

For Discussion on 17 November 2003

Legislative Council Panel on Education

Changes in the Regulatory Control of Private Schools Offering Non-Formal Curriculum

Purpose

This paper briefs Members on the proposal on changes in the regulatory control of private schools offering non-formal curriculum (PSNFCs).^{Note 1}

Background

2. At present, the Education Ordinance (EO) (Cap. 279) regulates the operation of “schools”.^{Note 2} In respect of PSNFCs, the role of the Education and Manpower Bureau (EMB) is to ensure that they are registered and comply with the requirements on safety of premises, registration of teachers and collection of fees under the EO. It is necessary to review our role in view of resource constraints and the community’s aspiration for a small government.

3. We consider that we should perform a basic regulatory role and must avoid over-regulating PSNFCs, as most PSNFCs provide an optional rather than mandatory private tutoring service for students undergoing formal schooling and some serve to enhance workplace skills for young people or adult learners. We should keep a proper balance on “regulation”, allow the market mechanism to operate in this sphere and encourage self-regulation in the long run. We briefed Members on proposed measures to pave way for this direction on 28 February 2002 (LC Paper No. CB(2)1171/01-02(02)). Measures relating to self-reporting of school information, increased transparency and reinforced consumer education have been taken. On the safety aspects, EMB continues to refer every case to the Buildings and Fire Services departments for action. On teacher registration, PSNFCs are required to employ registered or permitted teachers, as with other

^{Note 1} Schools which offer educational courses such as tutorial, commercial, language and computer courses, are all categorized as private schools offering non-formal curriculum (PSNFCs).

^{Note 2} “School” means an institution, organization or establishment which provides for 20 or more persons during any one day or 8 or more persons at any one time, any nursery, kindergarten, primary, secondary or post secondary education or any other educational course by any means, including correspondence delivered by hand or through the postal services.

schools. The registration unit of EMB continues to process such applications. However, regarding providing financial security to students, all the modes explored are found not feasible. Progress of the measures is at **Annex**.

Proposal

4. Against this background, we now propose to exempt PSNFCs from some provisions of the EO.

5. Section 9(3) of the EO provides that the Chief Executive (CE) in Council may, by order published in the Gazette, exempt from all or any of the provisions of the EO any school or class or description of school; and the owners, managers, teachers or pupils of such school or class or description of school, on such conditions, if any, as he thinks fit.

6. We propose to exempt PSNFCs from provisions relating to fees and collections, teachers and principals under section 9(3). Other miscellaneous provisions to be exempt include requirements relating to holidays^{Note 3} and hours of instruction. We will retain provisions on school registration and safety requirements (such as structural alterations and over-enrolment) to ensure safety of students, and registration of supervisors and managers to ensure proper management. Therefore, PSNFCs will still be required to register under the EO.

7. In granting the proposed exemption, we will set out conditions under three categories to keep a proper balance of regulation-

- (i) *Conditions for exemption from provisions of fees and collections*
 - (a) The course fee should be collected on an equal monthly basis. With the written agreement of students (aged 18 or above) or parents (for students aged below 18), PSNFCs may collect more than one month but not more than three months' course fee. However, students may choose to pay one to three months' course fee.
 - (b) The fees for the courses offered, including the fees for each instalment and number of instalments, should be displayed at a prominent place in the school premises.
 - (c) PSNFCs should issue to each student a formal receipt, which is stamped with a school chop, signed by the supervisor, and contains

^{Note 3} When the Education (Miscellaneous Amendments) Bill 2003 is passed by the Legislative Council, schools may conduct educational courses on general holidays.

information on registered school name, student name, course name, venue, amount of fee collected and period covered.

- (d) Each student should be given a leaflet before enrolling to the course. The leaflet should contain the course details, course fees, information of teachers and principals, and refund policies and procedures.

