

**Bills Committee on
Improving Electoral System (Consolidated Amendments) Bill 2021**

Government's Proposed Committee Stage Amendments

Purpose

_____ This paper sets out the Government's proposed Committee Stage Amendments ("CSAs") (the marked-up against the existing legislation is at **Annex A**) to the Improving Electoral System (Consolidated Amendments) Bill 2021 ("the Bill"), and the responses to major concerns raised by Members during Bills Committee meetings.

CSAs

(A) Rationalising the composition and duties of the Candidate Eligibility Review Committee ("CERC")

Composition

2. Currently, the relevant clauses in the Bill provide that the CERC is to consist of the chairperson and two to four other members, and the membership of the CERC is confined to principal officials appointed pursuant to Article 48(5) of the Basic Law. Subsequent to the Chief Executive ("CE")'s public commitment at the press conference on 13 April, during the meetings of the Bills Committee, many Members expressed support for expanding the composition of the CERC to include patriotic, independent and apolitical individuals with a view to further enhancing the credibility of the CERC. In this regard, we **propose** to move CSAs to increase the upper limit of members in the CERC from five to eight, and stipulate that the CE shall, in addition to the chairperson and two to four official members, appoint one to three non-official members.

3. We notice that during the meetings of the Bills Committee and the Subcommittee on Decision of the National People's Congress on Improving the Electoral System of the Hong Kong Special Administrative Region, some Members expressed concerns over issues pertaining to the regulatory regime concerning the CERC. Indeed, we should point out that as all members of the CERC are appointed by the CE, the CERC is a "public body" within the meaning of paragraph (e) of the definition of

“public body”¹ in section 2 of the Prevention of Bribery Ordinance (Cap. 201) (“POBO”). Although the definition of “prescribed officer” in section 2 of the POBO only includes “any principal official of the Government appointed in accordance with the Basic Law”, as the CERC is a public body, its members (including the non-official members) are regarded as public servants within the meaning of paragraph (a) of the definition of “public servant”² in section 2 of the POBO. In other words, the regulatory regime concerning “public body” and “public servant” under the POBO shall be applicable to the CERC.

4. On the other hand, in order to more accurately reflect the fact that the CERC referred to in the Decision of the National People’s Congress on Improving the Electoral System of the Hong Kong Special Administrative Region and the amended Annex I and Annex II to the Basic Law is actually the same committee, we **propose** to amend the relevant provisions in the Legislative Council Ordinance (Cap. 542) (“LCO”) and the Chief Executive Election Ordinance (Cap. 569) (“CEEEO”) to the effect that only one CERC will be established under the local electoral legislation, in the CEEEO, for the purpose of implementing Annex I and Annex II to the Basic Law. As a result of this amendment, the definition of the CERC under the LCO and the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) (“Cap. 541D”) will be amended such that the reference to the CERC in the relevant Ordinance and Regulation will point to the CERC established under the CEEEO.

Division of labour between the CERC and Returning Officer (“RO”)

5. In accordance with the relevant requirements in the Bill, although the CERC shall be responsible for deciding whether the nominations of candidates are valid, after the CERC has made a decision on the validity of nomination of an individual, the CERC must inform the RO of its decision, and the RO should make relevant administrative arrangements to publish a notice stating the particulars of validly nominated candidates in the gazette. Taking into account the important function of the CERC in the candidate

¹ Paragraphs (e) and (f) of the definition of “public body” under section 2 of the POBO provide that:

“(e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Chief Executive or the Chief Executive in Council; and
(f) any board, commission, committee or other body specified in Schedule 1.”

² In accordance with the interpretation under section 2 of the POBO, **public servant** (公職人員) means any prescribed officer and also any employee of a public body and— in the case of a public body other than a body referred to in paragraph (aa), (b) or (c) of this definition, any member of the public body;...

eligibility review mechanism, there have been views that it should be the CERC, instead of the RO, who publishes a notice on the validly nominated candidates in the gazette. In this regard, we **propose** that amendments be made to relevant provisions in the Bill to provide that the CERC shall be responsible for publishing a notice in the gazette stating the validly nominated candidates. Following this principle, we **propose** that in case a validly nominated candidate is disqualified before the polling day, the CERC shall be responsible for publishing a notice in the gazette specifying that its earlier decision has been varied, and stating the particulars of each candidate who remains validly nominated in the election.³

