

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 Board" (上訴委員會) means an Appeal Board appointed under section 62(1)(aa);
"Appeal Boards Panel" (上訴委員會) means the Appeal Boards Panel appointed under section 59(1)(a);".

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Section 10(2) is repealed.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written application of the supervisor, if the registration or the provisional registration of the school was under the repealed section 10(2) in respect of evening instruction;”;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"(3) In this section, "repealed" (已廢除) means repealed by section 3 of the Education (Miscellaneous Amendments) Ordinance (of 2003).".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Section 59 is repealed and the following substituted---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 "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 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" (上訴委員團) 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 established 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 University 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 Ordinance (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---

(a) 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

(b) 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.