

LEGISLATIVE COUNCIL BRIEF
ELECTORAL PROVISIONS
(MISCELLANEOUS AMENDMENTS) BILL 2002

INTRODUCTION

At the meeting of the Executive Council on 24 September 2002, the Council **ADVISED** and the Chief Executive **ORDERED** that the Electoral Provisions (Miscellaneous Amendments) Bill 2002 at Annex A should be introduced into the Legislative Council (LegCo).

BACKGROUND AND ARGUMENT

2. At present, as prescribed in Schedule 3 to the District Councils Ordinance (Cap. 547), the 18 District Councils (DCs) are made up of 390 elected seats, 102 appointed seats and 27 ex-officio seats in total.

3. The Administration consulted the LegCo Panels on Constitutional Affairs and Home Affairs and 18 DCs on the proposed composition of the second term DCs in June and July 2002. Specifically, we recommended that the existing district boundaries should be retained, and that each DC should continue to be made up of the existing number of elected, appointed and ex-officio members. Most LegCo Members and District Councillors generally found this direction acceptable. However, some Members of the LegCo and DCs expressed concern over the significant increase of population in the new towns of Islands, Sai Kung and Yuen Long. They considered that the proposed arrangements could not cater for the sharp and significant population growth in the new towns by 2003.

(I) Arrangements for the second term DCs

4. As our proposals were generally accepted by Members and the majority of the DCs, we would maintain the status quo for the composition of the second term DCs by retaining the existing district boundaries as well as the number of appointed and ex-officio seats for the DCs. However, in response to the views expressed by some Members of the LegCo and DCs, we decided to further examine and study the number of seats to be elected by Islands, Sai Kung and Yuen Long DCs.

5. We have set out at Annex B the projected population figures of the 18 DCs as at June 2003, the extent of population increase or decrease expressed in percentage terms as well as the average population size per constituency for each DC if the number of elected seats remains unchanged. Of the 18 districts, 10 would have a reduction in population. The remaining eight districts have varying degrees of population increase. The extent of increase in Islands, Sai Kung and Yuen Long, in particular the new towns, is far more significant than the other five districts. In fact, the new towns of Tung Chung, Tseung Kwan O and Tin Shui Wai would undergo a population expansion of 40% to 123%. As a result of the significant population growth in these new towns, the average population size per constituency of Sai Kung and Yuen Long would exceed the territory-wide population quota (i.e. 17,635) by more than 25%.

6. On the basis of the following considerations, we consider that there should be a limited increase in the number of elected seats for the three districts-

- (a) The average population per constituency in Sai Kung and Yuen Long would be as high as 22,000 to 23,000 people, if the status quo were to be maintained. This would be well above the territory-wide average of 17,635 people per constituency. In the case of Islands District, the two constituencies in Tung Chung would have to support some 60,000 people in total, if no extra elected seat were given to the new town.

- (b) Major changes to the boundaries of the existing constituencies in Sai Kung and Yuen Long would be unavoidable, as each constituency would have to shoulder a larger population if the number of elected seats were to remain unchanged. It is also possible that some rural constituencies would have to be merged to provide seats in the new towns to cater for the population increase. These changes would disrupt the community identity and cohesiveness of the residents already established in some areas since the 1999 DC elections. This would affect the integrity of the community. Concerns have been expressed by the relevant DCs that maintaining the status quo could not address the sharp and significant population increase in the new towns of the three districts, and that elected members in these districts would have difficulty in serving the large number of constituents adequately.
- (c) The Government attach considerable importance to the work of the DCs. We appreciate that at the district level DC members play a role of acting as a bridge between the Government and residents. New town residents require community services. We consider that more elected seats should be added to these districts, so that the relevant DCs would be in a better position to respond to, and take care of, residents' needs.

7. Specifically, we recommend that three elected seats should be added to Sai Kung and six to Yuen Long. As a result, their respective average population size per constituency will exceed the territory-wide population quota by less than 25 %, but will still be higher than the other districts. Furthermore, given the unique circumstances of the Islands District, we propose to provide an extra elected seat for the district to cater for the increase of population in Tung Chung. An analysis comparing this option against the original option is at Annex C.

(II) Voter Registration Cycle

8. At present, the Registration and Electoral Office (REO) needs to publish the provisional register (PR) and final register (FR) of electors for geographical constituencies (GCs) and functional constituencies (FCs) before 15 April and 25 May in each year

respectively in accordance with section 32 of the Legislative Council Ordinance (Cap. 542). Pursuant to section 14 of the Schedule to the Chief Executive Election Ordinance (Cap. 569), the REO is also required to publish the PR and FR of voters for Election Committee (EC) subsectors by the same deadlines.

