

Chief Executive Election Bill:
Committee Stage Amendments Proposed by the Administration
 (for discussion at the Bills Committee meeting to be held on 19 June 2001)

Proposed Committee Stage Amendments (CSAs)	Clause No.
<p>(I) Vacancy in office</p>	
<p>The CSAs to clause 4 are proposed in the light of the discussion with Members at previous meetings. Having regard to Members' views and that of the HK Bar Association, we propose to amend clause 4(c) as follows –</p> <p>“(c) If the Central People’s Government removes the Chief Executive from office –</p> <ul style="list-style-type: none"> (i) upon his resignation under Article 52 of the Basic Law; (ii) upon his resignation otherwise than under Article 52 of the Basic Law; (iii) under any circumstances under which he must resign under Article 52 of the Basic Law but is unable to do so; (iv) upon the reporting to it for decision of a motion of impeachment passed against him under Article 73(9) of the Basic Law; or (v) under any other circumstances under the Basic Law” <p>In our view, this formulation has set out all the circumstances when the CPG will remove the CE from office so that an election to return a new CE can be triggered. This is necessary to make sure that the legislation can cater for all possible circumstances.</p>	<p>4</p>

Proposed Committee Stage Amendments (CSAs)	Clause No.
(II) Polling date	
<p>To ensure that the polling date for the CE election is certain and definite, we propose to move CSAs to clauses 10 and 11. Under clause 10, the polling date will fall on -</p> <p>(a) the first Sunday on or immediately before the date 95 days before the office of the CE becomes vacant in the event of normal five-year expiry; or</p> <p>(b) the first Sunday on or immediately after the date 120 days after the office of the CE falls vacant in the event of vacancy in the office of the CE.</p>	10
<p>Clause 11 deals with the situation where it is necessary to fix another polling date because –</p> <p>(a) the CE election fails (e.g. death and/or disqualification of all candidates); or</p> <p>(b) the CE elect cannot assume office.</p> <p>For (a), we propose that a new poll should be held on the first Sunday 42 days after the election fails. This will do away with the power to appoint a new polling date we originally proposed to confer on the Electoral Affairs Commission (EAC).</p> <p>At the meeting held on 12 June 2001, some Members opined that it might be better to allow a longer lead time than 42 days. We have carefully considered this suggestion, but we are constrained by the requirement under BL 53. BL 53 requires that a new CE has to be selected within six months after the vacancy arises. According to the proposed new clause 10, a CE election will be held on the first Sunday 120 days after the vacancy arises. If this election fails (and hence no new CE is elected), we have only about two months to arrange a new election so as to meet the six-month requirement of BL 53. As Members will appreciate, it will be impossible to meet this BL requirement if we are to allow a longer period than 42 days under such circumstances.</p>	11

Proposed Committee Stage Amendments (CSAs)	Clause No.
<p>As for (b), we propose that if the CE elect cannot assume office, a new poll will be held –</p> <p>(a) <i>where an election is held in anticipation of a vacancy arising from normal five-year expiry of term</i> : on the first Sunday 120 days after the expiry of term of the serving CE; or</p> <p>(b) <i>where an election is held pursuant to a vacancy in the office of the CE</i> : on the first Sunday 120 days after the expiry of the six-month period since the vacancy first arose.</p> <p>This is the same arrangement which Members have agreed to in respect of the situation when the office of the CE falls vacant.</p>	
(III) Resignation of EC member	
<p>The CSA to clause 3 of the Schedule of the Bill is to give effect to the proposal that once an elected or nominated EC member becomes an ex-officio member, he will be deemed to have resigned from his membership in the elected or nominated subsector. With this amendment in place, the relevant vacancy can then be filled by way of a EC subsector by-election or supplementary nomination.</p>	Clause 3 of the Schedule
(IV) Disqualification from being nominated	
<p>The proposed CSAs will disqualify a person convicted of treason or sentenced to death from being nominated a candidate forever, rather than within a period of five years as originally proposed under the Bill.</p>	14
(V) Withdrawal of candidature	
<p>In the light of Members' concern, we propose to move CSAs to clause 19, providing that a candidate may only withdraw his candidature before the close of nominations. This is the same as that applicable to the LegCo elections.</p>	19

