

**Bills Committee on Electoral Legislation
(Miscellaneous Amendments) (No. 2) Bill 2015**

**Follow up on issues raised at the
Meeting on 1 February 2016**

At the meeting of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015 (“the Bill”) held on 1 February 2016, a Member made some suggestions regarding clause 5 of the Bill. This paper sets out the Government’s response, as well as information regarding clause 13 of the Bill (in relation to the composition of the Sports, Performing Arts, Culture and Publication functional constituency (“FC”)) for reference.

Clause 5 of the Bill

2. A Member proposed revising the wording of the amendments to be made to section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) under Clause 5 of the Bill, including –

- (a) to simplify the wording “for an election to elect the Chief Executive” in the proposed section 37(1A);
- (b) to specify the person making the declaration when “the proceedings for the election are declared to have been terminated” in the proposed section 37(1A)(b); and
- (c) to combine items (a) and (b) under the proposed section 37(1B) to make it more concise.

3. Regarding the comments in paragraph 2(a) and (b) above, we have made reference to the Elections (Corrupt and Illegal Conduct) Ordinance (including sections 36 and 37) and relevant electoral legislation in the drafting of Clause 5 of the Bill. The wording “for an election to elect the Chief Executive”, etc., has been used in those pieces of relevant legislation and has worked well. Therefore, similar wording is adopted in the Bill to ensure consistency with the wording in the existing legislation and to avoid controversy. Regarding the proposed section 37(1A)(b), the Government has given careful consideration on whether the persons responsible for making the declaration

when “the proceedings for the election are declared to have been terminated” should be spelt out, and considered it not necessary to do so. This is because the persons responsible for making such declaration are clearly spelt out in the relevant electoral legislation and model rules¹, hence there is no need to repeat the same in section 37(1A)(b).

4. Regarding paragraph 2(c) above, subsection (a) under the proposed section 37(1B) of the Bill is concerned with a Legislative Council (“LegCo”) election involving two or more constituencies (e.g., the general election). As the main purpose of amending section 37 is to align the deadlines for lodging election returns for both contested and uncontested candidates at the same LegCo election, it is therefore necessary to spell out in clear terms that in relation to LegCo election involving two or more constituencies, the situations in all constituencies have to be taken into consideration in determining the relevant deadline. Subsection (b) under section 37(1B) deals with LegCo election where only one constituency is involved (e.g., a by-election held in relation to a particular constituency), in such case we only need to take into consideration the situation in that constituency in determining the relevant deadline. The Government has given careful consideration on combining subsections (a) and (b) under the proposed section 37(1B) of the Bill, and considered it not desirable. In fact, the combined approach cannot clearly set out the different handling methods in respect of the two different situations mentioned in subsections (a) and (b).

5. To conclude, the Government is of the view that the drafting approach of Clause 5 of the Bill is appropriate, and has conveyed our policy objectives in a clear manner to avoid uncertainty in interpretation and application of the legislation. Therefore, the Government does not consider it necessary to propose any committee stage amendment to Clause 5 of the Bill.

¹ Details of declaring termination of election proceedings for the Chief Executive election are stipulated in section 22 of the Chief Executive Election Ordinance (Cap. 569); details of declaring termination of election proceedings for the Legislative Council election are stipulated in sections 42C and 46A(1) of the Legislative Council Ordinance (Cap. 542); details of declaring termination of election proceedings for the District Council election are stipulated in section 40 of the District Councils Ordinance (Cap. 547); details of declaring termination of election proceedings for an election relating to a Rural Committee are stipulated in section 20.2 of the Model Rules for Rural Committee Elections; details of declaring termination of election proceedings for the Rural Representative election are stipulated in section 30(1) of the Rural Representative Election Ordinance (Cap. 576); as for the Election Committee subsector elections and elections relating to the Heung Yee Kuk, there is no termination of election proceedings.

6. Apart from the above, a Member enquired the need for specifying in the proposed section 37(1C)² the scenario in which more than one of the specified events occur in relation to a constituency at a LegCo election, whereas similar wording is not found in relation to a District Council (“DC”) election (i.e., in the proposed section 37(1G)³). The reason is that in a LegCo election, insofar as a certain constituency is concerned, if only one of the following events occurs, an election is settled in relation to that constituency on the date on which that event occurs —

- (a) the result of the election is notified in the Gazette;
- (b) the proceedings for the election are declared to have been terminated;
- (c) the election is declared to have failed.

