

立法會
Legislative Council

LC Paper No. LS57/18-19

**Paper for the House Committee Meeting
on 22 March 2019**

**Legal Service Division Report on
Electoral Legislation (Miscellaneous Amendments) Bill 2019**

I. SUMMARY

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| 1. The Bill | The Bill seeks to amend various items of electoral legislation to make technical amendments concerning: <ul style="list-style-type: none">(a) the lists of persons comprising certain Legislative Council ("LegCo") functional constituencies and an Election Committee subsector;(b) the deadline for lodging election returns by candidates and the limits prescribed for relief of minor errors or omissions in election returns;(c) the way nomination forms are to be submitted by candidates; and(d) the requirement for letters that may be sent free of postage by candidates. |
| 2. Public Consultation | It is not mentioned in the LegCo Brief that the Administration has conducted public consultation. |
| 3. Consultation with LegCo Panel | The Panel on Constitutional Affairs ("the Panel") was consulted on the legislative amendments for the 2020 LegCo General Election on 21 January 2019. Various concerns were expressed by the Panel members. |
| 4. Conclusion | The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the issues discussed at the Panel meeting, Members may consider forming a Bills Committee to examine the Bill in detail. |

II. REPORT

The date of First Reading of the Bill is 20 March 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: CMAB C1/30/5/4) issued by the Constitutional and Mainland Affairs Bureau on 6 March 2019 for further details.

Object of the Bill

2. The Bill seeks to amend various items of electoral legislation to make technical amendments concerning:

- (a) the lists of persons comprising certain LegCo functional constituencies ("FCs") and an Election Committee ("EC") subsector;
- (b) the deadline for lodging election returns by candidates and the limits prescribed for relief of minor errors or omissions in election returns;
- (c) the way nomination forms are to be submitted by candidates; and
- (d) the requirement for letters that may be sent free of postage by candidates.

Provisions of the Bill

3. The Bill comprises five parts. Part 1 sets out the short title of the Bill. Parts 2 to 5 set out the amendments to various items of electoral legislation. The main provisions of the Bill are summarized in the ensuing paragraphs.

Amendments relating to the composition of certain FCs and an EC subsector

4. Part 2 of the Bill proposes to amend the Legislative Council Ordinance (Cap. 542) to:

- (a) revise the names of 13 bodies in eight FCs¹ to reflect the change of their names;

¹ (i) Agriculture and fisheries FC, (ii) transport FC, (iii) education FC, (iv) sports, performing arts, culture and publication FC, (v) textiles and garment FC, (vi) wholesale and retail FC, (vii) information technology FC, and (viii) catering FC.

- (b) remove 12 bodies which have ceased operation from six FCs;² and
- (c) add 10 bodies to four FCs.³

5. Consequent upon the proposed amendments to the composition of the education FC, the Bill also proposes to amend the Schedule to the Chief Executive Election Ordinance (Cap. 569) to make corresponding changes to the higher education EC subsector.

6. According to paragraphs 3 and 4 of the LegCo Brief, the above amendments are proposed by the Administration following a review on the delineation of the electorate of FCs conducted for the 2020 LegCo general election. The review was conducted on the basis of existing electorate of FCs in consultation with various bureaux/departments and the relevant requests received from individual bodies since the last review in 2015. Members may refer to Annex B to the LegCo Brief for details of the proposed amendments.

Amendments relating to election returns

7. Currently, under section 37(1A) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), a candidate at an election to elect the Chief Executive ("CE") is required to lodge with the Chief Electoral Officer ("CEO") an election return setting out the candidate's election expenses at the election and all election donations received by him/her in connection with the election within 30 days after the date on which the result of the election is published in the Gazette or the proceedings for the election are declared to have been terminated. Section 37(2) of Cap. 554 requires the relevant invoices/receipts to be submitted together with an election return for each election expense of \$100 or more. Section 37A of Cap. 554 provides for a relief arrangement under which a candidate may seek to rectify an error or omission in the election return lodged by a candidate if the aggregate value of the error(s) and/or omission(s) does not exceed the relevant limit prescribed in the Schedule to Cap. 554.

8. Part 3 of the Bill seeks to:

- (a) extend the time limit for submitting election returns for CE Election under section 37(1A) of Cap. 554 from 30 days to 60 days;
- (b) raise the threshold of \$100 to \$500 for an election expense that requires submission of relevant invoices and receipts under section 37(2)(b)(i) of Cap. 554; and

² (i) Agriculture and fisheries FC, (ii) transport FC, (iii) import and export FC, (iv) textiles and garment FC, (v) wholesale and retail FC, and (vi) information technology FC.

³ (i) Agriculture and fisheries FC, (ii) transport FC, (iii) education FC, and (iv) information technology FC.

- (c) raise the limits prescribed in the Schedule to Cap. 554 for relief of minor errors or omissions in election returns for different public elections. Details of the proposed new limits are at Annex C to the LegCo Brief.

9. According to paragraph 9 of the LegCo Brief, the proposed time limit of 60 days for lodging election returns for CE election would align with that for LegCo Election. The proposals to raise the threshold of \$100 for an election expense that requires supporting documents and the prescribed limits for relief of minor errors or omissions are made having regard to the fact that the present threshold and limits have not been revised since 2000 and 2011 respectively despite inflation and increases in the election expense limits over the years.

Amendments relating to submission of nomination forms

10. Under section 11 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), a candidate for a FC (other than the District Court (second) FC) may submit the nomination form to the Returning Officer in person or in any other manner authorized by CEO. However, under section 10 of Cap. 541D, a candidate for a geographical constituency ("GC") or District Court (second) FC must submit the nomination form in person.

11. Part 4 of the Bill proposes to amend section 10 of Cap. 541D so that a candidate for a GC or District Court (second) FC may submit the nomination form in person or in a way authorized by CEO. According to paragraph 7 of the LegCo Brief, the proposed amendment, if passed, would make the arrangements for submission of nomination forms by candidates in GCs and the District Court (second) FC align with those for candidates in other FCs as well as other public elections.

Amendments relating to letters that may be sent free of postage

12. Under Cap. 541D, the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F), and the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I), candidates of a public election may send letters of the prescribed weight and size free of postage.

13. Part 5 of the Bill seeks to amend Cap. 541D, Cap. 541F and Cap. 541I to provide for the limits on the size and thickness of letters that may be sent free of postage by candidates. The Bill proposes that such letters should not exceed 165 mm x 245 mm in size and 5 mm in thickness while the weight limit of 50 g would remain unchanged.

14. According to paragraph 8 of the LegCo Brief, the proposed requirement on size of postage-free letters, if passed, would be aligned with the size limit of "small letters" which are subject to the lower postage fee under the current arrangement of Hongkong Post.

Commencement

15. There is no commencement provision in the Bill. By virtue of section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

Public Consultation

16. It is not mentioned in the LegCo Brief that the Administration has conducted public consultation.

Consultation with LegCo Panel

17. As advised by the Clerk to the Panel on Constitutional Affairs ("the Panel"), the Panel discussed the legislative amendments for the 2020 LegCo General Election at its meeting on 21 January 2019. While members in general did not raise objection to the proposed amendments, some members expressed concerns about the mechanism for handling requests from bodies for registration as corporate electors for FCs and for removing registered corporate electors which had ceased operation. Some members also expressed concerns about the lack of clarity in the registration eligibility of electors for certain FCs under Cap. 542.

Conclusion

18. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the issues discussed at the Panel meeting, Members may consider forming a Bills Committee to examine the Bill in detail.

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