

立法會

Legislative Council

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Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2019

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Electoral Legislation (Miscellaneous Amendments) Bill 2019 ("the Bill"). It also gives a brief account of the discussion of the Panel on Constitutional Affairs ("the Panel") on the relevant amendment proposals.

Background

2. To prepare for the 2020 Legislative Council ("LegCo") General Election to be held in the third quarter of 2020, the Administration has conducted a review of the delineation of the electorate of the functional constituencies ("FCs") in LegCo in consultation with relevant bureaux/departments ("B/Ds"). According to the Administration, the review was conducted on the basis of the existing electorate and all relevant requests received from individual bodies/persons since the last review in 2015. The electorate of FCs in LegCo is provided for under the Legislative Council Ordinance (Cap. 542) ("LCO").

3. According to the Administration, the Administration after review has come up with a series of proposed technical amendments to LCO as set out at Annex B to the LegCo Brief (File Ref: CMAB C1/30/5/4), whilst maintaining the original delineation of FCs. The proposed technical amendments can be classified into the following categories:

- (a) to update the names of corporates specified under relevant sections of the existing legislation that have had their names changed since the last updating exercise;
- (b) to remove corporates which have ceased operation since the last updating exercise; and

- (c) to add new electors in the light of the prevailing situation of the FCs concerned.

4. The Administration also proposes to make consequential amendments to the Schedule to the Chief Executive Election Ordinance (Cap. 569) ("CEEEO") to reflect the corresponding changes to the electorate of the relevant Election Committee subsectors.

5. In the light of the experience gained from the last election cycle, the Administration also proposes to make a series of other technical amendments to improve electoral arrangements in the following aspects:

- (a) allowing candidates in candidate lists for a Geographical Constituency or the District Council (second) FC of the LegCo general election or by-election to submit the nomination form in a way authorized by the Chief Electoral Officer;
- (b) refining the requirement on thickness and size of each letter that may be sent free of postage by candidates; and
- (c) revising certain arrangements in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO").

Details of the above proposed technical amendments are set out in paragraphs 6 to 9 of the LegCo Brief under reference.

The Bill

6. The Bill introduces necessary technical amendments for the 2020 LegCo General Election and other public elections, including technical amendments concerning the electorate of FCs, arrangements in ECICO, as well as various electoral procedures.

Major concerns raised by the Panel

7. The Administration consulted the Panel on the above legislative proposals at its meeting on 21 January 2019. The major views and concerns raised by members are set out in ensuing paragraphs.

Technical amendments for functional constituencies

8. Some members sought details about the measures taken to verify whether the corporates proposed to be removed had ceased operation, and to ensure that

these corporates/their members were aware that they would no longer be eligible to register as electors in the relevant FCs and cast their votes in the 2020 LegCo General Election.

9. The Administration explained that an established mechanism was in place for handling registration of electors in FCs. Upon receipt of notifications from individual corporates or relevant B/Ds that the corporates concerned had already dissolved and were no longer in operation, the Registration and Electoral Office ("REO") would initiate statutory inquiry process for the respective registered electors. Besides, following the established practice, before each LegCo general election, the Constitutional and Mainland Affairs Bureau ("CMAB") would review the delineation of the electorate of FCs in consultation with relevant B/Ds. If there was information or evidence showing that individual corporates were no longer in operation, REO would issue inquiry letters to the electors concerned and strike off their registration if they failed to give a valid reply.

10. These members further asked whether a registered corporate elector, though still registered under the relevant ordinance but had actually ceased operation, could be identified under the aforesaid mechanism. The Administration advised that in line with the established practice, relevant B/Ds would be invited to advise if they were aware that any of the corporates specified under the legislation had ceased to operate or become inactive since the last review.

11. Hon MA Fung-kwok expressed concern that the Hong Kong Printers Association ("HKPA") had all along been registered as an elector of the Insurance FC despite its repeated requests over the past 20 years for inclusion in the Sports, Performing Arts, Culture and Publication FC. He was disappointed that the case was still not rectified in the current updating exercise and urged the Administration to follow up the case.

