

立法會
Legislative Council

LC Paper No. CB(2)522/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/98

Bills Committee on District Councils Bill

Minutes of Meeting
held on Tuesday, 2 February 1999 at 2:30 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Dr Hon Raymond HO Chung-tai, JP
Hon LEE Wing-tat
Hon Lee Kai-ming, JP
Hon Fred LI Wah-ming
Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon CHEUNG Man-kwong
Hon Christine LOH
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon TANG Siu-tong, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, JP

Members Absent : Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon Ambrose CHEUNG Wing-sum, JP
Dr Hon LEONG Che-hung, JP
Hon WONG Yung-kan
Hon YEUNG Yiu-chung
Hon LAU Wong-fat, GBS, JP

Hon Emily LAU Wai-hing, JP
Hon SZETO Wah

- Public Officers :** Mr Robin IP
Attending 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
- Clerk in :** Mrs Constance LI
Attendance Chief Assistant Secretary (2) 2
- Staff in :** Mr Jimmy MA
Attendance Legal Adviser
- Miss Flora TAI
Senior Assistant Secretary (2) 2
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I. Clause-by-clause examination of the Bill

Members noted that the Bills Committee had already dealt with Clauses 1 - 2 (Part I), 27 - 58 (Part V), 59 - 70 (Part VI) and 71. The Bills Committee continued examination of the remaining Clauses of the Bill and the Administration's responses to members' concerns.

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Clause 2 - Interpretation

2. Mr TSANG Yok-sing said that he did not agree with the Administration's response [Paper No. CB(2)1160/98-99(01)] that both the English and Chinese versions of the definition for "ordinary election" in Clause 2 were consistent. He maintained the view that there was a discrepancy between the Chinese and English versions of the definition for "ordinary election". He opined that a by-election of the first District Council (DC) was clearly not an ordinary election but it would also return "first elected" (首屆) members. Deputy Secretary for Constitutional Affairs 2 (DS(CA)2) responded that the Administration might consider amending "the first elected members" to "the first batch of elected members" to avoid any possible confusion. Legal Adviser (LA) advised that the Administration would then have to consider whether the amended definition was clear enough to include a member who was elected through by-election following the death/resignation of a candidate or member. The Chairman therefore advised the Administration to re-consider the drafting of the definition of "ordinary election".

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3. Members noted that the Administration would propose amendments to the definition of "prescribed public officer" by adding "Privacy Commissioner" and "Chairperson of the Equal Opportunities Commission" and their staff. The proposed definition would be identical to that of the Legislative Council Ordinance (Cap. 542). Mr CHEUNG Man-kwong asked whether the heads of other public bodies performing major public functions should also be included in the definition. DS(CA)2 replied that persons included in the definition of "prescribed public officer" would be disqualified as elected members, or appointed/ex officio members of a DC. It was the Administration's policy that candidature should be open to all, unless the job nature of a person constituted a conflict of interest with his holding an office in the DC. The CSAs were proposed because the two officers by virtue of their public office would have access to sensitive personal data and therefore a conflict of interest would arise if they stood for election.

4. Mr CHEUNG Man-kwong queried why heads of the Housing Authority and Hospital Authority who also had access to sensitive personal data were not included in the definition. He was of the view that other relevant public officers who had great influence over the livelihood of the people in Hong Kong should be precluded from election. DS(CA)2 agreed to reconsider the matter.

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Clause 3 - Declaration of Districts

5. Members did not raise any queries.

Clause 4 - Establishment of District Councils

6. Members had no comments.

Clause 5 - Number of members to be elected to a District Council and the number of members to be appointed to it

7. With reference to sub-clause (2), Mr Ronald ACCULLI asked whether the number of appointed members in each DC as listed in Schedule 3 of the Bill only represented the upper limit of appointed seats. Deputy Secretary for Constitutional Affairs (DS(CA)3) replied that the number of appointed seats roughly represented one-fifth of the overall membership of DCs. As the membership size of DCs varied, some flexibility would have to be provided in the appointment of members subject to the ceiling prescribed in Schedule 3.

