

**Administration's Response to Concerns raised by Members of the
Bills Committee on District Councils Bill
on 4 January 1999**

C1. The Administration to review whether increasing the quorum from 1/3 to 1/2 for District Councils meetings is practicable with regard to the operation of DB meetings and attendance records of DB members.

A1. Section 22 of the Provisional District Boards Ordinance (Cap 366) provides that the quorum of a Board meeting should be equivalent to one-third of the total number of members composing the Board. We recommend in clause 68 of the Bill that the quorum for future District Councils be increased from 'one-third' to 'not less than half' of its membership on the following grounds:

- it is reasonable to expect District Councils to transact business with at least half the membership present;
- the same quorum requirement (majority of the members) also appears to be a common requirement for most of the statutory boards and committees;
- since 1 July 1997, the Legislative Council adopted using 'half of the members' as the quorum for its meetings.

According to records, the average attendance rate for the 18 Provisional District Boards since 1 July 1997 ranged from 87% to 96%. Moreover, since District Boards normally meet only once every two months, we do not expect any great difficulty for members to meet this requirement.

For committees appointed by a District Council, clause 66(3) of the Bill provides that it will be up to the District Council to stipulate their quorum in its standing orders.

C2. The Administration to consider whether tenure of DB/DC members should lapse before the next ordinary election is to be held.

A2. Under the Provisional District Boards Ordinance and previous District Boards Ordinance, there is no such provision to terminate the District Board or the office of members prior to the next ordinary election. If the District Council is terminated before an election, there would be a gap of several months between succeeding terms of the Councils. If the office of members is terminated as proposed, it means that these persons would no longer be members and it follows that they would cease to be entitled to their remuneration. Furthermore, the Boards cannot conduct meetings until the new term of members are elected.

Under the existing Legislative Council Ordinance, section 6(3) provides that the Chief Executive may, before the end of a term of office of the LegCo, “prorogue” that Council to terminate its operation to enable a general election of LegCo to be held. This in effect means that LegCo (including its committees and panels) cannot hold meetings or transact formal business. The intention is that incumbent members will not be able make use of official meetings to publicise themselves. However, the arrangement does not affect members’ term of office and they can continue to perform their duties as individual and to draw their remuneration until the end of their office term.

Subject to Members' agreement, we propose that the arrangement as applied to members of LegCo be adopted and made applicable for members of District Councils.

C3. The Administration to explain why the phrase “in public interest” in Section 24 of Cap. 366 is not retained in Clause 83 (Directions by Chief Executive to a District Council) of the Bill.

A3. The omission of “in the public interest” in Clause 83 is inadvertent. We will restore the phrase as a Committee Stage Amendment.

C4. The Administration to provide a list on the powers of the Chief Executive and the Chief Executive in Council as conferred by the Bill.

A4. The Bill confers the following power for the Chief Executive and the Chief Executive in Council:

(a) for the Chief Executive

- to appoint persons to be appointed members of a District Council [Clause 11(1)];
- to specify a date for holding an ordinary election [Clause 27(3)];
- to direct the postponement of an ordinary election or the adjournment of the polling or counting of votes in respect of such an election, if the election, polling or counting of votes is likely to be disrupted or seriously affected by riot or open violence or any occurrence of public danger [Clause 36(1)];

- to give directions with respect to the exercise or performance by electoral officers of any of their functions with respect to the holding of an election [Clause 75(1)];
- after consultation with District Council, to give general directions to a District Council in the performance of its functions [Clause 83(1)].

(b) for the Chief Executive in Council

- to declare any area within a District to be a constituency [Clause 6(1)];
- to amend Schedule 1, 2 or 3 [Clause 8(1)]:

- Schedule 1 Number of and declaration of Districts
- 2 Establishment of District Councils
- 3 Number of elected and appointed members

- to make regulation for the purpose of the Ordinance, including those to provide for the number and qualifications of subscribers, election deposit and threshold for forfeiting election deposit [Clause 79(1) & (2)];
- to amend Schedule 4 or 5 [Clause 80]:

- Schedule 4 Forms for acceptance of office
- 5 Voting procedure under section 63 (election of Chairman or Vice Chairman).

