

立法會
Legislative Council

LC Paper No. CB(2)518/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/98

Bills Committee on District Councils Bill

Minutes of Meeting
held on Thursday, 21 January 1999 at 4:30 pm
in the Chamber 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 Cyd HO Sau-lan
 - Hon LEE Wing-tat
 - Hon Lee Kai-ming, JP
 - Hon Fred LI Wah-ming
 - Hon Ronald ARCULLI, JP
 - Hon MA Fung-kwok
 - Hon CHAN Wing-chan
 - Hon CHAN Kam-lam
 - Hon SIN Chung-kai
 - Hon Andrew WONG Wang-fat, JP
 - Hon WONG Yung-kan
 - Hon Jasper TSANG Yok-sing, JP
 - Hon Howard YOUNG, JP
 - Hon YEUNG Yiu-chung
 - Hon Emily LAU Wai-hing, JP
 - Hon TAM Yiu-chung, JP
- Members Absent** :
- Dr Hon Raymond HO Chung-tai, JP
 - Hon Eric LI Ka-cheung, JP
 - Hon Mrs Selina CHOW LIANG Shuk-ye, JP
 - Hon CHEUNG Man-kwong
 - Hon Ambrose CHEUNG Wing-sum, JP
 - Hon Christine LOH
 - Dr Hon LEONG Che-hung, JP

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Hon LAU Wong-fat, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Andrew CHENG Kar-foo
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
- Mr Arthur CHEUNG
Assistant Legal Adviser 5
- Miss Flora TAI
Senior Assistant Secretary (2)
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I. Timetable for action leading to 1999 District Council elections
[LC Paper No. CB(2)1137/98-99]

The Chairman referred members to the "Timetable for action leading to 1999 District Council elections" prepared by the Administration and asked members whether they were agreeable to the Administration's proposal to resume Second Reading debate on 10 February 1999. Secretary for Constitutional Affairs 2 (DS (CA)2) explained that the Administration hoped the Bills Committee could complete scrutiny of the Bill before the end of January 1999 so that the Second Reading debate could resume on 10 February 1999. He reminded members that under Rule 54 of the Rules of Procedure of the Legislative Council (LegCo), Secretary for Constitutional Affairs had to give 12 clear days' notice to resume the debate. The deadline for giving notice would be 26 January 1999 if resumption of the debate was to take place on 10 February 1999.

2. Ms Emily LAU remarked that the Bills Committee had to discuss a number of Committee stage amendments (CSAs) to be proposed by members. She stressed that the Administration must allow adequate time for scrutiny of the Bill, and that it was simply unrealistic to expect the Bills Committee to complete examination of the Bill within the next few days. She was of the view that the District Council (DC) elections could be postponed by one month from November to December 1999.

3. DS(CA)2 responded that all subsidiary legislation relating to the 1999 District Council elections would have to be passed by LegCo before the end of the session, and that LegCo had already scheduled the date of its last meeting of the current session for 14 July 1999. He said that preparatory work for the elections could not commence until the Bill had been enacted. He added that the Bill had proposed that DC elections must be held not earlier than 60 days and not later than 15 days before the new term commenced.

4. With regard to Ms Emily LAU's concern, the Chairman invited Legal Adviser (LA)'s comments on the legislative timetable proposed by the Administration. LA advised that under Rule 54, the public officer in charge of the Bill could give 12 days' notice for the resumption of the Second Reading debate. However, Rule 54 had provided some flexibility that a shorter notice might be allowed with House Committee's recommendation and permission of the President. LA added that while the last LegCo meeting in the current session was scheduled for 14 July 1999, the tenure of the Provisional District Board members would only lapse on 31 December 1999. The Administration might therefore consider making some administrative arrangements for the DC elections in the meantime, such as making preliminary recommendations on the demarcation of constituency boundaries by Electoral Affairs Commission (EAC). DS (CA)2 responded that the requirement for 12 clear days' notice was

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stipulated in Rule 54, and that a shorter notice period could only be approved by LegCo. In view of the very tight timetable for DC elections, the Administration's proposed plan had only allowed the minimum time required for each step of action. He therefore appealed to members to support resumption of the debate before Chinese New Year.