8. Mr Ronald ARCULLI expressed grave concern that the Chief Executive had been given too much power under the Bill. Apart from clause 8(1) which empowered the Chief Executive in Council to amend Schedules 1, 2 and 3, Chief Executive was also given the discretion to determine the actual number of appointed seats to be filled in each DC. In response, DS(CA)2 pointed out that the order made by the Chief Executive in Council under clause 8(1) was subsidiary legislation subject to negative vetting of the Legislative Council (LegCo). DS(CA)3 added that, in the past, the number of appointed members was not specified in the principal legislation. The decision of the then Governor in Council would be announced in the form of an order for LegCo's approval by way of positive vetting. However, under the current proposal, the number of elected and appointed members would be listed in a Schedule of the Bill. In response to Mr LI Wah-ming, DS(CA)3 confirmed that the Administration had agreed to include also the number of ex officio members for each DC in Schedule 3.

9. Mr CHEUNG Man-kwong inquired whether there were any legal problems for the Chairman of Tsuen Wan Rural Committee (RC) whose constituency covered villages in Kwai Tsing, to become an ex officio member of Tsuen Wan DC. Deputy Director of Home Affairs (DD(HA)) responded that the RCs of Tsuen Wan and Kwai Tsing had been consulted and they wished to retain the existing arrangements. Principal Government Counsel (Election) (PGC(E)) acknowledged that there was ambiguity in the legal position of the current arrangement of RCs straddling the boundaries of two districts. He said that the Administration was examining ways to address the problem. Mr LEE Wing-tat asked the Administration to resolve the problem at the earliest opportunity as this might affect the results of elections for returning RC Chairmen. LA reminded members that any challenge to RC elections were outside the ambit of the Bill.

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Clause 6 - Declaration of constituencies

10. Members had no further comments.

Clause 7 - Number of elected members to be returned for each constituency

11. Members had no comments.

Clause 8 - Chief Executive in Council may amend Schedule 1, 2 or 3

12. Mr CHEUNG Man-kwong suggested that any amendment to Schedules 1, 2 or 3 in the Bill to be made by the Chief Executive in Council must be based on the recommendation of the Electoral Affairs Commission. DS(CA)3 pointed out that Schedule 1 was only concerned with the delineation of district areas based on existing district boundaries, which was different from the delineation of constituencies under clause 6. Amendments to Schedule 1 would only be technical. As for the delineation of constituencies, the Electoral Affairs Commission would make recommendations to the Chief Executive in Council after public consultation.

13. Mr LEE Wing-tat was strongly of the view that Schedules 1, 2 and 3 were important policy issues and any amendments should be subject to the positive vetting of LegCo. He questioned why the Chief Executive in Council should be given such a wide range of powers to make amendments such as the number of appointed and elected seats in each DC. He was concerned that such amendments, which would be made by order published in the Gazette, would take immediate effect, while any amendment to these orders by LegCo could only take effect afterwards. DS(CA)2 responded that amendments to Schedules 1, 2 or 3 might not necessarily involve major policy issues. He assured members that the Administration would act prudently on any major policy changes, and would definitely consult the public and LegCo.

14. Mr LEE Wing-tat did not accept the Administration's explanation. He said that the Democratic Party might consider amending clause 8 to the effect that any amendment to Schedules 1, 2 or 3 had to be approved by LegCo by way of positive vetting.

15. With regard to Mr LEE's enquiry on sub-clause (3), PGC(E) explained that it was a standard provision to allow an order to be made to contain incidental, consequential, transitional or saving provision necessarily in consequence of the order. He said that the provision was purely technical, and these powers had been encompassed in the Interpretation and General Clauses Ordinance (Cap. 1).

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Clause 9 - District Councils to consist of elected members, appointed members and ex officio members

- Adm 16. Mr TSANG Yok-sing said that sub-clause (c) was related to Mr CHEUNG Man- kwong's previous query about the legal position of RCs straddling two Districts. He asked the Administration to address this concern. DS(CA)2 said that the Administration would consider whether amendments would be necessary.

