

Timing for the commencement and ending of legislative sessions

3.2 Although a decision on the timing for the commencement of a session in a legislative term rests with the Chief Executive in accordance with section 9(2) of the Legislative Council Ordinance (Cap. 542), the subject matter affects all Members of the Council and will impact on the timing for the holding of general elections. The Committee notes that prior to July 1997, the arrangements for the commencement of legislative terms and sessions were set out in the Royal Instructions and the Standing Orders of the former Legislative Council. The practice in the former Legislative Council was for a new session to commence in October each year with the Policy Address of the Governor delivered at the first sitting of that session, and to end in July, followed by a summer recess not exceeding three months in between. While the President determined the days and hours of sittings in accordance with the Standing Orders, a session was to end on such date as the Governor might appoint by notice published in the Gazette, or on a dissolution of the Council, whichever was the earlier. The dissolution period between two legislative terms was to enable elections of Members of the Legislative Council to take place. In 1991 and 1995, the general elections took place in September.

3.3 In the case of the Provisional Legislative Council, its term of office as decided by the Preparatory Committee for the Hong Kong Special Administrative Region was to commence after the appointment of the first Chief Executive and to cease operation upon the formation of the first Legislative Council, but in any event not beyond 30 June 1998. Owing to the short duration of the term of office between January 1997 and June 1998, there was only one legislative session in its entire term of office.

3.4 As for the Legislative Council of the Hong Kong Special Administrative Region, its first term shall be two years, and then four years each thereafter according to Article 69 of the Basic Law. Section 4(2) and (3) of the Legislative Council Ordinance (Cap. 542) provides that the first term of office of the Council is to begin on 1 July 1998 and that subsequent terms are to begin on such dates as specified by the Chief Executive. The Committee notes that the word “year” in Article 69 should mean “full calendar year”. According to the Legal Adviser of the Legislative Council, this meaning is consistent with the obvious meaning of “year” as it appears in other Articles (namely Articles 5, 24, 44, 46, 61 and 71) and Annex I of the Basic Law. The Basic Law is silent on whether there could be gaps between consecutive

terms of the Council.

Commencement of a legislative session

3.5 The Committee considers the arrangement for the first session of the first term of the Legislative Council not entirely satisfactory. The session commenced on 2 July 1998 with no Council meetings scheduled for the period between 29 July and 9 September 1998. Regular meetings of the Council are scheduled up to mid July 1999, with the Chief Executive's 1998 Policy Address delivered in October. Apart from the disruption of the flow of Council business by a break of six weeks after the Council has met for only one month, the delivery of the Policy Address in the middle of a session also creates difficulties in the planning of legislative work.

3.6 Members of the Committee are of the view that where possible, each session should commence with the delivery of the Policy Address, preferably in October allowing a summer break of not exceeding three months in between two sessions. In this respect, members are aware that there may be practical difficulties for commencement of the first session of the next term in October 2000 because the present term of office ends on 30 June 2000. Consideration should also be given to the timing of the general election in 2000 as it will affect the commencement of the new term and also its first session. Nevertheless, the Committee considers that different scenarios should be examined, including the possibility of advancing the Policy Address to July if it is not practicable to commence a session in October.

3.7 The Committee has, therefore, sought the views of other Members on, among other things, whether the first meeting of a session should tie in with the delivery of the Policy Address. This would have impact on the timing for the commencement and ending of the sessions in the current term, as well as the second and subsequent terms of the Council. The Committee has also consulted the Administration in this respect and enquired the possibility of advancing Policy Addresses to July if all sessions were to commence in July.

3.8 According to the Administration's response, if a legislative session commences in July, the six-week summer break in August/September under the present arrangement will be much shorter than those of previous legislative sessions. It would be "extremely difficult" for Policy Addresses to be delivered in July as the delivery of the Policy Address is affected by the budget cycle. The Financial Secretary consults Members on expenditure priorities in May/June, and bureaux will

formulate policy initiatives and seek funding in the annual resource allocation exercise from July to August. Initiatives with funding allocated will be included in the Policy Address in October. In October/November, the Financial Secretary starts another round of consultation with Members on the revenue aspects of the next Budget, and the expenditure and revenue proposals will be reflected in the draft Estimates of Expenditure and Revenue compiled in January. The Administration has concluded that it will continue to plan for Policy Addresses to be delivered in October in subsequent years.

