

**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 1(2)

Q1: When does the Ordinance come into operation? Whether different parts of the Ordinance will come into operation on different dates and if so, please explain why?

A1: Once the CE Election Bill is passed and comes in effect, a new mechanism for updating the membership of the "Election Committee" will be brought into operation at the same time. This is provided for in the Schedule of the Bill. In essence, the Schedule provides for a mechanism to ascertain and fill the vacancies among the EC membership. A new set of subsidiary legislation in relation to the EC subsector by-election and supplementary nomination (for the religious subsector) will have to be introduced in order to conduct any EC subsector by-election or supplementary nomination that may be needed to fill vacancies in the EC membership. Until such subsidiary legislation are put in place, no EC subsector by-election and other elections involving the "Election Committee" can be held. The timetable for the necessary legislative programme and the conduct of the EC subsector by-election is as follows -

<u>Timing</u>	<u>Event</u>
11 July 2001	Passage and commencement of the CE Election Bill
Mid July to October 2001	Making of subsidiary legislation to provide for the publication of EC subsector registers, election deposit, subscriber requirements, electoral procedures etc. in respect of the EC subsector by-elections

October to November 2001	Negative vetting of subsidiary legislation by the LegCo
end November 2001	Publication of EC subsector provisional register
mid December 2001	Publication of EC subsector final register
December 2001 to January 2002	Nomination and canvassing for the EC subsector by-election
January 2002	Polling date for the EC subsector by-election

Members will note that if there is any vacancy in the 6 LegCo seats returned by the EC after the enactment and commencement of the CE Election Bill, the LegCo by-election to fill such vacancy can only be held **after** the EC subsector by-election is completed in January 2002. Taking into account the time for nomination and canvassing for the LegCo by-election, the earliest polling date for any LegCo by-election will be in March 2002. This would mean that any LegCo seat which may become vacant after the CE Election Bill has been passed and brought into effect will remain vacant for a long period.

As leaving a LegCo seat vacant for a long period is not conducive to the effective operation of the LegCo, we have explored other options to deal with the problem. One option is to empower, in the Bill, the SCA to commence the Bill after any LegCo by-election that may be conducted. To do so will make it possible to conduct the LegCo by-election under existing arrangements as provided for in the Legislative Council Ordinance. Under this arrangement, the LegCo by-election can be held about two to three months after the vacancy arises because there will be no need to arrange for a EC subsector by-election or supplementary nomination.

There is also another possibility which we have examined. It involves not commencing those provisions in the Bill

which will have an impact on the LegCo by-election when the Bill is passed. Our preliminary analysis shows that the majority of the provisions will have an impact on the LegCo by-election. These include:

- (a) Clause 8(2), (3) and (4) of the Bill and the entire Schedule to the Bill;
- (b) consequential amendments to other enactments under clauses 50, 51, 52, 55 – 62, 63 – 75, 76, 77, 78 and 79 of the Bill;
- (c) definition provisions in clause 2 such as “electoral officer”, “final register of members of the Election Committee”, “member of the Election Committee”, “Revising Officer” and “subsector election”; and
- (d) any provisions in the Bill proper that make reference to (a) and (c) above, which include clauses 16, 18, 20, 21, 24, 25, 34, 44, 46, 47 and 48.

The implication of the above is that it leaves only a rather small number of remaining provisions that can commence immediately. In view of this, we do not believe this is a meaningful option and hence do not recommend it.

We therefore consider it appropriate to commence the Bill on a day to be appointed by SCA. Should a vacancy in the 6 LegCo seats returned by the EC arises in mid July, the LegCo by-election can be held by mid September and the Bill can then be commenced after the conduct of the LegCo by-election.

Constitutional Affairs Bureau
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