Proposed Committee Stage Amendments (CSAs)	Clause No.
(VI) Technical CSAs	
<p>We propose to move a number of technical CSAs to the Bill. Some of them are consequential amendments flowing from the CSAs highlighted above. Others are necessary to enhance the clarity of certain provisions of the Bill or to rectify minor errors.</p> <p>Technical CSAs which we propose include –</p> <p>(i) <i>Bill proper</i></p> <p>(a) <i>clause 2</i>: the CSA to the definition of “polling date” is consequential upon the amendments to clauses 10 and 11 regarding how the polling date is to be fixed. The deletion of sub-clause 2 is necessary since the reference to the CE under clause 11(2) will be deleted;</p> <p>(b) <i>clause 3</i> : the CSA requires a notice be published in the Gazette specifying the date when the term of office of the CE commences;</p> <p>(c) <i>clause 12</i> : the CSA is to make clear that the polling date calculated under the formulae as prescribed under clauses 10 and 11 has to be published in the Gazette;</p> <p>(d) <i>clause 14</i> : the CSA to clause 14(g) is to put it beyond doubt that only those persons who are found to be mentally disordered at the time of the CE election will be disqualified. Those who have recovered will not be caught therein.</p> <p>(e) <i>clauses 16 and 25</i> : the CSAs are to ensure that the appropriate time reference is adopted, as to when an EC person sentenced to imprisonment is disqualified from making nomination and voting at the CE election;</p>	Various

Proposed Committee Stage Amendments (CSAs)	Clause No.
<p>(f) clause 20 : the amendment to clause 20(1)(b) and the addition of clause 20(1)(ba) is to address the concern raised by the LegCo Legal Adviser. The CSAs will put it beyond doubt that a candidate will be disqualified from being elected if he has been convicted of offences under clause 14(f) within five years before the polling date (as against “before the date of nomination” under clause 14(f));</p> <p>(g) clause 22 : the CSA is consequential upon the amendment to the withdrawal provision (clause 19);</p> <p>(h) clause 30 : the CSA is to make it clear that a winning candidate is presumed to be duly elected unless the Court of First Instance or the Court of Final Appeal, as the case may be, rule him as unduly elected;</p> <p>(i) clause 34 : the CSA is made in response to the LegCo Legal Adviser’s suggestion to enhance clarity of this provision in respect of the disqualification of a EC member from subscribing to an election petition;</p> <p>(j) clause 39 : the CSA is to put it beyond doubt that both election petition and judicial review cases are covered, such that the acts of the CE will not be invalidated even if he is later ruled to be unduly elected;</p> <p>(k) clause 60: the CSA is consequential upon the amendment to clause 11. The EAC no longer needs to make regulation in respect of the appointment of another polling date as a fixed formula is proposed to be adopted; and</p> <p>(l) clause 76 : the CSA is to rectify a minor error because clause 35(3), to which it refers, is not in existence under the Bill.</p>	

Proposed Committee Stage Amendments (CSAs)	Clause No.
<p data-bbox="352 271 730 309"><i>(ii) Schedule to the Bill</i></p> <p data-bbox="427 353 1214 568">(a) <i>Clause 1 of the Schedule</i> : To address the concern of the LegCo Legal Adviser, we propose to provide the definition of “corporate member” in clause 1(1) instead of incorporating it in clause 1(3)(b)(ii);</p> <p data-bbox="427 613 1214 869">(b) <i>Table 5 in Clause 2, clauses 12 and 49 of the Schedule</i> : Following the passage of the Hong Kong Tourist Association (Amendment) Bill, the membership of the Association has been abolished. These CSAs are to reflect this change;</p> <p data-bbox="427 913 1214 1384">(c) <i>Clause 4 of the Schedule</i> : The CSA to clause 4(4)(a)(ii) is consequential upon the amendment to clause 3 of the Schedule. The other CSAs are to make clear that the name of an EC member will be removed if he has ceased to be registered, eligible to be registered or has been disqualified from being registered as an elector for a geographical constituency when the Electoral Registration Officer (ERO) compiles the provisional register of EC member;</p> <p data-bbox="427 1429 1214 1592">(d) <i>Clauses 5 and 40 of the Schedule</i> : We consider that it is more appropriate to use the term “ascertain” than “determine” in the context of these clauses;</p> <p data-bbox="427 1637 1214 1980">(e) <i>Clauses 9, 18 and 30 of the Schedule</i> : These CSAs are made in response to the suggestion of LegCo Legal Adviser to achieve consistency with clause 14(g) of the Bill proper in respect of persons who are found to be mentally incapable, and clause 33(1) of the Bill proper in respect of the term “corrupt conduct and illegal conduct”;</p>	

