

**Letterhead of CONSTITUTIONAL AFFAIRS BUREAU GOVERNMENT
SECRETARIAT**

8 February 1999

Your Fax. No. 2509 9055

Mrs Constance LI
Clerk to Bills Committee
Legislative Council
8 Jackson Road
Central, Hong Kong

Dear Mrs LI

Bills Committee on District Councils Bill
Meeting on 9 February 1999 (10:30 am)

In relation to the above meeting, I forward herewith the draft Committee Stage Amendments in English and Chinese to be moved by the Secretary for Constitutional Affairs for your circulation to members.

Yours sincerely,

(P W WONG)

for Secretary for Constitutional Affairs

Encl.

c.c. Hon Ambrose LAU Hon-chuen, JP (Chairman) - 2523 8392
Mr Jimmy MA, Legal Adviser - 2868 2813

Note on District Councils Bill
Draft Committee Stage Amendments
to be moved by the Secretary for Constitutional Affairs

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

Proposed CSA : To amend clause 2 on definition of 'prescribed officer' by adding 'Privacy Commissioner' and 'Chairperson of the Equal Opportunities Commissioner' and their staff.

Remarks : These persons will be disqualified from the above nomination as a result. This is considered necessary as these officers should be seen acting free of conflict of interest.

(2) Amendments to Schedule 1, 2 or 3 to be subject to the approval of the Legislative Council (clause 8)

Proposed CSA : To amend clause 8(1) to provide the above effect.

Remarks : Any future amendments to these Schedules will be subject to LegCo's "positive" rather than "negative" vetting.

(3) Setting out the number of Rural Committees in Schedule 3 and the District Councils to which they belong (clauses 9)

Proposed CSA : To add new subclauses under clause 9 to explain the arrangements for the Chairmen of Rural Committees to become ex officio members.

Remarks : Schedule 3 will also be amended.

(4) **Term of office of appointed members (clauses 11 & 16)**

Proposed CSA : To delete the sub-clauses 11(3) and 16(4).

Remarks : To delete the discretion available to the CE at present to specify a shorter period of appointment.

(5) **Absence from meetings of District Councils as a criterion for disqualification of member (clauses 14, 19 & 24)**

Proposed CSA : To amend clauses 14(4), 19(4) and 24(5) by changing the period from '6 months' to '4 months' and by adding a sub-clause to explain that the period of 4 months' absence is to be counted from the day next following the date of the meeting of a Council that the member is absent.

Remarks : Amendments in response to members' concern about this disqualification provision.

(6) **Ex officio members to accept office (clause 17)**

Proposed CSA : To add a new subclause to clarify that the Chairman of a Rural Committee cannot accept office as an ex officio in more than one District Council concurrently.

Remarks : This is to supplement provision in clause 9(2) and Schedule 3 (Part II) concerning the arrangements for ex officio seats in District Councils.

(7) **Chief Executive to specify dates for holding ordinary elections (clause 27)**

Proposed CSA : To amend clause 27(3) to make it clear that the above is an administrative act.

Remarks : To avoid any misunderstanding that it may be a legislative order.

(8) **Suspension of operation of District Councils to enable ordinary election to be held (clauses 27A & 84A)**

Proposed CSA : To add a new clause 27A to provide for the above proposed arrangement in future and a new transitional clause 84A for application of this arrangement to the first ordinary election in 1999.

Remarks : To avoid giving existing members an advantage over other candidates in a District Council election.

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

Proposed CSA : To amend clauses 32(1) and 38(2) by deleting “無法進行” and substituting “未能完成” .

Remarks : To make the Chinese term of "has failed" more appropriate to cope with different circumstances.

(10) **When election proceedings are terminated (clauses 32, 34A, 37 38A & 39)**

Proposed CSA : To amend clause 37 which requires election proceedings to be terminated and

to start afresh under certain circumstances. Principal changes involve amendments to clause 32(1)(b), deletion of clause 37 and addition of new clauses 32(1)(d), 34A, 38A and 39(5).

Remarks : The proposed changes aim to reduce the risks of disruption to electoral process by

(a) empowering the Returning Officer to invalidate nominations when he becomes aware of the death or disqualification of validly nominated candidate after close of nomination but before the date of polling; and

(b) by authorising the counting of the poll to continue if the death or disqualification occurs after the close of polling but before the declaration of results.

(11) **Functions of a District Council (clause 59)**

Proposed CSA : (a) By deleting "including matters relating to food and environmental hygiene services" in clause 59(a).

(b) By adding "(iii) community activities within the District" at the end of clause 59(b).

Remarks : Amendments in response to members' concern about functions of a District Council.

