

立法會

Legislative Council

LC Paper No. CB(1) 294/98-99

Ref: CB1/R/1/1

Committee on Rules of Procedure

Consultation Paper on Timing for Commencement of Legislative Sessions

Purpose

This paper invites Members' views on the timing for commencement of legislative sessions, and of sessions in subsequent terms.

Background

2. 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 former stipulated that legislative sessions should commence and end on such dates as the Governor should appoint by notice published in the Gazette, although the period between the last sitting of one session and the first sitting of the next session should not exceed three months; the latter provided that the first sitting of a term should be held on the date appointed by the Governor.

3. 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. The new term of office of the Council was to begin within 30 days after the date on which the results of the general election were declared.

4. 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 (HKSAR) 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 the entire term of office.

5. As for the Legislative Council of the HKSAR, 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. While section 10(1) of the Ordinance provides for the Chief Executive to specify the date and time for holding the first meeting of the first term, no provision has been made for determining the date and time of the first meetings of subsequent terms.

6. As regards the meaning of the word “year” in the context of the Basic Law, the matter was brought up by members of the Bills Committee during the scrutiny of the Legislative Council Bill in 1997. The legal advice given then by the Administration and the Legal Adviser was that the word “year” meant a “full year”, although the Basic Law was silent on whether there should be gaps between consecutive terms of the Council. This meaning has been further re-affirmed by the Legal Adviser in the study of the subject matter under consideration. According to the Legal Adviser, the word “year” in Article 69 should mean “full calendar year”. 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.

Present Position

7. In accordance with the notice of the Chief Executive published in the gazette, the first session of the first term of the Legislative Council commenced on 2 July 1998, which was also the date of the first meeting of the session. To provide a break in the summer of 1998, no Council meetings were scheduled for the period between 29 July and 9 September 1998. This arrangement is in compliance with Rule 14(1) (Days and Hours of Meetings) of the Rules of Procedure which states that “a period of 6 weeks shall not elapse between the date of one meeting and the date appointed for the next meeting in the same session.” Regular meetings of the Council have been scheduled up to mid July 1999, with the Chief Executive’s 1998 Policy Address to be delivered in October.

8. The Committee on Rules of Procedure (the Committee) considers the present arrangement not entirely satisfactory. 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. 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 because the present term of office ends on 30 June. 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.

9. The Committee also finds it necessary to consult other Members before formulating its recommendations. The matters requiring views from Members are as follows:

- (a) the number of sessions in the current term, and the timing for the commencement and ending of these sessions;
- (b) whether the first meeting of a session should tie in with the delivery of the Policy Address; and
- (c) the timing for the commencement and ending of sessions in the second and subsequent terms of the Council.

Consultation with the Administration

10. To facilitate consideration, the Committee has consulted the Administration on the following:

- (a) the desirability of the present arrangement, i.e. commencing a session in July, with a summer break of not exceeding six weeks in August/September, and followed by the Policy Address in October;

- (b) the timing for delivery of future Policy Addresses and the possibility of advancing Policy Addresses to July; and
- (c) the timing for holding the general election in 2000.

11. 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.

12. The Administration says that it has yet to take a firm view on the time-frame involved for the general election in 2000 and the commencement of the legislative term that follows. The Administration has also advised that amendments will be introduced to the Legislative Council Ordinance (Cap. 542) to provide for the Chief Executive to determine the date and time for holding the first meeting of the second and subsequent terms of office of the Council, at the same time when amendments are introduced to provide for the details of the electoral arrangements for the 2000 general election.

13. In relation to the convening of emergency sessions if there is a gap between two terms of offices, the Committee has sought the views of the Administration on the legal position of section 11 of the Legislative Council Ordinance. Section 11 was added to the Legislative Council Bill during Committee stage as a result of a Member's initiative, to provide for the President to convene emergency sessions

during, inter alia, the period after the end of the term of office of the Council. The arrangements for convening emergency sessions during the dissolution of the Council is not provided for in the Basic Law. To ensure that any laws passed during the dissolution of the Council are not subject to challenge in court, the Committee sought clarification from the Administration on the legal position of section 11. In response, the Administration has advised that questions arising as a result of legal proceedings will ultimately be a matter for the court to determine and it has no other comments on the matter.