(B) Specifying that no legal proceedings may be instituted in respect of certain decisions made by the CERC

6. According to the amended Annex I and Annex II to the Basic Law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate for membership of the Election Committee (“EC”), a candidate for the office of the CE and a candidate for membership of the Legislative Council (“LegCo”) pursuant to the opinion of the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region (“HKSAR”). In the process of drafting the Bill, we had examined whether to include the wordings of Annex I and Annex II to the Basic Law in the local legislation by setting out that no legal proceedings may be instituted in respect of the aforesaid decision made by the CERC. Noting the relevant requirements in Annex I and Annex II to the Basic Law has legal effect at the constitutional level, and the requirements therein are unequivocal, we considered that there was no need to directly quote the relevant wordings of Annex I and Annex II to the Basic Law in the local legislation. Hence, the relevant provisions in the Bill only define the term “election” in the context of election petition to the effect that an “election” is “to be construed subject to Annex I and Annex II to the Basic Law”, so as to embody the relevant requirements under Annex I and Annex II to the Basic Law in local legislation.

7. Some Members considered that there should be specific reference to the wordings of the amended Annexes I and II to the Basic Law in the local legislation. As mentioned above, given the clear legal effect of the relevant requirements in Annex I and Annex II to the Basic Law, there is, from the legal point of view, no absolute necessity to directly quote the

³ In the event that a validly nominated candidate is proved to have died before the polling day, the RO shall be responsible for publishing the gazette notice.

relevant wordings in the local legislation. Nevertheless, in order to avoid unnecessary doubts, we agree to accept this recommendation. As we will establish the CERC under the CEEO, we **propose** to introduce a new section 9B in the CEEO to specify that no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate for membership of the EC, a candidate for the office of CE or a candidate for membership of the LegCo pursuant to the opinion of the Committee for Safeguarding National Security of the HKSAR, and correspondingly revise the reference to “subject to Annex I to the Basic Law” or “subject to Annex II to the Basic Law” in other relevant provisions to a reference to section 9B of the CEEO.

(C) Specifying that a EC member may subscribe more than one nomination form in multiple capacities

8. In accordance with the requirements under the relevant provisions in the Bill, although each EC member can nominate candidates in his/her different capacities, a EC member cannot nominate different candidates in a functional constituency (“FC”) or a geographical constituency (“GC”) using his/her different capacities. During the meetings of the Bills Committee, some Members considered that a EC member should not be restricted from nominating different candidates in GCs and FCs using their different capacities. For instance, a EC member may nominate one candidate in any GC as a EC member, while nominating another candidate in the GC that he/she belongs to as a GC elector. Taking into account the views of Members, we **propose** to lift the relevant restrictions in the Bill such that the maximum number of nomination forms that a EC member can subscribe would be five⁴. The detailed arrangements are set out as follows –

⁴ A EC member who is also an authorized representative (“AR”) of a corporate elector may subscribe an additional nomination form in the capacity as an AR. This is because the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542C) as amended applies to a person who subscribes as an “elector”. The definition of “elector” includes a registered GC or FC elector and a EC member but does not include an AR (see section 3 of the LCO).

**Detailed arrangements for each EC member
to subscribe nomination forms using different capacities**

Constituency	As a EC member	As a GC/ a FC elector	Maximum number of forms that a EC member may subscribe in different capacities
GC	In any GC: 1	In his/her own GC: 1	2 ⁵
FC	In any FC: 1	In his/her own FC: 1 (Labour FC: 3)	2 ⁶ (If the EC member is an elector in the Labour FC: 4)
EC constituency ("ECC")	1		1

(D) Refining the priority of voter registration ("VR")

9. Since the electorates of some FCs are relatively small, we recommended in the Bill that if an individual/corporate is eligible to be

⁵ Specifically, a EC Member can nominate one candidate as a GC elector in the GC that he/she belongs to, and nominate another candidate as a EC member in either the GC that he/she belongs to or in any other GC. Meanwhile, a EC member can also choose to nominate the same candidate in the same nomination form in the GC that he/she belongs to, both as a EC member and as a GC elector.

