

Amend the Education Ordinance to provide for the transfer of functions of the Director of Education, the Education Department and related bodies; to abolish the Board of Education; to make consequential and related amendments to other enactments 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 Reorganization (Miscellaneous Amendments) Ordinance 2002.

(2) This Ordinance shall come into operation on 1 January 2003.

PART 1

Amendments to the Education Ordinance and  
its Subsidiary Legislation

Education Ordinance

2. Interpretation

(1) Section 3 of the Education Ordinance (Cap. 279) is amended by repealing the definition of "Director".

(2) Section 3 is amended by adding---  
""Permanent Secretary" (常任秘書長) means the Permanent Secretary for Education and Manpower;"

(3) Section 3 is amended in the following provisions by repealing "Director" wherever it appears and substituting "Permanent Secretary"---

- (a) the definition of "certificate of provisional registration";
- (b) the definition of "certificate of registration";
- (c) the definition of "code of aid for primary schools";
- (d) the definition of "code of aid for secondary schools";
- (e) the definition of "code of aid for special schools";
- (f) the definition of "practical school";
- (g) the definition of "skills opportunity school";
- (h) the definition of "special school";
- (i) the definition of "specified form";
- (j) the definition of "sponsoring body".

3. Delegation of Permanent Secretary's powers

(1) Section 5(1) is repealed.

(2) Section 5(2) is amended by repealing "Director" wherever it appears and substituting "Permanent Secretary".

(3) Section 5(2) is amended by repealing "Education Department" and substituting "Education and Manpower Bureau".

4. The Board of Education

Section 7 is repealed.

5. Resignation of a member

Section 7A is repealed.

6. Changes in design or use of premises  
increasing fire risk

(1) Section 21(1) is amended by repealing "Director" where it secondly appears and substituting "Permanent Secretary".

(2) Section 21(1A) is amended by repealing "Director" and substituting "Permanent Secretary".

(3) Section 21(2) is amended by repealing "Director" where it secondly and last appears and substituting "Permanent Secretary".

(4) Section 21(3) is amended by repealing "Director" where it twice appears and substituting "Permanent Secretary".

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

(1) Section 22(1) is amended by repealing "The Director" and substituting "The Permanent Secretary".

(2) Section 22(1)(c) is amended by repealing "Director" and substituting "Permanent Secretary".

(3) Section 22(1)(e) is amended by repealing "Director" and substituting "Permanent Secretary".

(4) Section 22(1)(f) is amended by repealing "Director" and substituting "Permanent Secretary".

(5) Section 22(1)(g) is amended by repealing "Director" and substituting "Permanent Secretary".

(6) Section 22(1)(h) is amended by repealing "Director" where it first appears and substituting "Permanent Secretary".

(7) Section 22(1)(ha) is amended by repealing "Director" and substituting "Permanent Secretary".

(8) Section 22(1)(j) is amended by repealing "Director" and substituting "Permanent Secretary".

(9) Section 22(2) is amended by repealing "Director" and substituting "Permanent Secretary".

8. Part heading amended

The heading to Part VII is amended by repealing "Director" and substituting "Permanent Secretary".

9. Appointment of inspectors

Section 79(a) is amended by repealing "Education Department" and substituting

"Education and Manpower Bureau".

10. Transitional provisions regarding approved managers

(1) Section 100(2) is amended by repealing "Director" where it first appears and substituting "Director of Education".

(2) Section 100(2) is amended by repealing "Director" where it secondly appears and substituting "Permanent Secretary".

11. "Permanent Secretary" substituted for "Director"

The Ordinance is amended in the following provisions by repealing "Director" wherever it appears and substituting "Permanent Secretary"---

- (a) section 6(1);
- (b) section 8(1) and (2);
- (c) section 9(5);
- (d) section 11(a);
- (e) section 12(2)(a) and (b);
- (f) section 13;
- (g) section 14(1) and (2);
- (h) section 15(1) and (2);
- (i) section 16(1) and (2);
- (j) section 17;
- (k) section 18(1), (2) and (3);
- (l) section 18A(1);
- (m) section 20(1), (5) and (6);
- (n) section 20A(1) and (2);
- (o) section 28;
- (p) section 29(1);
- (q) section 30(1) and (2);
- (r) section 31(1) and (2);
- (s) section 34;
- (t) section 35(1) and (2);
- (u) section 36(c) and (d);
- (v) section 37;
- (w) section 38(1) and (2);
- (x) section 38A(1), (2), (3), (4) and (5);
- (y) section 39(1) and (2);
- (z) section 40;
- (za) section 41(1), (2) and (3);

- (zb) section 43;
- (zc) section 44(a);
- (zd) section 45(1) and (2);
- (ze) section 46;
- (zf) section 47;
- (zg) section 49(1);
- (zh) section 50(1), (2) and (3);
- (zi) section 51(1) and (2);
- (zj) section 52(1) and (3);
  