9. The LegCo Panel on Constitutional Affairs had once suggested to the Government that consideration should be given to reducing the time gap between the publication of electoral registers and the polling day as far as practicable, so as to ensure that the data on electors contained therein would be more up-to-date. The same suggestion was also made by the Electoral Affairs Commission (EAC) in its report on the 1999 DC elections. In response to the request of Members and the EAC, we propose that, starting from 2003, the publication of electoral registers should be brought closer to the polling day. We have proposed two different sets of publication dates for the electoral registers, with a view to reducing the time gap between the publication of FRs and the polling day for DC and LegCo elections respectively to about two months. The detailed proposals are set out in the following paragraphs.

(i) DC election years

10. DC elections are normally held in the month of November. In order to bring the FR publication date as close to the DC elections as possible, we propose that the PR and FR be published not later than 15 August and 25 September respectively in years where DC elections are held.

(ii) LegCo election years

11. LegCo elections are normally held in the month of September. We, therefore, propose deferring the corresponding deadlines to 15 June and 25 July in years where LegCo elections are held.

(iii) Other years

12. In years in which no DC or LegCo elections are held, we propose adopting the same voter registration cycle as in LegCo election

years i.e. the PRs will be published in June and FRs in July.

(iv) Publication dates for various electoral registers

13. To revise the voter registration cycle for various electoral registers, apart from amending the Legislative Council Ordinance for the GC and FC registers, changes would also have to be made to the Chief Executive Election Ordinance in respect of the EC subsector registers. This is to retain the existing arrangement of synchronizing the publication dates of the electoral registers for GC, FC and EC subsectors. The Legislative Council Ordinance provides that a pre-requisite for a person to be registered as a FC elector or EC subsector voter is his being registered as a GC elector. By synchronizing the publication dates of all three registers, we can ensure that changes in the GC register can be properly reflected in the FC and EC subsector registers. Also, the Chief Executive Election Ordinance stipulates that a person must be registered both as a FC elector and EC subsector voter at the same time. This statutory requirement could only be fulfilled if we synchronize the publication dates of the various electoral registers. There are also operational advantages for REO, if the three electoral registers are published concurrently.

14. To sum up, the proposals in paragraphs 10-13 above will be translated into the following publication timetable –

	Publication of PRs for GC, FC and EC Subsectors	Publication of FRs for GC, FC and EC Subsectors
Proposed deadlines in DC election years	15 August (15 April)*	25 September (25 May)*
Proposed deadlines in LegCo election years and other years	15 June (15 April)*	25 July (25 May)*

*Dates in brackets refer to existing deadlines.

THE BILL

15. We need to amend Schedule 3 to the District Councils Ordinance (Cap. 547) to implement the proposal of increasing the number of elected seats for Islands, Sai Kung and Yuen Long. We also need to amend the relevant provisions of the Legislative Council Ordinance and the Chief Executive Election Ordinance to revise the publication dates of electoral registers. Schedule 3 to the District Councils Ordinance can be amended by way of subsidiary legislation. However, as our proposals involve amendments to a number of ordinances, we propose to introduce all the necessary amendments in the form of a composite bill for consideration by LegCo.

16. The key provisions of the Electoral Provisions (Miscellaneous Amendments) Bill 2002 are summarized in the following paragraphs.

(I) Amendments to the District Councils Ordinance

17. **Clause 10** of the Bill provides that the number of elected members specified in Schedule 3 to the District Councils Ordinance in respect of Islands, Sai Kung and Yuen Long DCs be amended to 8, 20 and 29 respectively.

18. **Clauses 5-9** of the Bill are to replace references to outdated terms and expressions in the disqualification provisions of the District Councils Ordinance. Sections 14, 19, 21, 24 and 30 of the District Councils Ordinance set out the disqualification criteria for appointed members, ex-officio members, candidates, elected members as well as electors. These sections contain references to terms and expressions which were previously adopted in the Bankruptcy Ordinance (Cap. 6) and the Mental Health Ordinance (Cap. 136), but have been amended subsequently. The terms and expressions involved are “composition with the person’s creditors” referred to in the Bankruptcy Ordinance and “unsound mind” in the Mental Health Ordinance. The opportunity is taken to make technical amendments to the District Councils Ordinance, so that the relevant terms and expressions therein are consistent with the references in the Bankruptcy Ordinance and the Mental Health

Ordinance.

