

立法會
Legislative Council

LC Paper No. CB(2)329/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/16/98

**Legislative Council Bills Committee on
Legislative Council (Amendment) Bill 1999**

**Minutes of 20th meeting
held on Thursday, 3 June 1999 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Dr Hon Raymond HO Chung-tai, JP
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon LEE Kai-ming, JP
Hon NG Leung-sing
Hon Bernard CHAN
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon Andrew WONG Wang-fat, JP
Hon LAU Kong-wah
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon TAM Yiu-chung, JP

Members Absent : Prof Hon NG Ching-fai
Hon Margaret NG
Hon Mrs Selina CHOW, JP
Hon MA Fung-kwok
Hon CHEUNG Man-kwong
Hon Christine LOH
Dr Hon LEONG Che-hung, JP
Hon LEUNG Yiu-chung
Hon Gary CHENG Kai-nam
Hon SIN Chung-kai

Hon WONG Yung-kan
Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon Howard YOUNG, JP
Hon LAU Wong-fat, GBS, JP
Hon Mrs Miriam LAU Kin-yee, JP
Dr Hon TANG Siu-tong, JP

Member Attending : Hon Ambrose CHEUNG Wing-sum, JP

Public Officers Attending : Miss Shirley YUNG
Acting Deputy Secretary for Constitutional Affairs

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs (5)

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Ms Phyllis KO
Acting Deputy Principal Government Counsel (Elections)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2) 3

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2) 7

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I. Administration's responses to points raised by the Bills Committee on 21, 24 and 25 May 1999
(LC Paper No. CB(2) 2135/98-99(01))

Item 4 - By-election under section 32(c) of Legislative Council Ordinance (LCO)

Acting Deputy Secretary for Constitutional Affairs (DS for CA) explained that according to the existing Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, the Chief Electoral Officer must as soon as practicable publish in the Gazette a notice for the by-election. Citing the Financial Services functional constituency (FC) as an example, DS for CA said that a by-election for the constituency had been arranged in October 1998, after a vacancy arose in September 1998.

2. In response to Ms Emily LAU, Legal Adviser (LA) said that as far as electoral legislation was concerned, time limit was usually not imposed on by-election arrangements. In fact, previous by-elections were all conducted within a reasonable time. He said that the Administration's reply was acceptable.

3. The Chairman added that since there were different by-election arrangements for vacancies arising from FC, geographical constituency (GC) and the Election Committee (EC), it might be inappropriate to impose a statutory time limit on by-election.

Items 5 and 6 - Voting system of the EC

4. Members noted the reply. Mr LEE Wing-tat said that he maintained the view that EC members should not be required to cast all votes under his entitlement.

Item 7 - Termination of election proceedings

5. Members noted that the Administration was considering members' suggestion that the arrangement to terminate election proceedings should not apply to FC elections if a candidate was disqualified or died before the polling day.

Item 8 - Advance polling day

6. Members noted that the Administration was considering members' suggestion that only one day should be designated for advance polling.

Item 9 - Amendments proposed by Hon Andrew WONG

7. Members noted the reply.

Item 10 - Compliance of clause 45(1) with the Basic Law

8. The Chairman questioned the constitutionality of removing the constituents of the Urban Council (UC) and Regional Council (RC) FCs following their dissolution on 31 December 1999, while the two returned Members would serve out their term until 30 June 2000. Mr LEE Wing-tat pointed out that an FC Member who no longer had a substantial connection with the relevant FC should cease to hold office. Under the circumstances, he doubted whether the Members returned by the UC and RC FCs were still qualified to be Members.

9. DS for CA responded that the eligibility and disqualification of a Member were separate issues. At the time that a person was elected as an FC Member, he must satisfy, inter alia, the condition of having a substantial connection with the relevant FC. That person would be disqualified as a Member when he had contravened Article 79 of the Basic Law which set out the circumstances under which a Member was no longer qualified for the office. She added that under section 40(1)(b)(iii)(I) of the Legislative Council Ordinance (LCO), a person contesting in an FC election would take a promissory oath to the effect that if elected, he or she would not do anything during his or her term of office that would result in, inter alia, his or her ceasing to have a substantial connection with the constituency. In the case of the two sitting Members returned by UC and RC FCs, they would not be considered to have positively done anything to cease to have a substantial connection with their respective FCs as the proposal to dissolve the municipal councils was made by the Administration.

