

Comparison Table for the Chief Executive Election Bill

Provision of the Chief Executive (CE) Election Bill <i>(Clause Number and Heading)</i>	Similar Provision in the Legislative Council Ordinance (LCO) (Cap. 542) or relevant Subsidiary Legislation <i>Section/Subsection</i>	Comments
1. Short title and commencement	S.1	The commencement provision is a common legal arrangement. The power to commence the operation of the CE Election Ordinance is conferred on the Secretary for Constitutional Affairs.
2. Interpretation	S.3	Most definitions are similar or identical to those in the LCO, e.g. Court, Electoral Affairs Commission and prescribed public officers. Some are new definitions required specifically for this Bill, such as Chief Executive and Acting Chief Executive.
3. Term of office of Chief Executive	S.4	Based on BL 46.
4. Vacancy in office	S.13, 14, 15 & 67	CPG's revocation of CE's appointment may be required if LegCo passes an impeachment motion under BL 73(9).
5. Declaration of vacancy	S.35	Similar except that it is the Acting CE, rather than the Clerk to LegCo, who will publish the notice of vacancy in the Gazette.
6. Election to return candidate for appointment to fill vacancy in office	S.36	Following BL 53, in the event that the office of CE becomes vacant, a new CE with a five year term shall be elected within 6 months.
7. Election by Election Committee	S.19(Geographical Constituency), 21(Functional Constituency) & 23(Election Committee)	This reflects the BL requirements as laid down in Annex I.

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8. Constitution of Election Committee	S.22	This provides that the EC established on 14 July 2000 under the LCO shall be the EC for electing the CE in 2002.
9. Term of office of Election Committee	No equivalent	This reflects the term of office for the EC as stipulated under BL Annex I.
10. Polling date	S.6	For the CE election, it is normally the CE who will determine the polling date. Under some circumstances, the authority will fall on the Acting CE. Moreover, the time restriction for polling date also varies between the CE election and LegCo general elections.
11. Appointment of another polling date	S.36 of LCO & S.8 of EP(Reg) ¹	In case of LegCo by-election, it is the Chief Electoral Officer who is empowered to appoint the polling date.
12. Publication of polling date	S.6(1) of LCO	Similar
13. Eligibility for nomination as candidate	S.37	This reflects the eligibility criteria stipulated under BL 44.
14. Disqualification from being nominated	S.39	<p>More or less similar. However, the provision in respect of passports and travel documents, and the restriction that a person cannot run for the office of the CE if he has been a CE for two consecutive terms are only applicable to the CE election.</p> <p>As compared with LCO, the CE Election Bill has consolidated some disqualification provision which have already been caught by the eligibility criteria laid down in BL 44. Therefore,</p>

¹ EP(Reg) stands for the Electoral Affairs Commission (Electoral Procedure)(Legislative Council Regulation) (Cap. 541 Sub.leg D).

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		some provisions such as LCO S.39(1)(g) (representative or salaried functionary of a government of a place outside HK), LCO S.39(1)(h) (members of a legislature of a place outside HK, except the NPC & CPPCC ²) are not necessary.
15. Nomination period	S.7 of the EP(Reg)	For LegCo elections, the nomination period shall be no less than 14 days but no more than 21 days and there shall be a period of 28 days to 42 days between the close of nominations and the polling date. For the CE election, only the minimum requirements are stipulated. The nomination period shall be at least 14 days and there shall be a minimum of 21 days between the close of nominations and the polling day.
16. Manner of nomination	S.40	For the CE election, there is an explicit BL requirement for a candidate to be supported by at least 100 EC members. The CE Bill also makes it clear that an EC member will be disqualified from subscribing to the nomination if he has resigned or is disqualified from being elected an EC member. Apart from declaring to uphold the BL, to pledge allegiance to the HKSAR and in respect of his nationality and right of abode, a candidate for the CE election shall also declare that he is running in his own individual capacity.
17. Determination of validity of nomination	S.42A(1)	Similar

² NPC stands for the National People's Congress and CPPCC stands for Chinese People's Political Consultative Conference.

