

LEGISLATIVE COUNCIL BRIEF

Education Ordinance (Cap.279) &
Post Secondary Colleges Ordinance (Cap.320)

EDUCATION (MISCELLANEOUS AMENDMENTS) BILL 2003

INTRODUCTION

At the meeting of the Executive Council on 25 March 2003, the Council ADVISED and the Chief Executive ORDERED that the Education (Miscellaneous Amendments) Bill 2003 at Annex A should be introduced into the Legislative Council.

JUSTIFICATIONS

2. Changing social environment and new developments under the education reform have rendered some of the provisions in the Education Ordinance (Cap.279), Education Regulations (Cap.279, sub. leg. A) and the Post Secondary Colleges Ordinance (Cap.320) inadequate or outdated. We therefore propose amendments as set out below.

(a) Registration of day and evening schools

3. Section 10(2) of the Education Ordinance requires a school which also provides evening instruction to be registered as a separate school. The separate registration procedure for day and evening schools is not cost-effective. Repealing this section will remove duplication of work, speed up the processing of applications and create a more business friendly environment.

(b) Appeals Board

4. Section 59 of the Education Ordinance provides for an Appeals Board to hear and determine appeals arising from a decision of the Permanent Secretary for Education and Manpower (PSEM) on registration of schools, managers, supervisors, principals and teachers, and applications for extension of service of teachers and principals in aided schools. At present, the Appeals

Board involves a large number of members in hearing every appeal. We propose a more flexible system of appointing a number of members to an Appeal Boards Panel and an Appeal Board which consists of 5 members including the Chairman or a Deputy Chairman and 4 other members of the Appeal Boards Panel will be formed to hear or determine an appeal case. Under this new arrangement, more than one hearing session can operate concurrently to handle different appeal cases.

5. At present, section 59(7) of the Education Ordinance requires that the Appeals Board may be assisted by a legal assessor (who should be a legal officer) appointed by the Secretary for Justice. To provide more flexibility, it is proposed that the Administration may appoint any legally qualified person to assist an Appeal Board.

(c) Raising the professional standards of teachers

6. Quality of teaching is essential to the provision of quality education. One of the key elements to assure the quality of teaching is teachers' qualifications and professional competency. To upgrade the quality of teachers and to develop a professional teaching force to meet the increasing demands on education, it is necessary to raise the minimum qualifications for teacher registration as well as require teachers to meet changing professional competency requirements in response to changing social needs and expectations.

7. On the advice of the Advisory Committee on Teacher Education and Qualifications (ACTEQ), we propose that, to qualify for a registered teacher (RT) status, a person must possess an approved teacher education qualification. The existing arrangements, whereby serving teachers can become RT by accumulating years of services without going through proper teacher training, will be abolished. We also propose to raise the minimum qualifications for permitted teachers (PTs) serving in schools offering primary, secondary and post secondary education to post-secondary level. The new requirement will apply to new PTs joining the teaching profession on or after 1 September 2003, and serving PTs who seek to have a new permit to teach upon change of school, subjects or levels of subjects taught. There will be no transitional period under normal circumstances. However, PSEM may exercise discretion to exempt those affected PTs from the new requirements in exceptional cases. The new higher qualification requirements will not extend to PTs seeking to teach in tutorial, commercial, computer and language schools, etc. The minimum qualifications for PTs serving in kindergartens would also be raised to 5 passes in the Hong Kong Certificate of Education Examination, including both English and Chinese Language as recommended in the 2000 Policy Address.

8. Professional development of the teaching force is an ongoing process. In recent years, we have introduced pre-employment requirements on new principals and continuing professional development of serving principals. The ACTEQ is currently reviewing the professional competency requirements of teachers. To provide legal backing to these measures, which will also apply to private schools, we need to amend the Education Ordinance to include an enabling provision which will empower the Chief Executive (CE) in Council to make subsidiary legislation to stipulate the qualifications and professional competency requirements of principals and teachers as and when necessary.

