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30 November, 2018

Ms Wendy KAN
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Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
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Dear Ms KAN,

Electoral Legislation (Miscellaneous Amendments) Bill 2018

I refer to your letter of 16 October 2018, and our response to your observations is set out below.

Part I: Legal Issues

Clause 1(2) to (4) of the Bill

2. You sought clarification on the reason for setting in clause 1(2) to clause 1(4) of the Bill the commencement date for provisions related to the Rural Representative (“RR”) elections as the later of 1 February 2019 or the Gazettal Date.

3. As the 2019 Rural Ordinary Election will be held in early 2019, and relevant preparatory work has commenced in early 2018, the commencement arrangement aims to provide certainty for this Election

and to avoid implications on the preparatory work. In addition, as the Election will be held on three consecutive Sundays in January 2019, setting commencement date as 1 February 2019 or later can ensure consistency of electoral arrangements for the rural areas regardless of the different polling days and irrespective of the progress of the scrutiny of the Bill.

Part 3 of the Bill

4. You sought clarification on the reason for not applying the proposal in Part 3 of the Bill (which allows a Revising Officer (“RevO”) to determine a case without a hearing on the basis of written submissions) to :

- (a) an appeal made under section 1 of the Registration of Electors (Appeals) Regulation (Cap. 542B)¹ or under section 1 of the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap. 569B)²;
- (b) a claim or an objection made regarding the registration of a person as a member of the Election Committee; and
- (c) RR elections.

5. Having considered the views received in the public consultation on enhancement of the Voter Registration (“VR”) system conducted in late 2015, regarding indubitable claim/ objection cases, the Government

¹ It means an appeal made under the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) against the decision of the Electoral Registration Officer not to register as an authorised representative a person appointed by a corporate elector as a replacement or a substitute under section 20 of Cap. 541B.

² Same as that in footnote 1.

proposes to allow the Electoral Registration Officer (“ERO”) to seek the ruling of the RevO by written submissions in lieu of hearing. The above-mentioned recommendation focuses on the claim or objection cases concerning geographical constituencies (“GCs”), functional constituencies (“FCs”) or subsectors that have to be processed within the deadlines of the annual VR cycle.

6. As regards case types (a) and (b) in para. 4 above, they have all along been dealt with separately from the claims or objection cases concerning GCs, FCs or subsectors under the existing electoral legislation. As regards case type (c) on RR elections, since the eligibility for registration as electors of RR elections is different from that of GCs, FCs or subsectors, the types and nature of the claim or objection cases in relation to RR elections are hence different. In addition, the relevant statutory deadlines for handling the above three types of cases are different from the statutory deadlines under the annual VR cycle for handling claim or objection cases concerning GCs, FCs or subsectors. Having considered the above, the Government does not consider it suitable to introduce the option of written submission in lieu of hearing in determining the above three types of cases.

Clauses 17, 24 and 29 of the Bill

7. In accordance with section 19 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) and section 35 and section 36 of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B), the ERO has to ensure that electors’ particulars are recorded in the final register in accordance with the RevO’s rulings. Therefore, it is necessary for the ERO to be notified of the RevO’s rulings, including the results of the reviews conducted by the RevO, so that the ERO can reflect the rulings made by the RevO in the final register. According to existing section 6(3) of Cap. 542B, in the case where the RevO decides to review any ruling made under section 2(5)(b), he shall determine the procedure

for such review. At present or after the passage of the Bill, the RevO continues to have the power to determine the review procedure, including how to inform the appellant or the person in respect of whom the objection is made of the review result. Under existing arrangement, the RevO would notify the appellant or the person in respect of whom the objection is made of the review result in writing.

8. In accordance with section 7(3) of the Rural Representative Election (Registration of Electors) (Appeals) Regulation (Cap. 576A), the RevO shall determine the review procedure. Following the existing arrangement, the RevO would notify the ERO, the appellant or the person being objected to of the review result in writing.