- (zk) section 53(1) and (2);
- (zl) section 54(1) and (2);
- (zm) section 55(c) and (d);
- (zn) section 56(1) and (2);
- (zo) section 57(1) and (2);
- (zp) section 58(2);
- (zq) section 58A(2)(b);
- (zr) section 58B(1) and (2);
- (zs) section 60(1) and (2)(a), (b), (c), (d), (e), (f) and (g);
- (zt) section 61(1) and (2)(a);
- (zu) section 62(1)(a) and (c), (2), (3), (6), (7) and (8);
- (zv) section 64(1) and (2);
- (zw) section 65;
- (zx) section 66(1) and (2);
- (zy) section 67;
- (zz) section 71;
- (zza) section 72(1), (2) and (3);
- (zzb) section 72A(1) and (2);
- (zzc) section 74(1), (2), (2A), (2B) and (3)(c)(i) and (iii);
- (zzd) section 80;
- (zze) section 81;
- (zzf) section 81A(1), (1A), (2), (3) and (4);
- (zzg) section 81B;
- (zzh) section 82(1);
- (zzi) section 83(1), (1A), (2), (3), (4), (5) and (6)(b) and (ii);
- (zzj) section 84(1)(sa), (v) and (za), (2)(a), (b) and (c) and (4);
- (zzk) section 86A(2);
- (zzl) section 87(1)(d)(i) and (ha) and (5)(a) and (b).

## Education Regulations

### 12. Maximum height of schools

Regulation 7 of the Education Regulations (Cap. 279 sub. leg.) is amended, in the proviso, by repealing "Director" where it first appears and substituting "Permanent Secretary".

### 13. Restriction on furniture to be in any classroom

Regulation 14 is amended by repealing "Director" where it first appears and substituting "Permanent Secretary".

### 14. "Permanent Secretary" substituted for "Director"

The Regulations are amended in the following provisions by repealing "Director" wherever it appears and substituting "Permanent Secretary"---

- (a) regulation 3;
- (b) regulation 6(b);
- (c) regulation 10;
- (d) regulation 15(2)(b) and (3);
- (e) regulation 16;
- (f) regulation 20;
- (g) regulation 21(1);
- (h) regulation 22;
- (i) regulation 23;
- (j) regulation 24;
- (k) regulation 28;
- (l) regulation 31;
- (m) regulation 32;
- (n) regulation 36;
- (o) regulation 37;
- (p) regulation 40(3)(b);
- (q) regulation 42;
- (r) regulation 42A;
- (s) regulation 43(1);
- (t) regulation 44;
- (u) regulation 46A(2) and (3);
- (v) regulation 48(2);
- (w) regulation 54(1), (2) and (3);
- (x) regulation 55(5);
- (y) regulation 56(4), (6) and (7);

- (z) regulation 57(3);
- (za) regulation 60;
- (zb) regulation 60A(1);
- (zc) regulation 61(1) and (2);
- (zd) regulation 62(1);
- (ze) regulation 64(b);
  
- (zf) regulation 65;
- (zg) regulation 66(1) and (2);
- (zh) regulation 75(1), (2), (3) and (4);
- (zi) regulation 79;
- (zj) regulation 80;
- (zk) regulation 81;
- (zl) regulation 82;
- (zm) regulation 83(1)(a), (b) and (c);
- (zn) regulation 85;
- (zo) regulation 87(1);
- (zp) regulation 88;
- (zq) regulation 89(1) and (2);
- (zr) regulation 90;
- (zs) regulation 91(2);
- (zt) regulation 92(2), (3), (4), (8), (10) and (12);
- (zu) regulation 93(2);
- (zv) regulation 94;
- (zw) regulation 95(1) and (2);
- (zx) regulation 96(1);
- (zy) regulation 97(1) and (2);
- (zz) regulation 98(1) and (2);
- (zza) regulation 99A(1), (2)(a) and (3);
- (zzb) regulation 101(10);
- (zzc) paragraphs (8) and (9)(a)(i), (b)(i) and (c) of and the definition of "approved" in Part I of the Second Schedule;
- (zzd) paragraph (2) of Part II of the Second Schedule;
- (zze) paragraph (3) of Part III of the Second Schedule;
- (zzf) paragraph (3) of and the definition of "approved" in Part IV of the Second Schedule;
- (zzg) paragraphs 1 and 2 of Part I of the Fourth Schedule.

Grant Schools Provident Fund Rules

15. Board of control

Rule 4(1) of the Grant Schools Provident Fund Rules (Cap. 279 sub. leg.) is amended by repealing "Director" where it first appears and substituting "Permanent Secretary".