(d) Conducting courses on general holidays

9. Section 2 of the General Holidays Ordinance (Cap.149) provides that “general holiday” means a day which shall be kept as a holiday by all banks, educational establishments, public offices and Government departments. Educational establishments, including schools and post secondary colleges are required to comply with the provisions of the General Holidays Ordinance. We therefore propose to amend the Education Ordinance and the Post Secondary Colleges Ordinance to permit schools and post secondary colleges to conduct courses on general holidays (including Sundays).

10. This proposal is in line with the Government’s policy to encourage life-long learning and addresses the concerns of private school operators. This will provide more flexibility to schools to accommodate the different needs of working adults and implement a more diversified curriculum in primary and secondary schools to suit individual modus operandi and interests.

THE BILL

11. The main provisions of the Bill are-

- (a) **Clause 3** seeks to abolish the requirement for separate registration of schools providing both day and evening instruction;
- (b) **Clause 5** provides for the appointment of a panel of persons to sit as members of one or more Appeal Boards and the appointment of a legally qualified person as legal advisor to an Appeal Board;
- (c) **Clause 12(a)** empowers the CE in Council to make regulations providing for any continuing education and training for teachers (including principals) and clarifies that the regulations may provide for qualifications of principals;
- (d) **Clause 12(b)** enables the regulations to make different provisions for different types of schools or teachers;

- (e) **Clause 12(c)** widens the power of the Permanent Secretary to waive the requirements of regulations subject to certain conditions;
- (f) **Clauses 13 and 21** allow schools and post secondary colleges to conduct courses and give instructions on general holidays;
- (g) **Clause 18(a)** repeals the provisions for permitted teachers to attain registered teacher status by accumulation of approved teaching experience;
- (h) **Clause 18(b)** raises the qualifications for permitted teachers teaching in schools providing primary, secondary and post secondary education;
- (i) **Clause 18(e)** raises the qualifications for permitted teachers teaching pupils undergoing nursery and kindergarten education.

LEGISLATIVE TIMETABLE

12. The Legislative timetable approved by the Executive Council is –

| | |
|--|----------------|
| Publication in the Gazette | 28 March 2003 |
| First Reading and commencement of Second Reading debate | 9 April 2003 |
| Resumption of Second Reading debate, committee stage and Third Reading | to be notified |

IMPLICATIONS OF THE PROPOSAL

13. Raising the qualifications for teacher registration and reinforcing the professional competency requirements of teachers will help lift the quality of teachers in Hong Kong for better education of our next generation. This will have a positive long-term effect on the economy at large. The proposal should also bring about some positive impact, albeit indirectly and minor, on the education attainment indicator. In overall terms, the proposal is in line with the sustainability principle of enabling present and future individuals to fulfill their potential by providing universal access to adequate and appropriate educational opportunities.

14. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the legislation being amended. It does not have any impact on the civil service system or any staffing implications. Any manpower savings from streamlining the registration of day and evening schools will be deployed for

other education services. The training cost for principals and teachers to attain professional competency requirements is included in Secretary for Education and Manpower's recurrent allocation. There are no other financial implications for the Government.

PUBLIC CONSULTATION

15. The proposals to raise the professional standards of teachers were recommended by ACTEQ following consultation in the education sector, including kindergarten and private school operators who were generally supportive.

16. The LegCo Panel on Education was consulted on the proposals on 17 February 2003. The proposals were generally supported by Members. Some Members suggested that PSEM should have discretionary power to exempt those affected PTs from the new requirements in exceptional circumstances. We have accepted Member's suggestion and added the relevant exemption provision in the Bill.

PUBLICITY

17. A press release will be issued. A line-to-take will be prepared and a spokesperson will be available to answer media and public enquiries.

ENQUIRIES

18. Enquiries on the brief should be made to Mr Andrew C S Poon, Principal Assistant Secretary for Education and Manpower (Quality Assurance), on telephone number 2892 6501.