5. Ms Cyd HO commented that the Bills Committee had met so frequently that the Administration had not been able to provide written responses and papers well before the meetings despite the hard work of the officers. She added that members of the Bills Committee also needed time to examine the detailed provisions of the Bill. DS(CA)2 responded that the Administration would make its best efforts to co-operate with the Bills Committee and would provide the requested information as early as possible.

6. Mr Fred LI remarked that it was not possible to complete scrutiny of the Bill before the end of January 1999 as the Bills Committee still had to follow up a number of policy issues and discuss the individual clauses. Ms Emily LAU said that while she acknowledged the need to pass the necessary legislation by 14 July 1999, she saw no reason why resumption of the Second Reading debate could not be postponed to March 1999. DS(CA)2 explained that EAC could not start work on the demarcation of constituency boundaries until the Bill was passed, as the demarcation would depend on the number of seats for each constituency as specified in the Bill. Moreover, EAC had to conduct public consultation on the proposed demarcation before making finalized recommendation to the Chief Executive (CE) in Council for approval. Taking into account the 28 days negative vetting procedure of LegCo, all subsidiary legislation would have to be tabled at LegCo before early June 1999 to allow sufficient time for the necessary preparatory work.

7. Mr Ronald ARCULLI queried why it was not feasible for EAC to start the preparatory work in parallel to the legislative work. He urged the Administration to defer the resumption of the Second Reading debate to 10 March 1999, as the Bills Committee had been given very limited time to scrutinize the Bill. He also reminded the Administration that the President of LegCo must be given sufficient time to rule on the CSAs proposed by Members. DS(CA)2 reiterated that any deferment of the legislative timetable would pose great difficulties to the election arrangements. Mr Andrew WONG supported Mr ARCULLI's suggestion, pointing out that some preliminary administrative arrangements for DC elections could proceed in parallel to the legislative work.

8. Mr CHAN Kam-lam supported the Administration's proposal that the Bills Committee should try to expedite scrutiny work of the Bill in view of the tight legislative timetable. He suggested scheduling additional meetings in the coming week in case the Bills Committee could not complete examination of the Bill by 26 February 1999.

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9. Mr LEE Wing-tat objected to the suggestion that more meetings should be scheduled in order to complete examination of the Bill by the end of January 1999. He expressed strong dissatisfaction that the Administration treated LegCo as a rubber stamp by not giving adequate time for the scrutiny of the Bill. He was strongly of the view that the proposed timetable was unfair to LegCo Members who needed time to study the voluminous provisions in the Bill. The Chairman reminded members that it would be the decision of the public officer in charge of the Bill to give notice for the resumption of Second Reading debate. In this connection, Mr Fred LI asked whether the Administration would insist to resume the debate on 10 February despite the strong reservations expressed by members. DS(CA)2 reiterated that it was the Administration's intention to resume the debate on 10 February 1999, and he hoped the Bills Committee could make the best efforts to complete scrutiny of the Bill during the subsequent meetings already scheduled.

10. Mr TAM Yiu-chung commented that there had been long discussion over the date of resumption of the Second Reading debate without reaching any consensus. He therefore suggested that the Bills Committee should expedite scrutiny work as far as possible, while the Administration should consider the feasibility of postponing the resumption of the Second Reading debate to 10 March 1999 (i.e. the first regular LegCo meeting after Chinese New Year). Ms Emily LAU warned the Administration if it insisted on resuming the debate on 10 February 1999, the relationship between the executive and the legislature would be jeopardized.

Adm
Clerk

11. In view of members' reservations about the legislative timetable, the Chairman advised the Administration to further consider the timing for resumption of the Second Reading debate and inform members of its decision as early as possible. He also asked the Clerk to schedule additional meetings before 29 January 1999, subject to availability of members, in order to expedite scrutiny of the Bill.

II. **Response to members' concerns raised at the meeting on 11 January 1999**

[LC Paper No. CB(2)1104/98-99]

12. Members noted the Administration's response to members' concerns raised at the meeting on 11 January 1999. The Chairman then asked the Administration to respond to members' questions.

