

Bills Committee on the Education (Amendment) Bill 2002
Administration's Response to Issue raised at the meeting on 25 June 2004

Purpose

This paper sets out the Administration's response to Members' query at the meeting on 25 June 2004 on the implication of section 64(3) of the Interpretation and General Clauses, Cap.1 on the appeal mechanism under the Education Ordinance.

Appeal mechanism under the Education Ordinance and judicial review

2. Section 61 of the Education Ordinance stipulates that a person on whom a notice is served under section 60(1) may, within 21 days after the service of the notice, appeal to an Appeal Board against the decision of the Permanent Secretary. Section 65 provides that the Permanent Secretary or the appellant may within 14 days after being served under section 64(2) with a notice of the decision of an Appeal Board appeal by way of petition to the Chief Executive (CE) in Council.

3. The appellant may apply for judicial review of the Appeal Board's decision if the leave of the court is obtained in accordance with the Rules of the High Court, Cap.4. Whether or not an appellant will succeed in obtaining the leave from the court to apply for judicial review of the Appeal Board's decision depends on the facts of individual case.

4. It is clear from section 64(3) of the Interpretation and General Clauses Ordinance, Cap.1 that the conferring by any Ordinance of a right of appeal or objection to the CE in Council does not prevent any person from applying to the High Court for judicial review of the decision. The orders of mandamus, certiorari, prohibition, and injunction are remedies, which the High Court may award in judicial review proceedings.

5. Whilst it seems that section 64(3) of Cap.1 may have precluded the courts from reviewing the decision of CE in Council, the interpretation of the statute is however a matter for the court. The court has the function of

authoritatively construing legislation and determining its legal meaning so far as is necessary to decide a case before it. This function is exclusive to the court. The courts are reluctant to see their jurisdiction ousted and tend to construe strictly any enactment that purports or is alleged to deny or restrict that jurisdiction. As such, the decision of the CE in Council is amenable to judicial review.

6. Section 64 of the Interpretation and General Clauses Ordinance, Cap 1 predates the Reunification. In interpreting the section, the courts will consider the possible difference between the status of the Governor (who was the Crown's representative) and the Chief Executive.

Education and Manpower Bureau
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