

LEGISLATIVE COUNCIL BRIEF

Legislative Council Ordinance (Chapter 542)

District Councils Ordinance (Chapter 547)

Chief Executive Election Ordinance (Chapter 569)

ELECTION COMMITTEE (REGISTRATION) (VOTERS FOR SUBSECTORS) (MEMBERS OF ELECTION COMMITTEE) (APPEALS) REGULATION

REGISTRATION OF ELECTORS (APPEALS) (AMENDMENT) REGULATION 2001

INTRODUCTION

At the meeting of the Executive Council on 25 September 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that –

- (a) the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation should be made under section 46 of the Chief Executive Election Ordinance (Cap. 569); and
- (b) the Registration of Electors (Appeals) (Amendment) Regulation 2001 should be made under section 82 of the Legislative Council Ordinance (Cap. 542) and section 81 of the District Council Ordinance (Cap. 547).

BACKGROUND AND ARGUMENT

General Background

2. The Chief Executive Election Ordinance (“the Ordinance”) provides that the Chief Executive shall be elected by the Election Committee (“EC”). The Ordinance provides for the constitution of the EC, including the registration of voters for EC subsectors and members of the EC, in a Schedule thereto. Under section 48 of the Schedule, a person who is dissatisfied with a decision of the Electoral Registration Officer (“ERO”) made in respect of the registration of voters for EC subsectors and members of the EC may appeal against the decision to a Revising Officer (“RO”) (who may be a magistrate or a legal officer to be appointed by the Chief Justice). Section 46 of the Ordinance empowers the Chief Executive in Council to make regulations to provide for the functions of, and appeals to, a RO.

3. The procedures for handling appeals against the registration of EC subsector voters by a RO are now provided for in a regulation made under the Legislative Council Ordinance and District Councils Ordinance, namely, the Registration of Electors (Appeals) Regulation (Cap. 542, sub. leg.). This regulation was approved by the Chief Executive in Council in 1997 and subsequently amended in 1999. With the removal of the relevant provisions on the constitution of the EC, including the power of making regulations relating to the RO, from the Legislative Council Ordinance to the Ordinance, we need to provide for the relevant appeal handling procedures in a new regulation to be made under section 46 of the Ordinance. As a direct result of the making of this new regulation, we need to revise the Registration of Electors (Appeals) Regulation, in the form of an amendment regulation.

THE REGULATIONS

Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation

4. The provisions of the new regulation are essentially drawn from the relevant part of the Registration of Electors (Appeals) Regulation. The new regulation provides for the functions and duties of a RO and the procedures to be followed by him in handling appeals relating to the registration of EC subsector voters in the subsector

registers. The appeal handling procedures need to tie in with the statutory voter registration cycle to be prescribed by regulation by the Electoral Affairs Commission. **Clause 3** of the new regulation provides that, with the exception of the subsector provisional register to be published in 2001, the RO has to make a ruling on each of the appeals against registration in the annual subsector provisional register, after conducting a hearing between 15 April and 11 May in the year the relevant register is published. **Clause 5** further requires that the RO should notify the ERO of his rulings not later than 17 May to enable the latter to reflect his rulings in the relevant final register. We will adopt a slightly more compressed timetable in handling appeals against registration in the 2001 subsector provisional register to make way for the conduct of subsector by-elections before the election of the Chief Executive is to be held in March 2002. **Clauses 3** and **5** provide that the RO should conclude all hearings within a 20-day period after the date of publication of the 2001 subsector provisional register and inform the ERO of his rulings no later than one day after the end of the 20-day period.

5. The new regulation extends the above appeal handling mechanism to cover appeals in relation to the registration of EC members. This provision is added in view of the new requirement in the Ordinance that the ERO should publish an EC provisional register before each Chief Executive election (except in the case a new EC is to be formed), omitting the names of those EC members who are dead, have resigned from the EC, or have lost their eligibility to be registered as a geographical constituency elector. Any person who is dissatisfied with the decision of the ERO can file an appeal to the RO. There is therefore a need to provide for the procedural steps to be followed by the RO in handling appeals in relation to the registration of EC members in the EC register. Under **clause 3** of the regulation, the RO is required to conduct hearings on appeals against registration in an EC provisional register within a 20-day period after the date of publication of the relevant register. He will have to inform the ERO of his rulings not later than one day after the end of the 20-day period.

Registration of Electors (Appeals) (Amendment) Regulation 2001

6. The Registration of Electors (Appeals) (Amendment) Regulation 2001 which is made under the Legislative Council Ordinance and the District Councils Ordinance contains amendments consequential to the new regulation. The amendments remove provisions relating to

appeals against registration of EC subsector voters when the EC was constituted under the Legislative Council Ordinance with the sole function of electing six Members to the second term of the Legislative Council. The opportunity is also taken to make a number of improvements to the drafting of the existing regulation where appropriate.

LEGISLATIVE TIMETABLE

7. The two regulations will be published in the Gazette on 5 October 2001 and tabled in the Legislative Council on 10 October 2001 for negative vetting.

BASIC LAW IMPLICATIONS

8. The Department of Justice advises that the regulations do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

9. The Department of Justice advises that the regulations are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

10. The regulations do not affect the current binding effect of the relevant ordinances.

FINANCIAL AND STAFFING IMPLICATIONS

11. The regulations have no additional financial or staffing implications.

PUBLIC CONSULTATION

12. Public consultation is considered unnecessary given the technical nature of the regulations.

PUBLICITY

13. A press release will be issued on 4 October 2001. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

14. Any enquiries on this brief should be addressed to Ms Doris Ho, Principal Assistant Secretary (Constitutional Affairs) 4, on 2810 2159.