16. "Permanent Secretary" substituted for "Director"

The Rules are amended in the following provisions by repealing "Director" wherever it appears and substituting "Permanent Secretary"---

- (a) rule 2(1) (the definition of "continuous contributory service");
- (b) rule 2(1) (the definition of "DSS school");
- (c) rule 7(1)(f) and (3);
- (d) rule 8(1), (1A) and (2A);
- (e) rule 9(2) and (6);
- (f) rule 13(3) and (7)(a);
- (g) rule 13B(1), (2) and (3);
- (h) rule 18(1) and (2A).

Subsidized Schools Provident Fund Rules

17. "Permanent Secretary" substituted for "Director"

The Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg.) are amended in the following provisions by repealing "Director" wherever it appears and substituting "Permanent Secretary"---

- (a) rule 2(1) (the definition of "continuous contributory service");
- (b) rule 2(1) (the definition of "Hong Kong Special Schools Council");
- (c) rule 2(1) (the definition of "Subsidized Primary Schools Council");
- (d) rule 2(1) (the definition of "Subsidized Secondary Schools Council");
- (e) rule 5(1)(c) and (3);
- (f) rule 7(1)(f) and (3);
- (g) rule 8(1), (1A) and (2A);
- (h) rule 9(2) and (6);
- (i) rule 13(3) and (7)(a);
- (j) rule 13B(3)(a), (b) and (c);
- (k) rule 15(1) and (2A).

Education (Amendment) Regulations 1982

18. Citation and commencement

Regulation 1(2) of the Education (Amendment) Regulations 1982 (L.N. 237 of 1982) is amended by repealing "Director of Education" and substituting "Permanent Secretary for Education and Manpower".

19. Addition of new regulation 40A

Regulation 5 is amended, in the new regulation 40A(2)(b), by repealing "Director" and substituting "Permanent Secretary".

PART 2

Consequential and Related Amendments

Transfer of Businesses (Protection of Creditors) Ordinance

20. Saving

Section 10(d) of the Transfer of Businesses (Protection of Creditors) Ordinance (Cap. 49) is amended by repealing "Director of Education Incorporated" and substituting "Permanent Secretary for Education and Manpower Incorporated".

Stamp Duty Ordinance

21. Interpretation of Part V

Section 38 of the Stamp Duty Ordinance (Cap. 117) is amended, in paragraph (b) of the definition of "incorporated public officer", by repealing "Director of Education Incorporated" and substituting "Permanent Secretary for Education and Manpower Incorporated".

Places of Public Entertainment Regulations

22. Power of licensing authority to reduce or waive fees

(1) Regulation 178(1)(b) of the Places of Public Entertainment Regulations (Cap. 172 sub. leg.) is amended by repealing "Director of Education" and substituting "Permanent Secretary for Education and Manpower".

(2) Regulation 178(1)(b) is amended by repealing "that Director" and substituting "the Permanent Secretary for Education and Manpower".

Hong Kong Examinations and Assessment

Authority Ordinance

23. Members of the Authority

(1) Schedule 2 to the Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) is amended, in paragraph (a)(vii), by repealing "Director of Education" and substituting "Permanent Secretary for Education and Manpower".

(2) Schedule 2 is amended by repealing paragraph (b)(i).

Post Secondary Colleges Ordinance

24. Interpretation

(1) Section 2 of the Post Secondary Colleges Ordinance (Cap. 320) is amended by repealing the definition of "Director".

(2) Section 2 is amended by adding---

""Permanent Secretary" (常任秘書長) means the Permanent Secretary for Education and Manpower.".



25. "Permanent Secretary" substituted for "Director"

The Ordinance is amended in the following provisions by repealing "Director" wherever it appears and substituting "Permanent Secretary"---

- (a) section 3;
- (b) section 4;
- (c) section 6(1), (2), (3), (4) and (6)(a);
- (d) section 7;
- (e) section 8(1);
- (f) section 9(1);
- (g) section 11;
- (h) section 12(2).

Post Secondary Colleges Regulations

26. Schedule amended

(1) The Schedule to the Post Secondary Colleges Regulations (Cap. 320 sub. leg.) is amended, in Forms 1, 2 and 3, by repealing "Director of Education" wherever it appears and substituting "Permanent Secretary for Education and Manpower".

(2) The Schedule is amended, in Forms 1, 2 and 3, by repealing "Education Department" wherever it appears and substituting "Education and Manpower Bureau".

27. "Permanent Secretary" substituted for "Director"

The Regulations are amended in the following provisions by repealing "Director" wherever it appears and substituting "Permanent Secretary"---

- (a) regulation 2(e)(i) and (h)(i) and (ii);
- (b) regulation 3(1);
- (c) regulation 4(1) and (2);
- (d) regulation 6(2);
- (e) regulation 8(2);
- (f) regulation 9(2).

