

Bills Committee on the Education (Amendment) Bill 2002
Administration's Response to Issue raised at the meeting on 23 June 2004

Purpose

This paper sets out the Administration's response and principal reasons to Members' query at the meeting on 23 June 2004 as to why the Bill is considered to be consistent with Article 141(3) of the Basic Law.

Article 141(3) of the Basic Law

2. BL 141(3) reads:

“Religious organisations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.”

The theme of continuity under the Basic Law

3. The nature of the Basic Law and the theme of continuity was illustrated by the Court of Appeal in *HKSAR v David Ma* [1997] HKLRD 761, Chan CJHC, as he then was, said:

“The Basic Law is not only a brainchild of an international treaty, the Joint Declaration. It is also a national law of the PRC and the constitution of the HKSAR. It translates the basic policies enshrined in the Joint Declaration into more practical terms. The essence of these policies is that the current social, economic and legal systems in Hong Kong will remain unchanged for 50 years. The purpose of the Basic Law is to ensure that these basic policies are implemented and that there can be continued stability and prosperity for the HKSAR. Continuity after the change of sovereignty is therefore of vital importance.” (See p.772I-J.)

4. BL 141(3) is an exemplification of the principle of continuity which pervades the whole of the Basic Law. In this case, continuity of religious policies, including the policy permitting religious organisations to run and provide social services in Hong Kong, such as schools, hospitals and welfare institutions, apparently dovetails the constitutionally protected freedom of religious belief, and freedom to preach and to conduct and participate in religious activities in public under BL 32. However, hospitals, schools etc. run by religious organisations should remain nevertheless subject to health or education laws and policies applicable to all relevant institutions in accordance with Hong Kong law.

5. Furthermore the term “previous practice” in BL 141(3) does not prohibit the introduction of new measures by the SAR government to improve the pre-97 education system, because improvement to the education system is expressly mandated by BL 136.

BL 136(1)

6. BL 136(1) reads:

“On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications.”

7. That development of the education system intended by the Basic Law is evidenced in the following comments on Chapter VI of the Basic Law by Mr Ji Pengfei, Chairman of the Basic Law Drafting Committee, when addressing the NPC on 28 March 1990:

“Chapter VI of the draft Basic Law carries stipulation on the maintenance and **development** of Hong Kong’s current systems and policies concerning education, science, culture,

sports, religion, labour and social services. These stipulations involve the interests of Hong Kong residents in many aspects of public life and are important for social stability and **development.**”

8. Mr Ji Pengfei’s speech has been accepted by the CFA as an aid to interpretation of the Basic Law (see *Chong Fung Yuen v Director of Immigration* [2001] 2 HKLRD 533 at 546J).

Constitutionality of the Bill

9. The Bill, which aims to provide for school-based management, ensures participatory decision-making, enhances the transparency of school management and public accountability, is an improvement to the education system and is justified under BL 136(1).

10. The Bill will apply equally to all aided schools regulated by the EMB pursuant to provisions of the Education Ordinance and the Code of Aid, including schools run by religious organisations which are also subject to EMB’s regulation. Continuity of the policy permitting religious organisations to run schools according to BL 141(3) is subject to the SAR government’s constitutional autonomy to develop Hong Kong’s educational system and policies over time, impacting on all schools that are subject to EMB’s regulation according to law. The Bill is therefore considered to be consistent with BL 141(3).

Education and Manpower Bureau
June 2004