Education and Manpower Bureau
26 March 2003

EDUCATION (MISCELLANEOUS AMENDMENTS) BILL 2003

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A BILL

To

Amend the Education Ordinance, the Education Regulations and the Post Secondary Colleges Ordinance to permit schools and post secondary colleges to conduct courses on general holidays, to abolish the requirement for separate registration of schools which provide both day and evening instruction, to enable the regulations to provide for any continuing education and training for teachers and to make different provisions for different types of schools or teachers, to widen the power of the Permanent Secretary for Education and Manpower to waive the requirements of regulations, to raise the qualifications requirement of teachers, to provide for the appointment of a panel of persons to sit as members of an Appeal Board, to revise the composition of an Appeal Board, to make other miscellaneous amendments and to provide for incidental and connected matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Education (Miscellaneous Amendments) Ordinance 2003.

(2) Sections 12, 15, 16, 18 and 20 shall come into operation on 1 September 2003.

(3) Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 17, 19 and 21 shall come into operation on a day to be appointed by the Secretary for Education and Manpower by notice published in the

Gazette.

Education Ordinance

2. Interpretation

Section 3 of the Education Ordinance (Cap. 279) is amended by adding -

"Appeal Boards Panel" (上訴委員團) means the Appeal Boards Panel appointed under section 59(1)(a);

"Appeal Board" (上訴委員會) means an Appeal Board appointed under section 62(1)(aa);".

3. Schools to be registered or provisionally registered

Section 10(2) is repealed.

4. Grounds for cancellation of registration or provisional registration of school

Section 22 is amended -

(a) in subsection (1), by adding -

"(ca) upon the written application of the supervisor, if the registration or the provisional registration of the school was under the repealed section 10(2) in respect of evening instruction;"

(b) by adding -

"(3) In this section, "repealed" (已廢除) means repealed by section 3 of the Education

(Miscellaneous Amendments) Ordinance
(of 2003).".

5. Section substituted

Section 59 is repealed and the following substituted -

"59. Appeal Boards Panel

(1) For the purposes of this Part, the Chief Executive shall by notice published in the Gazette appoint -

- (a) a panel of persons ("the Appeal Boards Panel") whom he considers suitable for appointment as members of an Appeal Board;
- (b) a member of the Appeal Boards Panel as the Chairman of the Appeal Boards Panel;
- (c) one or more members of the Appeal Boards Panel as Deputy Chairmen of the Appeal Boards Panel as he thinks fit; and
- (d) a person to be the secretary of the Appeal Boards Panel.

(2) A person appointed under subsection (1) shall hold office for such period as may be specified in such notice and may resign his office at any time by notice in writing to the Chief Executive.

(3) The Appeal Boards Panel may, subject to any other provision in this Part, regulate its own procedure and make standing orders for that purpose.

(4) An Appeal Board may at its request be assisted in the conduct of an appeal by a legally qualified person appointed by the Secretary for Justice to act as legal advisor.

(5) In this section, "legally qualified" (具有法律專業資格) means qualified to practise as a legal practitioner in Hong Kong."

6. Right of appeal to Appeal Boards Panel

Section 61(1) is amended by repealing "Appeals Board" where it twice appears and substituting by "Appeal Boards Panel".

7. Procedure on appeal

Section 62 is amended -

(a) in subsection (1) -

(i) by repealing "Appeals Board shall" and substituting "Appeal Boards Panel shall";

(ii) by adding -

"(aa) appoint an Appeal Board in accordance with subsection (1A) to hear the appeal;"

(iii) in paragraph (b), by repealing "Appeals" and substituting "Appeal";

(b) by adding -

"(1A) An Appeal Board shall consist of 5 members of the Appeal Boards Panel, who shall be -

(a) the Chairman or a Deputy Chairman of the Appeal Boards Panel; and

(b) 4 other members of the Appeal Boards Panel.

(1B) If a member of an Appeal Board is precluded by illness, incapacity, absence from Hong Kong or any other cause from exercising his functions, the secretary of the Appeal Boards Panel may appoint any other person from the Panel to act in the place of that member.";

(c) in subsection (2), by repealing "Appeals Board" and substituting "Appeal Boards Panel";

(d) by adding -

"(2A) The Chairman or a Deputy Chairman of the Appeal Boards Panel appointed as a member to an Appeal Board shall preside at the hearing of an appeal by the Appeal Board.";

(e) in subsection (4), by repealing "Appeals" and substituting "Appeal";

(f) by repealing subsection (5) and substituting -

"(5) The hearing of an appeal may, with the consent of the appellant and the Permanent Secretary, be continued notwithstanding a change in the membership of the Appeal Board by virtue of subsection (1B).";

(g) in subsection (6), by repealing "The Appeals" and substituting "An Appeal";

(h) in subsection (8), by repealing "Appeals" and substituting "Appeal".

