Legislative Council (Amendment) Bill 2011

Committee Stage

<u>Amendments to be moved by the Secretary for Constitutional and
Mainland Affairs</u>

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting everything before "into" and substituting—

        "(2)   Sections 3, 4, 5, 6, 8, 9, 10, 11, 11A, 12, 13, 14 and 15 come".

3   In the proposed section 12(3), by deleting "sections 13 and" and substituting "section".

5   (a)   In the proposed section 35A(1), by deleting "This" and substituting "Subject to sections 67(2)(b) and sections 70B(a)(ii)(B), this".

        (b)   In the proposed section 35A(1)(a), by adding "or 72" after "15".

        (c)   In the proposed section 35A(5), by deleting "that the person becomes" and substituting "that the person has been elected as".

        (d)   By deleting the proposed section 35A(8) and substituting—

            "(8)   For the purposes of any provision of any Ordinance—

                (a)   a person who becomes a Member

under subsection (5) is to be regarded as a Member elected as such; and

(b)   the process through which the person becomes a Member under this section is to be regarded as a part of an election,

if the context of the provision, having regard to the purpose of the provision, so requires.".

(e)   In the proposed section 35A(11), by deleting "58A" and substituting "58B".

6   By adding after subclause (2)—

"(3)   Section 36(1)(e)—

Repeal the full stop

Substitute a semicolon.

(4)   After section 36(1)(e)—

Add

"(f)   on the Court's making a determination under section 67(2)(b) or the Court of Final Appeal's making a determination under section 70B(a)(ii)(B) that a by-election is to be held.".".

7   (a)   In the clause heading, by deleting "**58A**" and substituting "**58B**".

(b)   By deleting "After section 58" and substituting "Before section 59".

(c)   By renumbering the proposed section 58A as section 58B.

(d)   In the proposed section 58B(1), by deleting everything before "election—" and substituting—

"(1)   If in a general election the election to return the Members for any geographical

constituency or the District Council (second) functional constituency is a contested election, the Returning Officer appointed for the constituency must, as soon as practicable after the completion of the counting of votes in respect of the".

(e)   In the proposed section 58B(2)(a)(ii), by deleting "and".

(f)   In the proposed section 58B(2)(b), by deleting the full stop and substituting "; and".

(g)   In the proposed section 58B(2), by adding after paragraph (b)—

> "(c)   where—
>
> > (i)   the Court or the Court of Final Appeal determines that a person on a list of candidates who was originally declared to have been duly elected as a Member was not duly elected as a Member; and
> >
> > (ii)   the sole ground for the determination is that the number of valid votes obtained by that list of candidates was less than that obtained by another list of candidates or other lists of candidates,
>
> the name of that candidate.".

(h)   In the proposed section 58B(4)(b), by deleting the full stop and substituting a semicolon.

(i)   In the proposed section 58B(4), by adding after paragraph (b)—

> "(c)   the number of votes which a candidate referred to in subsection (2)(c) has is—
>
> > (i)   if the candidate also falls within subsection (2)(a)(i) or (ii), determined by reference to paragraph (a); or
> >
> > (ii)   if the candidate also falls within subsection (2)(b), determined by reference to paragraph (b),
>
> having regard to the determination of the Court or the Court of Final Appeal by virtue

of which the name of that person appears on the precedence list.".

(j)   In the proposed section 58B(6), by adding after paragraph (a)—

> "(aa)   is, if any person whose name is included in the list becomes a Member by virtue of a determination of the Court or the Court of Final Appeal under section 67 or 70B, revised by removing that name from the list;".

(k)   In the proposed section 58B(6)(b), by deleting "and".

(l)   In the proposed section 58B(6), by adding after paragraph (b)—

> "(ba)   is, if the Court or the Court of Final Appeal makes a determination described in subsection (2)(c) in relation to a person, revised, subject to subsections (3), (4) and (5), by adding the name of that person on the list;
>
> (bb)   is, if the Court or the Court of Final Appeal determines under section 67(2B) or 70B(a)(iv) that a particular ranking of a person on the list is correct, revised by reflecting that ranking; and".

(m)   In the proposed section 58B, by adding after subsection (6)—

> "(6A)   If a precedence list published under subsection (1) is revised under subsection (6) or section 35A(7), the Returning Officer must, by notice in the Gazette—
>
> (a)   announce the revision; and
>
> (b)   publish the list as revised.".

(n)   In the proposed section 58B(7), by deleting "(a) or (b)".

(o)   In the proposed section 58B, by deleting subsections (8) and (9).

8(3)   (a)   In the proposed section 61(2A), by deleting "58A" and substituting "58B".

          (b)   In the proposed section 61(2A), by adding "and only" after "62".

          (c)   In the proposed section 61(2B)(c), by deleting "and".

          (d)   In the proposed section 61(2B)(d), by deleting the full stop and substituting "; and".

          (e)   In the proposed section 61(2B), by adding—

> "(e)   a ground specified in any other enactment that enables an election to be questioned.".

9   (a)   In the proposed section 63(1A)(a) and (b), by deleting "58A" and substituting "58B".

          (b)   In the proposed section 63(1B), by deleting everything after "section" and substituting "58B is questioned by an election petition, the Returning Officer who published the list may be made a respondent to the petition.".

10(2)   In the proposed section 65(2)(a), (b) and (c), by deleting "58A" and substituting "58B".

11   (a)   By renumbering the clause as clause 11(2).

         (b)   By adding before subclause (2)—

> "(1)   Section 67(2)—

Repeal

everything after ",determine"

Substitute

"whether—

(a) some other person (whether or not that other person is on a precedence list published under section 58A) was duly elected instead; or

(b) a by-election is to be held to fill the vacancy that arises as a result.".".

(c) In subclause (2), in the proposed section 67(2A), by deleting "58A" and substituting "58B".

(d) In subclause (2), in the proposed section 67(2B), by deleting "58A" and substituting "58B".

New By adding after clause 11—

"**11A. Section 70B amended (Court of Final Appeal's determination)**

(1) Section 70B(a)(ii)(B)—

  Repeal

  "was duly elected in place of the person; and"

  Substitute

  (whether or not the person is on a precedence list published under section 58B) was duly elected instead or a by-election is to be held to fill the vacancy that arises as a result;".

(2) After section 70B(a)(ii)—

  Add

  "(iii) if the election petition relates to—

      (A) the inclusion of the name of a person in; or

      (B) the exclusion of the name of a person from,

a precedence list published under section 58B, whether the name is to be included in the list; and

(iv) if the election petition relates to the ranking of a person on a precedence list published under section 58B—

(A) whether the ranking of the person on the list is correct; and

(B) if not correct, what is the correct ranking; and".".