

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

(1) **Definitions of “ordinary election” and “prescribed public officer” (clause)**

Proposed CSA : (a) Amending the definition of “ordinary election” to clarify that the term refers to the first election to elect persons to be elected members of the District Councils and to election to elect persons to fill the vacancies caused by the expiration of the term of office of elected members of the District Councils.

(b) Amending the definition of ‘prescribed public officer’ by adding ‘Privacy Commissioner’ and ‘Chairperson of the Equal Opportunities Commissioner’ and their staff. As a result, these persons will be disqualified from taking part in election to be an elected member and from becoming an appointed member or exofficio members. It is considered necessary to include these officers as they should be seen acting free of conflict of interest.

Remarks : (a) is a technical amendment and (b) is proposed on the basis of need to extend

the scope of the definition.

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

Proposed CSA : Amending 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 : Adding 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 : Deleting subclauses 11(3) and 16(4) to omit the discretion of CE to specify a shorter term of office for appointed members.

Remarks : Omission of the above discretionary power in response to members' concern.

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

Proposed CSA : (a) Deleting clauses 14(4), 19(4) and 24(5) and substituting the provision

that a member will be disqualified if he or she fails to attend meetings for 4 consecutive months without obtaining the consent of the Council.

(b) Adding a new subclause to explain that the period of “4 consecutive months” is to be counted from the day next following the date of the meeting of the Council at which the person is first absent.

(c) Adding another new subclause to supplement that if no meeting or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.

Remarks : Further clarification of absence from meetings of District Councils as a disqualification criterion member

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

Proposed CSA : Adding 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 : Amending clause 27(3) to make it clear that the above is an administrative act and not a legislative order.

Remarks : To avoid any misunderstanding.

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

Proposed CSA : Adding 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 : Deleting “無法進行” in clauses 32(1) and 38(2) 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 relax the circumstances which allow election proceedings to continue without termination by deleting clause 37, amending clause 32(1)(b) and adding new clauses 32(1)(d), 34A, 38A and 39(5).

Remarks : The proposed changes aim to reduce the risk 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) Deleting “including matters relating to food and environmental hygiene services” in clause 59(a)(i).

(b) Adding “(iii) community activities within the District” after clause 59(b)(ii).

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

(12) Quorum (clause 68)

Proposed CSA : Adding ‘of a District Council’ to the

heading of clause 68.

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 : Deleting “20” in clause 69(2) 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 : Amending the heading of clause 70 and adding 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 : Deleting “members” in clause 77 and substituting “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 : Amending clause 83(1) to make it clear that directions are “in relation to matters which affect the public interest”.

Remarks : To rectify an inadvertent omission in the first instance.

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

Proposed CSA : Adding a new Part II to Schedule 3 to provide the above information.

Remarks : To set out above information by Districts in the New Territories. CSA to clause (9) above is relevant.

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

Proposed CSA : Amending Forms 1 & 2 under Schedule 4 for acceptance of office by an appointed member/ex officio member to include declaration that he/she is not aware of reason of disqualification for appointment and/or holding office.

Remarks : The above is modelled on the same declaration which has to be made by candidates nominated for election. As a result, the requirement of making declaration will be imposed on all the 3 categories of District Council members.

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

- Proposed CSA** : (a) Adding clauses 17A, 19A, 24(aa) and 26(ea) to and amending clause 18 of the part of Schedule 6 which amends the EAC Ordinance Purpose is to clarify that the Commission is to be responsible for the delineation of District Council constituencies.
- (b) Amending also Section 24(b) to remove a miscellaneous amendment not related to the District Councils Bill.

Remarks : Mainly technical amendments.

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

Proposed CSA : Amending 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.

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12th draft : 8.2.99
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14th draft : 19.2.99

DISTRICT COUNCILS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional Affairs

Clause

Amendment Proposed

2

- (a) In the definition of "ordinary election", by deleting paragraph (a) and substituting -
- "(a) in relation to a District Council, the first election to elect persons to be the elected members of the District Council; or".
- (b) 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(1) By adding "subject to the approval of the Legislative Council" after "may".

9 (a) By renumbering it as clause 9(1).

(b) In subclause (1)(c) by adding "subsection (2) and" 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) By deleting subclause (4) and substituting -

(4) Subject to subsection (6), an appointed member is also disqualified from holding office for the remainder of that member's term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.

(5) The disqualifying period under subsection (4) begins on the day next following the date of the meeting of the Council at which the member is first absent.

(6) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is 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) By deleting subclause (4) and substituting -

(4) Subject to subsection (6), an ex officio member is also disqualified from holding office until the members elected at the next ordinary election commence their term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.

(5) The disqualifying period under subsection (4) begins on the day next following the date of the meeting of the Council at which the member is first absent.

(6) If during the disqualifying period no meetings

are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.

- 24 (a) By deleting subclause (5) and substituting -
- (5) Subject to subsection (7), an elected member is also disqualified from holding office for the remainder of that member's term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.
- (6) The disqualifying period under subsection (5) begins on the day next following the date of the meeting of the Council at which the member is first absent.
- (7) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is 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 the full stop and substituting "; and";

(ii) by deleting "無法進行" and substituting "未能完成".

(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";
- (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 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" were substituted for "District Council" and "District Councils" respectively."
- Schedule 3 (a) By renumbering it as Part I of Schedule 3.

(b) By adding -

"Part II

Item	District	District Council	Number 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 District	Sai Kung District Council	2	Hang Hau Rural Committee Sai Kung Rural Committee
5.	Sha Tin District	Sha Tin District Council	1	Sha Tin Rural Committee
6.	Tai Po District	Tai Po District Council	2	Sai Kung North Rural Committee Tai Po Rural Committee
7.	Tsuen Wan District	Tsuen Wan District Council	2	Ma Wan Rural Committee Tsuen Wan Rural

Committee

- | | | | | |
|----|--------------------|----------------------------|---|--|
| 8. | Tuen Mun District | Tuen Mun District Council | 1 | Tuen Mun Rural Committee |
| 9. | Yuen Long District | 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". |