(ii) Conditions for exemption of teachers of PSNFCs from provisions related to teachers

- (a) The minimum qualifications of a teacher should be in line with the current requirements of a permitted teacher, i.e. one or more Hong Kong Certificates of Education with an aggregate of 5 subjects at Grade E or above including Chinese Language or English Language. A teacher teaching Secondary 4 or 5 level should possess post-secondary qualification, and those teaching Secondary 6 or 7 level and post-secondary courses should possess an approved degree. For special subjects, the teacher is required to meet the requirements specified by the Permanent Secretary for Education and Manpower (PSEM). The name, ID number, qualifications and date of first appointment of the teacher should be reported to PSEM and the supervisor is required to certify that the information is correct. The supervisor is also required to check that the qualifications claimed by the teachers are genuine and to endorse “Original Seen” on the photocopies of the documents relating to the qualifications of teachers. The above-mentioned information of the teachers with photocopies of documents relating to their qualifications should be kept on the school premises.
- (b) Any teacher who has been convicted of an offence punishable with imprisonment should not be allowed to teach.

(iii) Conditions for exemption from provisions related to principals

The supervisor should appoint a teacher as the principal and inform PSEM the particulars of the principal and any changes in the particulars.^{Note 4}

8. If a PSNFC fails to comply with any conditions of a particular category, the PSNFC is not entitled to the exemption granted under the category concerned. The PSNFC is therefore obliged to comply with the relevant provisions.

^{Note 4} The principal is held responsible for regulations 38, 39, 52 and 53 related to fire drills, fire service installation, medical examination of pupils and infectious diseases.

Appropriate action such as prosecution action or cancellation of the registration of the managers or school will be taken if the PSNFC fails to do so.

Implementation Plan

9. It is intended that the proposal on exemption may take effect within the 2003-04 school year.

10. Before implementing the proposal, publicity on the gist of exemption through TV API, press release and EMB homepage will be launched. PSNFCs and students will be reminded of their responsibility listed in the Exemption Order and their consumer right respectively. Samples of formal receipt, refund policy and procedures and agreement for collecting more than one months' fee will be provided to guide the PSNFCs and students. The Consumer Council will handle any reported irregularities on fee collection. PSNFCs failing to comply with the conditions set will be made known to the public through various channels. It is expected that the number of complaints to be handled by EMB will decrease after implementation of the proposals.

11. To increase the transparency of PSNFCs, we will continue to provide their essential school information and records of contravention of the EO on the EMB homepage. In collaboration with the Consumer Council, we will continue to make known serious malpractices and repeated offences to the public through various channels. The publicity programme to remind students of their right and responsibility and points to note on selection of PSNFCs will be stepped up to enhance the impact.

12. We will review the effectiveness of the proposal two years after its full implementation. We may set additional conditions if required, or make changes in the regulatory control of PSNFCs to meet the current needs of the society.

Justifications

13. To meet the needs of the 21st Century, the Government encourages life-long learning and diversity in the education sector to provide more choices to learners. As PSNFCs are subject to market forces, more flexibility and room should be provided for them to meet the fast-changing needs and demands of the society. To achieve this end, we need to strike a balance among regulatory control, self-regulation, consumer protection and education.

14. In view of the changing needs and demands of the society, PSNFCs change their courses and the fees frequently. The present requirements under the EO for PSNFCs to seek approval from EMB for collection of fees for a course and any subsequent changes in the fee level of the course will impose administrative work resulting in delayed commencement of courses.

15. The exemption from the present restrictions on granting holidays and hours of instruction will highly facilitate the maximum use of time of students for life-long learning. When the Education (Miscellaneous Amendments) Bill 2003 is passed by the Legislative Council, PSNFCs may conduct educational courses on general holidays. Hence, the requirement for the supervisor to send the notice of all holidays to EMB before 15 August in each year may also be exempted.

16. Under the proposals, PSNFCs are still required to comply with the safety and health requirements and to register under the EO. Safety of students must be paramount and this is safeguarded. The minimum qualifications of teachers will remain the same to ensure that the quality of service would not be affected. Only the current procedures relating to fees and collections, teachers, principals and some miscellaneous provisions, which focus on administration rather than quality aspect, will be waived.

17. Through PSNFCs' provision of school information and agreed arrangements for the service, school-consumer relationship is specified at the point of business. PSNFCs should be held accountable for the services provided. With the increased transparency of PSNFCs and reinforced consumer education, consumers should exercise their rights and responsibilities in choosing PSNFCs.

18. The current regulation of private schools is mostly an administrative function. In re-prioritizing EMB's functions to tie in with the education reform, particularly at this time of financial stringency, there is a pressing need for the Administration to re-deploy the manpower to provide professional support to the mainstream schools.