12. The Administration explained that as HKPA was an association of underwriters approved by the Insurance Authority under the Insurance Companies Ordinance to carry on insurance business, it fulfilled the eligibility to be registered as an elector of the Insurance FC and could only be so registered under the relevant provisions of LCO. That said, if there were changes in the circumstances of HKPA and if a request was made by it again for inclusion in the Sports, Performing Arts, Culture and Publication FC was received, CMAB would consider the request in consultation with relevant bureaux.

13. Hon IP Kin-yuen expressed concern that the definition of electors of the Education FC under section 20E of LCO and the definition of voters of the Higher Education subsector under the Schedule to CEEA were unclear. He pointed out that the interpretation of "full-time academic staff engaged in

teaching or research and administrative staff of equivalent rank" by the relevant institutions seemed to vary, which might create unfairness in the exercise of voting rights by the staff concerned. He asked what measures the Administration would take to address the problem. Hon Mrs Regina IP noted with concern that some self-financed post-secondary colleges registered under the Post Secondary Colleges Ordinance (Cap. 320) were rather small in size. She questioned whether the staff of these colleges were also automatically eligible to be registered as electors of the Education FC and voters of the Higher Education subsector.

14. The Administration advised that the eligibilities for registration in the Education FC were stipulated in section 20E of LCO. In actual operation, it was the responsibility of the institutions concerned to provide REO with the information on their eligible staff members who satisfied the relevant definition for voter registration purposes. Generally speaking, each of the institutions concerned must provide REO with its respective list of eligible staff members in the light of their actual circumstances (e.g. the specific grade structure of staff members). Individual staff members who failed to register as electors in the Education FC could lodge claims, which would be handled by an independent Revising Officer, according to the statutory procedures. A written response was also provided by the Administration to the question raised by Hon Mrs Regina IP (**Appendix I**).

15. Hon Charles Peter MOK expressed concern that individual bodies had repeatedly applied for inclusion in the Information Technology FC but to no avail and that the Administration had not given any explanation. Pointing out that a number of agricultural organizations were formed in recent years, Hon CHU Hoi-dick also enquired why only one such organization (i.e. "Hong Kong New Territories Local Farmers Association") was proposed to be added to the Agriculture and Fisheries ("A&F") FC. He requested the Administration to explain the criteria for determining which bodies should be added to A&F FC or deleted as in the case of "The Tsing Lung Tau Hand Liner Fishermen's Credit Co-operative Society, Unlimited".

16. The Administration reiterated that in keeping with the established practice, CMAB would consult relevant B/Ds before each LegCo general election on requests for inclusion into FCs received since the previous review and consider various factors including the representativeness of the bodies in the relevant sector in the process. The Administration informed members that the eligibilities for registration as electors of the Information Technology FC were under review and consultation would be conducted by the Innovation and Technology Bureau in the second half of 2019.

17. As regards the case of "The Tsing Lung Tau Hand Liner Fishermen's Credit Co-operative Society, Unlimited", the Administration confirmed that as advised by the Agriculture, Fisheries and Conservation Department, the Co-operative Society was no longer in operation and its registration under the Co-operative Societies Ordinance (Cap. 33) had been cancelled. Furthermore, REO had conducted inquiry and confirmed that the Co-operative Society was no longer a registered elector in A&F FC.

Other technical amendments for improving various electoral arrangements

Revising certain arrangements in the Elections (Corrupt and Illegal Conduct) Ordinance

18. Some members enquired about the justifications for the Administration's proposal to raise the limits prescribed for rectifying minor errors or omissions in election returns under the de minimis arrangement provided in section 37A of ECICO. These members also asked whether the limits would be reviewed on a regular basis.

