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# MAJOR LEGISLATION & TREATIES

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## 1. Constitutional Law

### **The Fundamental Law of Education**

Law No.120, December 22, 2006 (Effective on December 22, 2006) . 18 clauses.

#### **Background:**

In recent years, the political circumstances in Japan have greatly changed. The basic law, which controlled education in Japan after the end of the War, was revised at last. Its revision had been the strong desire of the conservatives. In addition, the political forces seeking for the revision of the Constitution, proposed the law providing the procedures of its revision and the bill has been discussed in the Diet. It might pass in this 2007 term. In one sense, the Constitution and the Fundamental Law of Education were the postwar symbols of Japan, because they were closely connected to the reconstruction of this country as a democratic state. Needless to say, both laws depended on the deep regret for the stupidity of the War. In particular, the Law before the revision was intended to establish the foundation of education deeply rooted in the peace after the

War, and called “the Constitution of Education”. Therefore, the revision of the Fundamental Law of Education and the enactment of a procedural law for the constitutional amendment have been regarded as taboo for a long time.

However, Prime Minister Shinzo Abe, who is the first Premier from the postwar generation, declares the need to “get rid of the postwar regime” and is highly motivated to revise the Constitution in his administration. The Cabinet headed by Abe decided that the reconstruction of education was at the top of the agenda, and set up a special meeting to discuss that problem. These movements of the conservative political forces underlie the revision.

Of course, the intention of the conservative forces is not the only factor supporting the revision. The recent crisis in education has been widely recognized, and therefore the need to reform the educational system has been strongly insisted upon. The problems of the severe examination ordeal, the drop in scholastic ability, and the deterioration in morality and so on have been propounded. Some suggested that the Law enacted right after the end of the War was out-of-date and should be revised. Others insisted on the importance of moral education and patriotism or national character. These views were behind the revision.

The revisional history of the Law is as follows. On March 24, 2000, the National Conference for the Educational Reform was established and started discussions. The Conference published seventeen proposals for reforming the educational system as a report. Then the discussion continued at the Central Council of Education. On May 15, 2003, the Council submitted its report. In the same year, the government party began the study of the revision of the law. At last, on April 28, 2006, the bill to revise the Fundamental Law of Education was consented to in the cabinet meeting, and then suggested to the Diet. The bill was passed in the House of Representatives on November 16 and in the House of Councilors on December 15. The new law was proclaimed on December 22 and enforced on the same day.

### **Main Provisions:**

The revised Fundamental Law is made up of the preamble and four chapters.

### 1. Preamble

As the pre-revised law and the Constitution, the preamble is at the beginning of the law. It defines the purport of the law, emphasizes the importance of the dignity of individuals, and enumerates the new purposes of education in Japan. The greatest change is the creation of the provision mentioning to public spiritedness and the inheritance of traditions.

### 2. The purpose and the principle of the education

Chapter 1 provides the purpose and the principle of education. Articles 1 & 2 declare the purposes of education. It should be noted that loving our country and home is laid down as the purpose. Article 3 is a newly added clause and announces the idea of lifelong education. Article 4 freshly expresses the duty of the state and local government to support disabled persons.

### 3. The fundamentals for the practice of education

In Chapter 2, Articles 5 to 15 provide the educational fundamentals much more minutely than the pre-revised law. The need to support the disabled is mentioned. The provision that the primary responsibility for education lies in the home is added.

### 4. The administration of education

The provision of the pre-revised law that education should be carried out responding directly to the people is amended. The new Article 16 is related to the responsibility of the government. It provides that the education should be carried out fairly and appropriately, under the cooperation between the state and local government.

### 5. The enactment of law or order

Article 18 provides that the appropriate law or order shall be enacted to enforce this law.

### **Editorial Note:**

The present Cabinet headed by Abe declares two political agendas. One is the reform of education. Another is Constitutional Revision. Therefore, the revision of the Fundamental Law of Education called “the Constitution of Education” is an important step leading to the Amendment, which has been a concern in Japanese politics. The Abe

administration has a stable political ground in the Diet, because the Liberal Democratic Party and its alliance party have over 2/3 of the seats of the House of Representatives. This political stability originates from the historical victory of that party in the late general election. Additionally, Mr. Abe is the first Prime Minister belonging to the postwar generation. His main concern is to “get rid of the postwar regime” and thereof his attitude is regarded as nationalistic politically. The fact that he seeks to amend the Constitution and to enact the procedural law of the Amendment also heightens the impression that he is a nationalist. These political circumstances underlie the opposition movement.

The criticisms of this revised law are divided into two groups. Firstly, the deliberation in the Diet is criticized. Because the pre-revised law was the symbol of the postwar education and its basic principle was liberal, it was thought that its review demanded careful thought. But it was on April 28, 2006, that the Cabinet submitted the bill to the Diet to revise the law. It took only 8 months to discuss it. Therefore, it was thought that the revision was a premature decision. The Diet should have deliberated not only the content of the bill, but also what was exactly required in order to resolve the problems we were actually facing.

Secondly, the content of the amendment itself was a crucial matter. The bill submitted by the government included proposals concerning patriotism. Article 19 of the Constitution provides the freedom of thought and conscience. It assumes a society where people can have different views. The content of the new law is contrary to such a basic assumption. The opposition suggests that the changes of the basic structures depending on the liberalism might be an encroachment on the sphere of freedom. We should be eternally vigilant concerning the coercion of patriotism by the state, because it might be the first step to totalitarianism. The state should not decide what is right for individuals.

Anyway, I have a question as to the effectiveness of the revision. The amendment of the principle does not have the power to change the real world. It is impossible to resolve the problems that we actually face by rewriting the abstract words in the laws. The easy amendment could not achieve the important goal of improving the educational system. What is exactly wanted is concrete solutions suited to the problems. We need practical policies. Indeed, the revision narrows the area of the freedom of

thought and conscience, which is the most important and essential one for the democratic state. The hand of evil might reach for the next target. The Constitution might be the last fortress for the people who want a free and democratic society.

## 2. Administrative Law

### **The Act on the Reform of public service by introduction of competition**

Law No.51, June 2, 2006 (Effective on July 7, 2006) . 56provisions.

#### **Background:**

In each developed country, society is becoming increasing aged and fiscal conditions are severe. Thus small government is being aimed at worldwide, and grater efficiency and improvement in public services by introducing the energy of the private sector are planned for. The policy which reconsiders the monopolistic supply by the government of public services for the realization of efficiency and improvement of public services is being adopted widely, and the marketing test is regarded as an important policy which embodies this.

In Japan, after the collapse of the bubble economy, the finances of the country and of local public entities are still in a severe situation, so simplification and efficiency in the offer of public services are indispensable. And with recent years' social maturity, the national sense of values was diversified, and this has also had an influence on public services. That is to say, public services need to convert into a service more responds to the needs of individual citizens from a uniform service.

To answer such requests with limited funds, it is necessary that the simplification and efficiency of administrative mechanisms are carried out, the national burden reduced, the state of conventional regulations reconsidered, so that the regulation reforms which allow the private sector to take part in the field of the administrative service being advanced.

This act was concluded in the 164th Diet in 2006 as a part of such a series of regulation reforms.