

## **LEGISLATIVE COUNCIL BRIEF**

### **Legislative Council Ordinance (Cap. 542)**

#### **LEGISLATIVE COUNCIL (AMENDMENT) BILL 1999**

### **INTRODUCTION**

At the meeting of the Executive Council on 26 January 1999, the Council ADVISED and the Chief Executive ORDERED that the Legislative Council (Amendment) Bill 1999 should be introduced into the Legislative Council.

### **BACKGROUND AND ARGUMENT**

2. At present, arrangements for elections to the Legislative Council (LegCo) are set out in the Legislative Council Ordinance (LegCo Ordinance) (Cap.542) and the Electoral Affairs Commission Ordinance (EAC Ordinance) (Cap.541). However, most of the key provisions on the arrangements for the election of geographical constituencies (GCs), functional constituencies (FCs) and the Election Committee only apply to the first term LegCo election in 1998. Suitable legislative amendments must be made to provide a proper legal basis for the second term LegCo election to be held in 2000.

### **THE BILL**

3. The major provisions in this Bill seek to amend the LegCo Ordinance and, where necessary, make consequential amendments to the EAC Ordinance. Details are set out in the following paragraphs.

#### **(A) Election timetable**

4. To tie in with our proposal to hold the second term LegCo election in September 2000, **Clause 18** seeks to put back the annual publication deadlines for the Provisional Register and the Final Register to 15 April and 25 May respectively. **Clause 17** amends the cut-off date when a person must reach eighteen years old to be eligible for registration as an elector (which is at present set at 31 March) to 25 May, the new deadline for the publication of the Final Register.

**(B) Electoral arrangements for geographical constituencies**

5. **Clause 10** seeks to provide that there shall continue to be five constituencies in GC elections for the second term LegCo. **Clause 11** further stipulates that a total of twenty-four Members shall be returned from all GCs and that each GC is to return four to six members. Other existing arrangements in respect of the GC elections (e.g. the list voting system) will continue to apply to the 2000 LegCo election.

**(C) Electoral arrangements for the functional constituencies**

*(i) Delineation of electorates*

6. The existing provisions in the LegCo Ordinance for the election of FCs will continue to apply to the election of the second term LegCo (e.g. number of members to be returned from the FCs and voting systems) subject to the changes set out below.

7. The existing electorates for the FCs are listed in Schedule 1 to the LegCo Ordinance. Some of these are listed by name while others by reference to the eligibility criteria, e.g. being a corporate member of an umbrella organisation or having registered under a statutory scheme. For the sake of clarity, the basic principles governing elector eligibility for each FC should be prescribed in the main text of the LegCo Ordinance, and that the detailed list of the names of electors should be set out in separate schedules to the Ordinance. **Clauses 12, 13 and 42** give effect to this purpose. References to various items in Schedule 1 throughout the existing LegCo Ordinance are also amended accordingly (**Clauses 2(a)(ii), 16, 33(a), 34(a), 36, and 41(a)**).

8. The delineation of FC electorates under the new formulation is broadly the same as that for the 1998 LegCo election, except that the Urban Council and Regional Council FCs are to be replaced by two new FCs, one for the proposed District Councils and the other for the Catering sector. The District Council FC will comprise all members of the District Councils, while the Catering FC will follow the same delineation as the Catering Subsector of the Election Committee in the 1998 election.

9. A number of technical amendments to the delineation of the FC electorates are also proposed for updating purposes. Generally speaking, they can be classified into three categories :-

- (a) correcting the names of some corporate electors, and updating the description of certain eligibility criteria;

- (b) deleting corporate bodies which have closed down, ceased operation, or are no longer holding a particular type of licence/franchise; and
- (c) adding new corporate bodies such as new licensees/franchisees and professionals registered under new statutory schemes.

***(ii) Electoral arrangement for the District Council and Catering FCs and the incumbent LegCo Members from the Urban Council and Regional Council FCs***

10. Because of the relatively large size of the potential electorates of the District Council and Catering FCs, eligible electors in these two FCs will be allowed to register in any one of the other FCs of their choice if they are so eligible. This leaves the four small FCs (i.e. Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport FCs) the only constituencies subject to the restriction that eligible electors for these constituencies can only be registered in these FCs and not otherwise (**Clause 16(b)**). For the same reason, the first-past-the-post voting system will be used for the two new FCs (**Clause 34(a)**).