19. The Administration advised that since the de minimis arrangement was introduced in 2011, the limits prescribed for different elections had not been revised despite increases in the election expense limits ("EELs"). In considering adjustments to the limits, the Administration was mindful that the limits for different elections should not be too high or too low relative to the respective EELs. The Administration advised that the existing limits for different elections as a percentage of the respective EELs ranged from 0.04% to 1.54%, whereas the proposed limits would range from 0.3% to 5%. The Administration considered that the proposed adjustments relative to EELs were appropriate. The Administration further advised that the electoral arrangements would be reviewed after each election cycle in the light of the experience gained from the elections held and the views received.

20. Some members welcomed the proposal to revise the threshold under section 37(2)(b) of ECICO for the submission of invoices and receipts from \$100 to \$500 to help alleviate the workload of candidates when preparing their election returns. These members were, however, concerned that candidates might not be able to produce receipts for certain kinds of election donations.

21. The Administration advised that while the Composite Consumer Price Index had risen by 33% during the period from 2000 to 2017, the threshold of \$100 for the submission of invoices and receipts had not been adjusted since 2000. To maintain the integrity of election, the Administration considered it reasonable to require candidates to submit an invoice and/or a receipt giving particulars of the expenditure in the case of each election expenses of \$500 or

above. The Administration also advised that the proposed threshold, if adopted, would be reviewed after this election cycle for improvements to be made in the next election cycle.

Relevant papers

22. A list of relevant papers which are available on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
23 April 2019

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19 February 2019

Ms Joanne MAK
Clerk to Panel on Constitutional Affairs
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Mak,

**Meeting of Panel on Constitutional Affairs
Legislative amendments regarding
the 2020 Legislative Council General Election**

At the meeting of this Panel on 21 January 2019, Hon Regina Ip pointed out that the size of some approved post secondary colleges is relatively small, and enquired about the rationale for the Education Bureau (“EDB”) to allow all full-time academic staff engaged in teaching or research and administrative staff of equivalent rank in approved post secondary colleges to be registered as electors in the Education Functional Constituency (“FC”), and the meaning of “of equivalent rank”. In consultation with EDB and the Registration Electoral Office (“REO”), we herewith provide supplementary information as follows –

The eligibility of electors in the Education FC in the Legislative Council (“LegCo”) hinges on the job nature of the relevant staff members (e.g., full-time academic staff engaged in teaching or research and administrative staff of equivalent rank, full-time permitted teachers in schools resisted under the Education Ordinance (Cap. 279), etc.) as well as the category of the institutions that they are employed (e.g., approved post secondary colleges registered under the Post Secondary Colleges

Ordinance (Cap. 320), schools maintained and controlled by the Government, etc.), rather than the size of institutions they belong to. Based on this principle, all full-time academic staff engaged in teaching or research and administrative staff of equivalent rank in approved post secondary colleges are eligible for registration as electors in the Education FC in the LegCo.

In order to enhance the accuracy of voter registration particulars, in accordance with the established mechanism, the REO would request institutions specified under Section 20E(a)(ii) of Legislative Council Ordinance (Cap. 542) to provide information relating to their full-time academic staff engaged in teaching or research and administrative staff of equivalent rank. The REO would verify the registration eligibility of voters, so as to ascertain whether the relevant persons are eligible for registration as electors of the Education FC and remove electors who are no longer eligible. It is the responsibility of the institutions concerned to provide REO with the information on their eligible staff members who satisfy the above definition for voter registration purposes. Generally speaking, each of the institution concerned would have to decide on its respective lists of eligible staff members in the light of their actual circumstances (e.g., the specific grade structure of staff members) and provide the REO with such a list. Individual staff members who failed to register as electors in the Education FC could lodge claims, which will be handled by an independent Revising Officer, according to the statutory procedures.

Yours sincerely,



(Ms Cherie Yeung)
for Secretary for Constitutional and Mainland Affairs

cc: Secretary for Education (Attn: Ms Elaine MAK)
Chief Electoral Officer

Appendix II

Relevant documents on Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2019

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	21 January 2019 (Item III)	Agenda

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