The Ombudsman Ordinance

28. Organizations to which this Ordinance applies

Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended, in Part I, by repealing "Education Department."

29. Saving and transitional provisions

Despite the amendment to The Ombudsman Ordinance (Cap. 397) effected by section 28, the provisions of The Ombudsman Ordinance (Cap. 397) in force immediately before the date of commencement of this Ordinance that apply to any action taken by or on

behalf of the Education Department before that date in the exercise of its administrative functions shall apply to the Education and Manpower Bureau as if the action had been taken by or on behalf of the Education and Manpower Bureau.

#### Education Scholarships Fund Ordinance

#### 30. Interpretation

(1) Section 2 of the Education Scholarships Fund Ordinance (Cap. 1085) is amended by repealing the definition of "Director".

(2) Section 2 is amended by adding---  
"Permanent Secretary" (常任秘書長) means the Permanent Secretary for Education and Manpower;"

(3) Section 2 is amended, in the definition of "Trustee", by repealing "Director of Education" and substituting "Permanent Secretary".

#### 31. Establishment and vesting of fund

(1) Section 3(1) is amended by repealing "Director" and substituting "Permanent Secretary".

(2) Section 3(3) is amended by repealing "Director" where it first appears and substituting "Permanent Secretary".

(3) Section 3(3) is amended by repealing "Director of Education" where it twice appears and substituting "Permanent Secretary for Education and Manpower".

#### 32. "Permanent Secretary" substituted

for "Director"

The Ordinance is amended in the following provisions by repealing "Director" wherever it appears and substituting "Permanent Secretary"---

- (a) section 5(2)(a);
- (b) section 8(3);
- (c) section 11(2);
- (d) section 13(5);
- (e) section 14(3);
- (f) section 17(1);
- (g) section 18(d);
- (h) section 19(3).

#### 33. Sections added

The following are added---

"23. Saving and transitional provisions relating to the Education Reorganization (Miscellaneous Amendments) Ordinance 2002

(1) In this section and section 24---  
"Amended Ordinance" (經修訂條例) means this Ordinance as amended by the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of

2002);

"date of commencement" (生效日期) means the date of commencement of the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002).

(2) A reference in section 24 to property, rights and liabilities of the corporation sole known as the "Director of Education" is a reference to---

(a) property and assets of every description (whether tangible or intangible) and rights and liabilities of every description (whether present or future, actual or contingent);

(b) property wherever situated or rights and liabilities under the law of any place.

(3) The corporation sole known as the "Permanent Secretary for Education and Manpower" constituted by section 3(3) of the Amended Ordinance is deemed to be a continuation of and the same legal entity as the corporation sole known as the "Director of Education" constituted by section 3(3) of this Ordinance before the date of commencement.

(4) The enactment of the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002) does not affect the legality and validity of anything done by the corporation sole known as the "Director of Education" before the date of commencement.

24. Provisions incidental and supplemental to section 23

(1) The provisions in this section are for the avoidance of doubt and apply without limiting the generality of section 23 and to the extent that they are appropriate in the circumstances and consistent with this Ordinance.

(2) As from the date of commencement, all property, rights and liabilities to which the corporation sole known as the "Director of Education" was entitled or subject immediately before that date are deemed to be vested, without any actual transfer or conveyance, in the corporation sole known as the "Permanent Secretary for Education and Manpower".

(3) A reference to the corporation sole known as the "Director of Education"---

(a) in any agreement, arrangement or contract or in any deed, bond or any other instrument;

(b) in any process or other document issued, prepared or employed for the purpose of any proceeding before a court, tribunal or similar body; and

(c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of the corporation sole known as the "Director of Education" which vests in the corporation sole known as the "Permanent

Secretary for Education and Manpower" by virtue of subsection (2), shall be taken as from the date of commencement as referring to the corporation sole known as the "Permanent Secretary for Education and Manpower".

(4) The record of property of the corporation sole known as the "Director of Education" immediately before the date of commencement that is in the form of any entry in the books of a bank, company or other corporation is to be transferred in those books to the corporation sole known as the "Permanent Secretary for Education and Manpower" on the request of the corporation sole known as the "Permanent Secretary for Education and Manpower" by the bank, company or other corporation.

(5) The corporation sole known as the "Permanent Secretary for Education and Manpower" may sue on, recover or enforce any property or right vested in it under subsection (2) and may be sued for any liabilities to which it is subject under that subsection.

(6) The corporation sole known as the "Permanent Secretary for Education and Manpower" may sue on, recover or enforce a chose in action vested in it under subsection (2) without having to give a notice of transfer to the person bound by the chose in action.