C5. The Administration to consider whether the powers of the Chief Executive and the Chief Executive in Council provided in Clause 8 and 83 should be more clearly defined in the Bill.

A5. (a) Clause 8

Clause 8 empowers the Chief Executive in Council to amend Schedule 1, 2 or 3 (regarding the declaration of Districts, establishment of District Councils and number of elected and appointed members) by orders published in the Gazette. The Schedules as approved by the LegCo will remain as part of the Ordinance but the orders to amend these Schedules made by the Chief Executive in Council for subsequent terms of office for District Councils will be made as subsidiary legislation.

In the past, the number and boundaries of Districts, number and names of District Boards, the date of establishment of these Boards and the number of members for each District Board were not part of the Ordinance. The previous ordinance conferred power on the then Governor in Council to determine these matters by order. The orders thus made were subsidiary legislation subject to negative vetting by the Legislative Council.

The 1997 Provisional District Boards Ordinance Cap 366, which provides for the establishment of Provisional District Boards (until 31 December 1999), sets out the 18 Districts and Provisional District Boards in a Schedule. By virtue of section 27(2) of that Ordinance, the Districts and Provisional District Boards so set out are deemed to have been declared by the Chief Executive in Council and specified by the Chief Executive respectively.

It can be seen that the power thus conferred on the Chief Executive in Council to amend Schedule 1, 2 & 3 is in line with previous practice. The present arrangement of setting out details of district boundaries and District Councils in Schedules as part and parcel of the Bill makes the proposal more transparent and facilitates examination by the LegCo.

(b) Clause 83

Clause 83 is included on the basis of section 24 of the Provisional District Board Ordinance. We will restore the missing words 'in the public interest' as suggested in C3 above. The clause is by no means a new provision and in fact, many statutory Boards and Committees are subject to directions by the Chief Executive in relation to matters appearing to affect the public interest.

We do not think that any amendments to Clause 8 and 83 to define the power of the Chief Executive are necessary.

C6. The Administration to explain the purpose of Clause 11(3) which empowers the Chief Executive to specify in a letter of appointment a shorter period as the term of office of a person appointed to a District Council.

A6. Section 9(1) of the former District Boards Ordinance (1988 edition), provided that each appointed member shall hold office for a full term or for such lesser period as the Governor may in any particular case determine. A similar provision is provided in the District Councils Bill. Our intention is that the term of office of appointed members (other than

that of a substitute) should be for 4 years in most cases. The provision for appointment for a shorter period provides some flexibility in the appointment and is provided for in other ordinances.

C7. The Administration to consider adjusting the term of office of District Council members to coincide with the beginning and ending of a financial year to facilitate operation of the District Councils and the Secretariat.

A7. The above proposal presents a number of practical difficulties -

- if District Councils elections are to take place near in February or March so that the new term of District Council members begins from 1 April, canvassing activities would take place during the Chinese New Year period, during which many residents would be away. Previous experience has shown that canvassing activities during this time of the year are not welcomed by candidates or voters;
- if the second term District Councils were to commence from 1 April 2004 instead of 1 January 2004, it would mean that within 6 months in 2004, the Electoral Affairs Commission will have to arrange two elections (one for the 18 District Councils and another for the LegCo as the latter would take place in September 2004). This is not considered advisable in view of the heavy workload involved. In addition, there may be voter fatigue as a result of holding two elections within a short period of time;
- if the District Council election is held in February/March, it can only make use of the Register of Electors published in May of the

year before. This will make the Register more outdated than when the election is held in November.

One alternative is to shorten the term of office for the 1st term of District Council members from 48 months to 39 months so that the end of the term of office falls on 31 March 2003 instead of 31 December 2003. This would mean a gap of some 18 months between the District Council election and the LegCo election. Though this arrangement would prevent two elections from being held within a year, it would not address the difficulties of organising canvassing activities around the Chinese New Year period nor the problem of outdated Register of Electors referred to earlier.

We understand that adjustments to the annual financial allocation can be arranged and is unlikely to cause operational difficulty even if the term of office is set on a date other than 31 March.

Members of the Bills Committee may wish to consider the above points.

Constitutional Affairs Bureau

Government Secretariat

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