Matters for consideration

14. In drawing up the possible options for the purpose of consulting Members, the Committee is aware that there are inevitably pros and cons in every option. What the Committee is particularly concerned about is the way to address the following situations:

- (a) whether serving Members who run for elections would be regarded as having an advantage over other candidates if the general election takes place during a legislative term; and
- (b) whether there would be a problem with gaps in between terms if the term of office of a Legislative Council does not immediately follow that of its predecessor, notwithstanding the provision in section 11 of the Legislative Council Ordinance.

15. 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. Under normal circumstances, there is, theoretically speaking, 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. That leads to the question of whether these serving Members, if they also run for the election, would have an unfair advantage over other candidates. In this connection, the Committee is of the view that the problem could be overcome by the issue of clear administrative guidelines to serving Members governing electioneering activities.

16. If it is considered that the Council should 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. Notwithstanding the provision in section 11(2) of the Legislative Council Ordinance (Cap. 542) that the persons holding office as Members of the Legislative Council immediately before the dissolution shall 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.

17. The Committee has examined the subject at great length. It is of 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.

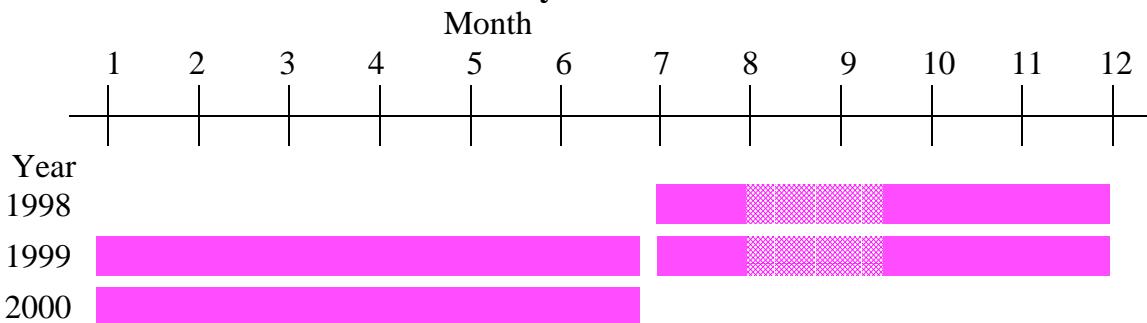
18. The Committee invites Members to give special thoughts to the above concerns when considering the options set out in the following paragraphs.

Options

Commencement and ending of sessions in current term

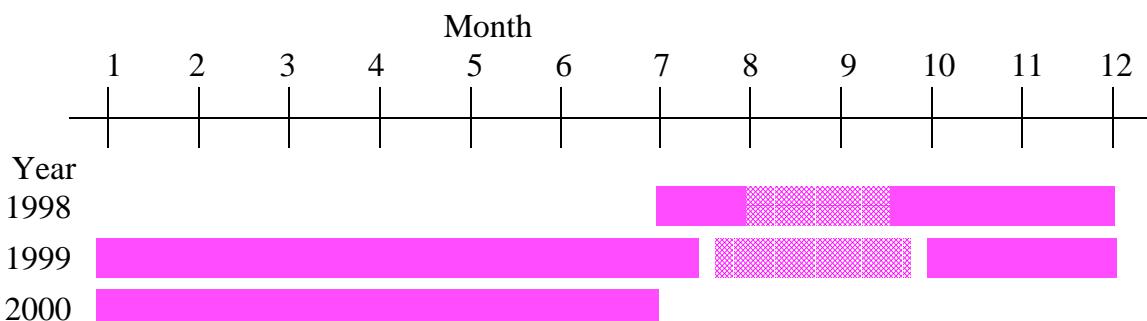
19. The current term will end on 30 June 2000. On the assumption that there are to be two sessions for the current term, two options are proposed. It should however be noted that in both options, the general election in 2000 could either take place before or after 1 July 2000. If it is held before July, the Council will need to be prorogued from mid-April onwards.

Option 1A **The 1998-99 session to end in June 1999 and the 1999-2000 session to commence in July 1999**



The commencement and ending dates of the two sessions in the current term will be consistent. The Council may take a break of up to six weeks in August/September. The commencement of the 1999-2000 session will not tie in with the delivery of the Policy Address.