11. **Clause 45(1) and (2)** seek to make it clear that the two incumbent LegCo Members returned by the Urban Council and Regional Council FCs in the 1998 election should serve out their term of office in the first term LegCo. They will still be, of course, subject to the existing provisions which govern when a member ceases to hold office e.g. death, resignation and disqualification. Also, no by-election will be held to fill their vacancies if such vacancies arise after 31 December 1999 when the term of office of the Provisional Urban Council and Provisional Regional Council expires.

**(D) Electoral arrangements for the Election Committee**

***(i) Establishment of Election Committee, number of members to be returned and system of voting for the election by the Election Committee***

12. **Clauses 14 and 15** provide that an Election Committee will be formed to return six members to the second term LegCo. As a corollary, **Clause 35(a)** stipulates that each Election Committee member shall cast six votes at the second general election.

(ii) *Formation of the Election Committee*

13. **Clause 43** seeks to adapt the existing Schedule 2 to the LegCo Ordinance to provide for the formation of the new Election Committee for the second term LegCo. Apart from the technical amendments which are necessary as a result of, for instance, changes in references to the FCs and delineation of the FC electorates and the establishment of the new Catering and District Council FCs (such as those contained in **sub-clauses (r) and (t)**), we propose to make the following changes :-

- (a) Members of the first term LegCo will replace members of the Provisional LegCo to become ex officio members of the Election Committee (**sub-clauses (b), (d) and (g)(i)**);
- (b) The existing requirement that an ex officio Election Committee member will be registered only if he is a permanent resident of Hong Kong will be expressly provided for in the new Schedule (**sub-clause (c)**);
- (c) The Urban Provisional District Boards and the New Territories Provisional District Boards Subsectors will be replaced by the Hong Kong and Kowloon District Councils and New Territories District Councils Subsectors respectively following the expiry of their terms of office and the establishment of the District Councils (**sub-clauses (e) and (g)(ii)**);
- (d) Arrangements are provided to facilitate the rolling over of names in previous registers to a new register of voters for the 2000 Election Committee Subsector elections (**sub-clause (k)**); and
- (e) The deadlines for the publication of the provisional registers and final registers of voters for the 2000 Election Committee Subsector elections will be amended to 15 April and 25 May 2000 respectively to tie in with the new deadlines for the publication of the voter registers for GC and FC elections (*re. paragraph 4 above*) (**sub-clause (zc)**).

14. Schedule 3 to the existing LegCo Ordinance (savings and transitional provisions) provides for the registration of electors for the first LegCo election in 1998. As the Schedule has already had its effect, we propose to replace it with a new schedule of transitional provisions to facilitate the rolling over of names from the existing catering subsector register to a new catering FC register for the purposes of 2000 LegCo election (**Clause 44**).

**(E) Disqualification of public officers from LegCo candidature**

15. **Clause 23(b)(iii)** seeks to extend the existing provisions on disqualification from LegCo candidature to the Privacy Commissioner, the chairperson of the Equal Opportunities Commission and all their staff.

**(F) Termination of election proceedings**

16. Under the existing LegCo Ordinance, if a validly nominated candidate dies or becomes disqualified after the close of nomination but before close of polling, the Returning Officer must terminate the election proceedings. If the candidate dies after the close of polling but before the declaration of result, the Clerk to LegCo will declare a vacancy in LegCo if the candidate is successful.

17. To implement our new proposal to minimize the risk of disruption to the electoral process, **Clauses 22, 25 and 32(a)** empower the Returning Officer to revise the list of validly nominated candidates and allow the election proceedings to continue if, before the election day (if advance polling is to be held, the first day for advance polling), he comes to know that the candidate has died or is disqualified.

18. In case the Returning Officer only comes to know such information on or after the election day, **Clauses 20(a) and (c), 30, 32(c), 33(c), 34(c), and 35(c)** provide that he shall take actions as follows :-

- (a) before the close of polling - the Returning Officer will terminate the election proceedings concerned and a by-election will be conducted.
- (b) after the close of polling but before the declaration of results - the case will be dealt with as follows -
  - (i) if the candidate concerned loses the election : the Returning Officer shall proceed with declaration of the election results; or
  - (ii) if the candidate concerned wins the election : in case of a single-seat constituency, the Returning Officer will declare the election to have failed and a by-election will be conducted; in case of a multiple-seat constituency, the Returning Officer will proceed with declaration of the election results in respect of the other successful candidates and a by-election will be conducted to fill the seat left unfilled by the candidate concerned. (There is one exceptional

circumstance. If the candidate concerned is contesting in a geographical constituency, his seat is to be taken up by the candidate ranked below him in the same list, in which case no by-election would be required.)

