

LEGISLATIVE COUNCIL BRIEF

Education Ordinance (Chapter 279)

GRANT SCHOOLS PROVIDENT FUND (AMENDMENT) RULES 2000

SUBSIDIZED SCHOOLS PROVIDENT FUND (AMENDMENT) RULES 2000

INTRODUCTION

At the meeting of the Executive Council on 28 March 2000, the Council ADVISED and the Chief Executive ORDERED that -

- (a) the Grant Schools Provident Fund (Amendment) Rules 2000, at Annex A; and
- (b) the Subsidized Schools Provident Fund (Amendment) Rules 2000, at Annex B,

should be made under section 85 of the Education Ordinance so that teachers of aided schools could remain in the statutory provident fund schemes when they switched employment to Direct Subsidy Scheme (DSS) schools ⁽¹⁾.

Note (1) The Direct Subsidy Scheme (DSS) was introduced in 1988 to provide recurrent subsidy for private secondary schools while allowing them greater freedom (vis-à-vis aided schools) with regard to the curriculum, school fee, entrance requirements and terms of employment for the staff, so as to enable them to develop into a viable alternative to aided and Government schools. The subsidy is based on the average unit cost of aided school places. The more students a DSS school can attract, the more subsidy the school will receive. A DSS school may also apply for capital grant to improve and repair its school premises.

BACKGROUND AND ARGUMENT

Existing Provident Fund Arrangements

2. Currently, teachers in aided schools are covered by either the Grant Schools Provident Fund (GSPF) or the Subsidized Schools Provident Fund (SSPF), depending on whether they are employed by a grant school or a subsidized school. The two funds are statutory schemes governed by, respectively the GSPF Rules and the SSPF Rules, made by the Chief Executive in Council under the Education Ordinance (Chapter 279). The main features of the two schemes are at Annex C. Under existing legislation, non-aided school teachers, including DSS school teachers, are not eligible to join either the GSPF or the SSPF. Also, once an aided school teacher ceases to be employed by the aided school sector, he can no longer stay in the GSPF or the SSPF, as the case may be.

3. Unlike the arrangements for aided school teachers, there are no centralised provident fund arrangements for teachers in DSS schools. However, a provident fund element is included in the DSS recurrent subsidy; the latter being based on the average cost of an aided school place in the past year which includes contributions made by Government to the GSPF and the SSPF. At present, DSS schools may establish their own provident fund schemes for their teachers, although there is no statutory or administrative requirement for the DSS schools to do so as the schools are free to decide how to use the DSS subsidy as a block grant. With the introduction of the Mandatory Provident Fund (MPF) System scheduled in December 2000, DSS schools must, like any other employers, have in place an MPF scheme or a scheme exempted under the MPF Schemes Ordinance for their teachers.

Arguments

4. Government's policy is to foster the development of a vibrant DSS school sector to inject more variety into the school system and to provide more choice to parents. In March 1999, the Executive Council endorsed a series of measures to support the growth of the DSS school

sector. A summary of the relevant decisions of the Executive Council and the follow-up actions which we have taken are at Annex D.

5. As part of our overall strategy to develop a strong DSS school sector quickly, we have been encouraging aided schools, in particular the more popular ones, to join the DSS. However, reaction from the aided school sector is lukewarm so far. Only one existing aided primary school (out of two applications) has been admitted into the DSS as from the 2000/01 school year. From discussion with the education sector, we understand that one of the main concerns of aided schools when they consider whether to join the DSS is whether their teachers' existing provident fund benefits could be preserved upon their change of status from aided to DSS.

6. For DSS schools to offer good quality education, they need good quality and experienced teachers. However, DSS schools often have difficulties attracting good aided school teachers to join them. One of the reasons is that the teachers, particularly those with many years of service, do not want to forego their provident fund benefits under the GSPF or the SSPF, or to leave the GSPF or the SSPF which are generally regarded as providing good investment returns ⁽²⁾.