(7) Any claim by or against the corporation sole known as the "Director of Education" in any judicial or administrative proceedings that is subsisting immediately before the date of commencement does not abate by reason of the enactment of the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002) and may be continued or enforced by or against the corporation sole known as the "Permanent Secretary for Education and Manpower".

(8) In any judicial or administrative proceedings that is subsisting immediately before the date of commencement in which the corporation sole known as the "Director of Education" is a party, the corporation sole known as the "Permanent Secretary for Education and Manpower" shall, on and from that date, substitute for the corporation sole known as the "Director of Education" as that party.

(9) This section and section 23 shall not be construed as giving validity, continuing in force or giving effect to any or all of the following---

(a) anything that could not have validly been done or given effect to under an enactment amended or repealed by the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002); or

(b) anything done otherwise than in the lawful exercise of a power or performance of a duty.

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

Director of Education Incorporation Ordinance

34. Long title amended

The long title of the Director of Education Incorporation Ordinance (Cap. 1098) is amended by repealing "Director of Education" and substituting "Permanent Secretary for Education and Manpower".

35. Short title

Section 1 is amended by repealing "Director of Education" and substituting "Permanent Secretary for Education and Manpower".

36. Permanent Secretary for Education and Manpower constituted a corporation sole

Section 2 is amended by repealing "Director of Education" where it twice appears and substituting "Permanent Secretary for Education and Manpower".

37. Power of corporation to act as trustee, etc.

Section 4 is amended by repealing "Education Department" and substituting "Education and Manpower Bureau".

38. Accounts, audit and annual report

Section 8(4) is amended by repealing "Director of Education" and substituting "Permanent Secretary for Education and Manpower".

39. Sections added

The following are added---

"9. Saving and transitional provisions relating to the Education Reorganization (Miscellaneous Amendments) Ordinance 2002

(1) In this section and section 10---

"Amended Ordinance" (經修訂條例) means this Ordinance as amended by the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002);

"date of commencement" (生效日期) means the date of commencement of the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002).

(2) A reference in section 10 to property, rights and liabilities of the corporation sole known as the "Director of Education Incorporated" is a reference to---

(a) property and assets of every description (whether tangible or intangible) and rights and liabilities of every description (whether present or future, actual or contingent);

(b) property wherever situated or rights and liabilities under the law of any place.

(3) The corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated" constituted by section 2 of the Amended Ordinance is deemed to be a continuation of and the same legal entity as the corporation sole known as the "Director of Education Incorporated" constituted by section 2 of this Ordinance

before the date of commencement.

(4) The enactment of the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002) does not affect the legality and validity of anything done by the corporation sole known as the "Director of Education Incorporated" before the date of commencement.

10. Provisions incidental and supplemental to section 9

(1) The provisions in this section are for the avoidance of doubt and apply without limiting the generality of section 9 and to the extent that they are appropriate in the circumstances and consistent with this Ordinance.

(2) As from the date of commencement, all property, rights and liabilities to which the corporation sole known as the "Director of Education Incorporated" was entitled or subject immediately before that date are deemed to be vested, without any actual transfer or conveyance, in the corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated".

(3) A reference to the corporation sole known as the "Director of Education Incorporated"---

- (a) in any agreement, arrangement or contract or in any deed, bond or any other instrument;
- (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before a court, tribunal or similar body; and
- (c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of the corporation sole known as the "Director of Education Incorporated" which vests in the corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated" by virtue of subsection (2),

shall be taken as from the date of commencement as referring to the corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated".

(4) The record of property of the corporation sole known as the "Director of Education Incorporated" immediately before the date of commencement that is in the form of any entry in the books of a bank, company or other corporation is to be transferred in those books to the corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated" on the request of the corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated" by the bank, company or other corporation.

(5) Where the corporation sole known as the "Director of Education Incorporated" is the trustee of any trust, the corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated" shall effective on the date of commencement

continue as trustee of that trust in substitution of the corporation sole known as the "Director of Education Incorporated".

(6) The corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated" may sue on, recover or enforce any property or right vested in it under subsection (2) and may be sued for any liabilities to which it is subject under that subsection.

(7) The corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated" may sue on, recover or enforce a chose in action vested in it under subsection (2) without having to give a notice of transfer to the person bound by the chose in action.

(8) Any claim by or against the corporation sole known as the "Director of Education Incorporated" in any judicial or administrative proceedings that is subsisting immediately before the date of commencement does not abate by reason of the enactment of the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002) and may be continued or enforced by or against the corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated".

(9) In any judicial or administrative proceedings that is subsisting immediately before the date of commencement in which the corporation sole known as the "Director of Education Incorporated" is a party, the corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated" shall, on and from that date, substitute for the corporation sole known as the "Director of Education Incorporated" as that party.

