

立法會

Legislative Council

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From : Clerk to Bills Committee

To : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Dr Hon Raymond HO Chung-tai, JP
Hon LEE Wing-tat
Hon Eric LI Ka-cheung, JP
Hon LEE Kai-ming, JP
Hon Fred LI Wah-ming
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon CHEUNG Man-kwong
Hon Ambrose CHEUNG Wing-sum, JP
Hon Christine LOU
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP
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 LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon TAM Yiu-chung, JP
Dr Hon TANG Siu-tong, JP

Bills Committee on District Councils Bill

Follow-up to the meeting on 11 January 1999

I forward for members' reference the Administration's response to the concerns raised at the meeting held on 11 January 1999.

(Miss Flora TAI)
for Clerk to Bills Committee

Encl.

c.c. Hon LAU Chin-shek, JP (Non-Bills Committee Member)

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**Administration's Response to
Concerns raised by Members
of the Bills Committee on District Councils Bill
on 11 January 1999**

C1(a) The Administration to consider amending the Bill or issuing guidelines to provide that during a prescribed period before the next ordinary election, District Council members should not in their capacity as members hold meetings and handle business or attend government funded activities so as to avoid such members from using their status to gain election benefits over other candidates.

A1(a) We would convey Members' concern to the Electoral Affairs Commission for consideration whether guidelines should be issued to prevent incumbent members from using their status to gain election advantage. The Administration would also consider issuing guidelines to departments to advise against inviting incumbent Provisional District Board Members or other candidates to officiate at government functions or assisting them in organising activities during the election period. In this connection, item 2 below is also relevant.

C1(b) The Administration to provide statistics on the number of District Board members who succeeded to retain their District Board membership at the 1994 election.

A1(b) Excluding Rural Committee Chairmen, there were 165 District Board members who held their office for both the terms, 1991-94 and 1994-97. Details of statistics are provided at **Appendix I**.

C2 If the term of office of District Council member is fixed, the Administration to consider terminating the operation of District Councils in advance to enable the next ordinary election to be held and to let District Councils members continue their office and draw their remuneration until the end of their term.

A2 We have already made a similar proposal in A2 of our previous written response. Should members have no objection, we can make provisions for suspending the operation of District Councils as a Committee Stage Amendment. The amendment will provide

that the District Councils (including its committees and working groups) will suspend operation upon commencement of nomination of candidates, that is, the District Councils will not hold meetings or transact formal business. However, the suspension would not affect the term of office of members and they can continue to draw their remuneration until the end of their office terms.

Together with the response to C1(a) above, we hope that this would address the concern of Members.

C3 The Administration to explain why the Chief Executive can exercise his power under some circumstances without making subsidiary legislation and to consider whether such power of the Chief Executive can be restrained through legislative provisions.

A3 Powers conferred on the Chief Executive include appointment of persons to be appointed members [clause 11(1)], specifying a date for holding election [clause 27(3)], postponement/adjournment of an ordinary election or polling/counting of votes in respect of the election on grounds of public safety [clause 36(1)], giving directions as to the performance of duties by electoral officers [clause 75(1)] and giving general direction to a District Council in the performance of its functions [clause 83(1)]. It is clear from the nature of these functions that they are administrative acts. Furthermore, the Chief Executive must act reasonably and within the constraints of the relevant provision. We do not consider that these provisions need to be amended.

Moreover, such powers conferred on Chief Executive are by no means new. Similar provisions are found in the former District Board Ordinance (1988 edition), Provisional District Board Ordinance, former Electoral Provision Ordinance and LegCo Ordinance.

C4 The Administration to explain why under clause 8 of the Bill the Chief Executive can amend the constituency boundaries without taking into account the recommendations made by the Electoral Affairs Commission.

A4 The Bill refers to two kinds of boundaries - district boundaries and constituency boundaries. The procedures for delineating Districts and Constituencies are explained below:

(a) Delineation of District Boundaries (Clauses 3 & 8 and Schedule 1)

The Districts and their boundaries are set out in Schedule 1 of the Bill. Once the Bill is passed by LegCo, the Schedule will form part of the Ordinance. Clause 8 of the Bill provides that the Chief Executive in Council may amend the Schedule by subsidiary legislation in the form of orders. The orders thus made will be subject to negative vetting by the LegCo provided under section 34 of the Interpretation and General Clauses Ordinance (Cap 1).

