

LEGISLATIVE COUNCIL BRIEF

DISTRICT COUNCILS BILL

INTRODUCTION

At the meeting of the Executive Council on 8 December 1998, the Council **ADVISED** and the Chief Executive **ORDERED** that the District Councils Bill should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

Previous Executive Council Discussion

2. At previous meetings of the Executive Council on the Review of District Organisations, it was decided that approval in principle should be given for adopting, among other things, the following changes as the general direction for the future development of District Boards (DBs):

- (a) the structure of the 18 DBs should be retained and the 18 Provisional DBs should be renamed, in English, "District Councils" (DCs) upon expiry of the term of office of their members on 31 December 1999;
- (b) the DCs should be given additional resources and responsibility, particularly in the areas of advising on food and environmental hygiene and organising/subsidising recreational and cultural activities at the district level; and
- (c) the first election to the DC should be held in late 1999 with the number of elected seats to be determined on the basis of one elected seat per 17 000 population.

The Proposal

3. We propose to put forward in mid-December 1998 a new piece of legislation to provide for the establishment and election of the DCs rather than amending the existing Provisional District Boards Ordinance (Cap 366). Such an arrangement has the following benefits:

- (a) it provides a clearer and more comprehensive picture for the establishment and election of the proposed DCs, following the example of the Legislative Council Ordinance;
- (b) it represents a tidier approach than amending the existing legislation; and
- (c) it makes the bill more intelligible to LegCo members.

4. Processing of this Bill is subject to a tight timeframe as our aim is to have new DC members elected in time to replace the existing Provisional DB members whose appointment would lapse by the end of December 1999.

THE BILL

5. The objective of this Bill is to provide for:

- (a) the declaration of Districts, the establishment of a body known as DC for each District, the composition of a DC's membership, the qualification for membership and disqualification from being a member; and
- (b) in the case of elected members, the procedure for electing members to DCs.

The main provisions in the Bill, are explained in detail in **paragraph 6 to 8** below. **(Note: A copy of the Loose Bill will be distributed to Members by the Government Printer shortly.)**

District Councils Provisions

6. The structure of DCs is essentially the same as the current Provisional DBs. The substance of the relevant provisions are based on similar provisions in the previous DB ordinances (1988 and 1994 editions) and the Legislative Council Ordinance. The main provisions are as follows:

(a) **Establishment**

There will be 18 Districts in the Hong Kong Special Administrative Region (HKSAR), and a DC will be established for each of these Districts to replace the corresponding Provisional DB w.e.f. 1 January 2000. **Clauses 3 and 4** provide for the declaration of Districts and establishment of District Councils. The number of Districts to be declared and boundaries of the Districts, the names of the DCs and their dates of establishment and the number of members to be elected or appointed to each DC are contained in **Schedules 1, 2 and 3**. **Clause 8** confers power on the Chief Executive in Council to amend these Schedules.

(b) **Composition**

Clause 9 provides that a DC is to be composed of elected members, appointed members and in the case of DCs in the New Territories, the Chairman of each Rural Committee within the District as ex officio members. For the first term of DC members, it is proposed in Schedule 3 that there should be 390 elected members, 102 appointed members and 27 ex officio members, a total of 519 members as compared with 373 in 1994-97 and 469 in 1997-98. The following guiding principles are used :

- (i) the number of elected members should be based on the ratio of one to every 17,000 population (which is the same as in 1994);
- (ii) the number of appointed members on average should be about one-fifth of the total number of members in a DC;

- (iii) the number of ex officio members should be based on the number of Rural Committees established under the Heung Yee Kuk Ordinance (Cap 1097), of which there are 27 at present, spreading over nine Districts in the New Territories.

