

Bills Committee on the Education (Amendment) Bill 2002
Administration's Response to Questions raised by
Hon. CHEUNG Man-kwong

Purpose

This paper sets out the Administration's response to the questions from Hon CHEUNG Man-kwong as listed in his letter addressed to the Chairman of the Bills Committee on 26 April 2004 [LC Paper No. CB(2)2166/03-04(02)].

“Public authorities” or “public bodies” in certain ordinances

2. Under the Education (Amendment) Bill 2002, aided schools shall establish incorporated management committees within five years from the commencement date of the Education (Amendment) Ordinance. Government schools are exempt from the Education Ordinance under section 9(1)(a) of the Education Ordinance and hence government schools are not included in the Education (Amendment) Bill 2002.

3. Whether or not aided schools are “public authorities” and “public bodies” as defined in certain ordinances will have to be determined by applying the wording of the relevant definition to the school concerned and will depend very much on the circumstances of each individual case. The application of the ordinances to aided schools is as follows:

Ordinance	Applicable to aided schools
Interpretation and General Clauses Ordinance (Cap.1)	Aided schools are not covered by any express provision of the definition of “public body” in Cap. 1. However, the word “include” in the definition indicates that the definition is not exhaustive. As Cap. 1 applies to other Ordinances subject to any contrary intention, whether aided schools are public bodies in the context of a particular Ordinance will have to be determined by reference to that context.
Prevention of Bribery Ordinance (Cap. 201)	Aided schools do not fall within the definition of “public body” in Cap. 201.

Hong Kong Bill of Rights Ordinance (Cap. 383)	It is not clear whether aided schools fall within the meaning of “public authority” as that term is not defined in Cap. 383.
Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)	Aided schools have not been specified as public bodies by the Chief Executive by notice in the Gazette under section 15(12) of Cap. 525.

Implication of establishment of an incorporated management committee

4. Upon enactment of the Education (Amendment) Bill 2002, aided schools will have to establish incorporated management committees to manage the schools prior to 1 January 2010. The committee as a whole will be a legal entity capable of suing and being sued in its own name. Individual managers will be protected from civil liability under the new proposed section 40BG of the Ordinance.

5. Whether the establishment of an incorporated management committee will affect the determination of the status of aided school as a “public body” or “public authority” as defined in various Ordinances will have to be determined by reference to the relevant definition having regard to the circumstances of the individual case.

6. In the context of Cap. 383, it is unlikely that the establishment of an incorporated management committee will affect the determination of the status of the school as a “public authority”. In the context of Cap. 1, Cap. 201 and Cap. 525, the establishment of an incorporated management committee will not affect the application of those Ordinances to the school concerned.

Amenable to judicial review upon the establishment of an incorporated management committee

7. Whether a decision of an aided school is amenable to judicial review depends very much on the circumstances of the case and in particular, the constitution, functions and funding of the school with the establishment of an incorporated management committee, and the source and the nature of the power/function being exercised or performed. It seems unlikely that the establishment of an incorporated management committee will make it more difficult to apply for judicial review of a decision of the school concerned.

Implication of the relationship between schools and the Education and Manpower Bureau (EMB) with the enactment of the Bill

8. Basically, the enactment of the Bill will not have any implication on the established relationship between aided schools and the EMB. We will continue to apply the existing mode of subsidy to schools, and will require them to operate in accordance with relevant Codes of Aid and service agreements. Upon incorporation, a school management committee will undertake the responsibilities under the Education Ordinance as a body corporate, and all the school managers will be collectively accountable for the management of the school. We will continue to maintain close contact with school sponsoring bodies and consult them on education policies. With the participation of parents, teachers, alumni and independent community members, the transparency and accountability of incorporated management committees will be enhanced. We may, depending on the circumstances, devolve more and more responsibilities to schools with incorporated management committee.

9. Upon enactment of the Bill, management committees of aided schools will have to be registered as incorporated management committees. According to section 3 of Schedule 1 introduced by the Bill in respect of the new section 40BO, employment contracts (including appointment contracts for staff) entered into by the schools prior to the incorporation of the management committees will be transferred to the newly established incorporated management committees. Any other contracts conforming to section 2 of the Schedule (which contains the condition that before entering into a contract all the contracting parties know that an incorporated management committee will with effect from the date of its establishment substitute as a party to the contract) will also be transferred to the newly established incorporated management committees. These contracts will not be affected by the incorporation status of the school management committees and will continue to have effect.

Education and Manpower Bureau
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