Proposed Committee Stage Amendments (CSAs)	Clause No.
<p>(f) Clause 11 : The revised definition of “subsector final register” and “subsector provisional register” are adopted from the definition of these two terms in the LegCo Ordinance;</p> <p>(g) Clause 21 of the Schedule : Having regard to Members’ concern on the proposed withdrawal mechanism, we propose to move a CSA to allow a subsector candidate to withdraw his candidature only before the close of nominations;</p> <p>(h) Clauses 23, 26 and 29 of the Schedule : These CSAs are made in response to the LegCo Adviser’s suggestion to use wording which is the same as the one adopted in clause 28(1)(b) of the Bill proper; and</p> <p>(i) Clauses 42 of the Schedule : The CSA is to enable the ERO to amend the final register of EC member to incorporate the decision of Revising Officer on appeal made under clause 48 of the Schedule.</p>	

Constitutional Affairs Bureau
16 June 2001

CS895f

CHIEF EXECUTIVE ELECTION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Constitutional Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	(a) In subclause (1) - (i) in the definition of "polling date", by deleting "appointed under" and substituting "fixed in accordance with"; (ii) in the definition of "subsector election", by deleting "1(1)" and substituting "1". (b) By deleting subclause (2).
3	By adding - "(3) The date on which the term of office of the Chief Executive commences shall be published by notice in the Gazette."

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By deleting paragraph (c) and substituting -

"(c) if the Central People's Government removes the Chief Executive from office -

- (i) upon his resignation under Article 52 of the Basic Law;
- (ii) upon his resignation otherwise than under Article 52 of the Basic Law;
- (iii) under any circumstances under which he must resign under Article 52 of the Basic Law but is unable to do so;
- (iv) upon the reporting to it for decision of a motion of impeachment passed against him under Article 73(9) of the Basic Law; or
- (v) under any other circumstances under the Basic Law."

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(a) In subclause (1), by deleting "be appointed by the Chief Executive." and substituting -

"be -

- (a) where the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise is a Sunday, that Sunday; or

(b) where the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise is not a Sunday, the Sunday immediately preceding the commencement of that period."

(b) By deleting subclause (2).

(c) In subclause (3), by deleting "be appointed by the Acting Chief Executive." and

substituting -

"be -

(a) where the 120th day after the date on which the office becomes vacant as specified under section 5(2)(b) is a Sunday, that Sunday; or

(b) where the 120th day after the date on which the office becomes vacant as specified under section 5(2)(b) is not a Sunday, the Sunday immediately following the first-mentioned day."

(d) By deleting subclause (4).

11 (a) By deleting the heading and substituting -

"New polling date".

- (b) In subclause (1) -
 - (i) by deleting "appointed under section 10 or paragraph (c)" and substituting "fixed in accordance with section 10, paragraph (c) or subsection (2)";
 - (ii) in paragraph (b), by deleting everything after "validly" and substituting "nominated dies or is disqualified under section 20(1) from being elected,";
 - (iii) by deleting paragraph (c) and substituting -
 - "(c) new polling date shall be -
 - (i) where the 42nd day after the close of nominations or the day on which the last remaining candidate who is validly nominated dies or is disqualified (as the case may be)

is a Sunday, that Sunday;

or

- (ii) where the 42nd day after the close of nominations or the day on which the last remaining candidate who is validly nominated dies or is disqualified (as the case may be) is not a Sunday, the Sunday immediately following the first-mentioned day; and".