Clause 10 - An elected member or appointed member taken to have resigned on becoming an ex officio member

17. Responding to Mr LEE Wing-tat, DD(HA) informed members that RC elections should have been completed by June 1999. However, by-election to return a Chairman to a RC might be necessary when the office became vacant. Clause 10 was to achieve the effect that an elected member or appointed member would be taken as having resigned if he won in the by-election to become an ex officio member. In this connection, Mr CHEUNG Man-kwong queried why an elected member of a DC could not have a choice, when he was also elected as a RC Chairman, whether to accept the ex officio membership of the DC. On a related issue, Mr TSANG Yok-sing also asked the Administration to confirm whether there was any impact on the ex officio member if he was absent from meetings of the DC for six consecutive months without obtaining the consent of the DC.

- Adm 18. The Administration agreed to provide a response to these concerns.

Clause 11 - Chief Executive to appoint members and how long appointed members are to hold office

19. Members had no further comments.

Clause 12 - Who may be appointed to a District Council

20. Members had no further comments.

Clause 13 - Appointed members to accept office

21. Members had no further comments.

Clause 14 - Disqualification of appointed members

22. Mr LEE Wing-tat asked whether there was a definition of "political party" in law. DS(CA)2 referred to the definition of "political body" in the Electoral Affairs Commission Ordinance (Cap. 541). Referring to the CSAs proposed by

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Mr Andrew WONG and Miss Christine LOH about barring politically active persons from being appointed to a DC, Mr CHEUNG Man-kwong was concerned that the definition of “political body” was unclear and this might lead to unfairness.

23. Regarding sub-clause 1(c), Mr LEE Wing-tat expressed concern that while the legislation on treason had yet to be enacted, the offence of treason was already included in the disqualification provision under this sub-clause. DS(CA)2 responded that reference had been made to relevant disqualification provisions of the Legislative Council Ordinance, and that the legislative proposal on the offence of treason was now under examination by the relevant policy bureau. PGC(E) informed members that the offence of treason still remained in section 2 of the Crimes Ordinance (Cap. 200) but some of the offences listed as treason were no longer applicable because of the transfer of sovereignty. However, other offences listed would have to be interpreted in the light of the Reunification Ordinance. Mr LEE expressed doubts on the applicability of these offences to Hong Kong Special Administrative Region (HKSAR). He referred to Article 23 of the Basic Law which stipulated that HKSAR shall enact laws on its own to prohibit any act of treason. He maintained the view that the offence of treason should not be included in the Bill before the enactment of relevant legislation on treason. DS(CA)2 undertook to provide a written response.

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24. Referring to sub-clause (1)(b) and (d), Mr CHEUNG Man-kwong expressed concern that a criminal act in other places, for example, offences of a political nature in Mainland China, might not be unlawful in Hong Kong. He therefore asked whether the disqualification provision regarding imprisonment for a term exceeding three months in the past five years should be restricted to offences only in Hong Kong. DS(CA)2 responded that the provision was based on similar provisions in the Legislative Council Ordinance. It aimed to prevent people who had committed serious offences from becoming DC members. PGC(E) added that a person was expected to abide by the laws of a place where he was in. He confirmed that the disqualification provision was the same as section 19(g)(i) of the former Electoral Provisions Ordinance which had applied to District Board elections in the past. He added that both appointed and elected members were subject to the same disqualification conditions. Referring to Mr CHEUNG Man-kwong's concern, Mr TSANG Yok-sing and Mr TAM Yiu-chung pointed out that the Government of the People's Republic of China had already abolished offences of a political or ideological nature in China.

25. In response to Mr CHEUNG Man-kwong's further enquiry, LA confirmed that the disqualification provision was applicable to all offences irrespective of their nature. Mr CHEUNG maintained the view that certain offences committed overseas which had no equivalents in Hong Kong should not be included, and that the disqualification provision should apply to criminal offences only. Mr LI

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Wah-ming shared his view, saying that the legislation was primarily to govern the election of a local council. They therefore urged the Administration to reconsider the issue. DS(CA)2 reiterated that it was the Administration's position and he had nothing further to add.

