

立法會
Legislative Council

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LC Paper No. CB(2)1604/11-12
(These minutes have been seen
by the Administration)

**Bills Committee on
Legislative Council (Amendment) Bill 2011**

**Minutes of the seventh meeting
held on 4 July 2011 at 8:30 am in the
Conference Room A of the Legislative Council Building**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
 - Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon WONG Yung-kan, SBS, JP
 - Hon LAU Kong-wah, JP
 - Hon Miriam LAU Kin-ye, GBS, JP
 - Hon Abraham SHEK Lai-him, SBS, JP
 - Hon LI Fung-ying, SBS, JP
 - Hon Vincent FANG Kang, SBS, JP
 - Hon WONG Kwok-hing, MH
 - Hon CHEUNG Hok-ming, GBS, JP
 - Hon WONG Ting-kwong, BBS, JP
 - Hon CHIM Pui-chung
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Hon CHAN Kin-por, JP
 - Dr Hon Priscilla LEUNG Mei-fun, JP
 - Hon WONG Kwok-kin, BBS
 - Hon IP Wai-ming, MH
 - Hon IP Kwok-him, GBS, JP
 - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Dr Hon PAN Pey-chyou
 - Hon Paul TSE Wai-chun, JP
- Members attending** :
- Hon Albert HO Chun-yan
 - Hon LEE Cheuk-yan
 - Dr Hon Margaret NG
 - Hon James TO Kun-sun
 - Hon CHAN Kam-lam, SBS, JP

Hon Emily LAU Wai-hing, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Paul CHAN Mo-po, MH, JP
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon Tanya CHAN

**Member
absent** : Dr Hon LAM Tai-fai, BBS, JP

**Public Officers
attending** : Constitutional and Mainland Affairs Bureau

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Ms Adeline WONG Ching-man
Under Secretary for Constitutional and Mainland
Affairs

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Department of Justice

Mr Frank POON Ying-kwong
Solicitor General

Mr Gilbert MO Sik-keung
Deputy Law Draftsman
(Bilingual Drafting and Administration)

Miss Emma WONG
Senior Government Counsel

**Clerk in
attendance** : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Ms Alice LEUNG
Senior Council Secretary (2)2

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Meeting with the Administration

[LC Paper Nos. CB(2)2226/10-11(01), CB(2)2246/10-11(01) and CB(3)840/10-11]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Papers provided by the Administration

2. Members noted that the Administration had provided the following papers for the meeting –

- (a) the Administration's paper entitled "Replacement mechanism" [LC Paper No. CB(2)2226/10-11(01)];
- (b) Committee Stage amendments ("CSAs") proposed by the Administration [LC Paper No. CB(2)2246/10-11(01)]; and
- (c) the Administration's paper entitled "Revised proposal to the replacement mechanism" tabled at the meeting [issued vide LC Paper No. CB(2)2299/10-11(01) on 5 July 2011].

Revised proposal to the replacement mechanism

3. Members noted that the Administration would propose CSAs to include new sections 35A and 67(2AA) to provide for the revised replacement mechanism. If any vacancy in the membership of the Legislative Council for any geographical constituency and District Council (second) FC arose under section 15 of the Legislative Council Ordinance (Cap. 542) (including those due to death, resignation, disqualification of Members due to other reasons or the situations set out in Article 79 of the Basic Law ("BL")), the vacancy would be filled by the candidate who ranked highest amongst the candidates on the

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candidate list of the Member who had resigned from or vacated his seat. The proposed section 67(2AA) was to extend the ground of lodging an election petition to the eligibility of the person to become a Member under the operation of the newly proposed section 35A.

4. Members further noted that the original section 35A was renumbered as section 35B. The proposed section 35B provided that a vacancy would be filled by the operation of the precedence list, if the vacancy was not filled under the proposed section 35A.

5. Mr IP Kwok-him expressed the view that the Administration's revised proposal was consistent with the list proportional representation system. Mr WONG Kwok-kin advised that the Hong Kong Federation of Trade Unions ("HKFTU") was supportive of CSAs proposed by the Administration, but HKFTU would also actively consider amendments proposed by other Members. Mr Jeffrey LAM also expressed support for the revised replacement mechanism proposed by the Administration. However, he considered that the Administration could make use of the summer recess to conduct a public consultation exercise on the revised proposal.

