

本署檔號：OUR REF: SF4 to HAB/CR/1/20/154

來函檔號：YOUR REF: LS/B/1/02-03

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3 January 2003

Clerk to Bills Committee  
(Attn.: Miss Lolita Shek)  
Bills Committee on Village Representative  
Election Bill  
Legislative Council  
8 Jackson Road  
Central  
Hong Kong

Dear Miss Shek,

Bills Committee on Village Representative Election Bill

Thank you for your letter of 31 December 2002.

The Administration's replies to the points raised by Members at the Bills Committee meeting held on 30 December 2002 are set out in Annexes A to I.

Please let me know if you have any further queries.

Yours sincerely,

(Stephen Fisher)  
for Secretary for Home Affairs

c.c. DHA (Attn.: Miss Monica Chen)  
D of J (Attn.: Mr. Lawrence Peng  
Mr. Alan Chong)

Village Representative Election Bill - Clauses 9, 15 and 22

Question

1. The Administration is asked to explain how the term "resident of an Existing Village" would be interpreted in the context of clauses 9, 15 and 22 of the Bill.

Reply

2. Clause 9(5) provides that a person elected as a Resident Representative for an Existing Village is disqualified from holding office if, at any time after the election, the person ceases to be a resident of the Village. In other words, a Village Representative must remain a resident of that Village in order to hold office as Village Representative. The purpose of this provision is to ensure that only a person who is a resident of the Village represents other residents as their Village Representative.
3. Clause 15(4) provides that a person is not eligible to be registered as an elector for an Existing Village unless, inter alia, the person is a resident of the Village and has been a resident of the Village for the 3 years immediately before applying to be registered. The Administration now proposes to amend "3 years immediately before applying to be registered" to read "3 years immediately before the date of application for registration" to make the meaning clearer. The purpose of this provision is to ensure that only residents of the Village are eligible to be registered as electors.
4. Clause 15(3) provides that a person whose name is currently on a final register for an Existing Village is not entitled to have his name included as an elector for that Village in a subsequent provisional register if the person has not been a resident of the Village for the 3 years immediately before the compilation of the register. In other words, if a registered elector has moved out of the Village, he loses his right to register as an elector in that Village.

5. Clause 22(1) provides that a person is eligible to be nominated as a candidate at an election for an Existing Village only if, inter alia, the person is a resident of the Village and has been a resident of the Village for the 6 years immediately preceding the nomination. The purpose of this provision is to ensure that only long-standing residents of the Village are eligible to be nominated as candidates.
6. Clause 2 defines "resident", in relation to an Existing Village, as a person whose principal residential address is in the Village. Clause 2 also defines "principal residential address", in relation to a person, as the address of the dwelling place at which the person resides and which constitutes the person's sole or main home.
7. If a person's only home is in an Existing Village, then he is a resident of that Village.
8. If a person has two or more residential addresses, his main home is the dwelling place at which he resides most of the time. What constitutes a person's main home would be determined by the facts of the case.

Home Affairs Bureau  
January 2003

Village Representative Election Bill - Clauses 9, 15 and 22

Question

1. Should the term "resident" of an Existing Village be defined as a person who ordinarily resides in such a Village?

Response

2. The concept of "residency-in-village" is different from the concept of "ordinary residence".
3. There is a genuine need for a "residency-in-village" requirement because :-
  - (a) the electors and the candidates should have some knowledge and understanding of the Existing Village and a sense of belonging to the village community; and
  - (b) "vote planting" in a small electorate is a real possibility and a residency-in-village requirement prevents such illegal and corrupt electoral conduct.
4. The Administration is of the view that the term "resident" of an Existing Village should not be defined as a person who ordinarily resides in such a Village.

Village Representative Election Bill - Clause 10

Question

1. The Administration is asked to explain how the effective date of a notice of resignation given by a Village Representative is determined if the notice has been faxed or e-mailed to the Director of Home Affairs.

Response

2. Clause 10(1) provides that a Village Representative may resign his office by giving written notice of his resignation to the Director of Home Affairs. However, a notice of resignation is not effective unless it is signed by the person concerned (clause 10(2)).
3. As a notice of resignation has to be signed, a copy of such a notice would not suffice. The original of the signed notice has to be sent to the Director of Home Affairs. A copy of the notice sent by facsimile transmission or by e-mail would not suffice. If it is intended that a fax or an e-mail would suffice, the clause should explicitly say so.
4. Under clause 10(3), a notice of resignation takes effect either on the date on which the notice is received by the Director, or if a later date is specified in the notice, on that later date. If the notice is undated, the notice would take effect on the date of receipt.
5. Clause 10 is modelled on section 25 of the District Councils Ordinance (Cap 547) and on section 14 of the Legislative Council Ordinance (Cap 542).