8. Witnesses and inspections

Section 63 is amended -

- (a) in subsection (1) -
 - (i) by repealing ", the Appeals" and substituting ", an Appeal";
 - (ii) in paragraph (b), by repealing "Appeals" and substituting "Appeal";
- (b) in subsection (2), by repealing everything after "chairman of the" and substituting "Appeal Boards Panel shall direct and shall be signed by the Chairman (or a Deputy Chairman if the Chairman is absent) and the secretary of the Appeal Boards Panel.";
- (c) in subsection (3) -
 - (i) in paragraph (a), by repealing "the Appeals" and substituting "an Appeal";
 - (ii) in paragraph (b) -
 - (A) by repealing "the Appeals" where it first appears and substituting "an Appeal";
 - (B) by repealing "Appeals" where it secondly appears and substituting "Appeal";
- (d) in subsection (4), by repealing "the Appeals" and substituting "an Appeal";
- (e) in subsection (5), by repealing "the Appeals" where it twice appears and substituting "an Appeal".

9. Decision of Appeal Board

Section 64 is amended -

- (a) in subsection (1), by repealing "the Appeals" and

substituting "an Appeal";

(b) in subsection (2) -

- (i) by repealing "the Board" where it first appears and substituting "the Appeal Boards Panel";
- (ii) by repealing "Appeals" and substituting "Appeal";
- (iii) by adding "Appeal" before "Board" where it last appears.

10. Further right of appeal to Chief Executive in Council

Section 65 is amended by repealing "the Appeals" and substituting "an Appeal".

11. Permission to operate school or to act pending appeal

Section 66(2) is amended -

- (a) in paragraph (a)(i) and (ii), by repealing "Appeals Board" and substituting "Appeal Boards Panel";
- (b) in paragraph (b) -
 - (i) by repealing "Appeals Board" where it first appears and substituting "Appeal Boards Panel";
 - (ii) in subparagraph (i), by repealing "the Appeals" and substituting "an Appeal";
 - (iii) in subparagraph (ii), by repealing "Appeals" and substituting "Appeal".

12. Regulations

Section 84 is amended -

- (a) in subsection (1)(w), by repealing "of registered teachers and permitted teachers" and substituting "and any continuing education and training of the registered teachers and permitted teachers (whether they are principals or not)";
- (b) in subsection (2), by adding before paragraph (a) -
"(aa) make different provisions for different types of schools or teachers;"
- (c) by repealing subsection (4) and substituting -
"(4) The Permanent Secretary may, on his own motion or upon application, by notice in writing waive wholly or in part the requirements of any regulation made under this section on such conditions as he thinks fit."

13. Section added

The following is added -

"85A. Conducting courses on general holidays

Notwithstanding anything in the General Holidays Ordinance (Cap. 149), a registered school or provisionally registered school may conduct educational courses or give instructions on a general holiday."

14. Saving regarding Appeals Board

- (1) Notwithstanding anything in this Ordinance -

- (a) any person who was a member of the former Appeals Board immediately before the commencement date is deemed to be a member of the Appeal Boards Panel for the remainder of his term of office, or (if applicable) until he ceases to be so for any reason before his term of office expires;
- (b) an Appeal Board which consists of members referred to in paragraph (a) or includes any such member is deemed to be a properly constituted Appeal Board for the purposes of the Amended Ordinance.

(2) All pending appeals proceedings before the former Appeals Board which have not been disposed of on the commencement date are to continue and be disposed of as if this Ordinance had not been enacted.

(3) Notwithstanding anything in this Ordinance, the validity of any proceedings before an Appeal Board is not affected by the inclusion in the Appeal Board of a member of the former Appeals Board serving the remainder of his term of office as provided in subsection (1)(a).

