

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/98

Bills Committee on District Councils Bill

Minutes of Meeting
held on Monday, 25 January 1999 at 8:30 am
in Conference Room A of the Legislative Council Building

Members Present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon Lee Kai-ming, JP
Hon Fred LI Wah-ming
Hon Ronald ARCULLI, JP
Hon CHEUNG Man-kwong
Hon Christine LOH
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon LAU Wong-fat, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon TAM Yiu-chung, JP

Members Absent : Hon Cyd HO Sau-lan
Dr Hon Raymond HO Chung-tai, JP
Hon LEE Wing-tat
Hon Eric LI Ka-cheung, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon MA Fung-kwok
Hon Ambrose CHEUNG Wing-sum, JP
Dr Hon LEONG Che-hung, JP
Hon SIN Chung-kai

Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon SZETO Wah

- Public Officers :**
- Attending**
- Mr Robin IP
Deputy Secretary for Constitutional Affairs 2
- Mrs Maureen CHAN
Deputy Secretary for Constitutional Affairs 3
- Mr Paul WONG
Principal Assistant Secretary for Constitutional Affairs
- Mr Augustine CHENG
Deputy Director of Home Affairs
- Mr James O' NEIL
Principal Government Counsel (Elections)
- Mrs N DISSANAYAKE
Senior Assistant Law Draftsman
- Mr Vidy CHEUNG
Senior Assistant Law Draftsman
- Miss Monica LAW
Senior Assistant Law Draftsman
- Clerk in Attendance :** Mrs Constance LI
Chief Assistant Secretary (2) 2
- Staff in Attendance :** Mrs Justina LAM
Assistant Secretary General 2
- Mr Arthur CHEUNG
Assistant Legal Adviser 5
- Miss Flora TAI
Senior Assistant Secretary (2) 2
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I. Clause-by-clause examination of the Bill

The Bills Committee continued clause-by-clause examination of the Bill starting from clause 55 and the gist of discussion was summarized below.

Clause 55 - When an election petition is terminated

2. Mr Ronald ARCULLI said that clause 55 only provided for the termination of an election petition when the petitioner died. He asked the Administration to advise whether there were other circumstances which might lead to termination of an election petition. Deputy Secretary for Constitutional Affairs 2 (DS(CA)2) undertook to provide a written response.

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Clause 56 - When respondent can withdraw from election petition proceedings and be substituted

3. Members had no comments.

Clause 57 - Acts of person not invalid if declared not to be elected

4. Members did not raise any queries.

Clause 58 - What is to happen if an elected member is determined not to have been duly elected

5. Mr Ronald ARCULLI asked about a court ruling on an election petition arising from the Regional Council functional constituency election in the last Legislative Council (LegCo) election. DS(CA)2 replied that according to section 67(2) of the Legislative Council Ordinance (Cap. 542), the Court must determine whether the person whose election was questioned was or was not duly elected and, if not duly elected, determine whether some other person was duly elected instead.

Clause 59 - Functions of a District Council

6. In response to Mr CHENG Man-kwong, DS(CA)3 confirmed that the (Provisional) District Boards Ordinance did not specify that Provisional District Boards would advise on "matters relating to food and environmental hygiene services". Mr CHENG then queried the rationale for highlighting "food and environmental hygiene services" in the Bill, since matters "affecting the well-being of the people in the District" in clause 59(a)(i) was broad enough to cover all relevant services. Deputy Secretary for Constitutional Affairs 3 (DS(CA)3) advised that strong views had been expressed during the public consultation exercise in 1998 that the provision of food and environmental hygiene services should be centralized. The Administration considered that it might worth

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highlighting in the Bill that the enhanced role of a District Council (DC) would include advising on these matters, in order to give a clear message to all concerned. Notwithstanding the Administration's explanation, Mr CHENG maintained the view that this function was highlighted only to reflect the Administration's political decision to abolish the two municipal councils.

7. Mr Ronald ARCULLI asked about the scope of issues to be discussed by a DC. DS(CA)3 replied that in the past, a District Board could discuss any issue affecting the well-being of people in the District. Mr ARCULLI remarked that the drafting of clause 59 gave the impression that while a DC could discuss a wide range of issues relating to the District under sub-clause 59(a), funds would be provided only for a limited scope of activities under sub-clause 59(b). DS(CA)3 responded that increased resources would be provided to DCs for carrying out their enhanced functions.