10. Mr LEE Kai-ming considered the Administration's explanation unacceptable. He pointed out that while a Member would be disqualified if he did something that would result in his ceasing to have a substantial connection with the relevant FC, the same Member would not be disqualified if the act was committed by the Administration. The Chairman supported the view and pointed out that if the same logic applied, a Member who had not positively done anything to result in his loss of status as a permanent resident could remain as a Member, in spite of Article 79(3).

11. In response to members, LA said that the Administration's interpretation was legally in order. However, if the Administration considered the proposed arrangements regarding the two UC and RC seats were in order, it was in fact not necessary to include clause 45(1) in the Bill. If the clause was for the purpose of avoidance of doubt, then it should be so specified in the Bill. DS for CA responded that the Administration would reconsider the drafting of clause 45(1).

12. Mr Ambrose CHEUNG pointed out that under the arrangements proposed by the Administration regarding the UC and RC FCs, the two sitting Members could represent neither their FCs nor their constituents after 31 December 1999. To overcome the problem, he suggested that the term of office of the municipal councils be extended until 30 June 2000 to tie in with that of the present term LegCo. In this

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regard, clause 45(2) which stipulated that no by-election would be held to fill a vacancy occurring in the membership of the UC and RC FCs after 31 December 1999 would no longer be necessary. He further pointed out that a vacancy for UC and RC FCs could occur well before 31 December 1999.

13. DS for CA said that the term of office of the municipal councils would expire on 31 December 1999 and their functions would be transferred to the Government and other statutory bodies. The two sitting Members could continue to perform the duties of LegCo Members after 31 December 1999, such as scrutinizing bills, monitoring the work of the government and debating on matters of general public interest including those relating to environment, food hygiene and recreational services. This was a special transitional arrangement following Government's proposal to abolish the two municipal councils. She undertook to respond to Mr Ambrose CHEUNG's suggestion in writing.

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Item 11 - Finance and Financial Services FCs

14. Members noted the reply.

II. Administration's responses to points raised by the Bills Committee on 28 and 31 May 1999

(LC Paper No. CB(2) 2202/98-99(01))

Item 1 - 20% nationality rule

15. Referring to the reply in the second paragraph, DS for CA said that some of the numbers were misquoted. The number of candidates running in the 12 specified FCs in the 1998 LegCo election should be 25, not 27; and the number of Members in the 12 specified FCs who were not of Chinese nationality or had the right of abode in other places should be six, not five.

16. Ms Emily LAU was not satisfied with the reply which failed to give a detailed breakdown on the nationality status of the candidates and Members of the 12 specified FCs. DS for CA responded that it was inappropriate to disclose personal information of individual candidates contesting in the 1998 LegCo election. She advised that other than the Architecture, Surveying and Planning FC, the Tourism FC and the Import and Export FC, the other FCs had candidates who were not of Chinese nationality or had the right of abode in other places.

17. Addressing Ms LAU's concern, LA advised that disclosure of candidates' information might contravene the Personal Data (Privacy) Ordinance. He said that while it was perfectly in order to disclose such information during election, it was doubtful whether the information could be used after the election and for purposes other than that related to the election. The Chairman said that such information was

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reported by the media during the election period, and a copy of the Apple Daily dated 25 April 1998 was tabled for members' reference.

18. At 5:22 pm, Mr LEE Wing-tat drew the attention of the Chairman to the fact that a quorum was not present. As a quorum was still not present after 15 minutes, the Chairman adjourned the meeting at 5:37 pm.

(Post-meeting note - The Administration's response to concerns raised by the Bills Committee at this meeting was circulated to members vide LC Paper No. CB(2) 2304/98-99(03).)

Legislative Council Secretariat
9 November 1999