Gaps in between terms

3.9 Should a legislative session commence in October, it would be necessary to address the gaps in between terms if the term of office of a Legislative Council does not immediately follow that of its predecessor. The Committee notes that in the Basic Law, dissolution of the Council is an exception rather than the rule as the Basic Law only provides for the Council to be dissolved under Article 50. Theoretically speaking, there should be no gap in between terms. To enable a general election to take place, section 6 of the Legislative Council Ordinance (Cap. 542) has provided for a prorogation during which business of the Council will come to a complete stop although all serving Members of the Council are still in office.

3.10 Some members of the Committee have expressed concern that if a general election were to be held during the prorogation of the Council, serving Members may have an unfair advantage over other candidates. However, if the Council were to be dissolved, rather than prorogued, for the purpose of holding the general election, the term of office of a Legislative Council would either be shorter than four years, which is contrary to the requirement under the Basic Law, or that different terms of the Council would commence at different months of a year. If a new term and session were to commence at different months of a year, it will be difficult for a session to commence with the Policy Address. This, however, is not the Committee's main concern. The Committee notes that the Basic Law does not provide for the convening of emergency sessions after the end of a term or during the dissolution of the Council. Although section 11 has been added to the Legislative Council Ordinance (Cap. 542), as a result of a Member's initiative, to provide, inter alia, for the President to convene emergency sessions during the period after the end of the term of office of the Council and for the persons holding office as Members of the Legislative Council immediately before the dissolution to be deemed as Members of the Legislative Council for the purpose of the emergency session, the status of these

“deemed Members” and the validity of any laws passed by them might still be subject to challenge.

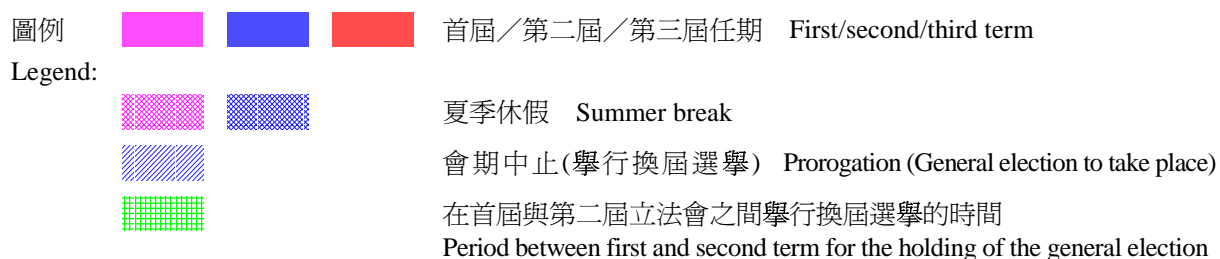
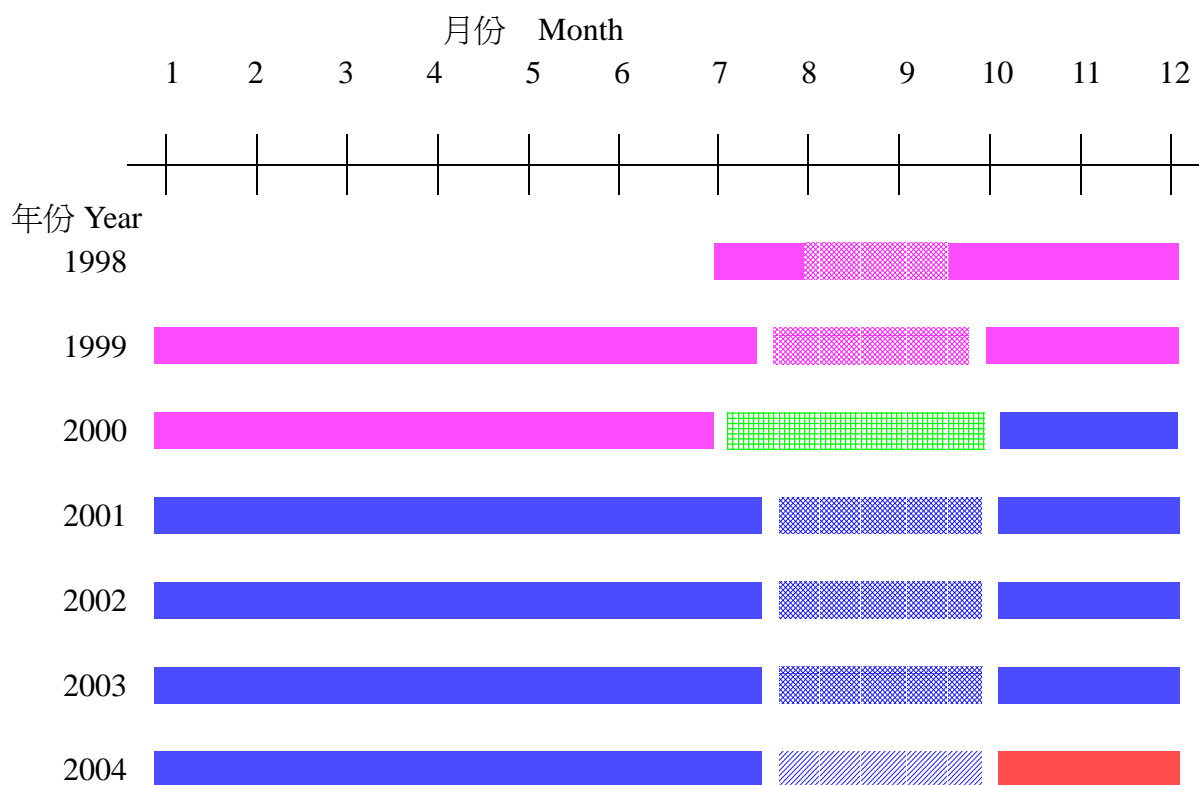
3.11 The Committee has examined the subject at great length. It has come to the view that the deeming of the persons holding office as Members of the Legislative Council under section 11(2) of Cap. 542 is solely for the purpose of convening an emergency session after the Council is dissolved but before the general election takes place. It is a provision necessary for ensuring that a law making mechanism is available during a period when there are no incumbent Members, e.g. when the Legislative Council has been dissolved by the Chief Executive under Article 50 of the Basic Law, but before the next general election is held. The provision is not intended to extend the term of office of these Members. The Committee is of the view that it would be unlikely that the provision would be considered as contravening the Basic Law as regards the two-year or four-year term of office of Members. If an emergency session were to be convened after the general election, the Chief Executive may specify, in accordance with section 4 of Cap. 542, an earlier date for the commencement of the new term and of its first session to enable a Council meeting to be held.