8. Mr David CHU sought clarification on the differences of functions between the Legislative Council (LegCo) and a DC. He asked whether a DC could also discuss matters relating to the Central Government or other governments. Assistant Legal Adviser (ALA) advised that the functions of LegCo were stipulated in the Basic Law and the primary function of LegCo was concerned with law-making. However, a DC was an advisory body on district matters and its functions were specified in the Bill. Responding to Mr CHU and Mr CHEUNG Man-kwong, ALA said that matters to be discussed by a DC must be related to the well-being of the people in the District. Deputy Director of Home Affairs (DD(HA)) supplemented that while District Boards could discuss issues of territory-wide concern such as the avian flu, the focus was more on District concerns such as cleaning of markets in the District.

9. Mr CHEUNG Man-kwong asked whether the Administration would consider allocating funds to DCs to provide greater flexibility for carrying out functions not listed in clause 59(b), for example, the provision of public facilities in the District. In response, DD(HA) explained the existing funding arrangements for District Boards. He said that large capital projects such as construction of schools and old age homes were centrally administered.

10. Mr TSANG Yok-sing inquired whether the scope of clause 59(b) would include community activities such as "Anti-Crime Campaigns" in the District. DD(HA) responded that District Boards had previously been allocated funds for organizing anti-crime and civic education programmes and that "environmental improvements" under clause 59(b) already covered a wide range of activities for funding purposes. Mr TAM Yiu-chung and Mr CHAN Kam-lam suggested that the Administration should consider adding "community activities" in this sub-clause to avoid ambiguity. DS(CA)3 undertook to consider the suggestion.

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11. Mr Ronald ARCULLI expressed concern that the present drafting of clause 59(b) might impose restrictions on the use of DC funds. DD(HA) clarified that the only proposed addition to the functions of a DC was sub-clause 59(a)(i) relating to food and environmental hygiene services, while other provisions in clause 59 remained the same as in the existing legislation. DS(CA)3 added that it would not be possible for DCs to carry out all types of projects given the limited funds available. Mr Howard YOUNG suggested that the proposed sub-clause 59(a)(i) should be deleted to avoid arguments. In this connection, Mr CHAN Wing-chan expressed concern that it might not be possible for a DC to discuss food and environmental hygiene matters if the sub-clause was deleted.

12. Mr ARCULLI noted that some members would propose Committee stage amendments (CSAs) to this clause and suggested the Bills Committee further discuss these issues with the Administration at the meeting scheduled for the afternoon. The Chairman advised that members could explain their proposed CSAs at the afternoon meeting, and that the Administration could indicate whether these CSAs were acceptable or not.

Clause 60 - Election of first Chairman and Vice Chairman

13. Referring to clause 60(6), Mr Howard YOUNG asked whether a Vice Chairman wishing to stand for election to fill a vacant position of the Chairman should first resign from his present office as the Vice Chairman. In this connection, Mr Ronald ARCULLI suggested that a provision could be added to the effect that if the Vice Chairman was elected as the Chairman, he would automatically cease to be the Vice Chairman. DS(CA)3 responded that the intention was that the Vice Chairman should tender his resignation as Vice Chairman upon election as the Chairman. Nevertheless, she undertook to consider the suggestion.

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Clause 61 - Resignation of Chairman or Vice Chairman

14. Mr CHEUNG Man-kwong asked whether there were similar provisions in existing legislation. ALA advised that neither the Basic Law nor the Legislative Council Ordinance contained a provision providing for the resignation of the LegCo President. However, a LegCo Member could resign at any time from his office by giving written notice of resignation to the Clerk to LegCo. Mr CHEUNG then queried the rationale for requiring a DC Chairman or Vice Chairman to give notice of resignation to the District Officer concerned. In response, DD(HA) explained that this was to facilitate the administrative arrangements to be made by the District Officer for the new election.

15. Mr CHEUNG was of the view that as DCs would be independent elected bodies, a DC member should be responsible to the DC and therefore his written

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notice of resignation should be directed to the DC rather than the District Officer. The DC could then instruct the District Officer to make the necessary administrative arrangements arising from the resignation. In this connection, the Chairman reminded members that a DC member was only required to give written notice of resignation to the District Officer but not to seek the District Officer's consent of the resignation.