(c) **Membership and term of office**

- (i) **Part IV** of the Bill contains the provisions on membership, including the eligibility criteria for becoming the various categories of members and the grounds on which a member is disqualified from holding office. To ensure consistency, disqualification criteria for different categories of members are the same.
- (ii) **Clause 11** provides that the Chief Executive may appoint persons as appointed members of a DC for a term of four years or for a shorter period. **Clause 18** states that an ex officio member's office becomes vacant if he ceases to be the Chairman of a Rural Committee or becomes disqualified. **Clause 22** provides that an elected member is to hold office for four years beginning on 1 January next following the ordinary election. **Clauses 13 and 17** require an appointed or an ex officio member to swear acceptance of office before becoming a member. Such includes declaration to the effect that they uphold the Basic Law and pledge allegiance to the HKSAR. For an elected member, the person is required to make declaration to the same effect when he is nominated as a candidate in a DC election.
- (iii) The combined effect of **clause 10** and the eligibility criteria for candidature in **clause 20** ensures that a member cannot occupy more than one seat at the same time whether in the same or different DCs.

(d) **Functions**

Clause 59 sets out the functions of a DC. They are mainly to advise the Government on matters affecting the well being of the people in the District, including matters relating to food and environmental hygiene services and to undertake environmental improvements and promotion of recreational and cultural activities

within the District where funds are made available for the purpose. Although the Bill's provision in this respect remains basically the same as the Provisional District Boards Ordinance, the Administration will through administrative arrangements enhance the role of DCs in matters concerning food and environmental hygiene services, provision and management of local facilities and promotion of recreational and cultural activities at the district level.

(e) **Chairman and Vice Chairman**

At present each Provisional DB elects a Chairman. **Clause 60** provides that members of a DC can elect a Chairman and a Vice Chairman. **Clause 64** empowers a Vice Chairman to carry out the duties of a Chairman when the Chairman is absent.

(f) **Procedures**

Similar to the Provisional District Boards Ordinance, **clauses 66, 67 and 69** enable a DC to make standing orders for the purpose of carrying out its functions, to appoint a public officer as secretary and to appoint committees for carrying out any of its functions respectively. **Clause 68** stipulates that 'not less than half' of the members constitutes a quorum.

(g) **Gazette notification**

Clause 6 empowers the Chief Executive to declare in the Gazette any area within a District to be a constituency, having regard to the recommendations made by the Electoral Affairs Commission (EAC). **Clauses 81 and 82** require the Designated Officer (i.e. Director of Home Affairs) to give notice in the Gazette within 21 days the name of persons who have become appointed or ex officio members and to give notice in the Gazette of a vacancy in the membership of a DC within 21 days after becoming aware of the vacancy.

Electoral Provisions

7. The provisions relating to electoral arrangements for the DC elections contained in this Bill are modelled on the relevant provisions of the Legislative Council Ordinance.

(a) **Date for holding an election**

Clause 27 requires the Chief Executive to specify a date for holding an ordinary election, having regard to the requirement that the first ordinary election must be held in 1999. Subsequent ordinary elections should be held at intervals of every four years and the date for the ordinary election must be not earlier than 60 days and not later than 15 days before commencement of a new term of office of DC members. **Clause 36** empowers the Chief Executive to direct the postponement of an ordinary election or the adjournment of polling or counting of votes in case of disruption by riot, violence or public danger.

(b) **Eligibility of electors**

The qualification and disqualification for registration as DC electors will be the same as that for LegCo electors. On this basis, **clause 28** provides that only an elector is entitled to vote and an elector is entitled to vote only once at an election. Since the next Final Register of electors to be compiled under the LegCo Ordinance will be published in early 1999 before the DC constituencies are delineated, we will on the basis of the above mentioned Final Register publish a separate register not later than September 1999 for the first DC ordinary election to indicate the DC constituency in which an elector is eligible to vote (**clause 30**).

(c) **Filling of casual vacancies**

Clause 32 provides that when a vacancy in the elected membership of a DC arises, the EAC will arrange a by-election to be held provided that there shall be no by-election within four months preceding the end of the current term of DC members.