(12) **Quorum (clause 68)**

Proposed CSA : To amend the heading of clause 68 by adding 'of a District Council'.

Remarks : To make it clear that the clause relates to meeting of a District Council.

(13) **District Council may appoint committee (clause 69)**

Proposed CSA : To amend clause 69(2) by deleting '20' and substituting "20(1)".

Remarks : To clarify that the eligibility criteria are those set out in subclause (1).

(14) **Proceeding of a District Council not affected by vacancy or defect in membership (heading of clause 70 and clause 70(2A))**

Proposed CSA : To amend the heading of clause 70 and to add a new subclause 70(2A).

Remarks : To extend the coverage of this clause to committees of District Councils.

(15) **Proceedings against members on grounds of disqualification (clause 77)**

Proposed CSA : To change the heading of clause 77 by replacing "members" with "persons".

Remarks : To make the heading more appropriate for the purpose of this clause.

(16) **Directions by Chief Executive to a District Council (clause 83)**

Proposed CSA : To amend clause 83(1).

Remarks : To make it clear that directions are in relation to matters which appears to affect the public interest.

(17) Setting out the number of Rural Committee, their names and the District Councils to which they belong in Schedule 3

Proposed CSA : To set out the above information in Schedule 3 by adding a new Part II.

Remarks : To set out for information the prevailing number of Rural Committees by Districts. CSA to clause (9) above is relevant.

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

Proposed CSA : By amending Forms 1 & 2 under Schedule 4 for acceptance of office by an appointed member/ex officio member.

Remarks : To require an appointed member/ex officio member to make declaration before the acceptance of office that he/she is not aware of reason of disqualification for appointment and/or holding office. This declaration will place them on par with the requirement for candidates nominated for election.

(19) Other technical amendments to the Electoral Affairs Commission (EAC) Ordinance (Schedule 6 - sections 17A, 18, 19A, 24 & 26)

Proposed CSA : To amend the EAC Ordinance under Schedule 6 by adding clauses 17A & 19A, 24(aa) and 26(ea) and by making amendments to clauses 18 and 24(b).

Remarks : To clarify that the Commission is responsible for delineating District Councils constituencies and to remove a miscellaneous amendment not related to the District Councils Bill.

(20) **Period of consultation with the public (Schedule 6 - section 25)**

Proposed CSA : To amend section 25 in Schedule 6 of the Bill so that the period for inspection of maps by the public for the first ordinary election and for making representation is adjusted to not less than 14 days (instead of the usual period of not less than 30 days).

Remarks : Shortening of the consultation period is proposed as the EAC is pressed for time to complete the report on constituency boundaries for the first District Council election to be held near the end 1999.

**Constitutional Affairs Bureau
Government Secretariat
February 1999**

win95u:dissanay:csa-dc

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11.1.99

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25.1.99

9th draft : 1.2.99

10th draft :

3.2.99

11th draft :

5.2.99

12th draft :

8.2.99

DISTRICT COUNCILS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional Affairs

Clause

Amendment Proposed

2

In the definition of "prescribed public officer" by adding -

"(ea) the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap. 486); or

(eb) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap. 480); or".

8 In subclause (1) by adding "subject to the approval of the Legislative Council" after "may".

- 9
- (a) By renumbering it as subclause (1);
 - (b) In subclause (1) by adding "subsection (2)," after "subject to";
 - (c) By adding -

"(2) If a Rural Committee specified in column 5 of Part II of Schedule 3 is a Rural Committee that falls within more than one District, for the purposes of subsection (1) (c), it is taken to be in the District specified opposite to it in column 2.

(3) The chairman of each Rural Committee specified in column 5 of Part II of Schedule 3 is eligible under subsection (1) (c) to become ex officio member of the District Council specified opposite to it in column 3.

(4) Subsections (2) and (3) and Part II of Schedule 3 are without prejudice to any other law governing Rural Committees."

- 11
- (a) In subclause (2) by deleting "subsection (3) and".
 - (b) By deleting subclause (3).

- 14
- (a) In subclause (4) by deleting "6" where it twice appears and substituting "4".

- (b) By adding -

"(5) For the purposes of subsection (4), the period of
4 consecutive months

begins on the day next following the date of the meeting of the Council at which the person is first absent.".

- 16 (a) In subclause (3) by deleting "subsection (4) and".
- (b) By deleting subclause (4).

- 17 (a) By renumbering it as clause 17(1).
- (b) By adding -

"(2) A person who is the chairman of a Rural Committee cannot accept office as an ex officio member in more than one District Council concurrently.".

- 19 (a) In subclause (4) by deleting "6" where it twice appears and substituting "4".

