

EDUCATION (MISCELLANEOUS AMENDMENTS) ORDINANCE 2004

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 1 OF 2004

L.S.

TUNG Chee-hwa
Chief Executive
20 January 2004

An Ordinance 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 2004.

(2) This Ordinance 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” (上訴委員團) means the Appeal Boards Panel appointed under section 59(1)(a);

“DSS school” (直資學校) means a school which has joined the Direct Subsidy Scheme administered by the Permanent Secretary under which the school receives subsidy directly from the Government on such terms and conditions as specified by the Government from time to time;”.

3. Schools to be registered or provisionally registered

Section 10(2) is amended by repealing “a school” and substituting “an aided school or a DSS school”.

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

Section 22 is amended, in subsection (1), by adding—

“(ca) upon the written application of the supervisor, if the registration or provisional registration of the school, not being an aided school or a DSS school, was effected—

- (i) before the commencement of section 3 of the Education (Miscellaneous Amendments) Ordinance 2004 (1 of 2004); and
- (ii) under section 10(2) in respect of evening instruction;”.

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 the procedure for appeals and make standing orders for those purposes.
- (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 Board

Section 61(1) is amended—

- (a) by repealing “the Appeals” where it first appears and substituting “an Appeal”;
- (b) by repealing “Appeals Board” where it secondly 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 subsections (1A) and (1B) to hear and determine 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) Where an Appeal Board hears or determines any appeal concerning the registration of a teacher or the cancellation of the registration of a teacher, at least 3 of its members must be registered teachers.

(1C) 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 (1C).”;

(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 “the Appeals” and substituting “an Appeal”;
- (b) in paragraph (b), by repealing “the Appeals” wherever it appears and substituting “an 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 a period equal to the term of his office that would have remained had this Ordinance not been enacted, or until he ceases to be so for any reason before expiry of the period;
- (b) the person who was the Chairman of the former Appeals Board immediately before the commencement date is deemed to be the Chairman of the Appeal Boards Panel for a period equal to the term of his office that would have remained had this Ordinance not been enacted, or until he ceases to be so for any reason before expiry of the period;

(c) an Appeal Board which consists of members and the Chairman referred to in paragraphs (a) and (b) or includes the Chairman or 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 or the Chairman of the former Appeals Board serving for the period as provided in subsection (1)(a) or (b), as the case may be.

(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 for the commencement of section 5 of this Ordinance under section 1(2) 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 “the Appeals” and substituting “an Appeal”.

18. Second Schedule amended

The Second Schedule is amended—

(a) in Part I—

- (i) in paragraph (1), by repealing “of 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 BOARD”.

20. Saving regarding qualifications of registered teachers and permitted teachers

(1) If immediately before the commencement date 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) A person who possesses the prescribed qualifications for registration as a teacher immediately before the commencement date may apply for registration within 2 months from the commencement date and the application is to be disposed of as if this Ordinance had not been enacted.

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

(4) In this section and section 21, “commencement date” (生效日期) means the date appointed by the Secretary for Education and Manpower for the commencement of section 18 of this Ordinance under section 1(2) of this Ordinance.

21. Transitional provisions regarding qualifications of permitted teachers

(1) Notwithstanding section 51(1)(c) of the Education Ordinance (Cap. 279), the Permanent Secretary may issue a permit under section 50 of that Ordinance in respect of a person who was serving as a permitted teacher in a school immediately before the commencement date even though the person does not possess the prescribed qualifications for a permitted teacher on or after the commencement date.

(2) Subsection (1) applies where—

(a) an application to employ the person as a permitted teacher in a school is made under section 49 of the Education Ordinance (Cap. 279) within 5 years from the commencement date; and

- (b) at the time of making the application the person has been enrolled in or is attending a training course approved by the Permanent Secretary for the purpose.

Post Secondary Colleges Ordinance

22. 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.”.