The Proposals

7. The GSPF and the SSPF are each controlled by a statutory Board of Control. Each Board comprises school council and teacher representatives, plus representatives of the Director of Education and the Director of Accounting Services. In order to facilitate aided schools to switch to the DSS, and to facilitate aided school teachers to join DSS schools, we proposed to the Boards of Control of the GSPF and the SSPF that the provident fund benefits of aided school teachers should be preserved when their schools switch to the DSS, or when they leave their schools to join a DSS school. While the Board of Control of the GSPF supported our proposals, the Board of Control of the SSPF insisted that when a subsidized school switches to the DSS, the teachers can choose to

Note (2) At present, the statutorily guaranteed dividend of the GSPF and the SSPF is 5%. However, according to past records, the actual investment returns of the two funds often exceed 5%. In the past five years, the average rate of return of the GSPF and the SSPF was 9.4%.

stay in (and contribute to) the SSPF only for a **maximum period of five years**. In addition, the Board did not support any proposal to allow subsidized school teachers joining DSS schools on their own initiative to stay in the SSPF.

8. The agreed proposals reached with the Boards of Control of the GSPF and the SSPF are as follows -

(a) For grant schools teachers

- (i) When a grant school switches to the DSS, its serving teachers who are already contributors to the GSPF can choose to stay in (and contribute to) the GSPF. Alternatively, the teachers may opt for a provident fund to be offered by the ex-grant DSS school.
- (ii) If a teacher chooses to remain in the GSPF upon his school turning from grant to DSS status under (i) above, and if he subsequently decides to leave the ex-grant DSS school and joins another DSS school, he may choose to stay in (and contribute to) the GSPF or opt for a provident fund offered by his new employer. If, however, he changes his employment yet again and joins another DSS school, he must leave the GSPF.
- (iii) When a teacher of a grant school leaves the school and joins a DSS school, he may choose to stay in (and contribute to) the GSPF or opt for a provident fund offered by the DSS school. If, however, he changes his employment yet again and joins another DSS school, he must leave the GSPF.
- (iv) For (i), (ii) and (iii) above, if a teacher opts to stay in the GSPF, the teacher's employer (i.e the DSS school) will have to donate to the GSPF in place of Government's donation. The employer's donation will be at the same rate as that of Government's had the teacher remained in employment in the grant school sector. The teacher's

contribution and the school's donation will be calculated on the basis of the teacher's salary stated in the contract between the teacher and the DSS school.

- (v) For (i), (ii) and (iii) above, if a teacher opts to stay in the GSPF, the period of service during which the teacher makes continuous contributions to the fund when he is employed by a DSS school will be counted towards the continuous contributory service.
- (vi) For (i), (ii) and (iii) above, if a teacher closes his account in the GSPF, his service in the DSS school and continuous contributory service completed prior to the closure of his account will not be counted towards the continuous contributory service if at a future date he re-joins an aided school and re-opens an account in either of the two statutory provident funds.

(b) For subsidized schools teachers

- (i) When a subsidized school switches to the DSS, its serving teachers who are already contributors to the SSPF can choose to stay in (and contribute to) the SSPF. Alternatively, the teachers may opt for another provident fund to be offered by the ex-subsidized DSS school. In the former case, they are allowed to stay in the SSPF for a **maximum period of five years** immediately after the school has switched to the DSS.
- (ii) If a teacher opts to stay in the SSPF, the teacher's employer (i.e the DSS school) will have to donate to the SSPF in place of Government's donation. The employer's donation will be at the same rate as that of Government's had the teacher remained in employment in the subsidized school sector. The teacher's contribution and the school's donation will be calculated on the basis of the teacher's salary stated in the contract between the teacher and the DSS school.

- (iii) If a teacher opts to stay in the SSPF, the period of service during which the teacher makes continuous contributions to the fund when he is employed by a DSS school will be counted towards the continuous contributory service.
- (iv) If a teacher closes his account in the SSPF, his service in the DSS school and continuous contributory service completed prior to the closure of his account will not be counted towards the continuous contributory service if at a future date he re-joins an aided school and re-opens an account in either of the two statutory provident funds.

9. In sum, the arrangements for grant school and subsidized school teachers will be different in two ways. **First**, a grant school teacher can choose to stay in the GSPF without any time limit after his school has joined the DSS. Furthermore, if he subsequently joins another DSS school, he will also have the option to stay in the GSPF. (If, however, he changes his employment with yet another DSS school, then he must leave the GSPF.) By contrast, a subsidized school teacher can remain in the SSPF only for at most five years after his school has joined the DSS. Furthermore, if he subsequently joins another DSS school, he must leave the SSPF. **Secondly**, a grant school teacher can stay in the GSPF if he leaves his grant school employment and joins a DSS school for the first time, whereas a subsidized school teacher is not given a similar option if he changes employment to a DSS school.

