

**Administration's Responses to Points raised
on 21, 24 and 25 May 1999 by Members of the Bills Committee on
the Legislative Council (Amendment) Bill 1999**

C1: To provide legal advice on why the circumstances under which a Member will be disqualified from holding office as set out in section 40(1)(b)(iii) could not be incorporated into section 15(3) of the Legislative Council Ordinance.

A1: Article 79 of the Basic Law lists out the circumstances under which the President of the Legislative Council may declare that a member of the Council is no longer qualified for the office. The list of circumstance is exhaustive and the Article cannot be added to or amended by domestic legislation although there is scope to elaborate or explain the meaning of the Article.

C2: To respond to Members' concerns about exit poll and canvassing activities conducted on advance polling day and application procedures for advance polling etc.

A2: As we have explained in the meeting, according to the past experience on elections, some electors may be unable to cast their votes on the general polling day due to various reasons such as work commitment, departing Hong Kong on vacation or business trips on the polling day. To facilitate these needy electors, we propose to amend the existing Legislative Council Ordinance to empower the Chief Executive to specify advance polling day(s) in respect of the Legislative Council general election to allow electors to apply to vote before the general polling day.

Having regard to the concerns raised by Members on the detailed arrangements, we would like to give a brief account on our preliminary thinking on the arrangements as follows:-

Application Procedures for Voting on the Advance Polling Day(s)

Electors must apply in writing for voting on the advance polling day(s) before a specified date. If electors can give reasonable grounds (such as work commitment, departing Hong Kong on vacation or business trips on the general polling day), they will be

allowed to vote on the advance polling day(s) in accordance with the relevant provisions.

Arrangements for Conducting Canvassing Activities

The arrangements in respect of the polling stations for the advance polling day(s) are similar to those of the ordinary polling stations on the general polling day. For example, only electors whose names are on the extracts of the voter registers of specified polling stations can cast their votes at the polling stations and candidates can monitor the polling process in the polling stations. The returning officers will also specify appropriate no canvassing zones and no staying areas to keep order. We note that some members have suggested all canvassing activities should be prohibited on the polling day. We shall give the Administration's views on the suggestion in due course.

Exit Polls

According to the existing guidelines on election activities, the Electoral Affairs Commission (EAC) has already required the media not to announce the results of the exit polls before the close of polls. The EAC will consider expanding the current guidelines and require the media not to announce the results of exit polls until all the polling (including the polling on the general polling day) closes. The EAC will issue a public statement censuring against those persons who contravene the guidelines.

Furthermore, we will remind electors at the polling stations that according to section 60 of the existing Legislative Council Ordinance, a person must not, without lawful authority, require an elector to disclose the candidate for whom the elector voted at an election. A person which contravenes the provision is liable to a maximum fine of \$5,000 on conviction.

The above arrangements are our preliminary thinking only. The EAC will make subsidiary legislation to give effect to the relevant arrangements. Members may raise their concerns when scrutinizing the relevant subsidiary legislation.

C3: To provide information on “advance polling” in other overseas countries.

A3: According to the information we gathered, Canada, Japan and Australia adopt advance polling arrangements. The details are as follows:-

Canada

All electors can go to specified advance polling stations on the advance polling days to cast their vote without have to make prior applications. The relevant legislation stipulates the 10th, 9th and 7th day before the election as advance polling days.

Japan

Electors who cannot vote on the polling day for specified reasons (such as work commitment) may go to specified polling stations to cast their vote within a certain period before the election. No prior application is required.

Australia

Any electors who cannot vote on the polling day for specified reasons (such as work commitment) may cast their vote at specified polling stations within a certain period before the election without having to make prior applications. They however have to explain at the advance polling stations the reasons why they cannot vote on the polling day before they can cast their vote.

As regards exit polls, there is no legislation in the above countries prohibiting the conduct of exit polls, or the announcement of the results of exit polls before the close of polls. It is worth noting that the electoral laws of Canada had once stipulated that no announcement of the results of exit polls could be made before the close of polls but the provision was found to be in contravention of the freedom of speech by the court and no longer applies now.

C4: To advise when a by-election under clause 32(c) will be held.

A4: Clause 20 of the Legislative Council (Amendment) Bill 1999 amends section 36(1) of the Legislative Council Ordinance which stipulates that the EAC must arrange for a by-election to be held on the making of a declaration by the returning officer that the election has failed. The existing Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation further stipulates that the Chief Electoral Officer must as soon as practicable publish in the Gazette a notice for the by-election. Taking the Regional Council functional constituency by-election held in late 1998 as an example, the EAC arranged for a by-election for the constituency in October immediately after the court determined in September that the then elected Member was not duly elected.

C5: To advise the number of votes received by the candidates of the EC election in 1998.

A5: Please refer to the Annex.

C6: On voting system of EC (clause 35), to advise the reasons for requiring an EC member to cast all 6 votes under his entitlement and the implications, if any, if he is given a choice as to whether or not to cast all 6 votes.

A6: The proposed voting system for the election by the Election Committee as set out in clause 35 of the Bill is the same as that in section 52 of the existing Legislative Council Ordinance. When the Provisional Legislative Council (PLC) examined the then Legislative Council Bill, Members introduced a committee stage amendment requiring that the Election Committee members must cast all 6 votes under their entitlement for their ballots to be valid. After due consideration of all factors, the amendment was passed by the PLC.