(b) Delineation of Constituencies (Clause 6)

Through consequential amendments to the EAC Ordinance, the Bill empowers the Electoral Affairs Commission to make recommendations on constituency boundaries to the Chief Executive. The Commission will prepare its recommendations on the basis of the district boundaries, population quota and the number of seats in each district as set out in the District Councils Ordinance. Furthermore, before it submits its report containing recommendations on the delineation of constituencies, the Commission is required to consult the public on its proposals for a period of not less than 30 days.

Clause 6 empowers the Chief Executive in Council to declare constituencies, having regard to recommendations made by the Commission. The order thus made will be subject to negative vetting by the LegCo provided under section 34 of the Interpretation and General Clauses Ordinance (Cap 1). This procedure is the same as that for the delineation of LegCo geographical constituencies.

C5 The Administration to clarify whether in accordance with clause 11(3), the Chief Executive can only specify a shorter period as the office term of an appointed member when the person to be appointed is a substitute. If this is not the case, what are circumstantial criteria under which the Chief Executive would exercise his discretion of a shorter period of appointment.

A5 As explained in our previous response to the Bills Committee, the provision for appointment for a shorter period is to provide some flexibility in the period of appointment of appointed members.

C6 The Administration to advise the circumstances under which section 24 of the provisional District Board Ordinance is not applicable. Are there any precedents of invoking this section?

A6 Section 24 of the Provisional District Board Ordinance makes it clear that the Chief Executive can exercise this power to give the Provisional District Board directions subject to two conditions:

- (a) of a general character as to the discharge of the Board's functions; and
- (b) in relation to matters appearing to affect the public interest.

In the past operation of District Boards, we are not aware of any incidents involving the then Governor or the Chief Executive to give direction to a District Board. This clause provides a safeguard for the Chief Executive in exceptional case and is necessary for protection of public interest.

Many statutory Boards and Committees are subject to similar provisions (for example the Mass Transit Railway Corporation [Cap 270], the Hong Kong Council on Smoking & Health [Cap 389], the Hong Kong Industrial Estates Corporation Ordinance [Cap 209] etc.).

In our last response, we have agreed to amend clause 83(1) so that it is made clear that exercise of such power to direct a District Council is in relation to matters appearing to affect the public interest.

C7 The Administration to consider listing out the criteria for appointing or not appointing persons to be appointed members of District Councils.

A7 Some general criteria governing who may be appointed to a District Council are already provided in clause 12 of the Bill. Clause 14 also sets out the disqualification provisions which apply to appointed members. As explained at previous meetings with the Bill Committee, the Administration does not consider it appropriate to stipulate additional criteria for making appointment. Each appointment will be considered in the light of individual merits including the person's suitability and potential contribution to the District Councils. The Administration is well aware of Members' concern that candidates who have failed in the election should not be considered for appointment in the same term.

C8(a) The Administration to advise why in clause 59(a), it is proposed to add in the phrase “including matters relating to food and environmental hygiene services”. Is the Administration assuming that a consent by the Legislature to clause 59(a) is equivalent to a consent to the proposal to abolish the two Provisional Municipal Councils?

A8(a) The phrase ‘including matters relating to food and environmental hygiene services’ is added to reflect the significant concern of the public raised during the public consultation exercise conducted last year. A separate Bill(s) to transfer the existing powers and functions of the Municipal Councils to the relevant government departments or agencies will be submitted to the LegCo for examination in the near future.

C8(b) The Administration to explain why having regard to the functions of a District Council in clause 59(a), it has not included recreational and cultural activities or other services, affecting well-being of the people in the District such as housing, education, etc.

A8(b) Other specific matters affecting well being of people in the District (such as promotion of recreation and cultural activities, housing, education, etc.) have not been specifically listed as the scope of clause 59 is very wide ranging and has already stipulated that one of the functions of the District Councils is to undertake the promotion of recreational and cultural activities within the District where funds are made available for the purpose.

C9 The Administration to consider the suggestion made by the Hon Andrew WONG Wang-fat that the quorum requirement should be lower than that of its committees and hence the Bill should not have proposed to increase the quorum of a District Council.

A9 We have already explained clearly in our last response the reason for increasing the quorum from ‘one-third’ to ‘not less than half’ of the total number of member. We believe that the increase will enhance the accountability of District Council members in deliberating Council business and we do not expect any difficulty for members to meet this requirements since District Councils normally meet once every two months only.