(II) Amendments to the Legislative Council Ordinance

19. **Clause 4** of the Bill provides that the REO must compile and publish GC and FC PRs and FRs not later than 15 August and 25 September in DC elections years, and not later than 15 June and 25 July in other years. Accordingly, **clause 3** amends the cut-off date as stipulated in section 29 of the Legislative Council Ordinance on or before which a person must have reached 18 years of age in order to be eligible for registration as an elector to 25 September in DC elections years and 25 July in other years.

(III) Amendments to the Chief Executive Election Ordinance

20. **Clause 11** of the Bill provides that the deadlines for publishing the PR and FR of EC subsectors should follow those of the GC and FC registers as set out above.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be as follows-

Publication in the Gazette	4 October 2002
First Reading and commencement of Second Reading debate	9 October 2002
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

BASIC LAW IMPLICATIONS

22. The Department of Justice advises that the proposals do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

23. The Department of Justice advises that the proposals are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

24. The Bill will not affect the current binding effect of the relevant Ordinances.

FINANCIAL AND STAFFING IMPLICATIONS

25. Additional resources would be required for paying honoraria and operating expenses allowance to the 10 additional elected members. This would involve additional expenditure of \$1 million in 2003-04 and \$4.2 million in 2004-05 and thereafter.

SUSTAINABILITY IMPLICATIONS

26. The proposals do not have significant sustainability implications.

PUBLIC CONSULTATION

27. We have informed the 18 DCs and the LegCo Panels on Constitutional Affairs and Home Affairs of the Administration's latest proposals on composition of second term DCs. The Panels have also been informed of the legislative proposals for the Electoral Provisions (Miscellaneous Amendments) Bill 2002.

PUBLICITY

28. A spokesman will be made available to answer queries from

the media.

ENQUIRY

29. Any enquiries on this brief should be addressed to Ms Doris Ho, Principal Assistant Secretary (Constitutional Affairs)4, on 28102159.

Constitutional Affairs Bureau
3 October 2002
File Ref.: CAB C1/41

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**ELECTORAL PROVISIONS (MISCELLANEOUS
AMENDMENTS) BILL 2002**

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A BILL

To

Amend the District Councils Ordinance to change the number of members to be elected to the Islands District Council, Sai Kung District Council and Yuen Long District Council and to replace references to outdated terms and expressions in the disqualification provisions; to amend the Legislative Council Ordinance to adjust the cycle for the compilation and publication of electoral registers and accordingly the date on or before which a person must have reached 18 years of age in order to be eligible for registration as an elector; and to amend the Chief Executive Election Ordinance to adjust the cycle for the compilation and publication of registers of voters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Electoral Provisions (Miscellaneous Amendments) Ordinance 2002.

Legislative Council Ordinance

2. Interpretation

Section 3(1) of the Legislative Council Ordinance (Cap. 542) is amended by adding -

"District Council ordinary election" (區議會一般選舉) means elections to elect persons to fill the vacancies caused by the expiration of the term of office of the elected members of District Councils;".

3. Elector to be 18 years of age

Section 29(b) is repealed and the following substituted -

"(b) the person's eighteenth birthday falls -

- (i) in any year other than a year in which a District Council ordinary election is to be held, on or before 25 July next following the person's application for registration; or
- (ii) in a year in which a District Council ordinary election is to be held, on or before 25 September next following the person's application for registration."

4. Electoral Registration Officer to compile and publish electoral registers

Section 32 is amended -

(a) in subsection (1) -

- (i) in paragraph (a), by repealing "15 April in each year, compile" and substituting "15 June in each year other than a year in which a District Council ordinary election is to be held, compile and publish in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541)";
- (ii) in paragraph (b), by repealing "25 May in each year" and substituting "25 July in each year other than a year in which a District Council ordinary election is to be held";

(b) by adding -

"(1A) The Electoral Registration Officer
must -

(a) not later than 15 August in
each year in which a District
Council ordinary election is
to be held, compile and
publish in accordance with
regulations in force under
the Electoral Affairs
Commission Ordinance (Cap.
541) -

(i) a provisional
register of
geographical
constituencies; and

(ii) a provisional
register of
functional
constituencies; and

(b) not later than 25 September
in each year in which a
District Council ordinary
election is to be held,
compile and publish in
accordance with regulations
in force under the Electoral
Affairs Commission Ordinance
(Cap. 541) -

- (i) a final register of geographical constituencies; and
- (ii) a final register of functional constituencies."