Directions by the Chief Executive to a District Council

13. Mr Fred LI referred to paragraph 3 of the Administration's response concerning the powers of the Chief Executive to give directions to a DC under clause 83 of the Bill. He asked the Administration to consider deleting the clause as such power had never been invoked by CE or the previous Governor. DS(CA)2 said it was the Administration's position that the clause should remain. LA reminded members that the Administration would propose a CSA to clause 83(1) to the effect that such directions were in relation to matters which appeared to CE to affect the public interest.

Powers of the Chief Executive in Council to amend the constituency boundaries

14. Ms Cyd HO commented that the Administration's response had not addressed members' concern about clause 8 which conferred powers to CE in Council to amend the district boundaries in Schedule 1 of the Bill. She said that the previous legislation had required the Governor to follow the recommendation of the Boundary and Election Commission in the demarcation of boundaries. She therefore inquired about the future consultation arrangements in this respect.

15. DS(CA)2 responded that the delineation of districts had been specified in Schedule 1 of the Bill which was now under LegCo scrutiny. After enactment of the Bill, EAC would prepare its recommendations on constituency boundaries in accordance with clause 6, on the basis of the number of seats in each district as specified in Schedule 3. EAC would be required to consult the public on its proposals for a period of not less than 30 days before forwarding its recommendations to CE in Council. In response to Ms HO, DS(CA)2 confirmed that EAC would have no role to play in the delineation of districts as the latter had already been specified in Schedule 1.

Appointed members of District Councils

16. Mr Fred LI expressed dissatisfaction that the Administration had not accepted members' suggestion to stipulate the criteria for appointment of members to DCs. Deputy Secretary for Constitutional Affairs 3 (DS(CA)3) responded that the Administration would carefully consider the concerns raised by members and other sectors of the community when appointing DC members.

17. Mr SIN Chung-kai requested the Administration to provide information on the occupation and political affiliation of the Provisional District Board members who were newly appointed in July 1997. DS(CA)3 replied that the Administration might not have the information. The Chairman advised the Administration to check its records and provide a written response.

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18. Ms Emily LAU said that the Administration had not addressed members' concern about CE's discretion to specify a shorter period for the term of office of an appointed member. DS(CA)3 replied that the clause was to provide for some flexibility in the appointment of members, and she had nothing to add to the Administration's written response. In response to Mr Andrew WONG and Mr Ronald ARCULLI, DS(CA)2 said that the appointed members would hold office from the date specified in the appointment letter up to 31 December of the year in which an ordinary election was to be held. As the appointment period was already specified in clause 11(2), Mr Andrew WONG considered that the flexibility provision in clause 11(3) was unnecessary and suggested the Administration to consider deleting the clause.

19. Responding to Ms Emily LAU, Principal Government Counsel (PGC) explained that the provision would enable CE to appoint a member for a shorter period in the case of an office vacated by an appointed member. Ms Cyd Ho said she did not consider it appropriate to give such discretion to CE because DC members would be electors for electing CE and returning a member (or members) to LegCo. She commented that the Administration should avoid making provisions which could give the impression of vote-planting. DS(CA)2 reiterated that in appointing DC members, CE would consider the suitability of the candidates with regard to their experience and potential contribution to the work of DCs. He had nothing to add to this answer.

Functions of a District Council

20. Mr Fred LI was of the view that the phrase "matters affecting the well-being of the people in the District" in clause 59(a)(i) was already wide enough to cover matters relating to food and environmental hygiene services. It was therefore not necessary to specify the latter in the clause. DS(CA)3 responded that the phrase "including matters relating to food and environmental hygiene services" was added only to reflect the significant public concern in this respect during the public consultation on the review of district organizations. It would give a clear message that DCs would have a role to play in monitoring these services. As District Boards had all along been involved in the promotion of recreational and cultural services, these were not specifically stated in clause 59.

21. Mr Fred LI disagreed with the Administration's argument. He recalled that the Administration had previously indicated that LegCo would be responsible for monitoring the provision of food and environmental hygiene services after the abolition of the municipal councils. DS(CA)3 clarified that there would be two levels of monitoring : DCs would monitor the provision of services at the district level while LegCo would have the overall monitoring through discussion at Panels and questions and debates at LegCo meetings.

