

Medical Registration (Amendment) Bill 2017

**Government's response to the follow-up issues raised at
the Bills Committee meetings on 13 November and 27 November 2017**

This paper sets out the Government's response to the follow-up issues raised at the Bills Committee meetings on 13 November and 27 November 2017 (Annex A).

Arrangements for handling conflicts of interest arising from the handling of complaints and disciplinary inquiries by the Medical Council of Hong Kong

2. The Government welcomed views from Members on the arrangements for handling conflicts of interest. At the request of Bills Committee, the Government has relayed Members' views to the Medical Council of Hong Kong (MCHK) for consideration. According to the response provided by the MCHK Secretariat, MCHK has an established mechanism on handling conflicts of interest.

3. Sections 7(1) and 7(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation require members of the Preliminary Investigation Committee to declare their interest upon receipt of a case. Generally speaking, a member with conflict of interest will not participate in any deliberation or decision regarding the case.

4. Moreover, other administrative measures have been put in place by MCHK to ensure that each and every complaint is handled in a fair and impartial manner. Such measures include -

- (a) When inviting Council members/ assessors to sit for an inquiry one month before its opening, the Secretariat will provide in advance Council members/ assessors with the information relating to the inquiry, including the identity of the defendant and the nature of the case, and remind Council members/ assessors to consider if they may have actual or perceived conflicts of interest;

- (b) The Secretariat will inform the defendant (if he or she has no legal representative) or the defendant's legal representative of the information on the participating Council members/assessors at least ten days before the opening of an inquiry. If the defendant considers it inappropriate for any of the Council members/assessors to join the inquiry, an objection may be lodged with the Chairman of MCHK for his/her decision;
- (c) Before the opening of an inquiry, the Chairman of the inquiry will again invite panel members to make declaration of interest, and ask whether the defendant will have any objection to the panel composition in accordance with the procedural guide of the Medical Council Disciplinary Inquiry.

5. Apart from the above measures on handling conflicts of interest when dealing with complaint investigation and disciplinary inquiry, new members of MCHK are provided with reference materials on the scope of work of MCHK and their particular attention is drawn to the guidelines on declaration of interest as set out in Standing Order No. 6 "Conflict of interests of members" such that members will be conversant with the rules before carrying out duties of MCHK.

6. MCHK welcomed views from Members of the Bills Committee on the arrangements for handling conflicts of interest arising from the handling of complaints and disciplinary inquiries by MCHK. After passage of the Bill, MCHK will review and consider how to further improve the mechanism on declaration of interest and handling conflicts of interest.

Arrangements for filling vacancy of a patient representative with unexpired term of office less than one year

7. Regarding the arrangements for the appointment of a patient representative whose term of the office is less than one year, the original intention of the Government is to follow the current arrangement for the seven members elected by all doctors under the Medical Registration Ordinance. That is, MCHK

will appoint a replacement to fill the vacancy with the unexpired term of office less than one year and to appoint temporary members.

8. Having considered the views of the Bills Committee and consulted representatives of major patient groups, the Government will propose amendments to section 5(AA)(b) of Cap. 161, in which the vacancy of patient representatives with a term of the office less than one year should be filled by a person who represents the interests of patients to be appointed by the Permanent Secretary for Food and Health (Health) instead of MCHK, on the nomination of any lay member of the Council.

Patient Organizations Election Regulation

9. The Government has provided details of the framework for the Patient Organizations Election Regulation (the Regulation) at Annex D of the Legislative Council (LegCo) Brief (file reference: FHCR1/F/3261/92) (Annex B). We have consulted major patient organizations on the framework and they agreed with the proposal in general. We will table the Regulation at LegCo for negative vetting possibly within three months after passage of the Medical Registration (Amendment) Bill 2017. The proposed timetable is as follows -

Time	Action
Within three months after passage of the Medical Registration (Amendment) Bill 2017	Tabling of the Regulation at LegCo
Four to seven weeks	Consideration of the Regulation by LegCo
Within 15 weeks after passage of the Regulation	Conduct for the patient organization election by MCHK Secretariat

Food and Health Bureau
December 2017

Bills Committee on Medical Registration (Amendment) Bill 2017

**List of follow-up actions required of the Administration
arising from the discussion at the meeting on 13 November 2017**