Based on the experience of 1998 Legislative Council election, we considered that the arrangement works well and therefore propose to adopt the same arrangement in the 2000 Legislative Council election.

C7: The Bill proposes that the election proceedings should continue if a candidate is disqualified or died before the polling day. Some members have suggested that the arrangement should not apply to the FC elections because it would limit the choice of the electors. Instead, the election proceedings should be terminated under these circumstances and a by-election should be held. Members request the Administration to reconsider the matter. In addition, to facilitate members' consideration, please also provide information on the arrangements adopted by other countries which have different election and voting systems e.g. New Zealand.

A7: We are considering Members' views and will report back to the Bills Committee as soon as possible. As for the information on overseas countries, the legislation in the United Kingdom stipulates that if a validly nominated candidate dies after the close of nomination but before the announcement of the election results, the electoral proceedings will be terminated. However, Members should note that the electoral system for election to the House of Commons in the United Kingdom is very much different from that in Hong Kong. Due to time constraint, we are unable to gather information on other countries for Members' reference.

C8: The Administration is requested to consider whether there is a need to designate more than one date for holding advance polling for a general election, given that the general election is held on only one day and the number of electors involved in advance polling is much smaller.

A8: The Bill empowers the Chief Executive to specify a date or dates as advance polling day(s) so as to provide sufficient flexibility for the Chief Executive to determine the number of advance polling days according to the practical need. At the Bills Committee meeting, Members have suggested there is no need to designate more than one date for holding advance polling. We are considering Members' views and if it is necessary to amend the relevant provisions of the Bill, we will put the amendments to the Bills Committee for discussion.

C9: To advise whether a Member’s proposals to restructure the FC system and to use the list system of proportional representation for the EC election are likely to have a charging effect.

A9: As the text of the proposed amendments is not yet ready, our response can only be preliminary.

As far as we can understand, the Member intends to move amendments to the Bill to the effect that the 30 functional seats will be grouped into five constituencies, each having six seats. Every registered GC elector will be entitled to vote in each of the five FCs, in addition to his GC vote. This proposal is totally in variance with the principles adopted for delineating the FC electorates. We therefore oppose the proposal as a matter of principle. As regards the question of charging effect, we will provide our comments after the text of the amendments is available.

We consider that it is inappropriate to apply the list system of proportional representation to the EC election. As we consider that the systems of voting in the 1998 LegCo election have worked well, we propose that the same systems be adopted for the 2000 second LegCo election. As regards the question of charging effect, we will provide our comments after the text of the amendments is available.

C10: To advise whether clause 45(1) is compatible with the relevant provisions of the Basic Law.

A10: Annex II of the Basic Law stipulates that the first term LegCo should be formed in accordance with the Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region (“the Decision”). The Decision stipulates that 30 members of the first term LegCo are to be returned by functional constituencies.

At the first LegCo election, 30 members were returned by 28 FCs. Of these Members, two were returned by the Urban Council and Regional Council FCs. Under our proposal, the provision in the

Bill that repeals the two Municipal Councils FCs will not take effect until 1 July 2000. Although we propose that with effect from 1 January 2000 the two Provisional Municipal Councils be abolished, these two FCs will continue to exist in law until 30 June 2000. Hence clause 45(1) of the Bill that allows the two LegCo Members returned by the Urban Council and Regional Council FCs to remain in office until 30 June 2000 does not contravene the Basic Law.

C11: To advise the arrangements to be adopted if the delineation of the electorates of the Finance and Financial Services FCs will be affected as a result of the proposed restructuring of the banking sector and the securities and futures markets.

All: The Hong Kong Monetary Authority is formulating its recommendations on the reforms of the banking sector with a view to producing a proposal to the Government before September 1999. The study on the proposed reforms of the exchanges and clearing houses is still under way. The results of the study will be available by the end of September 1999. At that time, we will study whether the delineation of the electorates of the Finance and Financial Services FCs will be affected.

Constitutional Affairs Bureau

May 1999

Election Committee Constituency

Candidate Candidate Number and Name	Value of Votes Received at the Final Count as Declared by RO	Result of Election
21 YEUNG YIU CHUNG	441	Elected
22 LEE KWONG LAM(LEE KAM KAI)	83	
23 PANG CHEUNG WAI THOMAS	226	
24 NG LEUNG SING	539	Elected
25 HO SAI CHU	386	Elected
26 MA FUNG KWOK	466	Elected
27 KAN FOOK YEE	300	
28 CHIU JAMES	141	
29 LAM PEI PEGGY	346	
30 YEUNG CHUN KAM CHARLES	380	
31 FAN HSU LAI TAI RITA	628	Elected
32 NG CHING FAI	530	Elected
33 CHANG SAU HAN MARIA JOYCE	149	
34 HO KA CHEONG	97	
35 LAW CHEUNG KWOK	259	
36 CHEUNG HOK MING	273	
37 SIU SEE KONG	56	
38 PANG HANG YIN	212	
39 CHU YU LIN DAVID	469	Elected
40 YAM CHI MING STEPHEN	137	
41 CHAN KAM LAM	432	Elected
42 HUI TAK FAI JOSEPH	214	
43 CHOY SO YUK	397	Elected
44 LEUNG TSZ LEUNG	85	
45 LAU HON CHUEN	504	Elected