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18. Publication of nomination	S.42A(2)	In addition to the names of validly nominated candidates, the CE Election Bill also requires the Returning Officer to publish, in the Gazette, the names of the EC members subscribing to each of the validly nominated candidates. Same as LegCo elections, the nomination forms are also available for public inspection.
19. Withdrawal of candidature	S.42	For the CE election, withdrawal of candidature is allowed after the close of nominations. Withdrawal must be made not later than 5 p.m. on the last working day immediately preceding the polling date.
20. Disqualification from being elected	S.39	The difference in provision is due to the difference between the CE election and LegCo elections in respect of eligibility criteria and disqualification provisions.
21. Postponement or adjournment of polling or counting of votes	S.44	The only difference is that the power for postponing the election or adjourning the polling or counting of the CE election is given to the Electoral Affairs Commission rather than, as in the case of LegCo elections, the CE.
22. The only candidate shall be returned	S.46	Similar
23. A poll shall be conducted in contested election	S.47	Similar
24. Voting by members of Election Committee	S.47	Similar
25. Disqualification from voting	S.53	It is made clear in the CE Election Bill that an EC member is also disqualified from voting if he has resigned.

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26. System of voting	S.52	The system of voting is one of majority run-off, designed to achieve majority support for the successful candidate. The arrangement in respect of death or disqualification of candidates are designed specifically to cater for the need to enable the CE election to proceed to completion.
27. Death or disqualification of candidate before close of polling	S.46A	
28. Death or disqualification after close of polling but before declaration of result	S.46A	
29. Declaration and publication of result	S.58	Similar
30. Winning candidate presumed to be duly elected	S.56	Similar
31. Member of Legislative Council deemed to have resigned if returned for appointment as Chief Executive	No equivalent	This is necessary to maintain the checks and balances of the constitutional order enshrined by the BL. The CE and LegCo have different functions and carry out different duties. If a person was to assume both offices at the same time, it would undermine the checks and balances as provided for under the BL.
32. Winning candidate to declare he is not a member of political party	No equivalent	For the election of the first term CE in 1996, members of political party must resign from his political party before he could run for the office of the CE. What we now propose is only that the winning candidate must declare he is not a member of any political party after the election and undertakes that, during his term of office, he will not become a member of any political party or be bound by the discipline of any political party. This is necessary to ensure that, when discharging his duties, the CE will

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		take into account the overall interests of the community rather than the interests of the political party to which he belongs.
33. Election may be questioned only by election petition made on specified grounds	S.61	Similar
34. Who may lodge election petition	S.62	For the CE election, if the applicant is not a validly nominated candidate, he needs the support of at least 10 EC members before he can lodge an election petition.
35. Period within which election petition and appeal must be lodged	S.65	The period allowed for petition and appeals against the CE election, is only seven working days, owing to the need to settle all petitions expeditiously to enable CPG to make the appointment and CE to assume office in time.
36. Respondent to election petition	S.63	Similar
37. Court to have jurisdiction to determine election petition	S.64(1) & (2)	Similar
38. Determination of election petition	S.67	For the CE election, the Court, in case it rules the winning candidate as not duly elected, cannot further determine whether another candidate is duly elected instead. A new election should be held.
39. Acts of person not invalid if ruled not to be elected	S.71	Similar

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40. Time limit for legal challenges	No equivalent	This is necessary to ensure that judicial review challenging whether the winning candidate is duly elected could be settled expeditiously.
41. Chief Justice may make rules	S.64(3)	Similar
42. Appointment of Returning Officers and assistants	S.78	For appointment as the Returning Officer for the CE election, only judges of the High Court or above are eligible.
43. Offence to obstruct or hinder electoral officers	S.79	Similar
44. Electoral Affairs Commission may give direction to electoral officers	S.80	The only difference is that the power to give direction in respect of the CE election is conferred on the Electoral Affairs Commission rather than, as in the case of LegCo elections, the CE.
45. Death or incapacity of electoral officer not to terminate authority	S.81	Similar
46. Candidate entitled to send letters to members of Election Committee free of charge	S.43	Similar
47. Regulation	S.82	Similar
48. Amendment of schedule	S.83	Similar