- (c) In subclause (2), by deleting everything after "at an" and substituting

-

"election for appointment to fill the vacancy in the office of the Chief Executive -

- (a) that will arise under section 4(a) cannot assume the office

of the Chief Executive on the day on which the vacancy arises, the new polling date shall be -

- (i) where the 120th day after the expiry of the term of office of the serving Chief Executive is a Sunday, that Sunday; or
 - (ii) where the 120th day after the expiry of the term of office of the serving Chief Executive is not a Sunday, the Sunday immediately following the first-mentioned day;
- (b) that arises under section 4(b) or (c) cannot assume the office of the Chief Executive before the expiry of 6 months commencing on the date on which the vacancy arises, the new polling date shall be -
- (i) where the 120th day

after the expiry of those 6 months is a Sunday, that Sunday; or

- (ii) where the 120th day after the expiry of those 6 months is not a Sunday, the Sunday immediately following the first-mentioned day,

and the Chief Electoral Officer shall fix another nomination period accordingly."

12 By deleting everything after "date" and substituting "fixed in accordance with section 10 or 11 shall be published by notice in the Gazette."

14 (a) By adding -

"(ea) he has, in Hong Kong or any other place, been sentenced to death and has not either -

- (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the

sentence; or

(ii) received a free pardon;

(eb) he has been convicted of treason;".

(b) In paragraph (f)(i), by deleting "or to death".

(c) In paragraph (g), by deleting "by the Court under section 10(1) of" and substituting "for the time being under".

16(5) (a) In paragraph (a), by deleting "3" and substituting "3(1)".

(b) By adding -

"(aa) is serving a sentence of imprisonment for the time being;".

(c) In paragraph (b), by deleting "(d),".

19 (a) In subclause (1), by deleting "5:00 p.m. on the last working day before the polling date" and substituting "the close of nominations".

(b) By adding -

"(3) A person who is nominated as a candidate shall cease to be regarded as such upon the withdrawal of his candidature.".

20(1) (a) By deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction".

- (b) In paragraph (b), by deleting "of section 14; or" and substituting "(except paragraph (f)) of section 14;".
 - (c) By adding -
 - "(ba) a candidate is or has been convicted, within the 5 years before the polling date, in the manner prescribed by subparagraph (i), (ii), (iii) or (iv) of section 14(f); or".
- 22(b)
- (a) By adding "at the close of nominations" before "but".
 - (b) In subparagraph (i), by adding "or" at the end.
 - (c) By deleting subparagraph (ii).
- 25
- (a) In paragraph (a), by deleting "3" and substituting "3(1)".
 - (b) By adding -
 - "(aa) is serving a sentence of imprisonment on the polling date of an election;".
 - (c) In paragraph (b), by deleting "(d),".
- 30
- By deleting "under section 38" and substituting "or the Court of Final Appeal pursuant to the determination of an election petition or

otherwise".

- 34 (a) In subclause (1)(b)(iii), by deleting "was validly nominated but".
(b) In subclause (4), by deleting "disqualified under section 16(5) from making nomination at an election, he shall" and substituting -
"disqualified -
(a) under section 16(5) from making nomination at an election; or
(b) under section 25 from voting at the poll at an election,
he shall".
- 35(2) By deleting "公布" and substituting "發下".
- 39 In paragraph (b), by adding "Court, the Court of Appeal or the" after "the".
- 44(2) By deleting "they are" and substituting "it is".
- 60(b) In the proposed section 7(1A), by deleting paragraph (a).
- 68 In the proposed section 53(2)(aa), by deleting "3" and substituting "3(1)".
- 76(b) In the proposed item 65, by deleting "and (3)".

Schedule,
section 1

- (a) In subsection (1), by adding -
- ""corporate member" (團體成員), in relation to a body included in a subsector, means a body that is a member of the body so included;"
- (b) In subsection (3)(b)(ii), by deleting "a body that is a" and substituting "a corporate".

Schedule,
section 2

In column 3 of item 2 of Table 5, by deleting paragraph (1).

Schedule,
section 3

- (a) By deleting the heading and substituting
- "Resignation of member of Election Committee".**
- (b) By adding before subsection (1) -
- "(1A) If -
- (a) on 14 July 2000, a person was a member of the Election Committee constituted on that date under the Legislative Council Ordinance (Cap. 542) (other than an ex-officio member of the Committee within the meaning of that Ordinance in force on that date); and
- (b) after that date, the Electoral Registration Officer, by adding the

person's name to the final register of members of the Election Committee, registered the person as an ex-officio member of the Committee under section 1(10) of Schedule 2 to that Ordinance in force immediately before the commencement of section 74 of this Ordinance, the person is deemed to have resigned, on the commencement of this section, from the membership referred to in paragraph (a).