Consultation

19. We have consulted the Consumer Council and the Hong Kong Federation of Private Educators (HKFPE). In general, the Consumer Council and the HKFPE support the overall direction of the proposals. We have also sounded out the proposals to 13 parent-teacher federations, one parents association and the

Way Forward

20. We intend to amend at a later stage the definition of “school” under the EO to the effect that PSNFCs providing educational courses for 30 or more persons aged between six and eighteen at any one time will be required to register under the Education Ordinance. Upon enactment of the proposed definition, the PSNFCs that require registration will be of medium or large size and will be required to pay a fee for registration.

21. According to the Code of Practice for the Provision of Means of Escape in case of Fire 1996, any room with a capacity exceeding 30 persons should be provided with at least two exits. The rationale for drawing the line of student number at 30 is to ensure that premises susceptible to building and fire hazard comply with corresponding safety requirements. Besides, 30 students constitute formal teaching in a class setting. The rationale for setting the age limit is that adults should be able to take care of themselves.

22. We are committed to promote life-long learning and diversity in education. In PSNFCs, we are working towards the direction of self-regulation. While making changes in the regulatory control of PSNFCs to allow the market mechanism to operate, we will continue the enforcement work against operation of unregistered schools and contravention of the relevant provisions of the EO. In collaboration with the Consumer Council, we will appeal to parents and students to exercise their consumer right and responsibility to make informed choices.

Education and Manpower Bureau
November 2003

**Private Schools Offering Non-Formal Curriculum
Work Progress on measures discussed at
the LegCo Panel on Education on 28 February 2002**

A. Self-reporting

Private schools offering non-formal curriculum (PSNFCs) have been required to self-report the basic information concerning the school yearly to EMB effective May 2002. The information includes school website, school facilities, teacher information and insurance policies to cover group/personal accident.

B. Increased transparency

(a) Publishing a list of PSNFCs on EMB homepage

A list of registered PSNFCs with the basic school information, including registered address, classroom accommodation, school fees and courses, and information collected through the self-reporting system have been uploaded and updated regularly on the EMB homepage since July 2002 to facilitate parents and students to make choice before enrolling to these schools.

(b) “Name and Shame” – Publishing malpractices of PSNFCs

Records of contraventions of the Education Ordinance and convictions in respect of unregistered schools and registered / provisionally registered schools for three school years have been uploaded and updated regularly on the EMB homepage since July 2002. In collaboration with the Consumer Council, EMB will continue to make known serious malpractices and repeated offences to the public through various channels.

C. Reinforced consumer education

A new pamphlet on how to choose tutorial schools were distributed to parents of all primary and secondary schools and uploaded to the EMB homepage in April 2002. Publicity to alert parents to select tutorial schools carefully is launched every summer.

D. Providing financial security

EMB has explored possibilities of providing financial security to students in

case of abrupt school closure. However, all the modes of financial security explored are found not feasible either due to high cost, absence of legislature for compulsory participation, or a lack of cost-effective mechanism to keep close watch of school administration and finance.

(a) Bank Guarantee /Performance Bond/Trust Account

The feasibility of Bank Guarantee, Performance Bond and Trust Account has been studied with some banks and the Consumer Council. They are found not feasible due to the following-

- It is difficult to assess the amount to be guaranteed, as there is no mechanism to monitor over-enrolment.
- It is difficult to decide who should be the beneficiary in the agreement of Bank Guarantee, Performance Bond and Trust Account.

(b) Insurance Coverage

A consultant has been appointed to conduct a feasibility study on provision of insurance for private schools. Major finding is: no insurance companies show interests in offering insurance scheme to PSNFCs, due to the absence of a mechanism to keep close watch of school administration and financial situation, and the absence of legislation for compulsory participation. A scheme with a small premium pool will not work. Therefore, the provision of insurance for PSNFCs is not feasible.

(c) Student Protection Fund

The Hong Kong Federation of Private Educators (HKFPE) in collaboration with its insurance consultant has been exploring a Student Protection Scheme for its member schools to compensate students in the event of school closures. The HKFPE has found the scheme not feasible because it is too tough and expensive for the participating members.