However, as more than one Member may have to be returned in the same constituency at a LegCo election⁴, it is possible that more than one of the events mentioned in (a), (b) and (c) above may occur in the election for that constituency. For example, according to section 46A(2) and (3)(b) of the Legislative Council Ordinance (Cap. 542) (“LCO”), in an election for a constituency where more than one Member is to be returned, if, after the close of polling but before declaring the result of the election, proof is given to the satisfaction of the Returning Officer that one of the candidates has died or is

² The proposed section 37(1C) of the Bill is as follows –

“(1C) For the purposes of subsection (1B), an election is settled in relation to a constituency on the date on which any of the following events occurs in relation to the constituency, or, if more than one of the following events occurs in relation to the constituency, on the date on which the last of those events occurs —

- (a) the result of the election is notified in the Gazette;
- (b) the proceedings for the election are declared to have been terminated;
- (c) the election is declared to have failed.”.

³ The proposed section 37(1G) of the Bill is as follows –

“(1G) For the purposes of subsection (1F), an election is settled in relation to a constituency on the date on which any of the following events occurs in relation to the constituency—

- (a) the result of the election is notified in the Gazette;
- (b) the proceedings for the election are declared to have been terminated;
- (c) the election is declared to have failed.”.

⁴ For example, in accordance with section 19 of the Legislative Council Ordinance (Cap. 542) (“LCO”), the number of Members to be returned for each geographical constituency is to be a number not less than five nor greater than nine at a LegCo general election; or in accordance with section 21(b) of the LCO, the number of Members to be returned is three Members for the labour functional constituency.

disqualified from being elected, and if after the counting of votes is finished, that candidate is found to be successful at the election, the Returning Officer must publicly declare the election to have failed to the extent that the number of candidates returned at the election was less than the number of Members to be returned for that constituency⁵, and must display the relevant notice in a prominent place outside the relevant counting station in accordance with section 97B(2) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D). Besides, the Returning Officer must publicly declare in the Gazette the other successful candidates at that election to be duly elected as Members. Under such circumstances, the situations mentioned in the proposed section 37(1C) of the Bill will occur at an election for the same constituency. In such case, the election in relation to that constituency is settled on the date on which the last of those events occurs.

7. For the DC election, since only one member is to be returned for each constituency⁶, not more than one of the events mentioned in paragraph 6 above will occur at the election for each constituency. Therefore, the situations and relevant wording of the proposed section 37(1C) of the Bill need not and should not apply to section 37(1G) which deals with the DC election.

Clause 13 of the Bill

8. A Member asked the Government to provide further information regarding Clause 13 of the Bill, i.e., amendments related to the composition of the Sports, Performing Arts, Culture and Publication FC.

9. A Member enquired the reason for changing the name of a listed body under the Sports, Performing Arts, Culture and Publication FC from “Videotage” to “Videotage Limited” as set out in Clause 13(9) of the Bill⁷. At

⁵ Except that there is another candidate or there are other candidates on the same list who has not or have not been returned for the constituency, then the candidate is to be returned or a candidate is to be returned according to the order of priority on the list (subject to that candidate’s being not disqualified from being elected) in place of the deceased or disqualified candidate in accordance with section 49(15) of the LCO. In that case the Returning Officer must publicly declare the candidate so returned to be elected.

⁶ According to section 7 of the District Councils Ordinance (Cap. 547), the number of elected members to be returned for each constituency is one.

⁷ Corresponding amendments are also made to the Chinese Version from “錄影太奇” to “錄影太奇有限公司”.

present, Item 61 of Part 3 of Schedule 1B to the LCO and section 12(2)(c) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) specify “Videotage” as a body eligible to be registered as an elector of the Sports, Performing Arts, Culture and Publication FC, as well as a voter of the Culture sub-subsector of the relevant Election Committee (“EC”) subsector. During the course of handling the work related to voter registration (“VR”) in the 2015 VR cycle, the Registration and Electoral Office received information provided by “Videotage Limited”, a registered elector/voter of the Sports, Performing Arts, Culture and Publication FC and the Culture sub-subsector of the relevant EC subsector, confirming that “Videotage” and “Videotage Limited” are the same body. The body also confirmed that “Videotage Limited” is the correct name of the body registered in the Companies Registry in accordance with the Companies Ordinance (Cap. 622). We thus consider there is a need to amend Schedule 1B to the LCO to update the name of the body to “Videotage Limited” so as to maintain consistency of the name of the body with that registered in the Companies Registry. Such amendment is purely technical in nature, and does not affect the body’s existing right to vote at LegCo and EC subsector elections.

10. Separately, regarding the remaining parts of Clause 13 of the Bill, a Member enquired the reason for amending the English names of certain listed bodies of the Sports, Performing Arts, Culture and Publication FC. The objective of making such amendments, similar to the case of “Videotage” mentioned above, is to make necessary technical amendments to the names of the relevant bodies as listed in the English version of Schedule 1B to the LCO, such as from “Ltd” to “Limited”, so that they are consistent with the name of the bodies as registered in the Companies Registry or under the Societies Ordinance (Cap. 151). These minor technical amendments do not affect such bodies’ existing right to vote at LegCo and EC subsector elections.

**Constitutional and Mainland Affairs Bureau
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