

立法會
Legislative Council

LC Paper No. CB(2)524/99-00

(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, 9 February 1999 at 10:30 am
in the Chamber of the Legislative Council Building

Members Present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon James TIEN Pei-chun, JP
Hon Cyd HO Sau-lan
Dr Hon Raymond HO Chung-tai, JP
Hon LEE Wing-tat
Hon Lee Kai-ming, JP
Hon Ronald ARCULLI, JP
Hon CHEUNG Man-kwong
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP
Hon WONG Yung-kan
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP

Members Absent : Hon David CHU Yu-lin
Hon Fred LI Wah-ming
Hon MA Fung-kwok
Hon Christine LOH
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon Andrew CHENG Kar-foo

Action

Hon SZETO Wah
Hon TAM Yiu-chung, JP

Member : Hon NG Leung-sing
Attending

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)

Mr Vidy CHEUNG
Senior Assistant Law Draftsman

Miss Monica LAW
Senior Assistant Law Draftsman

Clerk in : Mrs Constance LI
Attendance Chief Assistant Secretary (2) 2

Staff in : Mr Jimmy MA
Attendance Legal Adviser

Mr Arthur CHEUNG
Assistant Legal Adviser 5

Miss Flora TAI
Senior Assistant Secretary (2) 2

Action

I. Matters arising from previous meetings

[Paper No. CB(2)1279/98-99(02)]

Members noted the letter dated 8 February 1999 from the Secretary for Constitutional Affairs, attaching the Administration's responses to concerns raised at the meetings on 2 February and 4 February 1999. The letter was tabled at the meeting and was subsequently issued to members vide Paper No. CB(2)1279/98-99(02).

II. Draft Committee Stage amendments to be moved by the Administration

[Paper No. CB(2)1279/98-99(01)]

2. At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs 2 (DS(CA)2) took members through the Administration's proposed Committee stage amendments (CSAs) which were tabled at the meeting (the draft CSAs were subsequently issued to members vide Paper No. CB(2)1279/98-99(01)). DS(CA)2 said that the Administration had incorporated a number of members' suggestions in the CSAs. Discussion of the CSAs is summarized in paragraphs 3 - 28.

When a person is disqualified from being nominated as a candidate and from being elected as an elected member (clause 2)

3. Members noted that the Administration proposed to amend clause 2 on the definition of "prescribed officer" by adding "Privacy Commissioner" and "Chairperson of the Equal Opportunities Commission (EOC)" and their staff so that these persons would be disqualified from being nominated as candidates and from being elected as elected members. DS(CA)2 explained that a conflict of interests might arise if these persons were allowed to become a District Council (DC) member as they had access to sensitive personal data. As for officers in other public bodies, the Administration did not consider a conflict of interests would arise in this connection. He also informed members that the Legislative Council (Amendment) Bill, which was introduced into the Legislative Council (LegCo) on 3 February 1999, had also sought to disqualify the Privacy Commissioner and Chairperson of the EOC and their staff from candidature.

4. Mr CHEUNG Man-kwong said that while he accepted the need to include "Privacy Commissioner" and his staff in the definition, he did not understand why the Chairperson of EOC was different from heads of the Housing Authority and Hospital Authority who might also have access to sensitive personal data. DS(CA)2 replied that Equal Opportunities Commission Ordinance had conferred extensive investigation and enforcement powers on EOC. He reiterated that the policy intention was to enable as many people as

Action

possible to take part in the DC election unless there was already a significant conflict of interest.

5. Mr CHEUNG Man-kwong was not convinced of the Administration's argument. He said that some other public bodies also had similar statutory powers as EOC, but these bodies were not included in the definition. He was of the view that for equity reasons, there must be consistent standards for determining which types of public bodies should be covered by the definition. He asked whether it was possible to provide some legal basis for determining disqualification from candidature. In this respect, Legal Adviser (LA) advised that the provision was to deprive certain people of their right to stand for election, and this would be a matter of policy judgement rather than a legal issue. DS(CA)2 elaborated that the role of the Office of Privacy Commissioner and EOC was to investigate complaints and to enforce the respective ordinances, and their staff were given more statutory powers in accessing sensitive personal data than staff in Housing Authority and Hospital Authority.

