

立法會
Legislative Council

LC Paper No. CB(2)236/01-02

Ref : CB2/SS/1/01

**Paper for House Committee meeting
on 2 November 2001**

**First report of the Subcommittee on
subsidiary legislation relating to Chief Executive election**

Purpose

This paper reports on the deliberations of the Subcommittee on the following five items of subsidiary legislation tabled in the Legislative Council (LegCo) on 10 October 2001 -

- (a) Electoral Affairs Commission (Registration) (Electors for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) (Amendment) Regulation 2001 (L.N. 200);
- (b) Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (L.N. 197);
- (c) Registration of Electors (Appeals) (Amendment) Regulation 2001 (L.N. 199);
- (d) Election Committee (Appeals) Regulation (L.N. 196); and
- (e) Legislative Council (Formation of Election Committee) (Appeals) (Repeal) Regulation 2001 (L.N. 198).

The Subcommittee

2. At the House Committee on 5 October 2001, Members agreed to set up a subcommittee to study all items of subsidiary legislation relating to the Chief Executive (CE) election. A membership list of the Subcommittee is in **Appendix I**.

3. The five items of subsidiary legislation referred to in paragraph 1(a) to (e) above have been discussed at two meetings of the Subcommittee.

Deliberations of the Subcommittee

4. The main deliberations of the Subcommittee are summarised below.

Timetable for the 2002 CE election

5. In response to the request of the Subcommittee, the Administration has provided a timetable for the 2002 CE election as follows -

- (a) Scrutiny of subsidiary legislation relating to the CE election by the Subcommittee - October to mid December 2001;
- (b) Publication of the subsector and EC provisional registers - mid November 2001;
- (c) Publication of the subsector final register - early December 2001;
- (d) Nomination and canvassing for the EC subsector by-elections - mid December 2001 to early January 2002;
- (e) Polling date for the EC subsector by-elections - early January 2002;
- (f) Publication of the EC final register - mid January 2002;
- (g) Nomination and canvassing for the CE election - mid February to March 2002; and
- (h) Polling date for the CE election - 24 March 2002.

Electoral Affairs Commission (Registration) (Electors for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) (Amendment) Regulation 2001 (L.N. 200)

Purpose of Amendment Regulation

6. The principal Regulation provides for the procedural arrangements for the registration of electors for the functional constituencies (FC). It also provides for the registration of members for the EC and voters of its subsectors for the second LegCo general election held in 2000 in accordance with the requirements laid down in the Legislative Council Ordinance (Cap. 542).

7. The Regulation amends the principal Regulation to provide for the detailed arrangements for the registration of voters for the subsectors and members of the EC, and for the publication of the registers and omissions lists for the subsectors and the EC to tie in with the provisions of the Chief Executive Election Ordinance (Cap. 569).

Forms of notifications

8. Under section 12 of the principal Regulation, a notification may be sent by the Electoral Registration Officer (ERO) for the purpose of compiling a FC provisional register or a subsector provisional register. The notification must contain the name and identity document number, and also specify the sex of the person to whom it is to be sent.

9. According to the Electoral Affairs Commission, information regarding the identity document number and sex of a person are not considered essential for the purpose of notification. In order to better protect the personal data of electors in the process of sending notifications by mail, section 12 of the principal Regulation is amended to dispense with the requirement to include the identity document number and sex of the recipient of the notification.

Handling of notice of appeal

10. The Subcommittee notes that a corporate elector or voter may lodge a notice of appeal against the decision of the ERO not to register its authorised representative appointed as a replacement or substitute. The detailed procedure for handling the notices is currently provided by the Registration of Electors (Appeal) Regulation (Cap. 542, sub. leg.). Unlike the notices of claim or objection, an appellant has to lodge a notice of appeal to the Revising Officer (RO) instead of the ERO. Any notices of appeal received not later than 11 days before the polling date for the FC or the subsector concerned will be heard and settled before the election.

11. However, the existing arrangement has created some operational difficulties in that a notice of appeal may be made by a body throughout the year under the existing Regulation, and no RO will be specially appointed after the appeal period in May.

12. The Regulation proposes to provide for the notices of appeal to be handled in the same manner as that for the notices of claim and objection. Under the new section 31A, notices of appeal, if any, has to be submitted to the ERO first. The ERO will then notify the RO of any appeal received. The deadline for lodging an appeal remains the same.

EC subsector by-elections

13. In response to the Subcommittee, the Administration has advised that in preparation for the CE election to be held on 24 March 2002, EC subsector by-elections will be held for the following four subsectors to fill vacancies in the EC membership -

- (a) Finance;
- (b) Architectural, surveying and planning;
- (c) Legal; and
- (d) Heung Yee Kuk.

14. The Administration has also advised that following the passage of the Chief Executive Election Ordinance, an elected or nominated EC member who is also an ex-officio member by virtue of his election to LegCo or the National People's Congress is deemed to have resigned from his membership in the elected or nominated subsector. In addition, as civil servants at senior level are prohibited from participating in any electioneering activities, Mr Antony LEUNG Kam-chung, the Financial Secretary, has tendered his resignation as a member of the Finance subsector.

Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (L.N. 197)

15. The Subcommittee notes that the provisions of the Regulation are essentially drawn from the relevant part of the Registration of Electors (Appeals) Regulation (Cap. 542, sub. leg.). The Regulation provides for the procedure for a RO to hear and determine any appeal, claim or objection in relation to the registration of the voters for the subsectors of the EC and the registration of the members of the EC. The appeal handling procedures also tie in with the statutory voter registration cycle prescribed by the Electoral Affairs Commission (Registration) (Electors for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) (Amendment) Regulation 2001 (L.N. 200).

16. In response to comments made by the Legal Service Division, the Administration has agreed to move amendments to section 3 to align the English text with the Chinese text.

Registration of Electors (Appeals) (Amendment) Regulation 2001 (L.N. 199)

17. The Regulation amends the principal Regulation consequential to the Election Committee (Registration) (Voters for Subsectors) (Members of

Election Committee) (Appeals) Regulation (L.N. 197) and the Electoral Affairs Commission (Registration) (Electors for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) (Amendment) Regulation 2001 (L.N. 200) and to remove those provisions in relation to the second LegCo general election which are spent.

18. In response to comments made by the Legal Service Division, the Administration has agreed to introduce amendments to section 3(d)(ii) and (d)(iii) of the Amendment Regulation to achieve consistency in both the English and Chinese texts.

Election Committee (Appeals) Regulation (L.N. 196)

19. The Regulation provides for the functions and duties of a RO and the procedures to be followed by him in handling appeals against the results of EC subsector elections and the registration of nominated members.

20. Section 12 of the Regulation provides that any ruling made by the RO under section 6 does not invalidate acts done by the person as a member of the EC whose election or whose registration as such a member is questioned before the making of such ruling. The Subcommittee has requested the Administration to consider whether the provision should also apply in respect of the RO's decision upon review under section 10.

21. The Administration has agreed to move an amendment to the effect that section 12 shall apply to any ruling made by the RO under section 6, or any reversal or confirmation of such ruling by him under section 10(1).

Legislative Council (Formation of Election Committee) (Appeals) (Repeal) Regulation 2001 (L.N. 198)

22. The Subcommittee notes that this Regulation is to repeal the Legislative Council (Formation of Election Committee) (Appeals) Regulation consequential to the making of the Election Committee (Appeals) Regulation (L.N. 196).

Extension of scrutiny period

23. To allow time for the Subcommittee to report its deliberations to the House Committee, the Subcommittee has agreed that the Chairman of the Subcommittee, Hon IP Kwok-him, should move a motion at the Council meeting on 7 November 2001 to extend the scrutiny period of the five items of subsidiary legislation discussed in paragraphs 6 to 22 above to 14 November 2001.

Recommendation

24. Subject to the amendments to be moved by the Administration as discussed in paragraphs 16, 18 and 21 above (**Appendices II - IV**), the Subcommittee agrees to support the five items of subsidiary legislation.

Advice sought

25. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
1 November 2001

**Subcommittee on subsidiary legislation relating to
Chief Executive Election**

Membership list

Chairman

Hon IP Kwok-him, JP

Members

Hon Cyd HO Sau-lan
Hon NG Leung-sing, JP
Hon HUI Cheung-ching, JP
Hon CHAN Yuen-han, JP
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon TAM Yiu-chung, GBS, JP
Hon LEUNG Fu-wah, MH, JP

(Total : 12 Members)

Clerk

Mrs Percy MA

Legal Adviser

Mr Stephen LAM

Date

23 October 2001

ELECTION COMMITTEE (REGISTRATION) (VOTERS FOR SUBSECTORS)
(MEMBERS OF ELECTION COMMITTEE) (APPEALS) REGULATION (L.N. 197)

<u>Section</u>	<u>Amendment Proposed</u>
3	<p>(a) in subsection (2) (c) (iii) and (d) (iii), by repealing "on a date not later than 1 day";</p> <p>(b) in subsection (3) -</p> <p>(i) in paragraph (a) -</p> <p>(A) by repealing "in any year";</p> <p>(B) by repealing "7 日" and substituting "第 8 日或";</p> <p>(C) by repealing everything after "須在" and substituting "自該投票日期前 25 日起計的一段 21 日的期間內；及";</p> <p>(ii) in paragraph (b) -</p> <p>(A) by repealing "in any year" where it first appears;</p> <p>(B) by repealing "7 日內或該投票日期當日或" and substituting "第 8 日";</p> <p>(c) in subsection (6) (a) (iii), by repealing "on a date not later than 1 day".</p>

REGISTRATION OF ELECTORS (APPEALS) (AMENDMENT) REGULATION 2001
(L.N. 199)

Section

Amendment Proposed

- 3(d)
- (a) in subparagraph (ii) (A), by repealing "7 日" and substituting "第 8 日或";
 - (b) in subparagraph (iii) -
 - (i) by repealing "in any year" where it first appears;
 - (ii) by repealing "7 日內或該投票日期當日或" and substituting "第 8 日".

Election Committee (Appeals) Regulation (L.N. 196)

Section

Amendment Proposed

12

by repealing section 12 and substituting -

"12. Validity of acts of person

A -

- (a) ruling made by the Revising Officer under section 6; or
- (b) reversal or confirmation of such ruling by him under section 10(1),

does not invalidate acts done by the person as a member of the Election Committee whose election or whose registration as such a member is questioned before the making of such a ruling, reversal or confirmation, as the case may be."