- (b) By adding -

"(5) For the purposes of subsection (4), the period of 4 consecutive months begins on the day next following the date of the meeting of the Council at which the person is first absent.".

- 24 (a) In subclause (5) by deleting "6" where it twice appears and substituting "4".

- (b) By adding -

"(6) For the purposes of subsection

(5), the period of 4 consecutive months begins on the day next following the date of the meeting of the Council at which the person is first absent."

27 By deleting subclause (3) and substituting -

"(3) The Chief Executive must determine a date for holding an ordinary election under this section and give notice of that date in the Gazette."

New By adding in Part V, in Division 1 -

"27A. Suspension of operation of District Councils to enable ordinary election to be held

(1) After the Chief Executive determines a date for holding an ordinary election under section 27(3), the Designated Officer may, to facilitate the holding of such election, determine a date with effect from which the operation of the District Councils is to be suspended until the commencement of the term of office of the members elected at that ordinary election.

(2) The Designated Officer must give notice in the Gazette of the date determined by that Officer under subsection (1).

(3) Subject to subsection (4), the

operation of all District Councils and their committees stand suspended with effect from the date determined by the Designated officer under subsection (1).

(4) If the Designated Officer is of the opinion that circumstances so warrant, that Officer may permit or request a District Council or a committee to hold one or more meetings during the period of suspension.

(5) Nothing in this section is to be construed as affecting the term of office of a person who is a member of a District Council when the operation of that District Council is suspended under this section."

- 32(1)
- (a) In paragraph (b) by deleting "37" and substituting "38A(1)".
 - (b) In paragraph (c) -
 - (i) by deleting "無法進行" and substituting "未能完成";
 - (ii) by deleting the full stop and substituting "; and".
 - (c) By adding -
 - "(d) on the making of a declaration under section 38A(3) that an election for a constituency has failed because of the death or disqualification of the

successful candidate at the election."

New By adding -

"34A. Who are validly nominated candidates

(1) The Returning Officer must, as soon as practicable after receiving a nomination form that complies with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541), decide in accordance with those regulations whether or not a person is validly nominated as a candidate.

(2) If, after the Returning Officer has made a decision under subsection (1) that a candidate is validly nominated for election for a constituency but before the date specified for holding the election, it comes to the knowledge of the Returning Officer that the candidate has died, that Officer must, in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541) -

- (a) publicly declare that the candidate has died; and
- (b) further declare which candidate or candidates are validly nominated for election for that constituency.

(3) Subsection (2) does not apply if the Returning Officer has publicly declared under section 38(1) that the candidate was duly elected as an elected member.

(4) If, after the Returning Officer has made a decision under subsection (1) that a candidate is validly nominated for election for a constituency but before the date specified for holding the election, it comes to the knowledge of the Returning Officer that the candidate is disqualified from being nominated as a candidate, the Returning Officer must, in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541), vary the decision to the effect that the candidate is not validly nominated. If the Returning Officer so varies the decision, that Officer must, in accordance with those regulations -

- (a) publicly declare that the decision has been varied;
and
- (b) further declare which candidate or candidates are validly nominated for election for that constituency.

(5) Subsection (4) does not apply if the Returning Officer has publicly declared under section 38(1) that the candidate was duly elected

as an elected member."

37 By deleting the clause.

38(2) By deleting "無法進行" and substituting "未能完成".

New By adding -

"38A. When election proceedings are terminated or when an election fails

(1) If, on the day specified for the holding of an election but before the close of polling for the election, it comes to the knowledge of the Returning Officer that a validly nominated candidate for election for a constituency has died or is disqualified from being elected, that officer must, in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541), publicly declare that the proceedings for the election for the constituency are terminated.

(2) If, after the close of polling for an election but before declaring the result of the election, it comes to the knowledge of the Returning Officer that a candidate for election for a constituency has died or is disqualified from being elected, the proceedings for the election for the constituency are not to be terminated at that stage. If the counting of votes

in respect of the election has not begun or is being conducted, the counting of votes is to begin or to continue as if the death or disqualification had not occurred.

(3) If, after the counting of votes is finished, the candidate referred to in subsection (2) is found to be successful at the election, the Returning Officer must, in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541), publicly declare the election to have failed."

39 By adding -

"(5) Despite subsection (4), if, before declaring the result of an election for a constituency, it comes to the knowledge of the Returning Officer that the candidate who was successful at the election has died or is disqualified from being elected, that Officer -

- (a) must not declare that candidate as elected; and
- (b) must publicly declare, under section 38A(3), that the election has failed."

59 (a) In paragraph (a) (i) by deleting "including matters relating to food and environmental

hygiene services".

(b) In paragraph (b) -

(i) In subparagraph (i) by deleting "and" at the end.