Adm

6. Mr LEE Kai-ming shared similar concern as Mr CHEUNG Man-kwong. He suggested that the Administration might need to have an overall review to ascertain that staff in other public bodies did not have a conflict of interest if they stood for DC election. At Mr LEE's request, DS(CA)2 agreed to provide more detailed information on the rationale for including the Chairperson of EOC in the definition of "prescribed public officer" and excluding heads of Housing Authority and Hospital Authority from the definition.

7. Mr CHAN Kam-lam indicated support of the Administration's suggested amendment. He said that this would give an independent image of the Office of the Privacy Commissioner and EOC.

Amendments to Schedule 1, 2 or 3 to be subject to the approval of the Legislative Council (LegCo)

8. Members noted that the Administration had proposed to amend clause 8(1) to the effect that amendments to Schedules 1, 2 or 3 would be subject to the approval of LegCo.

Setting out the number of Rural Committees (RCs) in Schedule 3 and the DCs to which they belong

9. Members noted that the Administration had proposed to add new sub-clauses under clause 9 to explain the arrangements for the Chairmen of RCs to become ex officio members. Schedule 3 would also be amended to set out the number of RCs and DCs to which they belonged. In this connection, Mr CHEUNG Man-kwong said that the Administration had not advised on the legal position of the ex officio member representing a RC in Tsuen Wan which

Action

comprised three villages located in the neighbouring Kwai Tsing District. Deputy Director of Home Affairs (DD(HA)) explained that the amended Schedule 3 would clearly specify that the RCs belonged to Tsuen Wan DC. He reiterated that the Administration had already clarified the legal position of RCs straddling more than one DC by amending Schedule 3. He stressed that there was no legal ambiguity in this respect.

10. Mr CHEUNG Man-kwong expressed concern about the double voting right of indigenous villagers, i.e. they had one vote for election of the Village Representative (VR) who could then stand for election as the RC Chairman, and another vote for returning a member to the DC through direct election. DD(HA) explained that an indigenous villager who was entitled to vote in a rural election did not necessarily reside in that village, and that an indigenous villager, if he met the eligibility of an elector, could also vote in the DC election to be held for the constituency where he resided. He stressed that the elections for returning VRs and DC members were two different types of election. Mr CHEUNG Man-kwong then sought the views of Assistant Legal Adviser 5 (ALA5) on the Administration's argument. In response, ALA5 advised that a person who met the qualification requirements as an elector in a DC election as prescribed in the Bill was entitled to vote in the constituency allocated to the elector. He said that rural elections returning VRs and RC Chairmen were outside the ambit of the Bill. There was therefore no question of overlapping capacities of an indigenous villager as an elector in a rural election and a DC election.

Term of office of appointed members (clauses 11 and 16)

11. Members noted that the Administration had accepted members' views and proposed to delete sub-clauses 11(3) and 16(4) to the effect that the Chief Executive (CE) would not have the discretion to specify a shorter period of appointment.

12. Ms Emily LAU referred to the Concluding Observations of the United Nations Human Rights Committee issued on 3 November 1995 which had commented that the present electoral system in Hong Kong did not meet the requirements of Articles 25, as well as Articles 2, 3 and 26 of the International Covenant on Civil and Political Rights (ICCPR). She therefore sought the Administration's legal advice whether the provision of appointed membership in the Bill was in contravention of Article 39 of the Basic Law and the provisions of ICCPR. Principal Government Counsel (Election) (PGC(E)) responded that he could confirm that the Bill as drafted was consistent with the Basic Law and did not conflict with ICCPR or the human rights provisions of the Basic Law. He added that ICCPR did not prohibit appointed membership.