19. **Clauses 19 and 28** seek to repeal the existing provisions on the termination of election proceedings and the declaration of vacancy by the Clerk to LegCo in case of death of a successful candidate. While the existing EAC Ordinance already provides the Electoral Affairs Commission the power to make arrangements for the termination of election proceedings, **Clause 47(a)(ii)** empowers the Electoral Affairs Commission to make regulations for the failure of an election.

**(G) Advance polling**

20. In order to implement advance polling, **Clauses 2(a)(iii) and 6** empower the Chief Executive to specify one or more dates for holding an advance poll for a general election. The date(s) so specified must be within 15 days before the general polling day. **Clause 27** further enables the Chief Executive to postpone, adjourn or cancel the advance polling in case of riot, open violence or any occurrence of public danger, while **Clause 47(e)** provides the Electoral Affairs Commission with the residual power to postpone, adjourn or cancel the advance polling in other cases, e.g. typhoons. This largely mirrors the existing arrangement where the Chief Executive may postpone or adjourn the holding of a general election in case of riot etc. while the Electoral Affairs Commission may do so in other circumstances.

21. **Clause 31** provides that, if the Chief Executive specifies a date or dates for advance polling, electors may apply for voting on the advance polling day(s). Successful applicants will be allowed to vote on (any of) the advance polling day(s) but not on the general polling day irrespective of whether they have voted on the advance polling day(s), except that if the advance polling is cancelled, they would be allowed to vote on the general polling day. The detailed arrangements for advance polling will be made by the Electoral Affairs Commission by way of regulation (**Clause 47(a)(i) and (f)**). The above arrangements for advance polling would only apply to LegCo general elections, but not to LegCo by-elections or Election Committee Subsector elections in view of the time constraint in the latter cases.

## (H) Disqualification of LegCo Members from holding office

22. Under section 40(1)(b)(iii) of the existing LegCo Ordinance, a LegCo candidate must give a promissory oath at the time of nomination to the effect that, if elected, he would not do anything during his term of office that *would result* in the circumstances specified in that section. The circumstances set out in that section are largely based on the disqualification conditions which disqualify a candidate from being nominated in a LegCo election. Section 15(3) further provides that a breach of such oath could constitute a kind of “misbehaviour” which a LegCo Member may be censured under Article 79(7) of the Basic Law. In December 1998, the LegCo Panel on Constitutional Affairs raised the concern that the wording in sections 40(1)(b)(iii) and 15(3) seem to suggest that a breach of the promissory oath (hence constitutes a kind of “misbehaviour” for censure) would have occurred if a Member does something that *would lead* to one of the specified circumstances even if the circumstance may not have actually happened.

23. After reviewing the relevant provisions, the Administration is satisfied that the present wording might not reflect the original intention and **Clause 24(a)** therefore seeks to replace the word “would result” with “results” to make it clear that it could only constitute a breach of the promissory oath if the disqualifying circumstances have actually arisen. A saving provision is also provided in **Clause 45(3)** to make it clear that the change of wording would also apply to the promissory oath taken by Members at the time of nomination in the 1998 LegCo election.

## (I) Technical amendments

24. We have also taken the opportunity to propose some technical amendments to the LegCo Ordinance for the better carrying out of the Ordinance.

## (J) Commencement of operation of the Bill

25. **Clause 1(2)** provides that the Bill shall come into operation on a date specified by the Secretary for Constitutional Affairs in the Gazette.

## PUBLIC CONSULTATION

26. On 21 December 1998, we consulted the LegCo Panel on Constitutional Affairs about the proposals based on which this Bill is drafted. We have also met with major political parties and many independent LegCo Members to listen to their views on the proposals, and have gathered views expressed in media, commentators and the general public.

## **BASIC LAW IMPLICATIONS**

27. The Department of Justice advises that the proposed Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

28. The Department of Justice advises that the proposed Bill is consistent with the human rights provisions of the Basic Law.

## **FINANCIAL AND STAFFING IMPLICATIONS**

29. The 2000 LegCo election would require additional financial and staffing sources. We would work out the precise amount on the basis of the experience in holding the first LegCo election in 1998 and the arrangements for the 2000 LegCo election, and any additional resources would be sought in the usual manner.

## **LEGISLATIVE TIMETABLE**

30. The legislative timetable will be as follows -

Publication in the Gazette	29 January 1999
First Reading and commencement of Second Reading debate	3 February 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **PUBLICITY**

31. A press briefing will be held on 28 January 1999 before the Bill is gazetted. A spokesman will also be available for answering subsequent media enquiries.

Constitutional Affairs Bureau  
28 January 1999  
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