THE AMENDMENT RULES

10. The two sets of Amendment Rules, at Annexes A and B respectively, give effect to the proposals in paragraph 8 above. The major amendments are set out below –

- (a) **Clauses 4 and 5** of the GSPF Amendment Rules expand the scope of contributors of the GSPF to allow the following categories of teachers to stay in the GSPF -
 - (i) grant school teachers whose employers join the DSS;

- (ii) teachers in (i) above who leave the (ex-grant) DSS schools and take up another teaching employment in the DSS sector for the first time; and
 - (iii) grant school teachers who leave the employment of grant schools to take up teaching employment in the DSS sector for the first time.
- (b) **Clauses 5 and 6** of the SSPF Amendment Rules expand the scope of contributors of the SSPF to allow subsidized school teachers whose employers join the DSS to stay in the SSPF for a maximum period of five years after the employers have joined the DSS.
- (c) **Clause 8** of the GSPF Amendment Rules and **clause 9** of the SSPF Amendment Rules specify that DSS schools need to donate to the two funds as appropriate for contributors in their employment and at the same rate as Government would have done had the teachers remained in the aided school sector.

11. The relevant provisions of the existing Rules being amended are at Annex E.

PUBLIC CONSULTATION

12. The Legislative Council Panel on Education was briefed in broad terms on our proposals along the line in paragraph 7 above on 15 November 1999 and raised no objection.

13. As explained in paragraph 7 above, we have consulted the Boards of Control of the GSPF and the SSPF. The final arrangements for teachers contributing to the GSPF and the SSPF, as set out in paragraph 8 above, reflect the different positions of the two Boards.

COMMENCEMENT

14. The proposed amendments will take effect on a date to be

appointed by the Secretary for Education and Manpower. Our intention is that the amendments should take effect soonest after they have gone through vetting by the Legislative Council.

BASIC LAW IMPLICATIONS

15. The Department of Justice advises that the Amendment Rules do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

16. The Department of Justice advises that the Amendment Rules are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE RULES

17. The amendments will not affect the current binding effect of the Rules.

FINANCIAL AND STAFFING IMPLICATIONS

18. The proposal to allow ex-aided school teachers to stay in the statutory provident funds will have no direct financial implications for Government. Government's subsidy to DSS schools will be maintained at the current formula, that is, based on the average unit cost per aided school place, regardless of actual salaries paid by DSS schools to their teachers or employers' contributions made by DSS schools to the funds.

19. The proposal may increase Government's contingent liabilities. This is because according to existing legislation, the two statutory provident funds shall each maintain a reserve. The reserve will be called upon when the rate of investment return is lower than the level of a statutorily guaranteed 5% dividend. If the amount of reserve is not sufficient for the purpose, Government will have to provide an interest-free loan to the funds. Under the proposal, there may be a net increase in the number of contributors compared with the existing arrangement. This implies a larger balance for the contributors' account and hence a

larger contingent liability on the part of Government in respect of the 5% statutorily guaranteed dividend. However, such risks are very remote. Since the establishment of the two funds in 1945 and 1961 respectively, there was only one occasion (in 1978) when Government had to provide a special grant to the GSPF in order to cover an investment loss which could not be absorbed by the reserve of the fund.

20. The proposal will incur some additional administration work to Education Department but such increase will be minimal. In any case, any extra resources, if required, will be a charge to the funds in accordance with the prevailing rules and practices.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be –

Publication in the Gazette	7 April 2000
Tabling at the Legislative Council	12 April 2000

PUBLICITY

22. A press release will be issued. A spokesman will be available to answer media enquiries. Once the Amendment Rules complete the negative vetting procedure in the Legislative Council, Education Department will advise all DSS and aided schools of the new arrangements.

OTHERS

23. Enquiries on this Brief may be directed to Mr Patrick Li, Principal Assistant Secretary for Education and Manpower, at 2810 3029.

Education and Manpower Bureau
File Reference: EMBCR 43/2041/75
5 April 2000