

立法會

Legislative Council

LC Paper No. LS 16/02-03

Paper for the House Committee Meeting on 6 December 2002

Legal Service Division Report on Education (Amendment) Bill 2002

I. SUMMARY

1. **Objects of the Bill** To amend the Education Ordinance (Cap. 279) and its subsidiary legislation to facilitate the implementation of school-based management and introduce other amendments.
2. **Comments**
 - (a) The Bill makes provisions for the establishment of incorporated management committees (IMCs) to manage certain types of schools and for related matters.
 - (b) A transition period of 5 years from the date of commencement is provided for operating aided schools.
 - (c) Criminal liability is imposed on each of the managers constituting an IMC for failure of the IMC to comply with the Education Ordinance and the Education Regulations. A manager will have a defence if he proves that the failure, contravention or act is committed or done without his knowledge or consent, or that he has taken all reasonable steps to prevent the failure, contravention or act.
 - (d) A manager shall not incur any civil liability in respect of anything done or omitted to be done by the IMC or by him if he has acted in good faith.
3. **Public Consultation** A two-month public consultation was launched in 2000. The Board of Education has also been consulted.
4. **Consultation with LegCo Panel** The proposal for school-based management was discussed by the Panel on Education at its meetings on 20 November 2000, 11 December 2000 and 19 February 2001.
5. **Conclusion** The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. Since the Bill introduces a new policy that has attracted a lot of concern and debate, Members may wish to set up a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

To amend the Education Ordinance (Cap. 279) and its subsidiary legislation to facilitate the implementation of school-based management and introduce other amendments.

LegCo Brief Reference

2. ED(CR)58/00 Pt. 14 issued by the Education and Manpower Bureau on 20 November 2002.

Date of First Reading

3. 4 December 2002.

Comments

Incorporated Management Committees

4. The main object of the Bill is to provide the statutory framework for the implementation of school-based management proposed by the Advisory Committee on School-based Management ("the Advisory Committee") and endorsed by the Board of Education. The Bill provides for :

- (a) the incorporation of the managers of a school as a separate legal entity known as an incorporated management committee ("IMC") and the maintenance of a register of IMCs;
- (b) the functions of the school sponsoring bodies ("SSB") and IMCs;
- (c) the composition and operation of IMCs;
- (d) the matters that the constitution of an IMC must include;
- (e) the establishment of principal selection committees for the purposes of appointment of principals of schools which have IMCs;
- (f) the transfer of certain functions of supervisors to IMCs;
- (g) the transfer of other functions of supervisors to principals;
- (h) the power of the Director of Education to give directions to schools which have IMCs; and

- (i) the consequences of failure of incorporation.

Members may refer to the LegCo Brief for details of the proposals.

5. Under the Bill, an IMC should compose of managers nominated by SSB up to 60% of the maximum number of managers under its constitution, the principal as an ex-officio manager, not less than one elected teacher manager, not less than one nominated parent manager, one or more alumni managers and not less than one independent manager. Provisions are made for alternate teacher and parent manager.

6. The Bill requires the establishment of an IMC in every operating aided school within 5 years from the date of commencement, and the establishment of an IMC in every planned aided school before the school commences operation. The Bill further enables a school that has joined the Direct Subsidy Scheme ("DSS school") and a school which receives subsidies from the Government but is neither an aided school nor a DSS school to establish an IMC.

7. The Bill imposes criminal liability on each of the managers constituting an IMC for failure of the IMC to comply with the Education Ordinance and the Education Regulations. A manager will have a defence if he proves that the failure, contravention or act is committed or done without his knowledge or consent, or that he has taken all reasonable steps to prevent the failure, contravention or act.

8. A manager, however, shall not incur any civil liability in respect of anything done or omitted to be done by the IMC or by him if he has acted in good faith.

Other amendments

9. Other than the proposals relating to IMCs, the Bill also provides for :
- (a) new grounds for registration of managers and cancellation thereof; and
 - (b) the deletion of the reference to a school maintained and controlled by the Crown in right of Her Majesty's Government in the United Kingdom.

Public Consultation

10. According to the LegCo Brief, a two-month public consultation was launched after the Advisory Committee issued its recommendations in 2000. The Board of Education has also been consulted.

Consultation with LegCo Panel

11. The Panel on Education discussed the original proposals of the Advisory Committee at its meeting on 20 November 2000, and received views from deputations at its meeting on 11 December 2000. The Panel further discussed the final proposals of the Advisory Committee with the Administration and deputations at its meeting on 19 February 2001.

12. Panel members in general agreed that the powers of SSB to set visions and missions for their schools, and to control their private funds and assets, should be preserved and expressly provided in the legislation.

13. Some Panel members expressed support for setting up a one-tier IMC in each school in which representatives of parents and teachers were able to have meaningful participation in school management. They stressed that there should be at least two parent managers and two teacher managers in each IMC. These Panel members considered that the proposal of a two-tier governance structure of some SSB was only intended to exclude real participation of parents and teachers. Some SSB which had submitted their views to the Panel, however, had expressed strong objection to imposing a one-tier governance structure. A Panel member was of the view that while participation of parents and teachers in school management should be supported, a rigid governance structure should not be imposed across the board.

14. Panel members also raised questions about the role of school managers in the appointment and removal of principals, the maximum number of IMCs a school manager could serve on, and the accountability of parent and teacher manager for school performance.

15. Members may wish to refer to the minutes of the Panel meetings on 20 November 2000, 11 December 2000 and 19 February 2001 (issued vide LC Paper Nos. CB(2)668/00-01, CB(2)816/00-01 and CB(2)1324/00-01) for further details.

Conclusion

16. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. Since the Bill introduces a new policy that has attracted a lot of concern and debate in the community, Members may wish to set up a Bills Committee to consider the Bill in detail.

Prepared by

Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
4 December 2002