⁶ Specifically, a EC Member can nominate one candidate as a FC elector in the FC that he/she belongs to (if he/she is an elector in the Labour FC, he/she can nominate up to three persons), and nominate another candidate as a EC member in either the FC that he/she belongs to or in any other FC. Meanwhile, a EC member can also choose to nominate the same candidate in the same nomination form in the FC that he/she belongs to, both as a EC member and as a FC elector.

registered in certain FCs⁷ and any other FC (excluding the Heung Yee Kuk FC) at the same time, the individual/corporate can only register in the aforesaid FCs but not in any other FC. Considering that the latest estimation on the number of electors in the Catering FC would be 140, we **propose** to further amend the relevant provisions in the Bill to include the Catering FC as one of the FCs with priority in VR.

(E) Arranging a EC subsector by-election before a LegCo General Election (“LCGE”)

10. The existing CEEO stipulates that a EC by-election should be arranged before a CE by-election to fill the vacancies in the EC. Considering the new functions of the EC to nominate and elect LegCo Members, and that the EC subsectors ordinary election and LCGE could be held years apart, some Members suggested that a EC subsector by-election should be arranged before a LCGE.

11. With reference to the existing arrangement for a CE by-election, we **propose** to amend section 4 of the Schedule to the CEEO to specify that if the date on which the current term of office of the LegCo is to end is more than 12 months from the constitution date of the EC or the date of holding the EC subsector by-election, then a EC subsector by-election should be held before the LCGE. To hold the relevant by-election, the Electoral Registration Officer should compile and publish a provisional register of members of the EC during the period beginning on the date falling 210 days before and ending on the date falling 165 days before the date on which the current term of office of the LegCo is to end. This has taken into account: (a) according to section 6(2) of the LCO, the LCGE should be held not earlier than 60 days and not later than 15 days before the new term of office of the LegCo is to begin; and (b) operationally, the Registration and Electoral Office (“REO”) would need around 150 days to prepare for the EC subsector by-election and to hold the LCGE afterwards. The relevant arrangement relating to the by-election is at **Annex B** for reference.

⁷ Including the following FCs: (1) Heung Yee Kuk; (2) HKSAR deputies to the National People’s Congress, HKSAR members of the National Committee of the Chinese People’s Political Consultative Conference and representatives of relevant national organisations; (3) Agriculture and fisheries; (4) Insurance; (5) Transport; (6) Finance; (7) Sports, Performing Arts, Culture and Publication; and (8) Technology and Innovation.

(F) Extending the special VR deadline and expanding its coverage

12. Following the improved electoral system, there are major changes in the composition of the ECSSs and the FCs. In order to allow more time for the newly eligible and affected electors/voters to handle their VR matters, we propose extending the special VR deadline to 5 July 2021. Newly eligible and affected electors may submit VR applications after the passage of the Bill and not later than 5 July 2021. The dates of the other VR procedures would also be amended correspondingly, as set out in the following table –

VR statutory deadline	Special arrangement in 2021			
	ECSS		GC/FC	
	Original Proposal	CSA	Original Proposal	CSA
(1) Submission of applications for change of particulars (excluding change of registered address)	14 June	5 July	14 June	5 July
(2) Submission of applications for new registration	14 June	5 July	14 June	5 July
(3) Affected electors to respond to inquiry letters to retain their VR	N/A	N/A	14 August	19 September
(4) Publication of provisional registers and omissions lists	27 June	18 July	13 September	26 September
(5) Claims and objections period (All claims and objections in 2021 are to be handled by written submissions only, without hearings)	27 June to 1 July (5 days)	18 to 22 July (5 days)	13 to 25 September (14 days)	26 September to 9 October (14 days)
(6) Publication of final registers (“FR”)	25 July	5 August	25 October	29 October

13. In addition, since EC members to be returned by nomination would be added to four subsectors, namely the Accountancy, Chinese medicine, Legal and Technology and Innovation subsectors, and given that there is only a limited number of persons who are potentially eligible to be nominated as EC Members in these four subsectors, to facilitate registration of these four categories of persons as GC electors in time so that they will be eligible to be nominated as EC Members in the relevant subsectors, we also propose to expand the special VR deadline to cover these relevant subsectors. Specifically, the persons eligible to be nominated as EC members in the Accountancy, Chinese medicine, Legal and Technology and Innovation subsectors may submit GC VR applications by the special VR deadline (i.e. on or before 5 July 2021).