Constitutional Affairs Bureau
4 October 2001

KF1222

LEGISLATIVE COUNCIL BRIEF

Legislative Council Ordinance (Chapter 542)

Chief Executive Election Ordinance (Chapter 569)

ELECTION COMMITTEE (APPEALS) REGULATION

LEGISLATIVE COUNCIL (FORMATION OF ELECTION COMMITTEE) (APPEALS) (REPEAL) REGULATION 2001

INTRODUCTION

At the meeting of the Executive Council on 25 September 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that –

- (a) the Election Committee (Appeals) Regulation should be made under section 46 of the Chief Executive Election Ordinance (Cap. 569); and
- (b) the Legislative Council (Formation of Election Committee) (Appeals) (Repeal) Regulation 2001 should be made under section 82 of the Legislative Council Ordinance (Cap. 542).

BACKGROUND AND ARGUMENT

General Background

2. The Chief Executive Election Ordinance (“the Ordinance”) provides that the Chief Executive is to be elected by the Election Committee (“EC”) to be constituted in accordance with the Schedule thereto. The Schedule provides that the EC is to be composed of three types of members: members returned by EC subsector elections; nominees nominated by designated bodies of the religious subsector

(“nominated members”); and ex-officio members. To ensure the integrity and transparency of our electoral system, section 39 of the Schedule provides that an appeal against the result of an EC subsector election may be lodged to a Revising Officer (“RO”). Section 48 of the Schedule provides that any person who is dissatisfied with the registration of a nominee as an EC member representing the religious subsector, after the process of nomination is completed, may make an appeal to a RO. Section 46 of the Ordinance empowers the Chief Executive in Council to make regulations to provide for the functions of, and appeals to, a RO who is responsible for handling these appeals.

3. The procedures for handling appeals against the results of EC subsector elections and the registration of nominated members are now provided for in a regulation made under the Legislative Council Ordinance, namely, the Legislative Council (Formation of Election Committee) (Appeals) Regulation (Cap. 542, sub. leg.). This regulation was approved by the Chief Executive in Council in 1998 and subsequently amended in 2000. With the removal of the relevant provisions on the constitution of the EC, including the power of making regulations relating to the RO, from the Legislative Council Ordinance to the Ordinance, we need to provide for the relevant appeal handling procedures in a new regulation to be made under section 46 of the Ordinance. As a direct result of the making of this new regulation, we need to repeal the Legislative Council (Formation of Election Committee) (Appeals) Regulation.

THE REGULATIONS

Election Committee (Appeals) Regulation

4. The provisions of the Election Committee (Appeals) Regulation are essentially drawn from the Legislative Council (Formation of Election Committee) (Appeal) Regulation, with necessary modifications to reflect new requirements. The new 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. As the registration of ex-officio membership is based on the fact that a person is holding office either as a

member of the Legislative Council or Hong Kong deputy to the National People's Congress, the chance of dispute is minimal. We therefore do not consider that an appeal mechanism in respect of their registration is required.

5. **Clause 3** of the new regulation provides that any person claiming to be a candidate at an EC subsector election may lodge an appeal with the RO. As for nominated members, **clause 4** provides that any person who considers a nominated member is not eligible to be registered as an EC member representing the religious subsector may object to the registration of such member. Appeals may be lodged with a RO only on grounds specified in the new regulation. In the case of appeals against the election result, such grounds include the elected member being ineligible to be, or disqualified from being, a candidate at the election, or occurrence of material irregularity in relation to the election. As for registration of nominees of the religious subsector, the grounds for appeal may include the nominated member being ineligible to be, or disqualified from being, a nominee, or occurrence of material irregularity in relation to the nomination process. **Clause 5** provides that there will be a seven-day period for lodging an appeal and a period of 20 days is allowed for the RO to conduct hearings.

6. The RO is required under **clause 6** to make a ruling on each of the appeals after conducting a hearing. If he rules that an EC member who was declared elected at an EC subsector election was not duly elected, or that a nominated member should not have been so registered in the EC register, the Electoral Registration Officer should delete the particulars of the person concerned from the EC register in accordance with **clause 8** of the regulation. That person would cease to be an EC member.

Legislative Council (Formation of EC) (Appeals) (Repeal) Regulation 2001

7. The regulation is to repeal the Legislative Council (Formation of Election Committee) (Appeals) Regulation which currently sets out the appeal handling procedures in relation to the return of the

members of the EC constituted according to the Legislative Council Ordinance with the sole function of returning six Members to the second term Legislative Council.

LEGISLATIVE TIMETABLE

8. The two regulations will be published in the Gazette on 5 October 2001 and tabled in the Legislative Council on 10 October 2001 for negative vetting.

BASIC LAW IMPLICATIONS

9. The Department of Justice advises that the regulations do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

10. The Department of Justice advises that the regulations are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

11. The regulations do not affect the current binding effect of the relevant ordinances.

FINANCIAL AND STAFFING IMPLICATIONS

12. The regulations have no additional financial or staffing implications.

PUBLIC CONSULTATION

13. Public consultation is considered unnecessary given the technical nature of the regulations.

PUBLICITY

14. A press release will be issued on 4 October 2001. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

15. Any enquiries on this brief should be addressed to Ms Doris Ho, Principal Assistant Secretary (Constitutional Affairs) 4, on 2810 2159.

Constitutional Affairs Bureau
4 October 2001

KF1223