(4) This section is in addition to and not in derogation from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(5) In this section -
"Amended Ordinance" (經修訂條例) means the Education Ordinance (Cap. 279) as amended by this Ordinance;
"Appeal Board" (上訴委員會) means an Appeal Board appointed under section 62(1)(aa) of the Amended Ordinance;

"Appeal Boards Panel" (上訴委員會) means the Appeal Boards Panel appointed under section 59(1)(a) of the Amended Ordinance;

"commencement date" (生效日期) means the date appointed by the Secretary for Education and Manpower under section 1(3) of this Ordinance;

"former Appeals Board" (前上訴委員會) means the Appeals Board appointed under section 59 of the Education Ordinance (Cap. 279) in force immediately before the commencement date.

Education Regulations

15. Qualifications for permitted teachers

Regulation 69 of the Education Regulations (Cap. 279 sub. leg. A) is amended by adding "69A," before "70".

16. Regulation added

The following is added -

"69A. Qualifications for permitted teachers teaching other educational courses

The qualifications for a permitted teacher teaching in a school which provides any educational course other than nursery, kindergarten, primary, secondary or post secondary education shall be the qualifications specified in Part IIA of the Second Schedule."

17. Appeals

Regulation 104 is amended by repealing "Appeals Board" and substituting "Appeal Boards Panel".

18. Second Schedule amended

The Second Schedule is amended -

(a) in Part I -

- (i) in paragraph (1), by repealing "either the University of Hong Kong, or of The Chinese University of Hong Kong," and substituting "of a specified institution";
- (ii) in paragraph (2), by repealing everything after "education" and substituting "of a specified institution";
- (iii) by repealing paragraphs (3) and (9);
- (iv) in paragraph (8), by repealing "(3),";
- (v) by repealing everything after "For the purposes of this Part" and substituting -

"and Part II -

(a) "approved" (認可) means
approved by the
Permanent Secretary;

(b) "specified institution"
(指明院校) means any of
the following -

- (i) the Lingnan
University

establi

shed by the

Lingnan

University

Ordinance

(Cap. 1165);

(ii) The Hong Kong

Institute of

Education

established by

The Hong Kong

Institute of

Education

Ordinance

(Cap. 444);

(iii) the University

of Hong Kong

established by

the University

of Hong Kong

Ordinance

(Cap. 1053);

(iv) The Hong Kong

Polytechnic

University

established by

The Hong Kong

Polytechnic

Univers

ity Ordinance

(Cap. 1075);

(v) The Chinese

University of

Hong Kong

established by

The Chinese

University of

Hong Kong

Ordinance

(Cap. 1109);

(vi) the Hong Kong

Baptist

University

established by

the Hong Kong

Baptist

University

Ordinance

(Cap. 1126);

(vii) the City

University of

Hong Kong

established by

the City

University of

Hong Kong

Ordinan

ce (Cap.

1132);

- (viii) The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135);
- (ix) The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141);
- (x) The Open University of Hong Kong established by

The
Open
University of
Hong Kong
Ordinance
(Cap. 1145);

(xi) any Post
Secondary
College
registered
under the Post
Secondary
Colleges
Ordinance
(Cap. 320).";

(b) in Part II -

(i) in the heading, by adding "IIA," before
"III";

(ii) by repealing paragraph (1) and
substituting -

"(1) A higher diploma issued by a
specified institution;

(1A) an associate degree of a
specified institution; or";

(iii) in paragraph (2), by adding "or (1A)" after
"(1)";

(c) by adding immediately before Part III -

"PART IIA

[reg. 69A]

QUALIFICATIONS FOR A PERMITTED TEACHER
WHO IS PERMITTED TO TEACH OTHER
EDUCATIONAL COURSES

(1) One or two Hong Kong Certificates of Education Examination with an aggregate of 5 separate subjects at Grade E or a higher grade, including -

(i) English Language (Syllabus B), or of a standard which in the opinion of the Permanent Secretary is equivalent to Grade E or a higher grade in that Certificate; or

(ii) Chinese Language; or

(2) any other educational training or practical experience which in the opinion of the Permanent Secretary is equivalent to the qualifications specified in paragraph (1).