Clause 54 of the Bill

9. You sought clarification on the reason for amending a reference for questionable ballot papers in the proposed section 74A(a)(ii) in the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) to those “appear to be not marked in accordance with section 56(1) or section 56(2) (i.e. section 56(2)(a) or section 56(2)(b))” instead of merely those “appear to be not marked in accordance with section 56(2)(b)”.

10. Pursuant to section 74A(a)(ii) of the existing legislation, ballot papers which appear to be not marked in accordance with section 56 (i.e. section 56(1), section 56(2)(a), section 56(2)(b) or section 56(3)) are questionable ballot papers, and must be forwarded to the Returning Officer (“RO”) to decide whether those ballot papers are actually not marked in accordance with section 56 (i.e. section 56(1), section 56(2)(a), section 56(2)(b) or section 56(3)). If so, the ballot papers are not to be regarded as valid pursuant to section 77(1)(g). Section 77(2) merely provides for a specific arrangement for a ballot paper not marked in accordance with section 56(2)(b) that the vote on the ballot paper may still be counted despite the fact that the ballot paper has been decided by the RO as deviating from the requirements in section 56(2)(b), if the RO is satisfied that the intention of the voter is clear.

11. The amendment in clause 54 of the Bill is a consequential amendment for clause 55 which proposes to add a new section 77(1)(ga). The newly added section 77(1)(ga) intends to provide that overmarked ballot papers (i.e. those not marked in accordance with section 56(3)³) are to be regarded as clearly invalid ballot papers instead of questionable ballot papers, thereby aligning the arrangement with that for DC, LegCo and RR elections⁴. As section 74A(a) lists out the types of questionable ballot papers, it is necessary to carve out section 56(3) from the reference in section 74A(a)(ii) to ballot papers which “appear to be not marked in accordance with section 56” to reflect that the existing arrangement of those ballot papers “appear to be not marked in accordance with section 56(1) or section 56(2) (i.e. section 56(2)(a) or section 56(2)(b))” as questionable ballot papers will remain unchanged.

Clause 55 of the Bill

12. You sought clarification on whether a candidate, an election agent or a counting may, under section 77(4)(a) of Cap. 541I, inspect a ballot paper⁵ which is invalid and not to be counted pursuant to section 77(g) because it is not marked in accordance with section 56(1) or section 56(2).

³ The subsection 56(3) is extracted as follows –
at a subsector ordinary election, a voter or authorized representative may vote for as many candidates as the number of Election Committee (“EC”) members allocated to the subsector concerned. At a subsector by-election, a voter or authorised representative may vote for as many candidates as the number of EC members to be returned at the subsector by-election.

⁴ As mentioned at para. 19 of the LegCo brief.

⁵ As mentioned at para. 10 above, such a ballot paper has already been decided by the RO, pursuant to section 78, as a ballot paper under subsection 77(g) and thereby not being regarded as valid and not being counted.

13. According to the amended section 74A(a), ballot papers appear to be not marked in accordance with section 56(1) or section 56(2) are questionable ballot papers. Those ballot papers will be processed in accordance with the procedure set out in section 78 regarding questionable ballot papers. Specifically, section 78(3) provides that a candidate, an election agent, or a counting agent may inspect such ballot papers. Such arrangement is not changed by this Bill, i.e. those parties may still inspect those ballot papers⁶. The arrangement is in line with that under section 80(4)(a) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) as mentioned in your letter and that in the legislation for other elections.

Part 6 of the Bill

14. Divisions 1 and 2 under Part 6 of the Bill add section 80(1)(ia) for Cap. 541D and section 78(1)(ha) for Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) respectively, so that a ballot paper with vote recorded for a candidate/ a single or multiple candidates list with the candidate/ all the candidate(s) on the list deceased or disqualified is to be treated as clearly invalid. You sought clarification on the reason for introducing the proposal to DC and LegCo elections only (but not ECSS or RR elections). It is because the number of members/ representatives to be elected in ECSS and RR elections may reach double digits, the chances for ballot papers with votes recorded only for all those deceased or disqualified candidates are relatively low. Introducing the proposal to ECSS and RR elections will only unnecessarily complicate the counting procedure⁷.