## Annex D

### Village Representative Election Bill - Clause 13(3)(b)

#### Issue

1. The Administration is asked to consider whether the Chinese version of clause 13(3)(b) could be improved.

#### Response

2. Clause 13(3)(b) follows the wording in section 48(7)(b) of the Legislative Council Ordinance (Cap 542) and section 29(7)(b) of the District Councils Ordinance (Cap 547).
3. The Administration is of the view that the wording of clause 13(3)(b) should be consistent with similar provisions in other Ordinances.
4. We will raise the matter with the Department of Justice and the Constitutional Affairs Bureau for future review.

Home Affairs Bureau  
January 2003

Village Representative Election Bill - Clause 21

Issue

1. Clause 21 provides that a village by-election to fill a vacancy in the office of village representative for a Village is not to be held within the 4 months preceding the end of the current term of office of the Village Representative concerned. The Administration is asked to consider extending the period preceding the end of the current term for which no village by-election to fill a vacancy would need to be held.

Response

2. Clause 21(2) of the Bill is similar to section 33(2) of the District Councils Ordinance (Cap 547) and section 36(2) of the Legislative Council Ordinance (Cap 542). The Administration has to look at these provisions together.
3. We will conduct a review of rural elections after the 2003 Village Representative elections and will re-examine this issue in that review.

Home Affairs Bureau  
January 2003

Village Representative Election Bill - Clause 21

Question

1. The Administration is asked to provide information on the number of Village Representatives who died during their term of office.

Reply

2. Of the Village Representatives whose term of office commenced on 1 April 1999, 23 died during their term of office.

Home Affairs Bureau  
January 2003



Village Representative Election Bill - Clause 40

Question

1. The Administration is asked to provide the estimated number of persons who are eligible to be registered as electors in the largest and the smallest Existing Villages.

Reply

2. There are 693 Existing Villages listed in Schedule 1 to the Bill.
3. The Administration does not have reliable figures on the number of persons who are eligible to be registered as electors in Existing Villages. The number of persons who are eligible to be registered as electors in the largest Existing Village is likely to be over a thousand and in the smallest is likely to be less than a hundred.
4. It should be pointed out that those who are eligible to be registered as electors might not all do so. The Administration would do its best to encourage villagers to register as electors.

Village Representative Election Bill - Clause 40

Issue

1. The Administration is asked to consider reducing the number of electors required for lodging an election petition.

Response

2. Clause 40 provides that an election petition questioning an election may be lodged either by 10 or more electors entitled to vote at the election or by a candidate at the election.
3. In view of the small size of some of the Villages, there is a case for reducing the number of electors required for lodging an election petition as suggested by Members. The Administration proposes to amend "by 10 or more electors entitled to vote" to "by 5 or more electors entitled to vote".
4. The Administration will move an amendment to clause 40 at Committee Stage.

Village Representative Election Bill - Clause 58

Question

1. The Administration is asked to advise whether a person who has acted or claimed to be entitled to act as a member of a District Council or as a Member of the Legislative Council, while disqualified from acting as such, is liable to be guilty of a criminal offence.

Reply

2. Under section 79 of the District Councils Ordinance (Cap 547), the Secretary for Justice may bring proceedings in the Court against any person who is acting or claims to be entitled to act as a District Council member on the ground that the person is disqualified from acting as such. If it is proved that the defendant acted as a District Council member while disqualified from acting in that office, the Court may (a) make a declaration to that effect; (b) grant an injunction restraining the defendant from so acting; and (c) order the defendant to pay the Government such sum as the Court thinks appropriate, not exceeding \$5,000 for each occasion on which the person so acted while disqualified. The fact that a defendant is ordered to pay a sum to the Government does not mean he has committed a criminal offence. In fact, section 79 of the Ordinance does not create any offence.
3. Both the Legislative Council Ordinance (Cap 542) (section 73) and the Village Representative Election Bill (clause 58) have similar provisions.
4. Section 35(h) and (i) of the Social Workers Registration Ordinance (Cap 505) deals with a person who falsely represents himself as a registered social worker. It is an offence to do so under those provisions.