26. Mr CHEUNG Man-kwong expressed strong dissatisfaction with the Administration's response. DS(CA)3 explained that there were far too many offences in overseas countries. The disqualification provision was proposed on the principle that people who had committed serious offences, whether in Hong Kong or elsewhere, from becoming DC members. The fact that a person had been convicted of committing an offence after judicial proceedings in overseas countries could not be refuted. She stressed that it was to uphold the integrity of DCs before the public. In this connection, Mr CHAN Kam-lam was of the view that a law-abiding person should respect the laws of the place where he was in. As a grace period of five years had been provided for, it would not be necessary to provide exemptions on offences committed in other countries.

27. In response to Mr LEE Wing-tat, LA advised that as the Bill was an electoral law, it would be difficult to make comparison with other legislation. Nevertheless, reference might be made to the concept of double criminality in legislation relating to mutual legal assistance in criminal matters and extradition. For these legislation, assistance and extradition would be refused if the request related to punishment of a person for an offence which was an offence of a political character, or in respect of an act that, if it had occurred in Hong Kong, would not constitute an offence under the ordinary criminal law of Hong Kong. However, LA stressed that it was a policy consideration as to whether reference to these legislation was relevant. In this regard, Mr LEE Wing-tat was of the view that similar concept should be made applicable to the disqualification provision. He said that the Democratic Party might consider moving an amendment to this effect if the Administration refused to amend the provision.

28. Mr TSANG Yok-sing remarked that the criminal record of a person even in a place outside Hong Kong would be an important consideration in appointing or electing a DC member. However, he opined that the Administration might consider relaxing the restrictions by confining the offences to those committed in Hong Kong, in order to provide greater flexibility since the choice was ultimately that of electors. Mr CHEUNG Man-kwong added that the Administration should also consider requiring candidates to make a declaration on any criminal conviction in any other places. DS(CA)3 said that the Administration would consider members' views and provide a written response.

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29. In response to Mr LEE Wing-tat's enquiry on sub-clause (1)(e), PGC(E) confirmed that a honorary consul representing a foreign country would be precluded from being appointed to a DC.

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30. Mr CHEUNG Man-kwong said that he was not satisfied with the Administration's response to members' concern on sub-clause (4) about the calculation of the period of absence from DC meetings [Paper No. CB(2)1218/98-99(02)]. DD(HA) informed members that the Administration would move Committee Stage amendments (CSAs) to clarify the calculation of the period of absence. In this connection, Mr Howard YOUNG suggested that the Administration should consider replacing "is absent from meetings" by "fails to attend meetings" in the CSAs in order to improve the clarity in drafting.

Clause 15 - How an appointed member can resign

31. Mr CHAN Kam-lam asked about the reason for allowing a notice of resignation to take effect on a later date specified in the notice under sub-clause 3(b). DS(CA)2 responded that the provision was only to allow flexibility for the member concerned.

Clause 16 - When appointed member's office becomes vacant and appointment of a substitute

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32. Mr TSANG Yok-sing asked the Administration to consider whether "becomes vacant" in sub-clause (2) could adequately cover the situation where the number of appointed members in a DC was below the maximum number of appointed members specified in Schedule 3.

33. In response to LA's enquiry about the expiry of the tenure of DC members under sub-clause (3), PGC(E) confirmed that the person appointed would vacate office at 12:00 midnight on 31 December of the year in which an ordinary election was next held after the appointment.

Clause 17 - Ex officio members to accept office

34. Mr CHAN Kam-lam asked about the consequence if a person who was a RC Chairman did not swear acceptance of office as ex officio member of the DC. DD(HA) responded that the office of ex officio member would then become vacant, and no other person could fill the vacancy if there was no change to the RC Chairman concerned.

Clause 18 - When the office of ex officio member becomes vacant

35. Members did not raise any queries.

Clause 19 - Disqualification of ex officio members

36. Dr TANG Siu-tong raised the same concern as Mr CHEUNG Man-kwong on the applicability of disqualification provision to offences committed in a

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place outside Hong Kong under sub-clause (d)(i). The Administration noted the concern.

