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**Report of the Bills Committee on
Education Reorganization (Miscellaneous Amendments) Bill 2002**

PURPOSE

This paper reports on the deliberations of the Bills Committee on Education Reorganization (Miscellaneous Amendments) Bill 2002.

THE BILL

2. The main objects of the Bill are to amend the Education Ordinance (Cap. 279) and other related Ordinances to -
- (a) transfer the functions of the Director of Education (D of E) to the Permanent Secretary for Education and Manpower (PSEM);
 - (b) transfer the functions of the Education Department (ED) to the Education and Manpower Bureau (EMB); and
 - (c) abolish the Board of Education (BoE).

THE BILLS COMMITTEE

3. At the meeting of the House Committee on 22 November 2002, Members agreed to form a bills committee to study the Bill. Under the chairmanship of Hon Cyd HO Sau-lan, the Bills Committee has held three meetings with the Administration. A membership list of the Bills Committee is in **Appendix I**.

BACKGROUND

4. The Administration has proposed to merge EMB and ED into a new EMB with effect from 1 January 2003. Under the directorate structure of the new EMB,

five civil service posts including D of E would be deleted, PSEM would assume the existing functions of D of E, and there would be redistribution of duties and responsibilities amongst the directorate staff. The staffing proposal on these establishment changes was endorsed by the Establishment Committee (ESC) on 20 November 2002. The Finance Committee (FC) approved the recommendation of ESC at its meeting on 6 December 2002.

5. The reorganization of EMB and ED into one entity represents an attempt to integrate policy making and implementation. In line with this objective, and following the abolition of the post of D of E, the Administration proposes to merge BoE and the Education Commission (EC).

DELIBERATIONS OF THE BILLS COMMITTEE

Merger of BoE and EC

6. BoE was established in 1920 to advise D of E on educational matters. Its functions are provided for in section 7 of the Education Ordinance (Cap. 279) and are purely advisory. On the recommendation of the visiting panel reviewing education in Hong Kong, EC was set up in 1984 to advise the Government on education objectives and policies as well as to co-ordinate advice on education at all levels.

7. According to the Administration, the established convention is that EC advises on policies and issues of general concern to all education sectors while BoE focuses on school education and operational matters. However, in practice, EC's emphasis has been on major policy issues affecting school education. Past experience also shows that it is unsatisfactory to discuss policy issues without considering the operational aspects. In view of the problem of EC overlapping with BoE, the Administration has proposed to merge BoE and EC.

8. The Administration has advised that the merger of EC and BoE is consistent with the objective of integrating policy formulation and implementation that underpins the merger of EMB and ED. It also helps to enhance efficiency by streamlining the consultation process, and removing duplication of work. The expansion of ex-officio and functional appointments to EC institutionalizes the input of key stakeholders and strengthens the representation of EC.

Terms of Reference (ToR) of EC

9. A major concern of some members is that the functions and authority of the new EC would be degraded and similar to the existing BoE. Referring to the existing ToRs of EC and BoE and the revised ToR of EC (**Appendices II and III**), these members have pointed out that the reference to "the coordination and monitoring of the planning and development of education at all levels" in the

existing ToR has been replaced by the reference to "the planning and development of early childhood and school education" in the revised ToR. As early childhood and school education only refers to primary, secondary and special education, they are concerned that the future role of EC will not cover the development of university, vocational and continuing education which are matters within the existing ToR of EC.

10. The Administration has explained that it is within the existing ToR of EC to advise on matters that concern the planning and development of education at all levels. However, the present formulation of the ToR has given rise to the misunderstanding about EC's interface with the University Grants Committee (UGC) and other independent organizations. With the recent establishment of the Manpower Development Committee (MDC), which oversees the development of vocational and continuing education, it is desirable to spell out more clearly EC's role, namely, to advise on the planning and development of early childhood and school education and, in carrying out its tasks, to coordinate the work of UGC, the Vocational Training Council and other education advisory bodies.

11. The Administration has further explained that a comparison of the two sets of ToRs shows that, following the merger, there would in fact be a clarification and an expansion of the role of the EC. In particular, -

- (a) EC will remain the body advising the Government on overall educational objectives and policies as well as the priorities of their implementation having regard to the resources available;
- (b) EC will continue with its present role of coordinating the development in different educational sectors through working closely with other advisory bodies. With the exception of BoE, all advisory bodies listed in the existing ToR of EC still feature in the revised ToR of EC; and
- (c) the existing ToR of EC does not have a specific reference to early childhood and school education. However, following the merger of EC and BoE, the Administration considers it appropriate to add such a reference in the revised ToR of EC. The intention is to put beyond doubt the prominent role of EC in not only coordinating, but also advising the Government on, the developments in these two key educational sectors.