Option 1B **The 1998-99 session to end in July and the 1999-2000 session to commence in October 1999**



With the 1998-99 session ending in, say, mid-July, there will be a summer break of up to three months, and the commencement of the 1999-2000 session will tie in with the delivery of the Policy Address. Nevertheless, the 1999-2000 session will hardly be more than six months if the general election in 2000 is held before 30 June and the Council is prorogued from April onwards. On the other hand, if the general election in 2000 is to be held after 30 June 2000, the duration of the second session (1999-2000) will be over eight months.

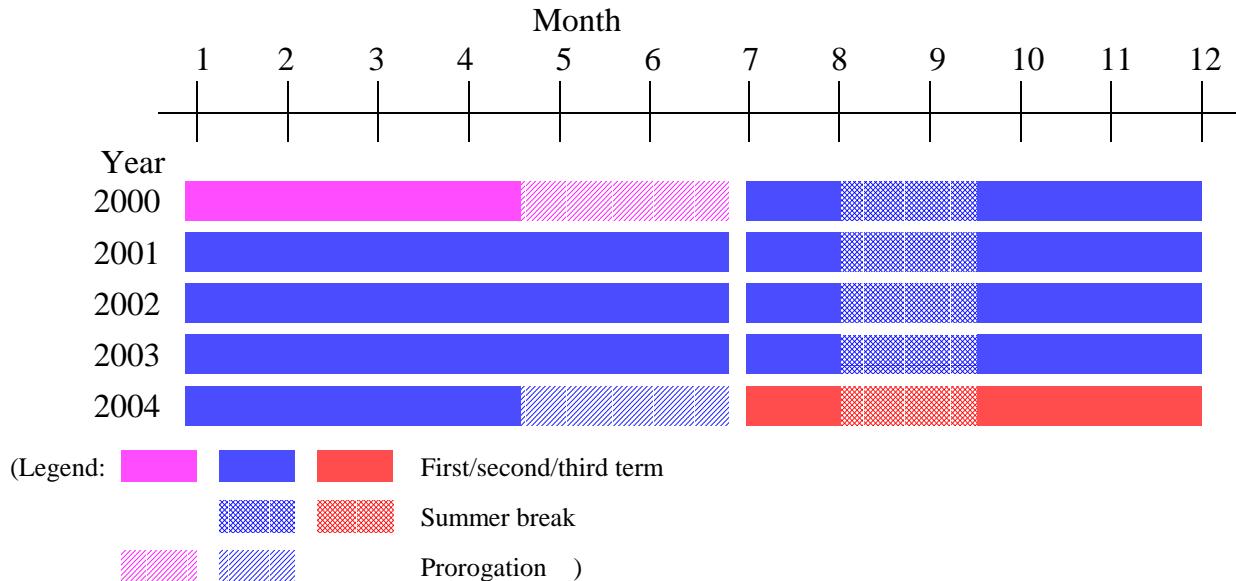
(Legend: First term
 Summer break)

Commencement and ending of sessions in second and subsequent terms

20. The timing for the general election in 2000 will have impact on the commencement date for the first session of the second term. As the Administration has not yet decided on the date of the general election, the Committee invites Members to give views on their preference of the sessional periods of the Legislative Council so that a consolidated view can be given to the Administration for their consideration.

21. On the basis that each term will follow immediately the previous one without a break, i.e., with the Council prorogued towards the end of each term to allow for general election, three options are proposed:

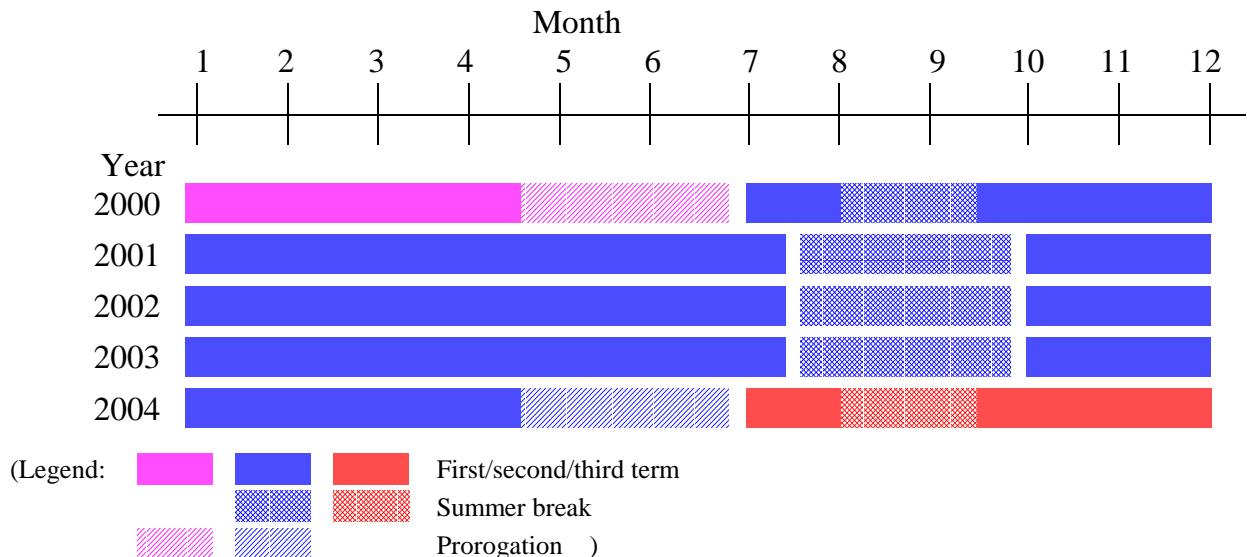
Option 2A All sessions in a term to commence in July and end on 30 June the following year, with the Council taking a summer break of six weeks in August/September



There will be no break in between terms or in between sessions. The Council will need to be prorogued before the end of its term to enable a general election to take place. The commencement of a session cannot be tied in with the delivery of the Policy Address, and all summer breaks will not be more than six weeks unless Rule 14(1) is amended. The pros and cons of this option are as follows:

Pros	Cons
<ul style="list-style-type: none"> - will follow neatly the commencement of a new term of office in July - general election will take place before July when less people leave Hong Kong for summer vacation - the problem of a gap in between terms will not arise 	<ul style="list-style-type: none"> - commencement of sessions will not tie in with the delivery of the Policy Address, and Council business will be disrupted one month after commencement of a session - the last session is shorter due to the need for prorogation of the Council - undesirable for a general election to be held while Members are still in office - all summer breaks will not exceed six weeks unless Rule 14(1) is amended

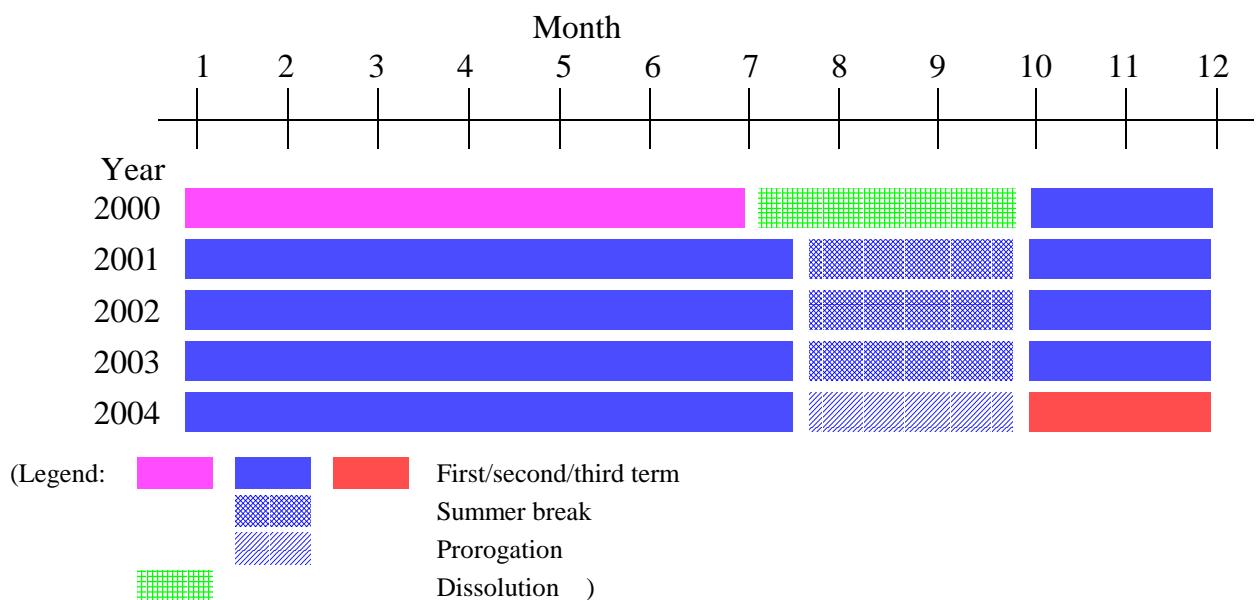
Option 2B The first session of a term to commence in July and end in the following July, and all subsequent sessions of the same term to commence in October and end in July the following year except the last session which is to end on 30 June