16. Mr CHAN Kam-lam remarked that as the Chairman or Vice Chairman of a DC was returned by DC members, he should be required to tender the resignation to the DC and also to give the written notice of resignation to the District Officer. However, Mr Ronald ARCULLI said that for the sake of clarity in law, the written notice of resignation must be given to a designated person instead of a council. DS(CA)3 pointed out that such requirement could be stipulated in the standing orders. She undertook to consider members' views.

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17. Mr CHEUNG Man-kwong asked whether the Administration would consider empowering DCs to appoint their own Secretariats so that a DC member could follow the LegCo practice by giving his written notice of resignation to the secretary to the DC. DD(HA) replied that the existing arrangement was satisfactory and there was no question about the integrity and independence of the existing public officers providing secretariat services to District Boards. He added that there could be recruitment problems due to the lack of promotion prospects if each DC was to appoint its own Secretariat. In this regard, Mr TAM Yiu-chung remarked that it was not necessary for DCs to follow LegCo practice, and that the existing arrangement was acceptable.

Clause 62 - When office of Chairman or Vice Chairman becomes vacant

18. Dr TANG Siu-tong expressed concern that clause 62(2) had not provided adequate time to prepare for the election of Chairman or Vice Chairman if it became vacant shortly before the next DC meeting. DS(CA)3 responded that a DC could always defer the date of next meeting for any preparation work to be done and the details could be provided in the standing orders.

19. Mr Howard YOUNG asked why the District Officer was required under clause 62(3) to preside at the meeting held for the purpose of electing the Chairman and Vice Chairman if both offices became vacant. DS(HA) replied that the Administration considered the District Officer the appropriate person to preside the meeting, as other members might have interest in running the offices and the District Officer was familiar with the business of the DC.

Clause 63 - Election of Chairman or Vice Chairman to be in accordance with Schedule 5

20. Members raised no comments on the clause.

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Clause 64 - Duties of Chairman and Vice Chairman

21. Members did not raise any queries.

Clause 65 - Chairman or other person presiding to have a casting vote

22. Members noted that the Administration would propose a CSA to amend clause 65(2) by replacing "member" with "person" since a District Officer could also preside at a meeting for electing a Chairman or Vice Chairman. Mr Ronald ARCULLI queried that the amendment was unnecessary as the District Officer presiding the meeting would not have the original vote in the first place. Senior Assistant Law Draftsman responded that the amendment only meant to clarify beyond doubt that a District Officer presiding the meeting did not have a casting vote. ALA advised that the Administration should also clarify whether the person presiding at a meeting for the purpose of electing a Chairman or Vice Chairman had an original vote. DS(CA)2 undertook to consider members' views.

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Clause 66 - District Council may make standing orders

23. Mr James TIEN asked and DS(HA)2 confirmed that each DC was empowered to make its own standing orders on its procedure. Mr TIEN expressed concern that DC might draw up different standing orders and that there was no monitoring as to whether they were in compliance with the legislation. DS(HA)2 informed members that most Provisional District Boards had followed the sample District Board Standing Orders provided by the Home Affairs Department in drawing up their standing orders. He added that the functions to be performed by a DC could not exceed those powers and functions prescribed in legislation. Mr CHEUNG Man-kwong then asked whether there was a mechanism to monitor the standing orders of DCs to ensure that they were in compliance with the statutory provisions. DS(HA)2 replied that it was the practice of each District Board to submit its draft standing orders to the Home Affairs Department for vetting, and the latter would seek legal advice if necessary.

24. Mr Ronald ARCULLI asked and PGC responded that standing orders of a DC was not subsidiary legislation and was not subject to LegCo approval. In this regard, Mr ARCULLI expressed concern that DCs might draw up their own standing orders providing for very different systems of voting and making resolution. He reminded the Administration that the voting system of the LegCo had been clearly prescribed in the Basic Law. Mr CHEUNG Man-kwong and Mr LEE Kai-ming shared Mr ARCULLI's concern. Mr ARCULLI asked the Administration to consider whether it was necessary to provide in the Bill a uniform system of making resolution by DCs, for example, by a simple majority

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vote. DS(CA)3 undertook to consider members' suggestions.