6. Mr CHIM Pui-chung was of the view that if a Member resigned, he should be restricted from participating in any by-election in the same term. Mr Paul TSE expressed the view that a vacancy should be filled by a candidate on the same list as that of the resigning Member and if the vacancy could not be filled by the same list, a by-election should be held.

7. Ms Miriam LAU urged the Administration to consider proposing a CSA to the effect that the proposed replacement mechanism should exclude situations (e.g. a Member's death, serious illness or other reasons) which were outside the control of the Member. Dr Priscilla LEUNG echoed a similar view. Ms Miriam LAU indicated that she would move a CSA to the Bill to that effect if the Administration did not do so.

II. Any other business

8. Members agreed that further meetings would be arranged if the Administration proposed to make any further amendments to the Bill.

9. There being no other business, the meeting ended at 10:45 am.

**Proceedings of the seventh meeting of the
Bills Committee on Legislative Council (Amendment) Bill 2011
on Monday, 4 July 2011 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000235 - 000349	Chairman	Opening remarks	
000350 - 000859	Chairman Administration Mr LEE Cheuk-yan Dr Margaret NG Mr WONG Kwok-kin Dr PAN Pey-chyou	<p>Mr LEE Cheuk-yan and Dr Margaret NG strongly requested the Administration to respond whether it would withdraw the Bill, having regard to the views expressed by the public in the demonstration on 1 July.</p> <p>Mr WONG Kwok-kin and Dr PAN Pey-chyou held the view that the Chairman should conduct the meeting according to the agenda by inviting the Administration to present its paper and members to raise questions afterwards.</p> <p>The following 12 non-Bills Committee Members walked out of the meeting in protest against the Administration's refusal to withdraw the Bill -</p> <p>Mr Albert HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr James TO, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Ronny TONG, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr WONG Sing-chi and Miss Tanya CHAN</p>	
000900 - 001605	Chairman Administration	The Administration briefed members on its proposed Committee Stage amendments ("CSAs") [LC Paper No. CB(2)2246/10-11(01)] and highlighted that the Amendment Ordinance should come into operation on 1 September 2012 and new sections 35A and 67(2AA) would be added to provide for the revised replacement mechanism.	
001606 - 001900	Chairman Mr LAU Kong-wah Administration	Mr LAU Kong-wah noted that a person to whom a notice was delivered under the new section 35A(4) was required to signify his acceptance of office as a Member by sending a written confirmation to the Returning Officer ("RO") within seven days after the date on which the notice was delivered. He was concerned about the insufficiency of time for the person concerned to return his confirmation if he was not in Hong Kong.	

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		<p>The Administration responded that the candidates of Legislative Council ("LegCo") elections had provided personal contact information and it would try every effort to notify the person concerned.</p>	
001901 - 002005	<p>Chairman Dr Philip WONG Administration</p>	<p>In response to Dr Philip WONG's enquiry about the counting of the seven-day requirement, the Administration explained that the seven-day period excluded the date on which the notice was delivered but included the intervening public holidays.</p>	
002006 - 002147	<p>Chairman Mr WONG Yung-kan Administration</p>	<p>Mr WONG Yung-kan asked whether a candidate was eligible for filling a vacancy arising mid-term in LegCo if he had subsequently acquired a nationality other than Chinese nationality when the vacancy arose.</p> <p>The Administration responded that under the proposed new section 35A(5), RO should determine whether the candidate was eligible to become a Member upon inquiry. If a candidate had acquired another nationality when a vacancy arose, he would not be eligible for filling the vacancy. If the vacancy was not filled by a person to whom a notice was delivered, RO should deliver the notice to the candidate who ranked second highest on the list.</p>	
002148 - 002556	<p>Chairman Mr WONG Ting-kwong Administration</p>	<p>Mr WONG Ting-kwong also raised concern about the new section 35A(4) relating to the return of confirmation of acceptance of office from the person to whom a notice was delivered.</p> <p>In response to Mr WONG Ting-kwong's enquiry, the Administration advised that the Bill did not have any provisions which expressly stated how a notice was delivered. However, under the Interpretation and General Clauses Ordinance (Cap. 1), there was a provision on service of notice by post.</p>	
002557 - 003011	<p>Chairman Mr Paul TSE Administration</p>	<p>Mr Paul TSE raised similar concern about the insufficiency of time for a person to whom a notice was delivered to return his confirmation of acceptance of office and asked whether the person concerned could lodge an election petition in case he had dispute over the delivery of notice.</p>	