Each term will follow immediately after the other. There will not be any gap in between sessions although the Council will need to be prorogued towards the end of its term to enable the general election to be held. There will be a six-week break in the summer of the first session, while other breaks in between sessions can be up to three months. With the exception of the first session, the Policy Address is delivered at the commencement of a session. The pros and cons of this option are as follows:

Pros	Cons
<ul style="list-style-type: none"> - apart from the first session, commencement of other sessions will tie in with the delivery of the Policy Address - the Council can take, with the exception of the first session, a break of up to three months between July and October in between sessions - electioneering activities can take place before July when less people leave Hong Kong for summer vacation - the problem of a gap in between terms will not arise 	<ul style="list-style-type: none"> - commencement of the first session in each Legislative Council term will not tie in with the delivery of the Policy Address - the first session in each Legislative Council term will last for 13 months while the last session lasts hardly more than six months as the Council will need to be prorogued to enable a general election to be held - undesirable for a general election to be held within the term of office of Members

Option 2C All sessions to commence in October and end in July, except the last session which is to end in September



All sessions, including the first session of the second term, will commence in October to tie in with the delivery of the Policy Address. It will be necessary for the Council to be prorogued towards the end of each term to allow for general election. All summer breaks in between sessions can be up to three months. The general election in 2000 will have to take place in the 3-month gap between July and October, during which no Legislative Council is in existence. The pros and cons of this option are as follows:

Pros	Cons
<ul style="list-style-type: none"> - commencement of all sessions will tie in with the delivery of the Policy Address; this is particularly important in respect of the Policy Address for the first session in a term - the commencement and ending dates of legislative sessions are consistent - the Council can take a break of up to three months between July and October - there will be no gaps in between terms from the second term onwards 	<ul style="list-style-type: none"> - there is a 3-month gap in between the first and second terms; hence the question of emergency sessions being convened during dissolution, as outlined in paragraphs 16 and 17, may arise

Views sought

22. Members are invited to give views on the following:

- (a) whether the first meeting of a legislative session should tie in with the delivery of the Policy Address by the Chief Executive;
- (b) whether Option 1A or 1B in paragraph 19 on the duration of sessions in the first term should be adopted; and
- (c) whether Option 2A, 2B or 2C in paragraph 21 relating to the sessional periods for the second and subsequent terms should be adopted.

23. Members are requested to give their views by completing and returning the reply slip at the **Appendix** to the Committee **before 21 October 1998**. The Committee will collate Members' views and forward recommendations to the President for her reference.

Enquiries

24. Any enquiries on this consultation paper can be directed to:

Ms Pauline NG, Assistant Secretary General 1, at 2869 9220; or
Mrs Vivian KAM, Chief Assistant Secretary (1)5, at 2869 9244.

Legislative Council Secretariat

9 October 1998

Reply slip
(To be returned by 21 October 1998)

Ref : CB1/R/1/1
To : Clerk to Committee on Rules of Procedure
(Attn: Mr Raymond LAM)
Legislative Council Secretariat
3rd floor Citibank Tower
3 Garden Road, Central, Hong Kong
(Fax No. : 2869 6794)

Committee on Rules of Procedure
Timing for Commencement of Legislative Sessions

I support/do not support* the proposal for the first meeting of a legislative session to tie in with the delivery of the Policy Address by the Chief Executive.

I have no strong views on the proposal for the first meeting of a legislative session to tie in with the delivery of the Policy Address by the Chief Executive.

I am in favour of the following options as detailed in paragraphs 19 to 21 of LC Paper No. CB(1)294/98-99:

I. Commencement and ending of sessions in current term

- Option 1A
- Option 1B

II. Commencement and ending of sessions in subsequent terms

- Option 2A
- Option 2B
- Option 2C

Other comments I have on the subject are as follows:

Signature _____

Name _____

Date _____

* Please tick/delete as appropriate