(1B) If -

- (a) a person is a member of the Election Committee (other than an ex-officio member); and
- (b) the Electoral Registration Officer, by adding the person's name to the final register of members of the Election Committee, registers the person as an ex-officio member of the Committee under section 41(3),

the person is deemed to have resigned, on

the date of the publication under section 41(4) of a notice to the effect that the person's name has been so added, from the membership referred to in paragraph (a).".

Schedule,
section 4

- (a) In subsection (1)(b), by adding "thereafter," before "within".
- (b) In subsection (4)(a) -
 - (i) by deleting "not later than" and substituting "on";
 - (ii) in subparagraph (ii), by adding ", or being deemed to have resigned," after "resigned";
 - (iii) in subparagraph (iii), by deleting ", or eligible to be registered," and substituting "or eligible to be registered, or having been disqualified from being registered,".

Schedule,
section 5

- (a) In subsection (1) -
 - (i) in paragraph (a), by deleting "determine" and substituting "ascertain";
 - (ii) in paragraph (b), by deleting "determined" and substituting "ascertained".
- (b) In subsection (2), by deleting "a determination" and substituting "an ascertainment".

- Schedule,
section 7
- In subsection (7), by deleting "designated" where it secondly appears.
- Schedule,
section 9
- (a) In paragraph (c)(i), by adding "conduct" after "corrupt".
- (b) By deleting paragraph (d) and substituting -
- "(d) is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or".
- Schedule,
section 11(1)
- (a) In the definition of "subsector final register", by deleting "of persons entitled to vote at a subsector election, compiled and published" and substituting "compiled and published for subsectors".
- (b) In the definition of "subsector provisional register", by deleting "of persons entitled to vote at a subsector election, compiled and published" and substituting "compiled and published for subsectors".
- Schedule,
section 12
- In subsections (6)(a) and (b) and (16), by deleting "(a),".
- Schedule,
section 18
- (a) In paragraph (e)(i), by adding "conduct" after "corrupt".

- (b) By deleting paragraph (f) and substituting -
- "(f) is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or".

Schedule,
section 21

- (a) In subsection (1), by deleting "5 p.m. on the working day before the date of the subsector election, but not otherwise" and substituting "the close of nominations".
- (b) In subsection (2), by deleting "a subsector" and substituting "such a".

Schedule,
section 23

- (a) In the heading, by deleting
", disqualification or withdrawal" and substituting **"or disqualification"**.
- (b) In subsection (1) -
- (i) by deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction";
- (ii) by deleting "or has withdrawn his candidature under section 21";
- (iii) by deleting "or the withdrawal".
- (c) In subsection (2)(a), by deleting "or has withdrawn his candidature".
- (d) In subsection (4), by deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction".

- Schedule,
section 25(3) By deleting "的" before the full stop.
- Schedule,
section 26 (a) In subsection (1), by deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction".
 (b) In subsection (2)(d), by deleting "members" where it first appears and substituting "member".
- Schedule,
section 27(3) (a) By deleting "and" and substituting a comma.
 (b) By adding "and the EAC Regulations" after "(Cap. 541)".
- Schedule,
section 29 (a) In subsection (5) -
 (i) by deleting ", the candidate to be elected for the subsector";
 (ii) in paragraph (a), by adding "the candidate to be elected for the subsector" before "is";
 (iii) in paragraph (b), by adding "the candidates to be elected for the subsector" before "are".
 (b) In subsection (8), by deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction".
- Schedule,
section 30(1) (a) In paragraph (d)(i), by adding "conduct" after "corrupt".

(b) By deleting paragraph (e) and substituting -

"(e) is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or".

Schedule,
section 40(4)

(a) In paragraphs (b) and (c), by deleting "determined" and substituting "ascertained".

(b) By deleting "determination" and substituting "ascertainment".

Schedule,
section 42

In subsection (2), by adding "or 48" after "39".

Schedule,
section 49

(a) In subsection (1)(a), by deleting "the" where it secondly appears.

(b) In subsection (2)(d)(i), by deleting "(a),".