

LEGISLATIVE COUNCIL BRIEF

Education Ordinance (Chapter 279)

Education (Amendment) Bill 1999

INTRODUCTION

At the meeting of the Executive Council on 30 November 1999, the Council ADVISED and the Chief Executive ORDERED that the Education (Amendment) Bill 1999 at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General 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 contravened the Education Ordinance and was 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 B 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.

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. Since aided schools are publicly funded, it is appropriate that they should follow the civil service practice of setting the retirement age at 60. 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 83% of the companies surveyed in Hong Kong is 60 or below. Hence, the retirement age for principals and teachers in aided schools is also in line with the private sector practice.

7. Retirement at 60 has been stipulated in the Codes of Aid for over 25 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 on a year to year basis for a maximum of five years. The limit of five years is to provide a buffer against unforeseen

circumstances which may require the continued service of the principal or teacher and ensure that a qualified successor is available. When considering an application for extension, the recommendation of the School Management Committee, the ability and performance of the principal or teacher concerned, and 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 its own merits.

The Proposal

8. In the light of the court judgement in June 1999, the Administration proposes to amend the Education Ordinance to embody the existing retirement policy (including the established arrangements for extension of service in exceptional circumstances) as currently set out in the Codes of Aid. In broad terms, the amendments will provide the following-

- (a) no one who is 60 or above shall be employed as a teacher or a principal of an aided school;
- (b) notwithstanding (a) above, a serving teacher or principal of an aided school may, with the approval of the Director of Education, remain in employment for a period of not more than one school year after that in which he has attained the age of 60. The approval may be extended by the Director for a maximum aggregate period of five consecutive school years; and
- (c) a serving teacher or principal who is aggrieved by the decision of the Director in relation to the extension of service [as per (b) above] may appeal against such decision to the Appeals Board established under section 59 of the Education Ordinance.

9. The proposed amendments require a definition in the Education Ordinance for “aided schools”, and the various Codes of Aid.

Some of these definitions already exist in the subsidiary legislation to the Ordinance. We therefore take the opportunity to consolidate and update all the required definitions in the primary legislation through this exercise.

THE BILL

10. The main provisions of the Bill are –
- (a) Clause 2 which adds definitions for “aided school”, “code of aid for primary schools”, “code of aid for secondary schools”, “code of aid for special schools”, “practical school”, “skills opportunity school” and “special school”;
 - (b) Clause 7 [new section 58A(1)] which prohibits an aided school from employing, as a teacher or the principal of the school, any person who is not a serving teacher or principal and who, if so employed, would commence such employment after the commencement of that section and would be aged 60 years or above before or at the commencement of such employment;
 - (c) Clause 7 [new sections 58A(2) and 58B] which prohibits an aided school from employing, during any school year after the commencement of that section, as a teacher or principal of the school, any person who has attained the age of 60 or above before the commencement of such school year, but that the Director of Education may, upon application by the management committee, permit the school to continue to employ a serving teacher or principal for the period of not more than one school year. The maximum aggregate period of such permission in respect of any serving teacher or principal shall be five consecutive school years; and
 - (d) Clause 8 which provides that any decision made by the Director of Education under the new section 58B shall be subject to appeal under Part V of the Ordinance.

11. The relevant provisions of the Education Ordinance being amended are copied at Annex C.

PUBLIC CONSULTATION

12. The Education Panel of the Legislative Council was consulted on 5 November 1999. The Panel supported the proposals. Some Panel members emphasized that there must be a proper appeal mechanism. We explained that the Bill would provide that any appeals would be heard by the Appeals Board established under section 59 of the Education Ordinance. The Appeals Board is an independent body with a balanced membership, including members of both the education sector and other professions. The Panel accepted this explanation.

BASIC LAW IMPLICATIONS

13. The Department of Justice advises that the Amendment Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

BINDING EFFECT OF THE BILL

14. The amendments will not affect the current binding effect of the Education Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

15. The Bill has no financial or staffing implications.

LEGISLATIVE TIMETABLE

16. The legislative timetable will be -

Publication in the Gazette	3 December 1999
First Reading and commencement of Second Reading debate	15 December 1999
Resumption of Second Reading	To be notified

debate, committee stage and Third
Reading

PUBLICITY

17. A press release will be issued. A spokesman will be available to answer media enquiries.

OTHERS

18. Enquiries on this Brief may be directed to Mr. Gordon Leung, Principal Assistant Secretary for Education and Manpower, at 28103950.

Education and Manpower Bureau
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