12. The Administration's explanation has not addressed some members' concern that EC's future work would be confined to just early childhood and school education, with no role in giving advice on developments in the higher education and sub-degree sectors. These members have requested the Administration to consider revising paragraph 1(a) of the revised ToR of EC, as follows -

- (a) deleting the reference to "the planning and development of early childhood and school education"; or
- (b) including "higher education and sub-degree sectors" after "the planning and development of early childhood and school education".

13. On the suggestion in paragraph 12(a) above, the Administration has advised that the scope of the Education Ordinance (Cap. 279) covers mainly early childhood and school education. These two sectors have always been the focus of BoE. Since the adoption of the education reform package, EC has, in practice, in the context of monitoring the implementation of the reform package, paid close attention to advising on the formulation and execution of key policies in respect of early childhood and school education. This has created considerable duplication. Following the merger of EC and BoE, EC will have direct responsibility for, rather than just co-ordinating early childhood and school education. The Administration sees merit in including an explicit reference to these two sectors in the revised ToR of EC, which do not now fall within the ToR of any other advisory bodies.

14. The Administration has further explained that highlighting the two sectors does not detract from EC's role of advising the Government on "the overall educational objectives and policies, and the priorities for implementation having regard to resources available."

15. As regards the suggestion in paragraph 12(b) above, the Administration considers it inappropriate for EC to advise on the planning and development of higher education and sub-degree sectors, which are the direct responsibility of UGC and MDC. To include them under the remit of EC would result in unnecessary duplication of work.

16. Despite the Administration's explanation, the Bills Committee remains of the view that the revised ToR of EC should be as broad as possible. An explicit reference to the early childhood and school education sectors is unnecessary and would lead to confusion about the future role of EC. Having regard to members' views, the Administration has agreed to delete the reference to the two sectors in paragraph 1(a) of the revised ToR of EC after reporting the matter to EC at its next meeting. In response to the request of the Bills Committee, the Administration has agreed that the Secretary for Education and Manpower (SEM) will give an undertaking in this respect at the resumption of the Second Reading debate on the Bill.

Date of merger of EMB and ED

17. Clause 1(2) of the Bill proposes that the Bill shall come into operation on 1 January 2003. As this target date will not be attainable, the Administration has proposed that the commencement date should be the day the Ordinance is published in the Gazette, and will move an amendment accordingly.

18. As the Bill cannot be enacted before 1 January 2003, some members have raised concern whether administratively the merger of EMB and ED should take place on 1 January 2003 as proposed. They consider it unsatisfactory for the merger to take place ahead of the enactment of the Bill. They have also pointed out that implementation of any staffing and financial proposals approved by ESC and FC respectively should be subject to the Council's approval of the relevant legislative proposals.

19. A member has expressed concern about the implications of the approach adopted by the Administration in this case on other similar proposals arising from the review of the relationship between bureaux and departments being undertaken by the Administration, following implementation of the accountability system for principal officials. The Bills Committee has requested the Administration to explain the procedural arrangements and legal basis for deleting the post of D of E and merging EMB and ED with effect from 1 January 2003, before enactment of the Bill.

20. The Administration has explained that FC approved a set of establishment changes for EMB and ED on 6 December 2002. These changes include, among other things, the deletion of the established post of D of E in the civil service with effect from 1 January 2003 and the consequential takeover of the duties of D of E by PSEM. It is, however, not approving the institutional merger of EMB and ED per se. FC members had been reminded by the Deputy Chairman of FC at the meeting of the introduction of this Bill and the formation of a Bills Committee to study the Bill. The Administration appreciates that until the enactment of the Bill, ED and the statutory office of D of E will continue to exist. In view of the progress of the legislative exercise, the Administration has obtained the agreement of the Chief Executive (CE) under Article 48(7) of the Basic Law to appoint PSEM to assume the statutory office of D of E with effect from 1 January 2003 in addition to PSEM's own duties. The Administration has also advised that this course of action was taken after consulting the Department of Justice. The general notice of appointment was published in the Gazette on 27 December 2002.