Clause 67 - District Council may appoint secretary

25. Mr CHEUNG Man-kwong asked whether a DC could select its secretary. DD(HA) responded that a DC could decline the Administration's recommendation in respect of the appointment of its secretary. However, no person other than a public officer could be appointed as the secretary of a DC. Mr CHEUNG disagreed that restriction should be imposed on a DC in the appointment of its secretary.

Clause 68 - Quorum

26. Members noted that the Administration would amend the heading by adding "of a District Council" after "Quorum" in order to make it clear that the clause related to the meetings of a DC. Mr CHEUNG Man-kwong expressed concern that the proposed increase of the quorum for DCs to "not less than half" of its membership was too high. In response, DD(HA) said that the proposed quorum requirement was reasonable, as the average attendance rate of District Board meetings was over 80% and a DC meeting would normally be held every two months. Mr CHAN Kam-lam and Mr CHAN Wing-chan indicated support of the proposed quorum requirement as DC members must be diligent and they were accountable to the electors.

Clause 69 - District Council may appoint committees

27. Mr Howard YOUNG queried the rationale of clause 69(5) which empowered a DC to delegate any of its functions to a committee. DD(HA) responded that it was the practice for a District Board to appoint a committee to discuss some specific subjects such as transport or cultural/recreation matters. Mr Ronald ARCULLI questioned that clause 69 had not specified the number of co-opted members to be appointed by a DC to its committee, and it might lead to a disproportionate number of co-opted members on a DC committee. DS(HA)3 advised that there were similar provisions in the Provisional District Board Ordinance. DD(HA) added that an co-opted member must also satisfy the qualifications set out in clause 20, according to the new provision in clause 69(2). He explained that the qualification requirement was reasonable as an co-opted member would perform the similar functions as a DC member in committee. Mr CHEUNG queried whether the requirement would unnecessarily restrict the appointment of co-opted members for expert advice on certain business of a DC. DD(HA) pointed out that a DC could always invite experts and persons other than its members or co-opted members to give advice at its meetings. Mr CHAN Kam-lam considered that the qualifications in clause 20 were basic requirements and were acceptable.

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28. Mr Ronald ARCULLI inquired whether co-opted members had the right to vote and whether their votes would outnumber DC members. Mr CHEUNG Man-kwong shared Mr ARCULLI's concern. DD(HA) informed members that no District Board had appointed a committee which comprised more co-opted members than the District Board members. He added that it was for a DC to consider the number of co-opted members to be appointed to its committees, and a DC with a small membership might wish to appoint more co-opted members to its committees. To address members' concerns, DD(HA) undertook to consider stipulating the maximum number or a ratio to limit the number of co-opted members on DC's committees.

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Clause 70 - Proceedings of a District Council not affected by vacancy or defect in membership

29. Members noted that the Administration would amend the heading by adding "or a committee" after "Council" and would add a new sub-clause (2A) stating that : - "The validity of proceedings of a committee are not affected by a defect in the appointment of or eligibility of a person to be a member of the committee.". The purpose of the amendment was to make it clear that the clause would cover committees of a DC.

30. Mr CHAN Wing-chan asked whether the number of vacancies would affect the operation of a DC. PGC said that this was only a savings clause that the validity of the proceedings of a DC would not be affected by any vacancy or defect in membership. Nonetheless, a DC would not be able to function if it was unable to have a quorum for its meetings. DS(CA)2 clarified that the quorum of a DC was based on the number of members of the Council holding office at the time of the meetings. Members noted that the provision was largely modelled on section 17 of the Legislative Council Ordinance relating to the proceedings of LegCo and similar provision in the Provisional District Boards Ordinance (Cap. 366). Mr Ronald ARCULLI asked whether a DC must comply with the membership and composition of elected and appointed members stipulated in Schedule 3, and whether any vacancy would affect the functioning of a DC. PGC replied that the DC would continue to function and the vacancies would be filled in accordance with the relevant provisions of the Bill.

II. Date of next meeting

31. The Chairman reminded members that the Bills Committee would discuss CSAs proposed by members at the next meeting scheduled at 4:30 pm in the afternoon.

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32. The meeting ended at 10:40 am.

Legislative Council Secretariat
1 December 1999