The Administration was requested to:

- (a) in respect of the proposed new section 3(5AA)(b) to the Medical Registration Ordinance (Cap. 161) ("the Ordinance"), gauge and revert in writing on the views of the patient organizations on the proposed arrangement that when a vacancy occurred in the office of a lay member representing the interests of patients and the unexpired term of the office was less than one year, the Medical Council of Hong Kong ("the Medical Council") would be empowered to (i) decide whether a person nominated by any lay member of the Medical Council to fill the vacancy represented the interest of the patients; and (ii) appoint a person to fill the vacancy based on such nomination; and
- (b) revert in writing on the Medical Council's stance on a member's view that the existing mechanism put in place by the Medical Council for handling conflict of interests under disciplinary inquiries might not be able to ensure that each and every complaint would be handled in a fair and impartial manner, with particular regard to the legislative proposal that the size of the pool of lay assessors and medical assessors, to be nominated by the nominating authorities set out in the proposed new Schedule 5 to the Ordinance, would be expanded significantly.

Bills Committee on Medical Registration (Amendment) Bill 2017

List of follow-up actions required of the Administration arising from the discussion at the meeting on 27 November 2017

The Administration was requested to revert to the Bills Committee on the latest views it collected from the patient organizations on:

- (a) the proposed arrangement to enable eligible patient organizations to elect three representatives among themselves to sit on the Medical Council of Hong Kong as set out in Annex D to the Legislative Council Brief (File Ref: FHCR1/F/3261/92);
- (b) the proposal that the proposed Patient Organizations Election Regulation would be subject to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1); and
- (c) the relevant legislative timetable.

**Key proposed election arrangement for the three persons
representing patients' interests at the Medical Council of Hong Kong**
(Annex D to the LegCo Brief (file reference: FHCR1/F/3261/92) refers)

(A) Eligibility of an elector

An organisation that wishes to be an elector will make an application to the Permanent Secretary for Food and Health (Health) and it must prove to the satisfaction of the Permanent Secretary that it meets all of the following requirements:

- (a) it is—
 - (i) a company as defined by section 2(1) of the Companies Ordinance (Cap. 622); or
 - (ii) a society, or a branch of a society, registered under section 5A(1) of the Societies Ordinance (Cap. 151);
 - (b) its principal objective is to safeguard or represent patients' interests;
 - (c) it has incorporated or registered under the Companies Ordinance (Cap. 622) or the Societies Ordinance (Cap. 151) for at least 2 years immediately before the application and has been carrying on activities to safeguard or represent patients' interests;
 - (d) it is recognized by or registered with an overseeing/management authority which includes —
 - (i) the Hospital Authority established under the Hospital Authority Ordinance (Cap. 113);
 - (ii) the Social Welfare Department;
 - (iii) the Hong Kong Society for Rehabilitation; and
 - (iv) any other entity recognised and accepted by the Permanent Secretary for Food and Health (Health).
2. A valid nomination shall be made by one elector as proposer and [four] electors as seconders.

(B) Electoral office

3. The Secretary of MCHK will conduct the election in accordance with the procedures as set out in the subsidiary legislation.

(C) Conduct of election

4. The election will be conducted on a triennial basis.

(D) Nomination of candidates

5. Each elector may nominate one candidate for election in accordance with its own internal rules.

(E) Voting

6. Voting at the polls is to be done by secret ballot. Each elector will be entitled to three votes. The three candidates who obtain the greatest number of votes will be elected.

(F) Term of office

7. The term of office of the three lay Council members is three years, and the members may be re-elected.

(G) By-election

8. If the office of an elected member becomes vacant, and at the time the vacancy arises, the unexpired term of office is not less than twelve months, the electoral office must, as soon as practicable, hold a by-election to elect a qualified candidate to hold that office for the unexpired term. The term of office of the member elected through the by-election is the unexpired term of the vacant office.

(H) Transitional arrangement

9. If the Permanent Secretary for Food and Health (Health) is satisfied that an applicant, who does not fulfill the requirements in paragraph 1(c), has been in operation for two years before the commencement date of section 4 of the Medical Registration (Amendment) Ordinance 2017, such application may be approved. The above transitional arrangement ceases to have effect on the expiry of two years after the first election.