21. The Administration has further advised that it will proceed with the formal merger of EMB and ED upon enactment of the Bill. Until then, it will proceed with the streamlining of responsibilities in EMB and ED on 1 January 2003 as approved by FC on 6 December 2002. Meanwhile, ED officers will continue to perform statutory functions under the Education Ordinance (Cap. 279) and any other relevant ordinances in the name of D of E.

22. Having noted the Administration's explanation and the advice of the legal adviser of the Bills Committee that the formal merger of EMB and ED upon enactment of the Bill is consistent with clause 42(5) of the Bill, the Bills Committee has raised no further queries on the arrangement.

Status of EC

23. Some members have questioned the rationale for maintaining the non-statutory status of EC after merging with BoE, a statutory body. These members find it a retrograde step to abolish a statutory body and replace it with an advisory body. They are of the view that it is more appropriate for EC to be subsumed in BoE, or for the new EC to be established as a statutory body.

24. The Administration has advised that EC, being a non-statutory advisory committee, has been operating effectively since its inception in 1984. Experience across the Government also indicates that there is no correlation between the legal status and the importance/influence of an advisory body. Moreover, since the scope of the Education Ordinance (Cap. 279) covers mainly early childhood and school education, placing EC under the Education Ordinance (Cap. 279) would restrict its role in coordinating the development beyond the early childhood and school education sectors. The Administration considers that EC has functioned well as a non-statutory body and there is no reason for changing it.

25. Members present at the meetings agree that the new EC should be a statutory body in the longer term. Since this is a policy issue which falls outside the scope of the Bill and in order not to impede passage of the Bill, these members also agree that the issue could be followed up at other forums.

Transparency and representation of EC

26. Some members have pointed out that the operation of the existing EC was very transparent. They have expressed concern that the new EC might become less transparent in its operation following its merger with BoE. They consider that the new EC should operate with increased transparency and representation.

27. The Administration has emphasized that the merger between EC and BoE is a pure streamlining attempt. Both the Government and EC have always attached great importance to the transparency of EC's work and to fostering communication with stakeholders. Over the past years, EC has introduced several initiatives to enhance its transparency. These include a three-stage public consultation which led to the formulation of the Education Reform package endorsed by the Government in 2000, and the publication of the annual progress report on the key areas of the education reform coupled with a reporting session for the stakeholders. Action is in hand to prepare for the 2003 annual report and stakeholders' meeting.

28. The Administration has advised that existing members of EC and BoE are drawn from among the key stakeholders, including frontline educators at different education levels, teacher educators, parents, and lay members. With the exception of government officials and the chairmen of the key education advisory committees, members are appointed on an ad personam basis. The current term of BoE expired at the end of 2002, whereas the EC membership will expire in June 2003.

29. Following the merger of EC and BoE, the Administration has proposed to broaden the membership of EC. To maintain continuity and for the sake of a smooth transition, the Administration has advised that it shall appoint to the EC on 1 January 2003 the Chairmen of the Subsidized Primary Schools Council, the Subsidized Secondary Schools Council and the Special Schools Council, as well as the Chairman of Home-School Cooperation Committee, on an ad personam basis. At present, they are members on BoE but not EC. The Administration also intends to appoint the current BoE Chairman to EC as a lay member. The Administration will re-structure the composition of EC when its current term expires in June 2003. For efficiency and better management of meetings, the number of EC members will remain at around 20.

30. Some members have requested SEM to pledge in his speech at the resumption of Second Reading debate on the Bill to increase the transparency and representation of EC. The Administration has agreed to consider.

Line of reporting for EC

31. According to the Administration, the new EC will advise SEM, instead of CE. On major policy issues, SEM will continue to consult CE and the Executive Council on the recommendations of EC and, where he may take a different view, highlight the differences, as was done in the past. A few members are concerned that the proposed change in line of reporting would diminish the importance of EC and of the view that the new EC should continue to advise CE, instead of SEM.

32. The Administration has explained that SEM has been and still is the principal official supporting CE in the formulation and implementation of education policies, with the EC being one of the key advisory bodies. Major educational policies will still have to be approved by the CE-in-Council. Therefore, asking EC to report to SEM rather than to CE direct is just a rationalization attempt to bring the arrangement in line with the implementation of the accountability system.