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		<p>The Administration responded that after the enactment of the Amendment Ordinance, the Electoral Affairs Commission would issue guidelines relating to delivery of notice to the candidate who ranked highest under the proposed section 35A. The Administration would also review relevant subsidiary legislation and consequential amendments would be made where necessary.</p>	
003012 - 003508	<p>Chairman Mrs Regina IP Administration</p>	<p>On Mrs Regina IP's concern about the costs and time involved in lodging an election petition, the Administration responded that the costs and time varied depending on the scope and complexity of disputes. Given that the Court of Final Appeal ("CFA") had declared the finality provision in section 67(3) of the Legislative Council Ordinance (Cap. 542) ("LCO") as unconstitutional and invalid, the Administration had proposed in the Electoral Legislation (Miscellaneous Amendments) Bill 2011 that a leap-frog appeal mechanism would be introduced so that an appeal against the Court of First Instance's determination could be made to CFA direct.</p>	
003509 - 004118	<p>Chairman Ms Miriam LAU Administration</p>	<p>In response to Ms Miriam LAU's questions about the scope of applicability of and the rationale behind the revised replacement mechanism, the Administration advised that the proposed replacement mechanism would cover all situations giving rise to a vacancy in any geographical constituency ("GC") or the District Council (second) functional constituency ("DC (second) FC"). Under this proposal, a vacancy would be filled by a candidate from the same list as that of the vacating Member, thus giving effect to the will of the electors voting for that Member's list. This arrangement was consistent with the list proportional representation system.</p>	
004119 - 004648	<p>Chairman Mr IP Kwok-him Administration</p>	<p>The Administration's elaboration on the replacement arrangements under the revised mechanism.</p>	
004649 - 004914	<p>Chairman Prof Patrick LAU Administration</p>	<p>Prof Patrick LAU asked about the eligibility of a candidate who was bankrupt to fill a vacancy arising mid-term.</p> <p>The Administration advised that section 39(1) of LCO had stipulated the eligibility of candidates at</p>	

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		<p>a LegCo election and for LegCo membership. In accordance with section 39(1)(i), a person was disqualified from being nominated as a candidate at an election and from being elected as a Member if he was an undischarged bankrupt or, within the previous five years, had either obtained a discharge in bankruptcy or had entered into a voluntary arrangement with the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors in either case without paying the creditors in full.</p>	
004915 - 005423	<p>Chairman Dr PAN Pey-chyou Administration</p>	<p>Dr PAN Pey-chyou expressed his concern about the provision which stipulated that a person to whom a notice was delivered should signify his acceptance of office as a Member by sending a written confirmation to RO within seven days after the date on which the notice was delivered.</p>	
005424 - 005855	<p>Chairman Mr Jeffrey LAM Administration</p>	<p>Mr Jeffrey LAM expressed queries about the rationale behind for the Administration to propose the revised replacement mechanism, the reasons for not excluding those situations specified under sections 15 and 72 of LCO and Article 79 of the Basic Law ("BL") ("BL 79") from the proposed revised replacement mechanism and the conformity of the revised mechanism with BL.</p> <p>The Administration reiterated that the arrangements for filling a vacancy arising mid-term under the revised replacement mechanism were based on the electors' will expressed in the previous GC election. Given that the vacancy was filled with reference to the result of the previous general election, it gave effect to the free expression of the will of the electors in the previous general election as a whole and was in line with the spirit of the proportional representation system.</p>	
005856 - 010216	<p>Chairman Mrs Sophie LEUNG Administration</p>	<p>Mrs Sophie LEUNG pointed out that while the list voting system was adopted for a GC general election, the system did not apply to a by-election for filling one single vacancy. In a GC by-election for filling one single vacancy, the vacancy was filled through the first-past-the-post system. In her view, this replacement arrangement was inconsistent with the proportional representation system.</p>	