3.12 In response to the Committee’s enquiry on the above concern, the Administration has subsequently confirmed, in the context of examination of the Legislative Council (Amendment) Bill 1999 introduced to the Council on 3 February 1999, that section 11 of Cap. 542 is not inconsistent with the Basic Law.

Arrangements for the second and subsequent terms

3.13 The Committee has also invited Members to give special thoughts to the arrangements for the second and subsequent terms. In this respect, a number of options were set out in a consultation paper circulated to Members in October 1998. A total of 58 Members responded. The results of the consultation exercise indicate that most Members are in favour of a new session commencing in October to tie in with the delivery of the Policy Address, and the session ending in July of the following year, allowing a break of not more than three months between sessions. Under this arrangement, the first term of the Legislative Council will end on 30 June 2000, after which a general election will take place. The second term will commence in October 2000 and end in September 2004, and the Council will be prorogued in July/August 2004 to enable the general election to take place.

3.14 An illustration of the arrangement is given below:



Follow-up actions

3.15 As a follow-up to the consultation exercise, the Committee has informed the Administration of Members' preferences to facilitate its determination of the timing for the commencement of legislative sessions and for the holding of general elections. In reply, the Administration has advised that it would comply with Members' preferences for the 1998-99 session to end in July 1999, and the 1999-2000 session to commence in October 1999. The provision for the Chief Executive to determine the first meeting of each term has been incorporated in the Legislative Council (Amendment) Bill 1999.

3.16 To facilitate arrangements for the first meeting of a session to tie-in with

the delivery of the Policy Address by the Chief Executive, the Committee has considered it appropriate to introduce an amendment to Rule 13 (The Chief Executive's Policy Address) to provide for the delivery of the Policy Address by the Chief Executive at the first meeting of a session if he so wishes.

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