(G) Revising the requirements to terminate election proceedings for GCs and FCs

14. To minimize the disruption to the election proceedings as far as possible, the Government proposed in the Legislative Council (Amendment) Bill 1999 that if a candidate had died or was disqualified after the nomination period but before the polling day, the GC, FC and ECC election would proceed as normal. During the Bills Committee stage, LegCo Members considered that as FCs usually comprised electors from the members of bodies, if a candidate from a particular body could no longer contest in the election due to death or disqualification and yet the election continued, the electors in that body would be deprived of an opportunity to nominate another candidate to represent them. Taking into account the comments from Members, the Government moved a CSA such that the RO for the FC election must terminate the election proceedings if a candidate has died or is disqualified after the nomination period but before the polling day.

15. Making reference to the arrangements for FC elections since 1999, section 42C of the amended LCO provides that if a validly nominated candidate in a GC has died or is disqualified after the close of nominations but before the date of the election, the RO must, in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”), publicly declare that the proceedings for the election for the constituency are terminated. The original policy intent of this provision was mainly that electors may be deprived of a choice in the event of the death or disqualification of a candidate in their GC after the close of nominations but before the date of the election under the “double-

seat, single-vote” system.

16. During the meetings of the Bills Committee, some Members expressed concerns over this provision, particularly the implications of this provision to other candidates in GC and FC elections. On 28 April 2021, the Government also received a joint letter from 38 Members of the LegCo (“Joint Letter”) forwarded by the Bills Committee requesting to amend the relevant provisions such that if a validly nominated candidate has died or is disqualified after the close of nominations but before the date of the election, the GC and FC election proceedings will continue to proceed. Having regard to Members’ concern, we **propose** to revise the relevant clauses to provide that in case of death or disqualification of a validly nominated candidate in a GC and FC after the close of nominations but before the date of the election, the relevant election proceedings will not be terminated, in line with the arrangements for the ECC.

(H) Enhancing the polling and counting arrangements in the ECC central polling station

17. Although section 30(4)(ab) of the amended Cap. 541D permits the Chief Electoral Officer (“CEO”) to designate the same polling station to serve as the polling station for the ECC, and the polling stations for electors from 10 GCs and 28 FCs concurrently, as the number of voters for each GC in the ECC polling station is very likely to be less than 500, it is possible that the issue of secrecy of vote may arise⁸. As such, we should not conduct counting of the GC ballot papers cast by EC members in the Central Counting Station. To safeguard the secrecy of votes, after the close of poll, we need to deliver the 10 GC ballot boxes to the main counting stations of the respective GCs for mixing with the ballot papers in the main counting stations before counting. However, if a misplaced ballot paper of a GC is found in the ballot box for another GC, the situation could be very chaotic, and the current legislative framework does not provide for a mechanism that deals with the misplaced ballot paper under this situation. That being said, if we were to place one GC ballot box in the polling station, the current legislative framework does not allow us to

⁸ Under the existing electoral law, the CEO must designate a polling station at which less than 500 electors are allocated to vote as a small polling station and ballot papers therein should be delivered to main counting station for mixing with other ballot papers before counting so as to preserve the secrecy of votes.

sort the GC ballot papers according to the 10 GCs after the close of poll^{9,10}.

18. In consultation with the REO, we **propose** to amend the relevant provisions to allow one GC ballot box to be placed in the ECC polling station for electors from the 10 GCs to cast their votes, and the designation of the ECC polling station as a ballot paper sorting station. After the close of poll, we will first arrange to sort the GC ballot papers according to the 10 GCs in the ECC polling station (i.e. ballot paper sorting station), and then deliver the ballot papers to the main counting stations of the respective GCs for mixing with the GC ballot papers in the station before counting. This arrangement can safeguard the secrecy of votes, and ensure that misplaced ballot papers can be located in time, lest these ballot papers might have been wrongly delivered to another GC and there would be a need to send them back to the main counting station of the correct GC, which may in turn lead to delay in counting time.