For the purposes of this Part and Part IV, a subject is not separate from another subject by reason only that instruction in the first subject is given in a language different from that in which instruction in the second subject is given.";

(d) in Part III -

- (i) by repealing "paragraph (1) or (2) of Part II" and substituting "Part II or IIA";
 - (ii) in paragraph (1), by repealing everything after "Language" and substituting "(Syllabus B) in the Hong Kong Certificate of Education Examination;"
 - (iii) in paragraph (3), by repealing everything after "Language" and substituting "(Syllabus B) in the Hong Kong Certificate of Education Examination.";
- (e) in Part IV -
- (i) in the heading, by repealing "院";
 - (ii) by repealing paragraph (2) and substituting
-
"(2) one or two Hong Kong
Certificates of Education Examination
with an aggregate of 5 separate
subjects at Grade E or a higher grade,
including English Language (Syllabus A
or B) and Chinese Language; or".

19. Appeals to Appeals Board

The Fourth Schedule is amended, in the heading, by repealing "APPEALS BOARD" and substituting "APPEAL BOARDS PANEL".

20. Saving regarding qualifications of registered teachers and permitted teachers

(1) If immediately before 1 September 2003 there is in existence an application -

- (a) for registration as a teacher made under section 44 of the Education Ordinance (Cap. 279); or
- (b) to employ a person as a permitted teacher in a school made under section 49 of the Education Ordinance (Cap. 279),

which has not been disposed of, then the application is to be disposed of as if this Ordinance had not been enacted.

(2) This section is in addition to and not in derogation from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

Post Secondary Colleges Ordinance

21. Section added

The Post Secondary Colleges Ordinance (Cap. 320) is amended by adding -

"13. Conducting courses on general holidays

Notwithstanding anything in the General Holidays Ordinance (Cap. 149), a College may conduct educational courses or give instructions on a general holiday."

Explanatory Memorandum

The main objects of this Bill are to amend the Education Ordinance (Cap. 279), the Education Regulations (Cap. 279 sub. leg. A) and the Post Secondary Colleges Ordinance (Cap. 320).

2. The Bill if enacted would -

- (a) abolish the requirement for separate registration of schools providing both day and evening instruction and empower the Permanent Secretary for Education and Manpower ("the Permanent Secretary") to cancel the registration of the relevant school on application of the supervisor (clauses 3 and 4);
- (b) provide for the appointment of a panel of persons to sit as members of one or more Appeal Boards and the appointment of a legally qualified person as legal advisor to an Appeal Board (clause 5);
- (c) revise the composition of an Appeal Board (clause 6);
- (d) empower the Chief Executive in Council to provide for any continuing education and training for teachers (including principals) by regulations and clarify that the regulations may provide for the qualifications of principals (clause 12(a));
- (e) enable the regulations to make different provisions for different types of schools or teachers (new section 84(2)(aa) of the Education Ordinance (Cap. 279) in clause 12(b));
- (f) widen the power of the Permanent Secretary to waive the requirements of regulations subject to certain conditions (clause 12(c));
- (g) allow schools and post secondary colleges to conduct courses and give instructions on general holidays (clauses 13 and 21);
- (h) revise the qualifications for registered teachers by -

- (i) recognizing degrees conferred by 10 specified institutions and other approved post secondary colleges;
- (ii) repealing the provisions for permitted teachers to attain registered teacher status by accumulation of approved teaching experience (clause 18(a));
- (i) raise the qualifications for permitted teachers teaching in schools providing primary, secondary and post secondary education (clause 18(b));
- (j) raise the qualifications for permitted teachers teaching pupils undergoing nursery and kindergarten education (clause 18(e)); and
- (k) prescribe the qualifications for permitted teachers teaching other educational courses (new regulation 69A of, and Part IIA of the Second Schedule to, the Education Regulations (Cap. 279 sub. leg. A) in clauses 16 and 18(c)).

3. Clause 14 provides a saving provision in respect of the Appeals Board and clause 20 saves the qualifications of existing teachers.

4. The Bill if enacted will come into force -

- (a) on 1 September 2003 for amendments in relation to the qualifications of teachers; and
- (b) on a day to be appointed by the Secretary for Education and Manpower for other amendments.

Clause 1 will come into force on gazettal of this Ordinance.