the end of the school year in which he has attained the age of 65 years. Such extension of service has to be reviewed and approved on an annual basis.

Advice Sought

10 . Members are invited to note the contents of this paper. Views and comments are welcome.

Education Department
November 1999

A Brief Note on the Court Judgement

Section 55 of the Education Ordinance provides for security of tenure to principals; the grounds for the Director of Education to withdraw the appointment of principals are laid down in section 56. Section 57 of the Code of Aid provides for the retirement of principals at 60. The court pointed out that there was a conflict between section 57 of the Code of Aid and section 55 of the Education Ordinance. The court ruled that section 57 of the Code of Aid amounted to an undertaking which the management committee of a school gave to the Director in return for subvention under the Code, however, it was not binding on the principal (at least insofar as retirement age was concerned) under the doctrine of privity of contract¹. It follows that the Director cannot justify the implementation of section 57 of the Code on any of the grounds set out in section 56 of the Ordinance. Relying on the privity of contract doctrine, the High Court ruled that to the extent that section 57 of the Code of Aid applied to principals, it was unenforceable against principals.

¹ To illustrate how the doctrine of privity of contract operates, Party A to a contract (i.e. the management committee of the school) is not permitted to break the obligation (i.e. the security of tenure provisions) which it owes to Party B (i.e. the principal) even if it has been agreed with Party C (i.e. the Director) to act in a way (i.e. to retire the principal when he reaches the age of 60) which would amount to a breach of those obligations. It would have been different if the principal had been a party to the agreement between the management committee and the school.