(10) This section and section 9 shall not be construed as giving validity, continuing in force or giving effect to any or all of the following---

(a) anything that could not have validly been done or given effect to under an enactment amended or repealed by the Education Reorganization (Miscellaneous Amendments) Ordinance 2002 ( of 2002); or

(b) anything done otherwise than in the lawful exercise of a power or performance of a duty.

(11) This section and section 9 are in addition to and not in derogation from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).".

St. Paul's College Council Incorporation Ordinance

40. Power of corporation

Section 4(1)(h) of the St. Paul's College Council Incorporation Ordinance (Cap. 1102) is amended by repealing "Education Department" and substituting "Education and Manpower Bureau".

Miscellaneous references to "Director of Education"

41. Amendment of references to "Director

of Education"

The provisions specified in column 3 of the Schedule are amended by repealing "Director of Education" wherever it appears and substituting "Permanent Secretary for Education and Manpower".

### PART 3

Saving and Transitional Provisions Relating to the Board of Education, the Director of Education and the Education Department

42. Saving and transitional provisions relating to the Board of Education, the Director of Education and the Education Department

(1) In this section and section 43---  
"date of commencement" (生效日期) means the date of commencement of this Ordinance;  
"functions" (職能) includes powers and duties.

(2) A reference in this section and section 43 to property, rights and liabilities of the Director of Education or the Education Department is a reference to---  
(a) property and assets of every description (whether tangible or intangible) and rights and liabilities of every description (whether present or future, actual or contingent);  
(b) property wherever situated or rights and liabilities under the law of any place.

(3) A person who holds office as a member of the Board of Education or its subcommittees immediately before the date of commencement ceases to hold that office on that date.

(4) All minutes, books, records, documents or other articles of the Board of Education and its subcommittees are to be handed over to the Permanent Secretary for Education and Manpower on the date of commencement.

(5) From the date of commencement, all property, rights and liabilities of the Director of Education or the Education Department are vested in the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(6) The enactment of this Ordinance does not affect the validity of anything lawfully done by, in relation to or on behalf of the Director of Education or the Education Department before the date of commencement.

(7) Anything lawfully done before the date of commencement by, in relation to or on behalf of the Director of Education or the Education Department pursuant to or in connection with his or its functions shall, on and from that date, be regarded and have effect as done by, in relation to or on behalf of the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.



(8) Anything that, immediately before the date of commencement, may be done by, in relation to or on behalf of the Director of Education or the Education Department pursuant to or in connection with his or its functions may, on and from that date, be done by, in relation to or on behalf of the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(9) Anything that, immediately before the date of commencement, may be done or is required to be done and is in the process of being done by, in relation to or on behalf of the Director of Education or the Education Department pursuant to or in connection with his or its functions shall, on and from that date, be continued by, in relation to or on behalf of the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

#### 43. Provisions incidental and supplemental to section 42

(1) The provisions in this section apply without limiting the generality of section 42 and to the extent that they are appropriate in the circumstances and consistent with this Ordinance.

(2) Any agreement, arrangement or contract made or entered into or transaction effected or other thing done by, in relation to or on behalf of the Director of Education or the Education Department which is in force or effective immediately before the date of commencement or which is to take effect on or after that date has effect as from that date as if made, entered into, effected or done by, in relation to or on behalf of the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(3) A reference to the Director of Education or the Education Department---

- (a) in any agreement, arrangement or contract or in any deed, bond or any other instrument;
- (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before a court, tribunal or similar body; and
- (c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of the Director of Education or the Education Department which vests in the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau by virtue of section 42(5), shall be taken as from the date of commencement as referring to the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(4) The record of property of the Director of Education or the Education Department immediately before the date of commencement that is in the form of any entry in the books of a bank, company or other corporation is to be transferred in those books to the Permanent Secretary for Education and Manpower or the Education

and Manpower Bureau, as appropriate, on the request of the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate, by the bank, company or other corporation.

(5) The Permanent Secretary for Education and Manpower or the Education and Manpower Bureau may sue on, recover or enforce any property or right vested in him or it under section 42(5) and may be sued for any liability to which he or it is subject under section 42(5).

(6) The Permanent Secretary for Education and Manpower or the Education and Manpower Bureau may sue on, recover or enforce a chose in action vested in him or it under section 42(5) without having to give a notice of transfer to the person bound by the chose in action.

(7) Any claim by or against the Director of Education or the Education Department in any judicial or administrative proceedings that is subsisting immediately before the date of commencement does not abate by reason of the enactment of this Ordinance and may be continued or enforced by or against the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(8) In any judicial or administrative proceedings that is subsisting immediately before the date of commencement in which the Director of Education or the Education Department is a party, the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau shall, on and from that date, substitute for the Director of Education or the Education Department, as appropriate, as that party.