III. Clause-by-clause examination of the Bill

[LC Paper No. CB(2)1130/98-99]

22. The Chairman informed the meeting that some members had already indicated their intention to propose CSAs to various provisions in Parts II-IV of the Bill. He therefore suggested, and members agreed, that the Bills Committee should first examine Part I, and Parts V-XI of the Bill which were less controversial. Members also noted that the Administration had also proposed some CSAs [LC Paper No. CB(2)1130/98-99]. The Chairman requested LA to give his comments on these CSAs at a future meeting when these were discussed.

23. The Bills Committee then proceeded to clause-by-clause examination of the Bill.

Clause 1 - Short title and commencement

24. Members raised no comments.

Clause 2 - Interpretation

25. Mr CHAN Kam-lam asked the Administration to consider whether it would be clearer in meaning to delete the word "first" in the definition of "ordinary election" so that the proposed provision would also be applied to subsequent ordinary elections. PGC replied that subsequent ordinary elections would be covered by the second part of the definition in (b), i.e. elections to elect persons to fill the vacancies caused by the expiration of the term of office of the elected members of DCs.

26. Mr TSANG Yok-sing pointed out that there might be inconsistency between the Chinese and English versions of the definition for ordinary election. He said that "first elected members" in English would only refer to those firstly elected rather than all members returned by the first ordinary election (首屆). PGC responded that it was the legislative intention to refer "first elected members" to those returned by the first ordinary election. Nevertheless, he undertook to check whether there was any inconsistency between the English and Chinese versions and revert to the Bills Committee.

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Part V of the Bill

27. The Bills Committee then proceeded to examine the clauses in Part V as agreed.

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Clause 27 - Chief Executive to specify dates for holding ordinary elections

28. Mr CHAN Kam-lam asked why it was necessary to specify in Clause 27(1) that the first ordinary election must be held in 1999. DS(CA)2 replied that the proposed provision was necessary because the term of office of Provisional District Board members would lapse on 31 December 1999.

29. Ms Emily LAU asked and PGC confirmed that to specify a date for holding an ordinary election by notice published in the Gazette under Clause 27(2) was not a subsidiary legislation because it had no legislative effect. PGC added that the proposed provision was modelled on relevant provision of the Legislative Council Ordinance. In this connection, LA advised that the procedure under Clause 27 was an administrative arrangement which was different from a statutory arrangement. He informed members that it was the practice of the LegCo and of other overseas legislatures to stay neutral by not involving in the decision of specifying the dates for elections. While the proposed arrangement was similar to that in the Legislative Council Ordinance, it would be a matter for Members to consider whether LegCo should have a role to play in the decision to specify dates for holding elections of a District Council which was not a legislature. In response to Ms LAU, DS(CA)2 explained that Clause 27(4) was modelled on a similar provision in the Legislative Council Ordinance. The purpose was to provide a reasonable timeframe for an ordinary election to be held before or after the new term of office.

30. Mr CHAN Kam-lam commented that the Chinese version of Clause 27(4) might need improvement as some words were redundant. The Chairman therefore suggested the Administration to review the drafting.

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Clause 28 - Who is entitled to vote at an election

31. In response to Mr Fred LI's enquiry about the legislative intention of Clause 28(5), PGC explained that a person whose name was on the register should not be prevented from voting, even if there was doubt as to whether the person's name should have been included in the final register. He stressed that the final register was taken as the evidence of a person's entitlement to vote. If a candidate or other electors had doubts on the voter's eligibility, there were channels for election petitions. Despite the Administration's explanation, Ms Emily LAU said that she remained to be convinced that it was appropriate to allow a doubtful voter, whose name was included in the final register, to vote. To address members' concerns, Mr Fred LI and Mr Howard YOUNG requested the Administration to provide examples justifying the appropriateness of the proposed provision. DS(CA)2 undertook to provide a written response.

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32. There being no other business, the meeting ended at 6:35 pm.

Legislative Council Secretariat

1 December 1999