(I) Increasing the penalty for schools and non-government organisations receiving grants from the Government to fail to comply with the CEO's requirement to make available the premises for use as polling station(s) and/or counting station(s)

19. Under the Bill, the CEO may require the owners or occupiers of any target premises (i.e., schools and non-government organisations receiving grants from the Government) to make available their premises for use as polling station(s) and/or counting station(s). Specifically, the REO will continue to communicate with the occupiers/owners of the target premises in the first instance with a view to obtaining consent to use the premises as a polling and/or counting station. The CEO may require the occupier/owner of the premises to make available the premises as a polling and/or counting station in case the negotiation fails. If the occupier/owner fails to comply with the requirement, the Government will issue a general demand note requiring the occupier/owner to pay a financial penalty of \$10,000. If the person refuses to settle the financial penalty, the Government can recover it through civil claims (i.e. through the Small Claims Tribunal ("SCT")). If any party to the proceedings is not satisfied

⁹ Section 28(1)(c) of Cap. 541D provides that the ballot paper sorting station can only receive GC ballot papers from dedicated polling stations for sorting.

¹⁰ All along, one ballot box will be used for the 28 FCs, and the ballot papers in the ballot box will be delivered to the Central Counting Station for sorting according to different FCs before counting. As such, there would be no need for sorting to be conducted in the ballot paper sorting station.

with the order or judgement of the adjudicator, the party may apply to the SCT for review or to the Court of First Instance (“CFI”) of the High Court for leave to appeal. In addition, the penalty imposed shall be paid into the general revenue in accordance with section 17A of the Public Finance Ordinance (Cap. 2).

20. On the other hand, the CEO shall pay to the occupier/owner a user fee if the occupier/owner complies with the requirements of the CEO by making available the premises for use as a polling and/or counting station. In fact, this is not a new arrangement and the REO had communicated with venue owners in the past to determine the amount of user fee and no problems arose. If the two parties cannot reach an agreement on the amount of the user fee, the occupier/owner may apply to the court for a determination of the amount of the user fee under subsection (4)(b) of the relevant provision. Given the prevailing civil jurisdiction and procedure¹¹ are applicable to the above proceedings, we do not consider it necessary to specify these matters in the provisions.

21. In response to Members’ view that the originally proposed level of financial penalty (\$10,000) is not a sufficient deterrent, we **propose** amendments to clauses 7(2), 102, 161 and 202 of the Bill so as to increase the financial penalty to \$50,000 for enhancing the deterrent effect of the penalty.

22. In addition, having regard to Members’ views expressed at the Bills Committee meeting on the new provisions concerning the user fee, we also **propose** to make appropriate amendments to the provisions to reflect the arrangements more clearly.

23. Some Members suggested that the calculation of user fee should be specified in the provisions. Given the different physical locations or settings of different premises, it is difficult to work out an objective formula for calculation. On the other hand, where no agreement can be reached on the amount of the user fee, the occupier/owner may apply to the court for a determination of the amount of the user fee in accordance with the proposed provisions, and provide a reasonable basis for calculating the loss suffered. The court will make an appropriate determination of the amount of the user fee with reference to the loss suffered.

¹¹ Claims up to \$75,000 will be dealt with in the SCT; claims more than \$75,000 but not more than \$3,000,000 will be dealt with in the District Court; and claims more than \$3,000,000 will be dealt with in the CFI of the High Court.

24. Regarding Members' suggestion that the non-compliance with the requirement be specified as a criminal offence, we need to note that some of the target premises are not registered as a corporation and imposing criminal liability on these bodies would further complicate the issue. Moreover, even if the failure to comply with the requirement is specified as a criminal offence and a fixed penalty is imposed, we would still need to face the possibility that some bodies would refuse to pay the penalty. With reference to other legislation, we would need to draft provisions for these situations to set out in detail the manner and procedures for recovering the fixed penalty. The drafting process and enforcement may not be simpler than the current proposal. It is important to note that the financial penalty is intended to reduce the difficulty of the REO in borrowing venues for use as polling/counting stations, rather than a punitive arrangement. In fact, we envisage that only a small number of cases may warrant the consideration for recovering the financial penalty following the introduction of the new requirements. We consider it appropriate and proportionate to continue to apply the financial penalty as a civil debt.