(9) Any right of appeal against a decision of the Director of Education or the Education Department or any right to have such decision reviewed that is subsisting immediately before the date of commencement may, on and from that date, be exercised as if the decision were a decision of the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(10) Any right of appeal to the Director of Education or the Education Department or any right to have anything reviewed by the Director of Education or the Education Department that is subsisting immediately before the date of commencement is to be treated, on and from that date, as being a right of appeal to the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate, or a right to have that thing reviewed by the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(11) Any form that is specified or prescribed before the date of commencement for use in connection with any function of the Director of Education or the Education Department may, on and from that date, be used despite the fact that it contains

references to the Director of Education or the Education Department; and such references shall be construed as references to the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(12) If immediately before the date of commencement, there is in existence an application for a permit, registration, permission, approval, authorization or exemption or an application of a similar nature made to the Director of Education or the Education Department which has not been disposed of, it is to be taken to be an application made to the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(13) Any circular, circular memorandum, order, certificate, notice, approval, letter, guideline, report, statement or other document issued by the Director of Education or the Education Department which is in force immediately before the date of commencement, or which is to take effect on or after that date, has effect as if issued by the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate, in so far as that is required for continuing its effect after that date.

(14) Any terms and conditions imposed on any grant in aid or subsidy granted by the Director of Education or the Education Department before the date of commencement shall continue to take effect and be binding on the grantee as if imposed by the Permanent Secretary for Education and Manpower or the Education and Manpower Bureau, as appropriate.

(15) This section and section 42 shall not be construed as giving validity, continuing in force or giving effect to any or all of the following---

- (a) anything that could not have validly been done or given effect to under an enactment amended or repealed by this Ordinance; or
- (b) anything done otherwise than in the lawful exercise of a power or performance of a duty.

(16) This section and section 42 are in addition to and not in derogation from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

#### SCHEDULE [s. 41]

Amendment of "Director of Education" to "Permanent Secretary for Education and Manpower"

Item Ordinance Provision

1. Specification of Public Offices (Cap. 1 sub. leg.) The entries relating to "Director of Education".
2. Employment Ordinance (Cap. 57) Section 50(3)(h)(ii).
3. Employment of Children Regulations Regulation 2 (the definition of

(Cap. 57 sub. leg.) "school attendance certificate").

4. Employment of Young Persons and Children at Sea Ordinance (Cap. 58) Section 2.
5. Pensions Ordinance (Cap. 89) Section 18(1B)(b).
6. Pension Benefits Ordinance (Cap. 99) Section 19(6)(a).
7. Auxiliary Forces Pay and Allowances Ordinance (Cap. 254) Section 16(2)(c).
8. Auxiliary Forces Pay and Allowances (Pensions) Regulation (Cap. 254 sub. leg.) Section 6(6)(a).
9. Queen Elizabeth Foundation for the Mentally Handicapped Ordinance (Cap. 399) Section 5(ba).
10. Pension Benefits (Judicial Officers) Ordinance (Cap. 401) Section 20(6)(a).
11. Electricity Ordinance (Cap. 406) Section 32(2).
12. Environment and Conservation Fund Ordinance (Cap. 450) Section 7(2)(c).
13. Hong Kong Arts Development Council Ordinance (Cap. 472) Section 3(3)(e).
14. Sex Discrimination Ordinance (Cap. 480) Schedule 1, item 15.
15. Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) Section 5(1).
16. Family Status Discrimination Ordinance (Cap. 527) Schedule 1, item 15.
17. Grantham Scholarships Fund Ordinance (Cap. 1076) Section 4(1)(b).
18. Munsang College Incorporation Ordinance (Cap. 1094) Section 4(2).
19. Social Work Training Fund Ordinance (Cap. 1100) Section 5(1)(c).
20. Sir Robert Black Trust Fund Ordinance (Cap. 1101) Section 5(2)(b).
21. Li Po Chun Charitable Trust Fund Ordinance (Cap. 1110) and 3(7). Schedule, paragraphs 2(2) and (3).
22. The English Schools Foundation Ordinance (Cap. 1117) Section 9(8). Section 6(1).
23. Police Children's Education Trust Ordinance (Cap. 1119) Section 6(2)(c).
24. Police Education and Welfare Trust Ordinance (Cap. 1120) Section 6(2)(c).
25. Correctional Services Children's Education Trust Ordinance (Cap. 1131) Section 6(2)(c).

Explanatory Memorandum

The main objects of this Bill are to amend the Education Ordinance (Cap. 279) ("the Ordinance") and other related Ordinances to---

(a) transfer the functions of the Director of Education to the Permanent Secretary for Education and Manpower;

(b) transfer the functions of the Education Department to the Education and Manpower Bureau; and

(c) abolish the Board of Education.

