

**Administration's Responses to Points raised on 5 June 2001
by Members of the Bills Committee
on the Chief Executive Election Bill**

(for submission to the Bills Committee meeting to be held on 12 June 2001)

Clause 2

Q1: What are the criteria for drawing up the list of persons under the definition of "prescribed public officer" in clause 2?

A1: The definition of "prescribed public officer" in clause 2 of the CE Election Bill is essentially the same as the one adopted in section 39 of the Legislative Council Ordinance (LCO). The list of public officers to be disqualified from LegCo candidature is drawn up on the basis of the consideration whether the officer holder of a particular post is likely to have a conflict of interest if he is elected a LegCo member. In the case of the CE election, we consider that it would be relevant to take into account the likely conflict of interest of holders of such posts and that it is necessary to prohibit such public officers from standing for the elections unless they resign from the public service. This is to ensure the integrity of the public service and to avoid conflict of interest.

Q2: What are the reasons for including persons specified in (f) and (g) under the definition?

A2: The list of persons put under the definition of "prescribed public officer" in the CE Election Bill are the same as those adopted in section 39 of the LCO. When the LCO was last amended in 1999, we proposed to extend the provisions on disqualification from LegCo candidature to cover the Privacy Commissioner and the Chairperson of the Equal Opportunities Commission, as well as their staff in view of the nature of their functions and duties. The roles of the two offices are similar to that the Ombudsman (i.e. paragraph (c)). They are conferred with extensive statutory powers, among which are the ability to gain access to sensitive personal data, power to conduct investigations into complaints, and power to issue codes of practice for compliance. To ensure the integrity of their work and to avoid any conflict of interest in the discharge of their duties,

they as well as their staff should be disqualified from running in the election.

The above proposal was accepted by the Bills Committee on the Legislative Council (Amendment) Bill 1999 and passed by the LegCo in July 1999.

Clause 3

Q3: What is the term of office of a CE elected to fill a vacancy in the CE office in the middle of a 5-year term?

A3: The term of a CE is five years. This is clearly stated in BL 46.

BL 53 provides that in the event that the office of the CE becomes vacant, a new CE shall be selected within six months in accordance with BL 45. There is no other provisions in the BL that prescribes a shorter term of office for the new CE.

Q4: Would the Administration review the drafting of the Chinese version of clause 3(2)?

A4: We will consider Members' views when finalizing the Administration's CSAs.

Clause 4

Q5: Would the Administration consider other consequential amendments to the Bill if clause 4 is amended, such as clauses 5, 6(e)?

A5: Where clause 4 is amended, we will amend clauses 5 and 6 consequentially, if necessary.

Clause 5

Q6: Would the Administration consider amending clause 5(2)(b) to read “specify the date on which the office became or becomes vacant” to cover the situation where the vacancy in office arises beyond the 21 day period referred to in clause 5(2)(a)?

A6: Under clause 5(1), a declaration will be made after the office has actually fallen vacant. If the CPG removes CE with effect from a future date, it is prudent to declare the vacancy only after the office has become vacant in accordance with clause 5(2).

Clause 14

Q7: Whether the same disqualification provision in respect of treason in section 39(1)(c) of LCO should apply to a candidate of the CE election?

A7: We agree that person convicted of treason or sentenced to death should be disqualified from being nominated as candidate of the CE election forever. We will move a CSA for this purpose to bring the CE Election Bill in line with S. 39(1)(b) and (c) of the LCO.

Subject to the Bills Committee’s agreement, we will draft CSAs to provide for that and present them, together with other Administration CSAs, for Members’ discussion at the meeting to be held on 19 June 2001.

Q8: Would a candidate be disqualified from being elected if he is convicted of any offence under clause 14(f) after the nomination but before the close of polling?

A8: We will move a CSA to put it beyond doubt that a candidate will be disqualified from being elected if he is convicted of any offence under clause 14(f) after the nomination but before the polling date.

Subject to the Bills Committee’s agreement, we will draft CSAs to provide for that and present them, together with other Administration CSAs, for Members’ discussion at the meeting to be held on 19 June 2001.

Clause 32

Q9: Whether a member of a political party operating outside Hong Kong can stand for the CE election?

A9: The CE Election Bill does not prohibit member of political parties from being nominated as candidates in the CE election. A person who is a member of a political party is allowed to run in the CE election if he meets all the qualification criteria and if he is not disqualified from being nominated as a candidate and meets other requirements under the Basic Law or any other enactment. Nevertheless, if a member of political party is elected at the CE election, he must resign from his party within seven working days.

Q10: Would the Administration reconsider the drafting of clause 32 having regard to some Members' views that the provision fails to achieve the objective envisaged by the Administration?

A10: We consider that the definition of "political party" under the CE Election Bill does not require further amendment since it is based on existing definition under the Societies Ordinance (Cap.151) and the Electoral Affairs Commission Ordinance (Cap. 541). This definition is sufficient to achieve our purpose.

Constitutional Affairs Bureau
9 June 2001