Clause 20 - Who is eligible to be nominated as a candidate

37. Members had not made further comments.

Clause 21 - When person is disqualified from being nominated as a candidate and from being elected as an elected member

38. In response to Mr LEE Wing-tat's enquiry about subclause (1)(d), PGC(E) said that "serving a sentence of imprisonment" did not include suspended sentence or bail cases. Both the dates of nomination and election were included because the provision covered both nomination as a candidate and being elected as an elected member. Mr LEE then expressed concern that the provision would preclude a person who was sentenced to imprisonment of only one day or one month from being elected, whereas the disqualification provision in subclause (1)(e) applied to imprisonment for more than three months within a period of five years. Mr Andrew WONG reminded members that he had proposed to amend the same provision in the Legislative Council Ordinance in the past. Mr LEE said that the Democratic Party would make reference to Mr WONG's previous proposal and might consider amending the provision.

Clause 22 - How long elected member is to hold office

39. Members had not raised any queries.

Clause 23 - Elected members to accept office

40. Members had not raised any queries.

Clause 24 - Disqualification of elected members

41. The Chairman informed the meeting that some members had indicated their intention to propose CSAs relating to this clause. Mr Howard YOUNG also reminded the Administration that since the same disqualification provisions would apply to elected and appointed/ex officio members, amendments to clause 24 should be consistent with those to clauses 14 and 19.

42. On sub-clause 1 (g), Mr Andrew WONG asked whether the provision had taken account of recent changes to Bankruptcy Ordinance. PCE(E) responded that the drafting had reflected the existing provisions in Bankruptcy Ordinance, Cap.6. He added that sub-clause 1(g) had proposed, nevertheless, that a bankrupt person who had obtained a discharge in the previous five years without repaying the creditors in full would still be disqualified from holding

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office as an elected member. Miss Christine LOH and Mr LEE Wing-tat expressed concern that the provision might be too harsh in view of the modernization of Bankruptcy Ordinance and the recent economic downturn. Mr LEE said that some bankruptcy cases were less serious, for example, those who failed to pay house mortgages as a result of the drastic changes in property prices. Mr Ronald ARCULLI remarked that it would not be practicable to specify in law which type of bankrupt case was less serious than the others, and it should be for the electors to judge. Mr Andrew WONG suggested that the sub-clause should simply read "undischarged bankrupt". Mr LEE supported the suggestion. DS(CA)2 undertook to consider the suggestion.

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43. Regarding sub-clause 2, Mr LEE Wing-tat inquired about the rationale for setting the grace period for disqualification at five years in respect of conviction of offences. PCE(E) responded that similar provisions were found in the previous District Boards Ordinance which set the disqualification period at ten years. The Bill had already provided for a shorter period. Mr LEE expressed concern that the five years period would bar a person from being eligible for two DC elections. DS(CA)2 said that five years already represented a significant reduction of the previous provision. Mr Andrew WONG was of the view that a shorter period should be allowed for offences other than those related to Corrupt and Illegal Practices Ordinance (Cap. 288).

44. LA commented that technically speaking, sub-clause 2 might be redundant as clause 21(1)(e) contained similar provisions. In this connection, Mr Andrew WONG said that unlike the Legislative Council Ordinance, the disqualification clauses in respect of nomination and holding office of elected members of a DC could be grouped under one single clause instead of separate clauses as in the Bill. PCE(E) explained that the separate provisions were to reflect the sequence of events for a DC election. LA undertook to study the drafting of these provisions and report to the Bills Committee if there were problems.

LA

45. On sub-clause (5), Mr Ronald ARCULLI asked about the method to seek DC's consent for six months' absence from meetings. DS(CA)2 advised that it would require approval at a DC meeting. With regard to the procedure to obtain consent of a DC, PCE(E) said that it would be for the DC to determine and the procedures could be specified in the Standing Orders. Mr LEE Wing-tat was of the view that there should be a formal approval mechanism, for example, by way of resolution at a DC meeting, as this would be an important issue involving the disqualification of a member if approval was not given. Mr Andrew WONG suggested that the Standing Orders of a DC should be included as a Schedule of the Bill. Mr LEE Kai-ming and Mr LEE Wing-tat supported the suggestion, pointing out that important issues such as the quorum for meetings and voting procedure should be stipulated in the Schedule to ensure consistency among DCs. DS(CA)2 responded that DCs should be allowed some flexibility in

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determining their own procedures, but he undertook to consider members' views.