2. Part 1 (clauses 2 to 19) amends the Ordinance and its subsidiary legislation.

3. Clause 2(1) and (2) repeals the definition of "Director" in section 3 of the Ordinance and adds a definition of "Permanent Secretary". Clause 2(3) amends those definitions in section 3 of the Ordinance listed under clause 2(3) by repealing "Director" wherever it appears and substituting "Permanent Secretary".

4. Clause 3(1) repeals section 5(1) of the Ordinance so as to repeal the power of the Deputy Director of Education to exercise any function originally exercised by the Director of Education under the Ordinance.

5. Clause 3(2) and (3) amends section 5(2) of the Ordinance by repealing "Director" and substituting "Permanent Secretary" and by repealing "Education Department" and substituting "Education and Manpower Bureau", where appropriate.

6. Clause 4 repeals section 7 of the Ordinance to abolish the Board of Education; the functions of the Board of Education will be assumed by the Education Commission to streamline the advisory mechanism.

7. Clause 5 repeals section 7A of the Ordinance which governs the resignation of a member of the Board of Education.

8. Clauses 6, 7, 8 and 9 amend various sections of the Ordinance by repealing "Director" and substituting "Permanent Secretary" and by repealing "Education Department" and substituting "Education and Manpower Bureau", where appropriate.

9. Clause 10(1) amends section 100(2) of the Ordinance to make it clear that the word "Director" where it first appears in that section means "Director of Education". This is a historical reference, therefore the word "Director" in section 100(2) is not amended to "Permanent Secretary". However, as the definition of "Director" in section 2 of the Ordinance has been repealed, it is necessary to clarify the word "Director" in section 100(2).

10. Clause 10(2) amends section 100(2) of the Ordinance by repealing "Director" where it secondly appears in that section and substituting "Permanent Secretary".

11. Clause 11 amends various sections of the Ordinance listed under that clause by repealing "Director" wherever it appears and substituting "Permanent Secretary".

12. Clauses 12 and 13 amend various provisions of the Education Regulations (Cap. 279 sub. leg.) by repealing "Director" and substituting "Permanent Secretary", where

appropriate.

13. Clause 14 amends various provisions of the Education Regulations (Cap. 279 sub. leg.) listed under that clause by repealing "Director" wherever it appears and substituting "Permanent Secretary".

14. Clause 15 amends rule 4(1) of the Grant Schools Provident Fund Rules (Cap. 279 sub. leg.) by repealing "Director" and substituting "Permanent Secretary", where appropriate.

15. Clause 16 amends various provisions of the Grant Schools Provident Fund Rules (Cap. 279 sub. leg.) listed under that clause by repealing "Director" wherever it appears and substituting "Permanent Secretary".

16. Clause 17 amends various provisions of the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg.) listed under that clause by repealing "Director" wherever it appears and substituting "Permanent Secretary".

17. Clauses 18 and 19 amend regulations 1(2) and 5 of the Education (Amendment) Regulations 1982 (L.N. 237 of 1982) by repealing "Director of Education" and substituting "Permanent Secretary for Education and Manpower" and by repealing "Director" and substituting "Permanent Secretary", where appropriate.

18. Part 2 (clauses 20 to 41) and the Schedule contain consequential and related amendments to other Ordinances. In particular---

(a) clause 23(2) amends paragraph (b)(i) of Schedule 2 to the Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) by repealing the power of the Chief Executive to appoint 1 public officer to serve as a member of the Hong Kong Examinations and Assessment Authority; the public officer appointed used to be an officer from the Education and Manpower Bureau; as the Permanent Secretary for Education and Manpower or his representative will be a member of the Hong Kong Examinations and Assessment Authority under paragraph (a)(vii) of that Schedule, there is no need to appoint another officer from the Education and Manpower Bureau to the Hong Kong Examinations and Assessment Authority;

(b) clause 28 amends The Ombudsman Ordinance (Cap. 397) by taking out "Education Department" from Part I of Schedule 1 to that Ordinance because the Education Department will be subsumed under the Education and Manpower Bureau; the Education and Manpower Bureau, as part of the Government Secretariat, is already covered by Part I of that Schedule;

(c) clause 33 adds saving and transitional provisions to the Education Scholarships Fund Ordinance (Cap. 1085) that are required for the reconstitution of the corporation sole known as the "Director of Education" to a corporation sole known as the "Permanent Secretary for Education and Manpower"; and

(d) clause 39 adds saving and transitional provisions to the Director of Education

Incorporation Ordinance (Cap. 1098) that are required for the reconstitution of the corporation sole known as the "Director of Education Incorporated" to a corporation sole known as the "Permanent Secretary for Education and Manpower Incorporated".

19. Part 3 (clauses 42 and 43) contains saving and transitional provisions required for the abolition of the Board of Education and transfer of functions of the Director of Education and the Education Department.