13. Ms Emily LAU expressed strong dissatisfaction with the Administration's response. She said that Government's Report on ICCPR was

Action

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ambiguous on the part of elections. She was strongly of the view that the provision of appointed membership was obviously in contravention of Article 39 of the Basic Law and the relevant human rights conventions. To enable members to have a clear picture of the issues involved, she requested the Administration to provide its justifications in full, and LA to provide written comments on whether an appointed element in the composition of the proposed DCs was compatible with Article 25 of ICCPR. In this connection, Mr Ronald ARCULLI remarked that a court case relating to the functional constituency (FC) elections to LegCo might have bearing on the issue. Ms Cyd HO pointed out, however, that the court had ruled that FC electoral arrangements had been provided for in the constitutional documents then in force, hence the basis to object to FC constituency arrangement was not justified. She said that this was only because Government had amended the Letters Patent afterwards. She was of the view that the court ruling might not apply to Hong Kong Special Administrative Region, since the Basic Law had already provided for the election of LegCo by universal suffrage. The Administration and the LA noted Ms LAU's request and members' comments.

(Post-meeting note : The Legal Service Division's Report was issued to members vide LC Paper No. CB(2)1389/98-99.)

Absence from meetings of DCs as a criterion for disqualification of member (clauses 14, 19 and 24)

14. Ms Cyd HO questioned that since DC meetings would only be held bi-monthly, the Administration's revised CSAs might still not be able to achieve the purpose of reducing the disqualification period to two meetings or four months. ALA5 advised that according to the draft CSAs proposed by the Administration, the period of four consecutive months was to begin from the day next following the date of meeting of the DC at which the person was first absent. If DC meetings were held every two months, a person would be allowed to be absent at three consecutive meetings. In view of the explanation, Ms Cyd HO said that the CSAs had not in effect reduced the disqualification period. She therefore urged the Administration to reduce the disqualification period to two meetings or four months, otherwise she would consider moving a CSA herself to that effect.

15. To cater for situations where no DC meeting was held during the four months period, Mr CHEUNG Man-kwong referred to Mr Andrew WONG's previous suggestion that the disqualification period could be calculated on the basis of absence at two meetings or absence for four consecutive months. DS(CA)2 responded that the clause must provide some degree of clarity and certainty, and the calculation should not be too complicated as it would involve the disqualification of a DC member. Mr CHEUNG maintained the view that the CSAs were not clear on situations where no meeting or only one meeting was held during the four months.

Action

16. In view of members' concern, the Chairman sought clarification as to how the disqualification criterion would apply to cases where no DC meeting was held during the four months period. PGC(E) advised that the person concerned would still be caught under this provision under these circumstances. However, ALA5 had doubts on such interpretation, pointing out that if new sub-clause 19(5) was read together with the original sub-clause 19(4), the disqualification criteria should not apply to cases where no meeting was held during the four months period.

Adm

17. In view of the different interpretations on the CSAs, members sought further clarification from the Administration on the intention of the provision. In this connection, Mr Ambrose CHEUNG said that the clause was unclear as DCs were not required by law to convene meetings every two months. DS(CA)2 reiterated that it would be for the DCs concerned to decide the frequency of their meetings, and that it would be clearer to determine the absence period on the basis of period rather than the number of meetings. However, in view of members' concern about the application of the CSAs, DS(CA)2 agreed to re-consider the drafting for greater clarity.

Ex officio members to accept office (clause 17)

18. Members noted that the Administration had proposed to add a new sub-clause to clarify that a RC Chairman could not accept office as an ex officio member in more than one DC concurrently. DS(CA)2 said that the CSA was to address members' concern about the position of RCs straddling more than one District. In this connection, Schedule 3 of the Bill would also be amended to specify the DCs to which the RCs would belong.

