

**Administration's Response to Concerns raised on 10 December 1999
by Members of the Bills Committee
on Elections (Corrupt and Illegal Conduct) Bill**

Clause 7

C1: To respond to the view that the offence provisions in clause 7 as well as in other clauses as they are drafted have the effect of creating absolute offences without having to prove a corrupt motive. The Administration is requested to clarify whether this is the policy intention, and if not, to consider whether it is desirable to specify a corrupt intent by adding, e.g. “corruptly” or “without reasonable excuse” before “offers” as appropriate.

A1: Like the other clauses in Part 2 of the Bill, clause 7 seeks to define what corrupt conduct is at an election. The structure of the provisions follows that adopted in the UK Representation of the People Act 1983. It provides that where a person does a specified act for a specified purpose he engages in a corrupt conduct. Thus, it is a corrupt conduct to offer an advantage to another person to induce him to stand at or to withdraw from an election. The mental element is the intention to induce the candidate to stand, to refrain from standing or to withdraw as a candidate. The motive to bribe is built-in in the way the clause is drafted. Adding the word “corruptly” that literally denotes the motive to influence by using bribery is not only unnecessary and tautological, it might cast doubt on whether in any particular case the offering of an advantage to a person in relation to his candidature is a corrupt conduct.

As regards other qualifiers like “without reasonable excuse” or “without lawful authority”, in drafting the Bill we have critically assessed the need to add these qualifiers in individual clauses. We do not think it necessary to add such qualifiers in clause 7 because if the mental element to influence a decision on candidacy is present, there should be no reasonable excuse for the conduct.

Clause 19

C2: To clarify whether and how this clause applies in the cases of soliciting donations from pedestrians by setting up collection boxes and collecting election donations collectively for a group of candidates.

A2: The object of clause 19 is to ensure transparency at an election by requiring a candidate to record details and usage of election donations at an election. To address the practical difficulties in fund raising from pedestrians, we have adopted the Committee's proposal to require the candidate to issue a receipt to the donor only if he donates more than \$1,000. We consider that it is appropriate to use \$1,000 as the amount to require a receipt to be given to the donor, even though the election donation is given collectively to a group of candidates at the election. To avoid any doubt in the interpretation of the clause, we will move an CSA to clarify this.

C3: To advise whether “an election donation” refers to and covers the aggregate amount of payments made by the same donor on more than one occasions.

A3: It would depend on the circumstances as to whether a series of payments would be treated as a single election donation for the purposes of clause 19. For example where the donor made clear from the start his intention to donate a specific sum in excess of \$1,000 by way of installments over a short period of time, clearly the amounts of the individual payments would be subject to aggregation for the purposes of clause 19. A number of factors could be relevant including the amount of individual payments, the method of payment, the total amount, the frequency of payments, and the relationship between the donor and the candidate. It should be borne in mind that, in the event of enforcement action under Section 19(3) it would be for the prosecution to prove beyond reasonable doubt that the payment were a single donation and that the candidate was aware of that fact.

Clause 21

C4: To advise whether it is the policy intent for this clause to cover legitimate agreement between the petitioner and the respondent to withdraw the petition subject to leave of court, e.g. the petitioner of an election petition appealing to the respondent not to claim costs against him in return for his withdrawing the election petition. Similar to the concern raised about clause 7 above, should proof of the existence of a corrupt intent be required in this clause?

A4: Unlike in a commercial dispute where it is perfectly legitimate for the litigants to reach an out-of-court settlement as the disputes relates to private rights and interests, in an election petition the petitioner is actually challenging the result of an election that is of public concern. For this reason, our electoral laws provide that the petitioner must obtain the leave of the court to withdraw an election petition. The laws also allow another person to stand in as petitioner to enable the election petition to continue. We therefore consider that it is inappropriate to allow any advantage (be it an offer for out-of-court settlement or a blatant bribe) be offered to induce a petitioner to withdraw his election petition. This would not prevent a court from making an appropriate order for costs at termination of proceedings.

Constitutional Affairs Bureau
30 December 1999