(d) **Qualification and disqualification for candidature**

Clause 20 sets out that a person to be nominated as a candidate at an election must be a registered elector, aged 21 or above and has ordinarily resided in Hong Kong in the preceding three years. **Clause 21** sets out the grounds (e.g. holding a specified public office or being convicted of a specified offence) on which a person would be disqualified from being nominated or elected.

(e) **Voting system**

One member is to be returned in an election from each constituency (**clause 7**) and the “first past the post” voting system is to be used in the DC election (**clause 39**).

(f) **Election petition**

Clause 47 provides that an election petition may be lodged with the court on the grounds that the winning candidate is not eligible or is caught by the disqualification provisions concerning candidature.

(g) **Demarcation of constituency boundaries**

The Electoral Affairs Commission Ordinance has already provided for the Commission’s function in making recommendations on DC constituency boundaries but without setting out detailed procedures. Our proposed amendments to this Ordinance (**paragraph 26 of Schedule 6**) now provide that in making recommendations on DC constituencies, the Commission must adhere to the boundary of the relevant DC and the number of elected members for that DC as specified by the Chief Executive in Council, including any revision made by the Chief Executive in Council not later than 12 months before the deadline for the Commission to submit its recommendations. However, there would be flexibility for the Commission to deviate from the population criterion at 25% either way, which is the same percentage adopted in past DB elections. If there is a need to depart from this margin, the Commission has to include an explanation in its report to the Chief Executive.

Repeal and consequential amendments

8. **Clause 85** repeals the Provisional DB Ordinance with effect from 1 January 2000 which is also the date of establishment of the DCs. **Clause 86 and Schedule 6** set out amendments to affected Ordinances, which are consequential on the repeal of the Provisional District Boards Ordinance and the enactment of the District Councils Ordinance.

PUBLIC CONSULTATION

9. The future development of DBs is part and parcel of our recent Review of District Organisations. In this extensive public consultation exercise (which included the LegCo, the two Provisional Municipal Councils, 18 Provisional DBs, major political parties, academics, the Arts Development Council, Sports Development Board, staff of the two municipal services departments and open forums for the general public), the majority view favours the retention of the structure of the 18 DBs with enhanced role and additional resources. Although the views on composition of members were diverse, some saw the merits of retaining an appropriate number of appointed seats in the future DBs.

BASIC LAW IMPLICATIONS

10. Article 97 of the Basic Law provides that “district organisations which are not organs of political power may be established in the HKSAR, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation”. Article 98 further stipulates that “the powers and functions of the district organisations and the method for their formation shall be prescribed by law”. The Department of Justice advises that the proposed legislation is consistent with the above two provisions and does not conflict with those provisions of the Basic Law, carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

11. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

12. On the basis of previous experience in registering electors and in making arrangements for elections, we estimate that the electoral arrangements for the 1999 DC elections would require additional financial and manpower resources in the financial year 1999-2000. We will work out in due course the details of the resources required and seek the approval of the Finance Committee of the Legislative Council, if necessary.

13. With regard to the additional cost arising from operation of the future DCs, we estimate that an extra provision of around \$14.3 million per annum will be required for meeting the honoraria due to increase of 50 members serving on the DCs w.e.f. 1 January 2000.

LEGISLATIVE TIMETABLE

14. The legislative timetable approved by the Chief Executive in Council is as follows :

Publication in the Gazette	11 December 1998
First Reading and commencement of Second Reading debate	16 December 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

15. A press briefing on the main features of the Bill will be held one day prior to its publication.

16. For enquiries in relation to this Bill, please contact the following officer:

Mr Paul WONG (黃保華)

Principal Assistant Secretary (Constitutional Affairs)

Tel. no. 2810 3802

Fax no. 2523 4889

Mr John LEUNG (梁志仁)

Principal Assistant Secretary (Constitutional Affairs)

Tel. no. 2810 2123

Fax no. 2523 4889

Constitutional Affairs Bureau

Government Secretariat

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