**Comparison of the Schedule to the Chief Executive Election Bill
with the Legislative Council Ordinance**

Provision of the Schedule to the Chief Executive (CE) Election Bill <i>(Clause Number and Heading)</i>	Similar Provision in the Legislative Council Ordinance (LCO) (Cap. 542) <i>Section/Subsection</i>	Comments
1. Interpretation	3(1), (2) and (2A); 1(12), 1(12A), 1(12B), 7(1) and 7(2) of Schedule 2	New terms adopted in the CE Election Bill include “subsector by-election”, “subsector election”, “subsector ordinary election”, “sub-subsector by-election”, “sub-subsector ordinary election”. These additions are necessary to cater for the proposed new arrangements that subsector by-elections will be held to fill vacancies in the membership of the Election Committee (EC).
2. How Election Committee is to be constituted (including Tables 1 to 5)	1(1), (2), (3), (4), (5), (6), (7), (8) and (13) (including Tables 1 to 5) of Schedule 2	Essentially the same, with the exception that- (a) section 2(8) (vs section 1(8) of Schedule 2 to the LCO) is slightly modified to provide for ex-officio membership at the time a new term EC is formed. (b) paragraph (1) of item 2 in Table 5 will be deleted by means of an administrative CSA pursuant to the enactment of the Hong Kong Tourist Association (Amendment) Bill which scraps the membership system of the Association amongst other things.
3. Member of Election Committee may resign	No equivalent	A new clause to provide for the procedures to be followed if a member of the EC (other than an ex-officio member) wants to resign from the membership.
4. Electoral Registration Officer to compile and publish provisional register	No equivalent	A new mechanism to fill vacancies among the membership of the EC (other than the ex-officio membership) is provided for under the CE Election Bill. Under this arrangement, the Electoral Registration Officer (ERO) is required to

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		<p>compile and publish a provisional register of EC members on or before 30 November 2001 for the purposes of the 2002 Chief Executive (CE) election, and thereafter within 14 days after a vacancy in the office of the CE or a vacancy among the six Members of the 2nd term Legislative Council (LegCo) returned by the EC is declared. But no provisional register would be published should one have been published in the last 12 months or if the election to fill the vacancy falls outside the EC term.</p> <p>This provision also sets out under what circumstances (death, resignation or cessation of the eligibility to be a geographical constituency elector before a relevant date) would the name of an EC member (other than an ex-officio member) be removed to an omissions list while compiling the provisional register of the EC. It proposes that the provisional register and the omissions list be made available for public inspection.</p>
<p>5. Supplementary nomination or subsector by-election to be held to fill vacancy in membership of Election Committee</p>	<p>No equivalent</p>	<p>A new clause to empower the Electoral Affairs Committee (EAC) to arrange for a supplementary nomination (in the case of the religious subsector) or a subsector by-election (in the case of any other subsector with members returned by election) if the number of members representing a subsector as indicated in the provisional register of EC members falls short of the number of members allocated to the concerned subsector.</p>
<p>6. Composition of the religious subsector</p>	<p>2 of Schedule 2</p>	<p>Identical. The religious subsector is to be composed of the same six designated religious bodies as provided for in the LCO.</p>

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7. Nomination of members by the religious subsector	3 of Schedule 2	No substantive difference except that new provisions are added to extend the existing nomination arrangements to supplementary nomination.
8. Who is qualified for selection as a nominee	4 and 16 of Schedule 2	No substantive difference except that a new provision setting out the eligibility criteria for a nominee in a supplementary nomination is added. Such a nominee cannot be an EC member or a candidate at a subsector by-election with the nomination to be held around the same period as the supplementary nomination.
9. When a person is disqualified from being a nominee	5 of Schedule 2	Identical.
10. Application of the Elections (Corrupt and Illegal Conduct) Ordinance	6 of Schedule 2	Essentially the same.
11. Interpretation	7(1) of Schedule 2	Essentially the same, with the exception that the definition for “existing subsector final register” are revised to cater for the new requirement on annual publication of the subsector register.
12. Who is eligible to be registered as a voter	8 of Schedule 2	Essentially the same, subject to the removal of provision in respect of catering subsector which has become redundant following the elections to the second term LegCo.
13. Corporate voter to have authorized representative	9 of Schedule 2	Essentially the same, with the exception that the existing requirement of the authorised representative of a corporate elector for the functional constituency election and the subsector election being the same person is no longer necessary. This is because in future the subsector election and the functional constituency election will be held at different times.