(ii) In subparagraph (ii) by deleting the full stop and substituting "; and".

(iii) By adding -

"(iii) community activities within the District."

68 In the heading by adding "**of a District Council**" after "**Quorum**".

69(2) By deleting "20" and substituting "20(1)".

70 (a) In the heading by adding "**or a committee**" after "**Council**".

(b) By adding -

"(2A) The validity of proceedings of a committee are not affected by a defect in the appointment of or eligibility of a person to be a member of the committee."

77 In the heading by deleting "**members**" and substituting "**persons**".

83(1) By deleting "in relation to the performance of its

functions" and substituting", in the performance of its functions, in relation to matters which appear to the Chief Executive to affect the public interest".

New By adding -

"84A. Transitional: application of section 27A to first ordinary election

In relation to the first ordinary election to be held under this Ordinance, section 27A is to have effect as if "Provisional District Board" and "Provisional District Boards" respectively were substituted for "District Council" and "District Councils".

Schedule 3 (a) Renumber Schedule 3 as Part I of Schedule 3.

(b) By adding -

"Part II

Item	District	District Council	No. of Rural Committees	Names of Rural Committees
1	Islands District	Islands District Council	8	Cheung Chau Rural Committee Lamma North Rural Committee Lamma South Rural

Committee

				Mui Wo Rural Committee
				Peng Chau Rural Committee
				South Lantau Rural Committee
				Tai O Rural Committee
				Tung Chung Rural Committee
2	Kwai Tsing District	Kwai Tsing District Council	1	Tsing Yi Rural Committee
3	North District	North District Council	4	Fanling Rural Committee Sha Tau Kok Rural Committee Sheung Shui Rural Committee Ta Kwu Ling Rural Committee
4	Sai Kung	Sai Kung	2	Hang Hau Rural

District

District

Committee

Council

Sai Kung Rural

Committee

5	Sha Tin District Council	Sha Tin District Council	1	Sha Tin Rural Committee
6	Tai Po District Council	Tai Po District Council	2	Sai Kung North Rural Committee Tai Po Rural Committee
7	Tsuen Wan District Council	Tsuen Wan District Council	2	Ma Wan Rural Committee Tsuen Wan Rural Committee
8	Yuen Long District Council	Yuen Long District Council	6	Ha Tsuen Rural Committee Kam Tin Rural Committee Pat Heung Rural Committee Ping Shan Rural Committee Sha Tin Rural Committee Shap Pat Heung Rural Committee
9	Tuen Mun District Council	Tuen Mun District Council	1	Tuen Mun Rural Committee

Council"

Schedule 4 (a) In Form 1 -

- (i) in paragraph (b) by deleting "and".
- (ii) in paragraph (c) by deleting the full stop and substituting "; and".
- (iii) by adding -

"(d) to the best of my knowledge and belief I am not disqualified for appointment and from holding office as an appointed member by virtue of section 14 of the District Councils Ordinance."

(b) In form 2 -

- (i) in paragraph (b) by deleting "and"
- (ii) in paragraph (c) by deleting the full stop and substituting "; and".
- (iii) by adding -

"(d) to the best of my knowledge and belief I am not disqualified from holding office as an ex officio member by virtue of section 19 of the District Councils Ordinance."

Schedule 6 By adding under the heading "**Electoral Affairs Commission Ordinance**" -

"17A. Long title amended

In the long title to the Electoral Affairs Commission Ordinance (Cap. 541) is amended by

adding "and District Council constituencies" after "constituencies".

Schedule 6, section 18 By deleting "of the Electoral Affairs Commission Ordinance (129 of 1997)".

Schedule 6 By adding -

"19A. Functions of Commission

Section 4(a) is amended by adding "or District Council constituencies, as the case may be," after "constituencies".

Schedule 6, section 24 (a) By adding –

"(aa) in subsection (2) (a) by adding "or District Council constituency, as the case may be" after "constituency";".

(b) By deleting paragraph (b) and substituting -

"(b) by repealing subsection (3) (b) and substituting -

"(b) in respect of -

- (i) the first ordinary election to be held under the District Councils Ordinance (of 1998), not later

than 31 May 1999; and

- (ii) subsequent ordinary elections, at intervals of not more than 36 months from the preceding ordinary election.";"

Schedule 6, By deleting paragraph (b) and substituting –

section 25 "(b) by repealing "first provisional recommendations made after the commencement of this section" and substituting "provisional recommendations made for the first ordinary election to be held under the District Councils Ordinance (1998)".

Schedule 6, By adding –

section 26 "(ea) in subsection (6) (b) by repealing "or the geographical constituency" and substituting ", the geographical constituency or the District Council constituency";".