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		The Administration responded that the revised replacement mechanism was consistent with the proportional representation system and maintained the proportion of seats allocated among different political parties and groups represented by the lists of candidates in the previous general election.	
010217 - 010352	Chairman Mr WONG Kwok-kin	Mr WONG Kwok-kin indicated that the Hong Kong Federation of Trade Unions ("HKFTU") supported CSAs proposed by the Administration. Notwithstanding this, HKFTU would also actively consider amendments proposed by other Members.	
010353 - 011109	Chairman Mr Vincent FANG Administration	Mr Vincent FANG pointed out that the public were very concerned about deprivation of the right to vote or the right to stand for a by-election and there were views that a viable option was to restrict the resigned Member from participating in a by-election in the same term.	
011110 - 011804	Chairman Dr Priscilla LEUNG Administration	<p>Dr Priscilla LEUNG enquired why the Administration proposed the revised replacement mechanism given that it still could not plug the loophole as pointed out previously by the Administration that a Member might resign so that a candidate from his same party could fill the vacancy.</p> <p>The Administration explained that there were views in the Bills Committee that filling a vacancy by candidates who had not been elected on the same list as that of the resigning Member could not plug the loophole in the existing replacement mechanism. However, if the vacancy was not filled by candidates who had not been elected on the same list as that of the resigning Member, it could not reflect the overall will of the electorate.</p> <p>On Dr Priscilla LEUNG's concern that the vacancy might be filled by a candidate from another list which had obtained only a small number of votes, the Administration responded that the candidates on the precedence list had a certain level of public support.</p>	
011805 - 012255	Chairman Ms Miriam LAU Mr Paul TSE Administration	Mr Paul TSE considered that the revised replacement mechanism and the original replacement mechanism proposed by the Administration were contradictory. He held	

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		the view that a vacancy should be filled by a candidate on the same list as that of the resigning Member and if the vacancy could not be filled by the same list, a by-election should be held.	
012256 - 012444	Chairman Administration	<p>The Administration continued the presentation of CSAs set out in LC Paper No. CB(2)2246/10-11(01) and highlighted that further amendments (i.e. amendments underlined) were required for the following subsections under the proposed section 58B(6) -</p> <p>"(bb) is, if the Court or the Court of Final Appeal determines under section 67(2A) or 70B(a)(iv) that the name of a person which is not included in the list is to be included in the list, revised, subject to subsections (3), (4) and (5), by adding that name on the list;</p> <p>(bc) is, if the Court or the Court of Final Appeal determines under section 67(2A) or 70B(a)(iv) that the name of a person which is included in the list is not to be included in the list, revised by removing that name from the list;</p> <p>(bd) is, if the Court or the Court of Final Appeal determines under section 67(2B) or 70B(a)(v) that a particular ranking of a person on the list is correct, revised, if necessary, by reflecting that ranking; and".</p>	
012445 - 012506	Chairman SALA2	SALA2 advised that the legal and drafting aspects of CSAs proposed by the Administration were in order.	
012507 - 013258	Chairman Mrs Regina IP Ms Miriam LAU	<p>Pointing out that the Amendment Ordinance would only commence in September 2012, Mrs Regina IP considered that there was no hurry for the Bill to be enacted. She also asked whether the filling of a vacancy arising from a Member's death, serious illness or other involuntary circumstances could be differentiated from that of a vacancy arising from a Member resigning from office on his or her own initiative.</p> <p>Ms Miriam LAU advised that the Liberal Party had conducted an opinion survey during the period from 30 June to 3 July 2011 and about 1 640</p>	