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<p>14. Electoral Registration Officer to compile and publish a register of voters</p>	<p>10 of Schedule 2</p>	<p>This provision provides for the annual publication of subsector registers to ensure that an up-to-date register is in place in case a subsector election is required to be held. For the 2002 CE election, a subsector provisional register and final register will be published not later than 30 November and 14 December 2001 respectively. Thereafter, subsector provisional register and final register will be published annually not later than 15 April and 25 May respectively (at the same time when the corresponding registers for Geographical Constituencies and Functional Constituencies are published). The provision also sets out how a provisional register should be compiled.</p>
<p>15. When subsector final register is to take effect</p>	<p>11 of Schedule 2</p>	<p>Essentially the same.</p>
<p>16. When a subsector ordinary election is to be held</p>	<p>12 of Schedule 2</p>	<p>Identical.</p>
<p>17. Who is eligible to be nominated as a candidate at a subsector election</p>	<p>13 of Schedule 2</p>	<p>No substantive difference except that a new provision setting out the eligibility criteria for a candidate in a subsector by-election is added. Such a candidate cannot be a EC member or a nominee in a supplementary nomination for the religious subsector to be held around the same period as the nomination for the subsector election.</p>
<p>18. When a person is disqualified from being a subsector candidate</p>	<p>14 of Schedule 2</p>	<p>Identical.</p>

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19. Candidate to lodge deposit	15 of Schedule 2	Identical.
20. Person not to be nominated for more than one subsector	16 of Schedule 2	Identical.
21. Withdrawal of candidature	17 of Schedule 2	The main difference is that candidates for a subsector election are allowed to withdraw their candidature after the close of nominations. However, under the LCO, candidates can withdraw their candidature only before the close of nominations.
22. Who are validly nominated candidates for subsector election	42A	This clause is adapted from s.42A of the LCO to state clearly that the Returning Officer (RO) should decide on the validity of nominations and publish a list of validly nominated candidates after receipt of nominations.
23. Death, disqualification or withdrawal of a validly nominated candidate before date of subsector election	42B	This clause is adapted from s.42B of the LCO. It sets out the actions to be taken by the RO if it comes to light before the date of a subsector ordinary election or by-election that a validly nominated candidate has died, has withdrawn his candidature or is disqualified from being nominated as a candidate. It provides legal certainty for ROs to respond to such possibilities.
24. When holding of a subsector election can be postponed or adjourned	18 of Schedule 2	The main difference is that, under the CE Election Bill, the power to order the postponement or adjournment of a subsector election rests with the EAC, instead of the CE. This is proposed in the interest of fairness, as the EC under the Chief Executive Election Bill will be responsible for electing the CE.

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<p>25. What is to happen if insufficient number of candidates is nominated for a subsector</p>	<p style="text-align: center;">19 of Schedule 2</p>	<p>The main difference is the inclusion of new provisions setting out the actions to be taken by the RO if no candidate is validly nominated, or the number of validly nominated candidates is less than the number of members to be returned at a ordinary subsector election or by-election. These additions are necessary to cater for a full range of scenarios.</p>
<p>26. Death or disqualification of a validly nominated candidate before declaration of election result</p>	<p style="text-align: center;">46A</p>	<p>This clause is adapted from s.46A of the LCO. Under the CE Election Bill, the election proceedings for a subsector election will continue, if it comes to light on or after the election day but before the declaration of results that a validly nominated candidate has died or is disqualified, as if the death or disqualification had not occurred. This is to ensure that the conduct of elections will not be affected by the death or disqualification of a candidate.</p> <p>This clause also sets out the actions to be taken by the RO if the deceased or disqualified candidate is successful at the election.</p>
<p>27. How subsector election is to be conducted</p>	<p style="text-align: center;">20 of Schedule 2</p>	<p>Essentially the same.</p>
<p>28. Who is entitled to vote at a subsector election</p>	<p style="text-align: center;">21 of Schedule 2</p>	<p>Identical.</p>