19. Mr CHEUNG Man-kwong asked whether an elected member of a DC, if also elected as chairman of a RC, could refuse to accept office as ex officio member of the DC and retain his status as elected member. DD(HA) responded that an elected or appointed member who had become a RC Chairman and ex officio member of a DC would be taken as resigned as elected or appointed member. However, a RC Chairman would not become ex officio member of a DC unless he sworn acceptance of office; if no oath was taken, the ex officio office would be vacant. However, the vacancy could not be filled unless the RC Chairman concerned had formally resigned.

CE to specify dates for holding ordinary elections (clause 27)

20. Members noted that the Administration had proposed, in response to the suggestion of LA, to amend clause 27(3) to make it clear that CE's act to specify dates for holding ordinary elections was an administrative act and not a legislative order. LA explained that clause 27(3) in the Bill was analogous to

Action

standard provision relating to making a notice by subsidiary legislation. He therefore recommended the Administration to amend clause 27(3) in order to avoid any misunderstanding that it might be a subsidiary legislation. LA also drew members' attention that the proposed provision was different from that in the Legislative Council Ordinance (Cap. 542) which required the CE to specify the date for holding general elections by notice published in the Gazette.

Suspension of operation of DCs to enable ordinary election to be held (clauses 27 and 84)

21. Members noted that the Administration had proposed, in response to members' concerns, to add a new clause 27A to provide for suspension of operation of DCs in future to enable ordinary election to be held and a new transitional clause 84A for application of the arrangement to the first ordinary election in 1999. DS(CA)2 explained that the amendments were proposed to avoid giving existing members an advantage over other candidates in a DC election.

The Chinese term for "has failed" in "an election for a constituency" (clauses 32 and 38)

22. Members noted that the Administration had proposed to amend clauses 32(1) and 38(2) by deleting "無法進行" and substituting "未能完成" in order to make the Chinese term of "has failed" more appropriate to cope with different circumstances.

When election proceedings are terminated (clauses 32, 34, 38 and 39)

23. Members noted that the Administration had proposed to amend clauses 32(1)(b), to delete clause 37 and to add new clauses 32(1)(d), 34A, 38A and 39(5) which required election proceedings to be terminated and to start afresh under certain circumstances. DS(CA)2 explained that the proposed changes were to reduce the risks of disruption to electoral process by empowering the Returning Officer to invalidate nominations when he became aware of the death or disqualification of validly nominated candidate before the polling date. This was to avoid unfairness and inconvenience to electors and other candidates.

Functions of a DC

24. Members noted that the Administration now proposed to delete "including matters relating to food and environmental hygiene services" in clause 59(a) and to add "(iii) community activities within the District" at the end of clause 59(b).

Action

Quorum (clause 68)

25. Members noted that the Administration had proposed to amend the heading of clause 68 by adding "of a District Council" in order to make it clear that the quorum requirement was related to meeting of a DC.

DC may appoint committee (clause 69)

26. Members noted that the Administration had proposed to amend clause 69(2) by deleting "20" and substituting "20(1)" in order to clarify that the eligibility criteria were those set out in sub-clause 20(1).

Proceeding of a DC not affected by vacancy or defect in membership (clause 70)

27. Members noted that the Administration had proposed to amend the heading of clause 70 and to add a new sub-clause 70(2A) in order to extend the coverage of the clause relating to DC proceeding not affected by a vacancy or defect in membership to committee of DCs.

Proceedings against members on grounds of disqualification (clause 77)

28. Members noted that the Administration had proposed to change the heading of clause 77 by replacing "members" with "persons" in order to make the heading more appropriate for the purpose of the clause.