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		<p>respondents had participated in the survey. The results of the survey were as follows -</p> <ul style="list-style-type: none"> (a) 46.8% of the respondents supported that the loophole of the existing replacement mechanism should be plugged and 40.7% of the respondents did not support the proposal; (b) 46.3% of the respondents supported the revised replacement mechanism and 42.7% of the respondents objected to the revised mechanism; and (c) 62.8% of the respondents supported to put forward a proposal which only dealt with a situation where a vacancy arose due to resignation of a Member and only 24.8% of the respondents objected this proposal. <p>Ms Miriam LAU urged the Administration to propose a CSA to the effect that application of the proposed revised replacement mechanism would exclude situations (e.g. a Member's death, serious illness or other reasons) which were outside the control of the Member.</p>	
013259 - 014024	Prof Patrick LAU Mr CHIM Pui-chung Mr Jeffrey LAM	<p>Prof Patrick LAU enquired about the feasibility of putting in place a replacement mechanism under which a by-election would be held only if there was one vacant seat and whether a limit could be set on the number of by-elections to be held in a term.</p> <p>Mr CHIM Pui-chung held the view that if a Member resigned, he should be restricted from participating in any by-election in the same term.</p> <p>Mr Jeffrey LAM expressed support for the Administration's revised proposal. However, he considered that the Administration could conduct a public consultation exercise to collect public's views in the summer recess.</p>	
014025 - 015329	Mr IP Kwok-him Mr Paul TSE Ms Miriam LAU Mr Jeffrey LAM	<p>Mr IP Kwok-him considered that the revised proposal put forward by the Administration was consistent with the list proportional representation system. He indicated that he had reservation about the suggestion made by Ms Miriam LAU as the proposal only dealt with the situation where a</p>	

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		<p>Member resigned. In his view, a comprehensive review on the existing replacement mechanism was warranted.</p> <p>Mr Paul TSE pointed out that as the revised replacement mechanism proposed by the Administration covered all situations including those which were outside the control of the Member, there might be diverse views in the society. He suggested the Administration to set up a committee comprising legal practitioners and political science academics to study the issue carefully before putting forward any proposal to change the existing replacement arrangement.</p> <p>On Mr IP Kwok-him's and Mr Paul TSE's views, Ms Miriam LAU responded that the Liberal Party's suggestion could address the public's concern over the loophole of the existing mechanism arising from the resignation of a Member. She considered that the issue relating to the filling of a vacancy arising from other situations could be further studied. Ms LAU indicated that she would consider proposing a CSA if the Administration decided not to propose a further CSA to the effect that the replacement mechanism only applied to the situation where a Member resigned from his office.</p>	
015330 - 020649	Chairman Administration Mr CHIM Pui-chung Mr Jeffrey LAM	<p>On members' views, the Administration responded that -</p> <p>(a) BL had stipulated that there were 60 Members in LegCo and when there was a vacancy, the vacancy should be replaced. In accordance with the provisions of BL and LCO, the Administration was not able to introduce a proposal as suggested by Prof Patrick LAU that a by-election would be held only if there was one vacant LegCo seat arose mid-term;</p> <p>(b) the revised replacement mechanism had responded to the views that the vacancy arose due to death or natural situations should be filled by a candidate of the same party so as to reflect the will of the electorate expressed in the general election; and</p>	

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		(c) in respect of the suggestion of restricting a Member who had resigned to participate in a by-election, the Administration had considered this proposal and needed to study the issue of its conformity with BL 26. The Administration's present position on the arrangements for filling vacancies arising in mid-term was to put in place a replacement mechanism based on the results of the previous general election.	
020650 - 021256	Chairman Dr Priscilla LEUNG Ms Miriam LAU Mrs Regina IP	Dr Priscilla LEUNG urged the Administration to propose a CSA to restrict a resigning Member from participating in a by-election in the same term. Ms Miriam LAU urged the Administration to consider the suggestion made by her earlier.	
021257 - 021634	Administration Chairman	The Administration informed members that the legal principles and considerations of the Department of Justice on the revised proposal to the replacement mechanism had been set out in the Administration's paper tabled at the meeting [LC Paper No. CB(2)2299/10-11(01)]. The Chairman said that further meetings would be arranged if necessary.	