Clauses 56 and 61 of the Bill

15. The heads (a) to (h) of the statement set out in the proposed section 78(7) of Cap. 541I actually include all types of invalid ballot

⁶ As mentioned at para. 19 of the LegCo brief.

⁷ As mentioned at para. 19 of the LegCo brief.

papers listed out in section 77(1) and are not limited to those ballot papers which were questionable under section 74A and have subsequently been determined by the RO as invalid under section 78. To better reflect the legislative intent and the existing actual arrangement, we propose to amend the statement that RO is to prepare a statement of ballot papers “which are not to be regarded as valid under section 77”, thereby aligning it with the heads (a) to (h) of the statement as required in the same section. The same is also applicable to section 51(6) of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J). We will introduce Committee Stage Amendments (“CSAs”) accordingly.

Part II: Drafting Issues

Clause 10 of the Bill

16. We agree that the proposed section 32(4) and section 32(5) of Cap. 541B can be beefed up to clarify that the scope of section 32(6) and section 32(7) are confined to notice of claim/ objection related to the FCs provisional register or a subsector provisional register. We will introduce CSAs accordingly.

Clauses 14, 21 and 26 of the Bill

17. The “representations referred to in section 2(2)(c)” under the proposed new section 2B(2)(b) of Cap. 542B include all the representations made under section 2(2)(c)(i), section 2(2)(c)(ii) or section 2(2)(c)(iii) rather than just the representations made under section 2(2)(c)(iii). Therefore, we consider it not appropriate to amend the proposed new section 2B(2)(b). The proposed new section 3B(2)(b) under Cap. 569B and section 2A(2)(b) under Cap. 576A are similar to the proposed new section 2B(2)(b) under Cap. 542B and hence there is no need to amend these provisions as well.

Clause 19(2) and (3) of the Bill

18. After checking the references to section 7(2AA)(b)(ii) and section 7(2AA)(a)(ii)⁸ added to column 2 of Table 1 in section 2A(4) of Cap. 569B, we confirm that the references should be section 7(2AA)(b)(i) and section 7(2AA) (a)(i). Regarding clause 12(2) and clause 12(3) of the Bill, we agree that references to section 6(2AA)(b)(i)⁹ and section 6(2AA)(a)(i)¹⁰ should be added to column 2 of Table 1 in section 1A(4) of Cap. 542B so as to maintain consistency of the relevant provisions. We will introduce CSAs accordingly.

Clause 65 of the Bill

19. We agree to add a definition of “sub-subsector” to the proposed section 2(1) of Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap. 569C) to make the provision clearer. We will introduce CSAs accordingly.

Part III: Other observations

20. We agree to amend section 31(10) of Cap. 541B to remove the obsolete reference to section 26(5)(a) as the latter has already been repealed. Thank you for pointing this out. We will introduce CSAs accordingly.

21. Thank you for drawing our attention to the current issue of the Loose-leaf edition of Cap. 541J in which two "section 50(1)(e)" appears

⁸ Corresponding to section 29(1)(a)(i) of Cap. 541B and section 29(1)(a)(ii) of Cap. 541B in column 1 of Table 1.

⁹ Corresponding to section 13(1)(a) of Cap. 541A and section 29(1)(a)(i) of Cap. 541B in column 1 of Table 1.

¹⁰ Corresponding to section 13(1)(b) of Cap. 541A and section 29(1)(a)(ii) of Cap. 541B in column 1 of Table 1.

in the English text. We have checked against the Gazette version (L.N. 233 of 2001) and confirmed that the Gazette version is in order. Hence, no legislative amendment is required. The Department of Justice will arrange for necessary rectification to the Loose-leaf edition in due course.

Yours sincerely,



(Ms Cherie YEUNG)

for Secretary for Constitutional and Mainland Affairs

c.c. Clerk to Bills Committee

DoJ (Attn: Miss Emma WONG
Mr Gary LI)

HAD (Attn: Ms Anna CHOR, JP)

REO (Attn: Mr SM WONG
Mr Raymond WANG
Mr NL SHUM)