Supplementary questions

C10(a) Among the Provisional District Board members appointed in July 1997, how many were elected members from the September 1994 election and for these members, the Administration to provide their classification by occupation.

A10(a) Statistics on the occupation of 345 District Board members of the 1991-94 terms who were appointed in July 1997 are provided at **Appendix II**.

C10(b) Among the Provisional District Board members appointed in July 1997, how many were failed candidates from the September 1994 election and for these members, the Administration to provide their political affiliation.

10(b) Out of the Provisional District Board members appointed in July 1997, 21 failed in the September 1994 election. We are not able to provide their political affiliation as the Administration does not have accurate and complete information in this respect.

Constitutional Affairs Bureau

January 1999

District Board 區議會	No. of District Board members (not including Rural Committee Chairmen) who held the office for both the terms 1991-94 and 1994-97 連任 1991-94 及 1994-97 兩屆區議會之議員數目 (不包括各鄉事委員會主席)
Central & Western 中西區	7
Eastern 東區	18
Kowloon City 九龍城	13
Kwun Tong 觀塘	15
Sham Shui Po 深水	11
Southern 南區	9
Wan Chai 灣仔	5
Wong Tai Sin 黃大仙	11
Yau Tsim Mong (previously Yau Tsim and Mong Kok District Board) 油尖旺 (於 94 年 10 月前分為油尖區區議會及旺角區議會)	8
Islands 離島	2
Kwai Tsing 葵青	10
North 北區	5
Sai Kung 西貢	4
Sha Tin 沙田	13
Tai Po 大埔	8
Tsuen Wan 荃灣	9
Tuen Mun 屯門	9
Yuen Long 元朗	8
Total 總數：	165

Note: There were 441 District Board members for the term 1991-94

註：區議會 1991-94 任期內共有議員 441 人

Number of 1994/97 Elected DB Members by district and type of occupation

Appendix II

Occupation Type	No. of PDB Members																		Total
	C & W	E	KC	KT	SSP	S	WC	WTS	YTM	Is	K & T	N	SK	ST	TP	TW	TM	YL	
1. Agriculture & fisheries												1			4		1		6
2. Insurance		3		1					1		1	1		1	1		2	1	12
3. Transport				3		1			1		2		1					1	9
4. Education	5	5	3	5		1	1	4		1	3	1		5	2	1	1	1	39
5. Legal		1		1		2	1		1				1	1	1	3			12
6. Accountancy	1	2	1												1		1		6
7. Medical	1	1			1	1	1	2						1					8
8. Health Services						1		1	1										3
9. Engineering			2	3							1	1					2		9
10. Architectural, surveying & planning									1					1			1		3
11. Labour		2	1		1			1			1		1				1		8
12. Social Welfare	2		1	3	2	2	2		3		3	1	1			1			21
13. Real estate and construction		2	1		1		1	1		1	1				2		2	1	13
14. Tourism		2						1											3
15. Commercial	3	6	1	3	3	1		5	4	1	1	4	1	10	2	3	2	6	56
16. Industrial			1			1					2					3		1	8
17. Finance & financial service	1	1		3			1			1		1	1						9
18. Sports, performing arts, culture & publication			1		2	1	1											1	6
19. Import and export																		1	1
20. Textiles and garment			1	1	1						1		1		1				6
21. Wholesale and retail			2			1				1									4
22. Information technology	1	2		1		1					1			1			4		11
23. Full-time DB member		7	6	8	6	3	2	6	1	1	9	1	4	10	3	4	8	5	84
24. Others (e.g. preacher, community organiser)					3			1	2					1				1	8
Total	14	34	21	32	20	16	10	22	15	6	26	11	11	31	17	15	25	19	345

Key

C&W - Central & Western
 E - Eastern
 KC - Kowloon City
 KT - Kwun Tong
 SSP - Sham Shui Po

S - Southern
 WC - Wan Chai
 WTS - Wong Tai Sin
 YTM - Yau Tsim Mong
 Is - Islands

K&T - Kwai Tsing
 N - North
 SK - Sai Kung
 ST - Sha Tin
 TP - Tai Po

TW - Tuen Wan
 TM - Tuen Mun
 YL - Yuen Long