

立法會

Legislative Council

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Implications on the operation of the House Committee pending the election of its chairman and deputy chairman

Purpose

This note analyses the implications on the operation of the House Committee ("HC") pending the election of its chairman and deputy chairman for the 2019-2020 session.

Provisions relevant to election of the chairman and deputy chairman of HC under the Rules of Procedure ("RoP") and the House Rules ("HR")

2. Under RoP 75(2), the chairman and deputy chairman of HC shall be elected by HC from among its members and shall hold office until the chairman and deputy chairman of HC for the next session are respectively elected in that next session or, in case the election is held before that next session commences, until that commencement. Under RoP 75(2A), the election of the chairman and deputy chairman of HC for the second or each subsequent session of a term of the Legislative Council may take place at a meeting held before that session commences.

3. The provisions in RoP 75(2) and (2A) are also reflected in HR 20. These provisions provide the option of holding the election of HC chairman and deputy chairman at a meeting before a new session commences. In the event that they are not elected before the commencement of the new session, the members who were the chairman and deputy chairman of HC before the election ("the incumbent HC Chairman and Deputy Chairman") will continue to hold office until the chairman and deputy chairman for the new session are elected.

4. Pursuant to HR 20(c) and Appendix IV to HR, the meeting(s) for the election shall be called by HC chairman in office who shall also preside at the meeting unless he or she is being nominated for the chairmanship.

Election of committee chairman as the first order of a committee's business

5. According to the practice and procedure of overseas parliaments which operate by way of a committee system similar to LegCo, the first proceeding of a committee is the election of the Chair.¹ Committee Chairs and Vice-chairs are elected at the beginning of a session and, as necessary, during the course of a session.² Since the election of a committee Chair is the first order of a committee's business, until this item of business is completed with the election of the Chair, no other business can be transacted. In the event of the resignation or removal of the Chair from the committee, a new Chair must be elected before the committee can take up other business.³

6. Similarly, in the case of HC, it is noted that the election of its chairman and deputy chairman is the first proceeding of HC for a new session. With reference to the above practice and procedure of overseas parliaments, the election of its chairman and deputy chairman would need to be completed before HC can move on to other business.

Powers and functions of the incumbent HC Chairman

7. Since the incumbent HC Chairman continues to hold office until the chairman for the new session is elected, there is a view that the former may convene HC meetings and decide on the agenda of these meetings so that normal business that requires HC's decision in the new session can be transacted while the election process continues. This interpretation, however, would be contrary to the purpose of RoP 75(2) and HR 20(c) as set out in LC paper No. CROP 23/01-02 insofar as they allow the election of HC chairman to be held before a new session commences. According to that paper, the purpose of allowing early election of HC chairman is to enable the newly elected chairman to decide on the agenda for the first HC meeting which is usually held shortly after a new session commences. Given the above purpose of the election of HC chairman, it is apparent that the agenda for regular HC meetings held after a new session commences is to be decided by the newly elected chairman, not by the incumbent HC Chairman.

¹ *Erskine May Parliamentary Practice* (25th edition), para. 38.17; *House of Commons Procedure and Practice, Canada* (2000), p. 829.

² *House of Commons Procedure and Practice, Canada*, *ibid.*

³ *Ibid.*, p. 830.

8. The reason for providing for the incumbent HC Chairman to continue to hold office pending the election of the chairman for the new session may be related to the requirement for the holding of the election at a meeting of HC. At common law, a meeting will only be properly constituted when at an adequate venue, sufficient members are present to form a quorum and someone to control the meeting (i.e. a chairman).⁴ To provide in RoP that the incumbent HC Chairman shall hold office until the new chairman is elected would allow the incumbent Chairman to call and/or preside at meetings for the election of HC chairman and deputy chairman for the new session without the need to appoint another Member to do so.

9. Based on the above analysis, the powers and functions of the incumbent HC Chairman vis-à-vis a new session primarily relate to the conduct of the election of HC chairman and deputy chairman for the new session. Pending the election, HC would not be in a position to transact other business that requires its decision. In relation to matters that do not require to be decided at HC meetings, since the incumbent HC Chairman is still in office until the chairman for the new session is elected, it would seem difficult to see why the incumbent Chairman cannot in the interim perform acts of administrative nature in suitable cases, for example, directing the Clerk to HC to issue relevant papers to HC members for their information.

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⁴ *Shackleton on the Law and Practice of Meetings* (Fourteenth edition), Sweet and Maxwell, p. 51.