District Councils Ordinance

5. Disqualification of appointed members

Section 14 of the District Councils Ordinance (Cap. 547) is amended -

- (a) in subsection (1)(g), by repealing "composition with the person's creditors or a voluntary arrangement" and substituting "voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors";
- (b) in subsection (2), by repealing everything after "if" and substituting "the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs.";
- (c) in subsection (3), by repealing "person's unsoundness of mind has ceased" and substituting "person has become capable of managing and administering his or her property and affairs".

6. Disqualification of ex officio members

Section 19 is amended -

- (a) in subsection (1)(g), by repealing "composition with the person's creditors or a voluntary arrangement" and substituting "voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors";
- (b) in subsection (2), by repealing everything after "if" and substituting "the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs.";
- (c) in subsection (3), by repealing "person's unsoundness of mind has ceased" and substituting "person has become capable of managing and administering his or her property and affairs".

7. When person is disqualified from being nominated as a candidate and from being elected as an elected member

Section 21 is amended -

- (a) in subsection (1)(i), by repealing "composition with the person's creditors or a voluntary arrangement" and substituting "voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors";
- (b) in subsection (2) -
 - (i) by repealing ", in accordance with the Mental Health Ordinance (Cap. 136), the Court has found the person to be of unsound mind and incapable of managing

himself or herself and his or her affairs" and substituting "the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs";

(ii) by repealing "person's unsoundness of mind has ceased" and substituting "person has become capable of managing and administering his or her property and affairs";

(c) in subsection (3) -

(i) by repealing ", in accordance with the Mental Health Ordinance (Cap. 136), the Court has found the person to be of unsound mind and incapable of managing himself or herself and his or her affairs" and substituting "the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs";

(ii) by repealing "person's unsoundness of mind has ceased" and substituting "person has become capable of managing and administering his or her property and affairs".

8. Disqualification of elected members

Section 24 is amended -

- (a) in subsection (1)(g), by repealing "composition with the person's creditors or a voluntary arrangement" and substituting "voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors";
- (b) in subsection (3), by repealing everything after "if" and substituting "the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs.";
- (c) in subsection (4), by repealing "person's unsoundness of mind has ceased" and substituting "person has become capable of managing and administering his or her property and affairs".

9. When an elector is disqualified from voting at an election

Section 30(e) is amended by repealing everything after "is" and substituting "found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs; or".

10. Schedule 3 amended

Schedule 3 is amended, in Part I -

- (a) in item 10, in column 3, by repealing "7" and substituting "8";
- (b) in item 13, in column 3, by repealing "17" and substituting "20";

- (c) in item 18, in column 3, by repealing "23" and substituting "29".

Chief Executive Election Ordinance

11. Election Committee

The Schedule to the Chief Executive Election Ordinance (Cap. 569) is amended -

- (a) in section 11(1) -

- (i) in the definition of "existing functional constituencies final register", by repealing "32(1)" and substituting "32(1) or (1A)";
- (ii) in the definition of "existing geographical constituencies final register", by repealing "32(1)" and substituting "32(1) or (1A)";
- (iii) in the definition of "subsector final register", by repealing "14(1)(b)" and substituting "14(1)(b) or (1A)(b)";
- (iv) in the definition of "subsector provisional register", by repealing "14(1)(a)" and substituting "14(1)(a) or (1A)(a)";
- (v) by adding -

"District Council ordinary election"

(區議會一般選舉) means elections to elect persons to fill the vacancies caused by the expiration of the term of

office of the elected members
of District Councils;" ;

(b) in section 14 -

(i) in subsection (1) -

(A) in paragraph (a), by repealing "30
November 2001 and not later than 15
April in each subsequent year" and
substituting "15 June in each year
other than a year in which a
District Council ordinary election
is to be held" ;

(B) in paragraph (b), by repealing "14
December 2001 and not later than 25
May in each subsequent year" and
substituting "25 July in each year
other than a year in which a
District Council ordinary election
is to be held" ;

(ii) by adding -

"(1A) The Electoral
Registration Officer shall compile
and publish in accordance with the
EAC Regulations -

(a) not later than 15
August in each year
in which a District
Council ordinary
election is to be
held, a provisional
register of voters

- for subsectors; and
- (b) not later than 25 September in each year in which a District Council ordinary election is to be held, a final register of voters for subsectors."