Directions by CE to a DC (clause 83)

29. Members noted that the Administration had proposed to amend clause 83(1) to make it clear that directions by CE to a DC were in relation to matters which appeared to him to affect the public interest. Mr CHEUNG Man-kwong queried how "public interest" could be defined in order to dispel any possible abuse. In response, PGC(E) explained that the term "public interest" must be interpreted in the context of the functions and purposes of a DC as set out in the Bill. In response to the Chairman, PGC(E) responded that a direction given by the CE under clause 83 could be challenged by way of judicial review if he acted contrary to the statutory purposes. Mr CHEUNG Man-kwong then asked whether a DC could decide whether to execute the directions given by CE. DS(CA)2 responded that clause 83(2) required a DC to give effect to directions given by the CE. PGC(E) supplemented that all statutory provisions were in theory subject to supervision of the court which could give an order requiring a DC to carry out its statutory functions by giving effect to the directions of CE. However, Mr CHEUNG was of the view that the scope of DC functions was already very broad and there was no practical need to empower CE to give directions to DCs. DS(CA)2 reiterated that the provision was necessary.

Action

30. Mr Ambrose CHEUNG asked about the legal effect if the phrase "appear to the Chief Executive" was deleted from the proposed CSA. He expressed concern that the proposed CSA as drafted would give CE the discretion to determine what are matters of public interest. In response, PGC(E) explained that the phrase was included because CE clearly must make a decision that the matter was related to public interest when exercising his discretion under clause 83(1). LA advised that the proposed CSA as drafted conferred a very broad discretionary power on CE and therefore the scope of judicial review to challenge his decision to give directions to a DC under this clause would be relatively limited. LA also pointed out that there was no provision in the Bill that a DC would be a corporate body which could institute proceedings. He advised that the Administration might need to explain which party would have the right to seek judicial review to challenge the decision of CE under this clause. In view of LA's comments, Mr Ambrose CHEUNG suggested that the phrase "which appears to the Chief Executive" should be deleted. DS(CA)2 undertook to consider his suggestion.

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Setting out the number of RCs, their names and the DCs to which they belonged in Schedule 3

31. Members noted that the Administration had, in response to members' requested, set out the number of RCs, their names and the DCs to which they belonged in Schedule 3 by adding a new Part II.

Declaration by appointed member/ex officio member when accepting office (Schedule 4)

32. The Bills Committee noted that the Administration had accepted member's views that appointed and ex officio members of a DC should also be required, as the elected members, to make a declaration to the effect that they were not aware of any reason of disqualification for appointment and/or holding office. DS(CA)2 said that the Administration had proposed amendments to Forms 1 and 2 in Schedule 4 to that effect.

Other technical amendments to the Electoral Affairs Commission Ordinance (Schedule 6)

33. Members noted that the Administration had proposed technical amendments to the Electoral Affairs Commission Ordinance under Schedule 6 by adding sections 17A, 19A, 24(aa) and 26(ea) and by making amendments to sections 18 and 24(b). DS(CA)2 explained that the amendments primarily sought to clarify that the Commission was responsible for delineating DC constituencies.

Action

Period of consultation with the public (Schedule 6)

34. Members noted that the Administration proposed to amend section 25 in Schedule 6 so that the period for inspection of maps by the public for the first ordinary election and for making representation was adjusted to not less than 14 days (instead of the usual period of not less than 30 days).

III. Date of next meeting

35. As Ms Emily LAU had requested the Administration and LA to provide written comments on whether the provision of appointed membership in DCs would contravene Basic Law and ICCPR, and LA would need time to examine the drafting of the Administration's proposed CSAs, members agreed to schedule a further meeting for Thursday, 11 February 1999 at 8:30 to conclude scrutiny of the Bill.

IV. Any other business

36. Mr Ambrose CHEUNG asked whether the Administration had consulted all Provisional District Boards (PDBs) on the Bill. DD(HA) replied that a copy of the Bill had been forwarded to all PDBs, and so far two PDBs had invited representatives of the Administration to their meetings to discuss the Bill.

37. There being no other business, the meeting ended at 12:25 pm.

Legislative Council Secretariat

1 December 1999