Saving and transitional provisions

33. Under clause 43(5) of the Bill, EMB may sue on, recover or enforce any property or right vested in it under clause 42(5) and may be sued for any liability to which it is subject under clause 42(5). Similarly, under clause 43(6), EMB may sue on, recover or enforce a chose of action vested in it under clause 42(5) without having to give a notice of transfer to the person bound by the chose of action. The legal adviser to the Bills Committee has queried whether these provisions are inconsistent with section 13 of the Crown Proceedings Ordinance (Cap. 300) which provides that civil proceedings by or against the Crown instituted under the Ordinance shall be instituted by or against the Secretary for Justice.

34. The Administration has explained that clause 43 does not confer any additional rights on PSEM and EMB which D of E and ED do not have under the

current legislation. Clause 43(5) and (6) do not require such actions to be brought by or against PSEM and EMB in their own names and are therefore not inconsistent with section 13 of the Crown Proceedings Ordinance (Cap. 300).

35. The legal adviser has pointed out that the provisions are adopted in ordinances relating to the establishment of statutory bodies which are legal entities separate from the Government. Since the present context is different and to avoid any confusion caused to third parties, the Administration has been requested to reconsider the need for these provisions. After consideration, the Administration has agreed to move an amendment to delete clause 43(5) and (6) from the Bill.

FOLLOW-UP ACTIONS REQUIRED OF THE ADMINISTRATION

36. In response to the request of the Bills Committee, the Administration has agreed -

- (a) to delete the reference to "the planning and development of early childhood and school education" from the revised ToR of EC. SEM will give an undertaking in this respect in his speech at the resumption of the Second Reading debate on the Bill; and
- (b) to consider members' request that SEM should pledge to increase the transparency and representation of EC in his speech at the resumption of Second Reading debate on the Bill.

CONSULTATION WITH THE HOUSE COMMITTEE

37. The Bills Committee consulted the House Committee on 7 February 2003 and sought the latter's support that the Second Reading debate on the Bill be resumed on 19 February 2003.

Council Business Division 2
Legislative Council Secretariat
11 February 2003

**Bills Committee on Education Reorganization
(Miscellaneous Amendments) Bill 2002**

Membership list

Chairman Hon Cyd HO Sau-lan

Members Hon LEE Cheuk-yan
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon CHEUNG Man-kwong
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon SZETO WAH
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

(Total : 11 Members)

Clerk Mrs Percy MA

Legal Adviser Ms Bernice WONG

Date 16 December 2002

Existing Terms of Reference

Board of Education (BoE)

The Board of Education is a statutory body established under the Education Ordinance to advise the Hong Kong Government, through the Director of Education, on educational matters at school level. Its main tasks are to advise on the implementation of approved policies, to review existing policies and to propose changes.



Education Commission (EC)

The Education Commission advises the Government on the following :

- the overall educational objectives and policies, and the priorities for implementation having regard to resources available;
- the co-ordination and monitoring of the planning and development of education at all levels.

In carrying out these tasks, the Commission will co-ordinate but not seek to direct the work of Board of Education (BoE), University Grants Committee (UGC), Vocational Training Council (VTC) and other education advisory bodies. Specifically, it will –

- receive and comment on the periodic reports submitted to the Government by BoE, UGC, VTC and other major advisory bodies on education;
- request the above-mentioned bodies to initiate discussion on issues falling within their respective purview as necessary;
- receive regular reports from the Government on the introduction and implementation of major education policies and initiatives; and
- initiate educational research as appropriate.

The Commission oversees the operation of the Quality Education Fund, with advice from the Quality Education Fund Steering Committee.

The Commission submits its reports and recommendations to the Chief Executive.

**Education Commission
Proposed Terms of Reference**

I. The Education Commission advises the Secretary for Education and Manpower on –

- (a) the overall educational objectives and policies, and the planning and development of early childhood and school education; and
- (b) the priorities for implementation of its recommendations having regard to resources available;

II. In carrying out its tasks, the Commission will co-ordinate but not seek to direct the work of University Grants Committee (UGC), Vocational Training Council (VTC) and other education advisory bodies. Specifically, it will –

- (a) receive and comment on the periodic reports submitted to the Government by UGC, VTC and other major advisory bodies on education;
- (b) request the above-mentioned bodies to initiate discussion on issues falling within their respective purview as necessary;
- (c) entertain requests from the Government for advice on educational issues; and
- (d) initiate education research as appropriate.

III. The Commission oversees the operation of the Quality Education Fund, with advice from the Quality Education Fund Steering Committee.

IV. The Commission submits its reports and recommendations to the Secretary for Education and Manpower.