Explanatory Memorandum

The objects of this Bill are -

- (a) to amend the District Councils Ordinance (Cap. 547) -
- (i) to increase the number of seats for elected members of the Islands District Council, Sai Kung District Council and Yuen Long District Council (clause 10); and
- (ii) to replace references in the disqualification provisions to terms and expressions previously used, which have already been amended, in the Bankruptcy Ordinance (Cap. 6) and the Mental Health Ordinance (Cap. 136) (clauses 5 to 9);
- (b) to amend the Legislative Council Ordinance (Cap. 542) -
- (i) to change the respective dates on or before which the Electoral Registration Officer must, in each year, compile and

publish the provisional registers and final registers of electors for geographical constituencies and functional constituencies (clause 4); and

(ii) to adjust the date on or before which a person must have reached 18 years of age in order to be eligible to be registered as an elector (clause 3); and

(c) to amend the Chief Executive Election Ordinance (Cap. 569) to change the respective dates on or before which the Electoral Registration Officer must, in each year, compile and publish the provisional register and final register of voters for subsectors constituting the Election Committee (clause 11).

Population Figures of 18 DCs

		Population in March 1999	Population projection as of June 2003	% of increase/ decrease	Average population size per constituency ¹
(1)	Islands <i>(Tung Chung</i>	84,909 <i>31,579</i>	113,538 <i>60,598</i>	+34% <i>+92%</i>	16,220
(2)	Sai Kung <i>(Tseung Kwan O</i>	295,211 <i>221,362</i>	376,451 <i>309,620</i>	+28% <i>+40%</i>	22,144
(3)	Yuen Long <i>(Tin Shui Wai</i>	391,364 <i>122,233</i>	542,615 <i>272,681</i>	+39% <i>+123%</i>	23,592
(4)	North Tuen Mun Kwai Tsing Wong Tai Sin Sha Tin	268,992 489,589 479,919 428,067 621,722	296,343 527,155 510,553 450,892 636,562	+10% +8% +6% +5% +2%	18,521 18,178 18,234 18,036 17,682
(5)	Remaining 10 districts	ranging from 172,138 to 629,463	ranging from 153,100 to 600,339	ranging from -11% to 0%	ranging from 13,918 to 17,158
(6)	18 districts as a whole	6,646,656	6,877,553	+3%	17,635

¹ this figure is derived by dividing the projected population of the district as of June 2003 by the existing number of elected seats

Number of Elected Seats for Individual District Councils
Original Proposal (i.e. maintaining status quo) vs "6 / 3 / 1" Option

District Council	Population projections as of June 2003 (a)	Original Proposal			"6 / 3 / 1" Option		
		No. of elected seats (b)	Average population size per constituency (a)÷(b)	+/-% of population quota ¹	No. of elected seats (c)	Average population size per constituency (a)÷(c)	+/-% of population quota ¹
Islands	113,538	7	16,220	-8.02%	8	14,192	-17.46%
Sai Kung	376,451	17	22,144	25.57%	20	18,823	9.47%
Yuen Long	542,615	23	23,592	33.78%	29	18,711	8.82%
North	296,343	16	18,521	5.03%	16	18,521	7.72%
Kwai Tsing	510,553	28	18,234	3.40%	28	18,234	6.05%
Tuen Mun	527,155	29	18,178	3.08%	29	18,178	5.72%
Wong Tai Sin	450,892	25	18,036	2.27%	25	18,036	4.90%
Sha Tin	636,562	36	17,682	0.27%	36	17,682	2.84%
Kwun Tong	583,356	34	17,158	-2.71%	34	17,158	-0.21%
Central and Western	251,696	15	16,780	-4.85%	15	16,780	-2.41%
Kowloon City	369,130	22	16,779	-4.85%	22	16,779	-2.42%
Southern	284,567	17	16,739	-5.08%	17	16,739	-2.64%
Sham Shui Po	347,624	21	16,554	-6.13%	21	16,554	-3.72%
Yau Tsim Mong	260,229	16	16,264	-7.77%	16	16,264	-5.41%
Eastern	600,339	37	16,225	-7.99%	37	16,225	-5.63%
Tai Po	306,687	19	16,141	-8.47%	19	16,141	-6.12%
Tsuen Wan	266,716	17	15,689	-11.03%	17	15,689	-8.75%
Wan Chai	153,100	11	13,918	-21.08%	11	13,918	-19.05%
Total	6,877,553	390	17,635	-	400	17,194	-

¹ The population quota is worked out by dividing the total population by the total number of elected seats.