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29. System of voting and counting of votes	22 of Schedule 2	<p>The main differences are: -</p> <p>(a) the existing system of voting and counting is extended to cover a subsector by-election, with suitable modifications;</p> <p>(b) if it comes to light before the declaration of election result that the winning candidate has died or is disqualified and there are still candidate(s) who has/have not been returned, the candidate or the candidate with the greatest number of votes should be declared to be duly elected in place of the deceased or disqualified candidate.</p>
30. When a voter is disqualified from voting at subsector election	23 of Schedule 2	Identical.
31. Consequences of non-compliance with requirements of this Schedule	24 of Schedule 2	Identical.
32. Misnomer or inaccuracy not to affect operation of election document	25 of Schedule 2	Identical, with the definition for “identity document” added for the sake of clarity.
33. Subsector election to be presumed valid	26 of Schedule 2	Identical.
34. Subsector election not to be questioned only because of defect in appointment of electoral officer	27 of schedule 2	Identical.
35. Returning Officer to publish result of subsector election	28 of Schedule 2	Identical.

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36. Offences by Returning Officers and others with respect to conduct of subsector election	29 of Schedule 2	Identical.
37. Voter not to be required to disclose how vote was cast	30 of Schedule 2	Identical.
38. Subsector candidates entitled to send letters to voters free of postage	31 of Schedule 2	Identical.
39. Subsector election may be questioned only by appeal to Revising Officer	32 of Schedule 2	Essentially the same, except that election appeals have to be filed with the Revising Office within 7 days, instead of 14 days under the LCO, the election results are published. This shorter appeal period is necessary to ensure that a new CE can be selected within six months as required by the Basic Law if the office of the CE becomes vacant.
40. Electoral Registration Officer to compile and publish final register	32(2)	The main difference is that the ERO has to compile and publish a final register of EC members after the publication of results of a subsector by-election, in addition to a subsector ordinary election. He is also required to do so, if after the publication of a provisional register of EC members, it is found that there is no vacancy in the membership of the EC.
41. Electoral Registration Officer to amend final register to give effect to change in ex-officio membership	32(2); 1(9)-(11) of Schedule 2	Identical. These provisions empower the ERO to amend the EC final register as and when there are changes to the ex-officio membership.

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42. Electoral Registration Officer may amend register	32(3)	No substantive difference except that the ERO is also empowered to incorporate Revising Officer's determination on appeals against the result of a subsector election into the final register of EC members, if he is directed by the latter to do so.
43. When final register is to take effect	33(2)	No substantive difference, with proposed changes to set out, in clearer terms, the validity of the final register.
44. Appointment of Electoral Registration Officer and assistants	75	No substantive difference except that the appointment of the ERO and assistant EROs is only for the purpose of registering persons as members of the EC or as subsector voters.
45. Electoral Registration Officer may specify forms	76	Identical.
46. Appointment of Revising Officer	77	No substantive difference except that the appointment of Revising Officer is only for the purpose of handling appeals relating to the registration of persons as EC members or as subsector voters, as well as appeals against results of subsector elections.
47. Appointment of Returning Officers and assistants	78	No substantive difference except that the appointment of Returning Officers and Assistant Returning Officers is only for the purpose of subsector elections and nominations/supplementary nominations.
48. Right of appeal to Revising Officer against decisions of Electoral Registration Officer	34	No substantive difference except that the right to appeal is limited to the decisions of the ERO on the registration of persons as EC members or as subsector voters.

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<p>49. Savings and transitional provisions for first subsector provisional register</p>	<p>No equivalent</p>	<p>This clause is to provide for the basis on which the first provisional subsector register to be published not later than 30 November 2001 is to be prepared. In brief, the provisional registers for subsectors with corresponding FCs will be based on the Functional Constituencies final registers published in May 2001, whereas the provisional registers for the remaining subsectors will be based on the subsector final registers published in May 2000.</p>

Constitutional Affairs Bureau

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