Clause 25 - How an elected member can resign

46. In response to Mr LEE Kai-ming's enquiry about sub-clause (2), PGC(E) explained that a notice of resignation must be signed by the member concerned but he was not required to sign in person in front of a designated officer.

Clause 26 - When elected member's office becomes vacant

47. Members did not raise any queries.

Clause 31 - Vacancy in membership of elected members of a District Council to be declared

48. In response to Mr Ronald ARCULLI's enquiry about the application of sub-clause (2), DS(CA)2 explained that the Designated Officer, after becoming aware that the successful candidate had died before that candidate was declared to be elected, must declare the existence of a vacancy and arrange a by-election. He added that such cases would be rare but the provision was added for completeness. Responding to Mr LEE Wing-tat, Mr ARCULLI remarked that sub-clause (2) was necessary in order to start a by-election immediately. He pointed out that, under clause 23(1), a person who was elected a member was to be regarded as having accepted office unless that person gave written notice of non-acceptance within seven days.

Clause 32 - By-election to be held to fill vacancy in membership of District Councils

49. Mr LEE Wing-tat asked whether the former District Boards Ordinance in 1994 had the same provision as sub-clause (2) in the Bill. PGC(E) undertook to provide a written reply.

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Clause 72 - Electoral Registration Officer may specify forms

50. Members did not raise any queries.

Clause 73 - Appointment of Returning Officers and assistants

51. Members did not raise any queries.

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Clause 74 - Offence to obstruct or hinder electoral officer

52. Members noted that the maximum level of a fine at level 2 was \$5 000. Mr LEE Wing-tat was of the view that the penalty for the offence to obstruct or hinder electoral officer was too light. DS(CA)2 responded that the Bill had provided for various offences and that the fine level under clause 74 was considered appropriate having regard to their relative level of seriousness.

Clause 75 - Chief Executive may give directions as to exercise or performance of electoral officers' functions and duties

53. In response to Mr LEE Wing-tat, DS(CA)2 responded that clause 75 was a general empowering provision and the Administration did not have any specific scope of directions in mind which would be given by the Chief Executive. Mr LEE maintained the view that the clause was not necessary as the functions and duties of electoral officers have been clearly prescribed, and the Electoral Affairs Commission had already been empowered to give directions in respect of the holding or conduct of an election if it was likely to be obstructed or seriously affected, say, by a typhoon or riot. Mr Andrew WONG opined that the provision might be necessary in the past only because Electoral Affairs Commission Ordinance did not exist then. DS(CA)2 reiterated that the clause was only a catch-all provision.

54. Mr Ronald ARCULLI queried why the sentence "The directions have no effect to the extent that they are inconsistent with this Ordinance or the Electoral Affairs Commission Ordinance" was added to sub-clause (1). PGC(E) responded that this was an additional safeguard and that the same provision was found in section 80 of the Legislative Council Ordinance.

Clause 76 - Death or incapacity of electoral officer not to terminate authority

55. In response to Mr Ronald ARCULLI, PGC(E) explained that clause 76 provided for the continuation of authority as conferred by an electoral officer even though he had died or become incapable of carrying out his duties. This was to tie in with clause 73(3) of the Bill which empowered an Assistant Returning Officer to exercise and perform the functions and duties of Returning Officer with the authority of that Returning Officer. He also confirmed that clause 76 was the only delegating provision related to electoral staff.

II. Date of next meeting

56. Members noted that the next meeting would be held on Thursday, 4 February 1999 from 8:30 am to 12:30 pm.

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57. The meeting ended at 6:30 pm.

Legislative Council Secretariat
1 December 1999