(J) Adjusting the eligibility requirements for voters of the Accountancy and Hotel subsectors

25. To reflect more accurately the policy intent and the actual situation of the relevant sectors, we also propose to make the following amendments in relation to the eligibility requirements for voters of the following subsectors:

- (a) **Accountancy Subsector**: in the current Bill, Public Interest Entity ("PIE") auditors who are registered under the Financial Reporting Council Ordinance (Cap. 588) would become eligible voters of the subsector regardless of whether they have undertaken PIE engagement in the three years before the registration. To reduce the risk of vote-rigging (say, by only registering but has not in practice undertaken any PIE engagement) and to more accurately reflect policy intent, we propose to add section 12(19B) to the Schedule of the CEEO to provide that the relevant registered PIE auditor is eligible to be registered as a voter only if it has undertaken or carried out PIE engagement in the three years immediately before making the application for registration; and
- (b) **Hotel subsector**: in the current Bill, section 39H of the Schedule to the CEEO as amended has stipulated the eligibility

requirements of eligible voters for the Hotel subsector which include being a licence holder as defined by section 2(1) of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and a corporate member which is entitled to vote at general meetings of the Federation of Hong Kong Hotel Owners Limited (“the Federation”). The Federation reflected that the provisions may not suit the actual situation of the industry and could render its members ineligible to be registered as voters due to technical reasons. Considering the constitution of the Federation which has already stipulated that only the owner of a hotel that is in operation may become a member of the Federation and enjoys the voting right at the general meetings, we **propose** to delete the licensing requirement in the Bill. The constitution could provide the restriction and certainty that the relevant member would have a substantial connection with the subsector. As regards section 200 of the LCO which provides for the composition of the Tourism FC¹², we also **propose** to make the same amendment.

(K) Arrangement relating to the appointment of ARs

26. The existing section 26(2) of the LCO and section 13(2) of the Schedule to the CEEO have stipulated the requirement and eligibility for becoming the ARs of corporate electors and corporate voters respectively. One of the requirements is that the natural person must have a substantial connection with the corporate elector/voter for him/her to become eligible to be the AR of the body. In the Joint Letter, Members have unanimously requested that it should be provided clearly in the law that the AR should be appointed by the governing authority of the corporate elector/voter. We will stipulate the requirement through CSAs.

¹² The major aim for the Central Authorities to take the lead to improve the electoral system is to implement the principle of “patriots administering Hong Kong”, and to ensure that the composition of the LegCo is broadly representative, in accordance with the actual situation in Hong Kong and reflecting the overall interests of society. When determining the electorate of various FCs, the HKSAR Government has taken into consideration the uniqueness and representativeness of each FC, as well as the actual situation in Hong Kong. According to estimated figures, the number of eligible electors for the Tourism FC is around 300 and the actual number of electors is to be confirmed.

Other Major Concerns

(A) Prohibiting any person from inciting another person not to vote, or to cast a blank or invalid vote, by public activity during an election period

27. Clause 336 of the Bill seeks to introduce a new provision (i.e. section 27A) to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to specify the illegal conduct of inciting another person not to vote or to cast an invalid vote by public activity during an election period. Members suggested that the provision should clearly require that the incitement conduct be accompanied with an intent to manipulate and undermine the election.

28. Having carefully considered Members' suggestion, we consider that it would be very difficult for enforcement in practice to prove that a person, has the intent of "manipulating and undermining the election" while inciting another person not to vote or to cast an invalid vote by public activity. If this offence requires the prosecution to prove an intent to "manipulate and undermine the election", it is likely to indirectly prevent the Government from effectively regulating electoral activities in accordance with the amended Annexes I and II to the Basic Law. We therefore do not propose to specify the relevant intent in the provision. We reiterate that "incite" in the provision should be interpreted in accordance with common law principles and therefore it already includes the need to prove the relevant *mens rea*. Furthermore, the provision allows a defendant to plead lawful authority or reasonable excuse as a defence. Overall speaking, we consider that the existing provision adequately addresses the concerns raised by Members and strikes a reasonable balance.

29. Members suggested that the provision be amended to make it clear that the illegal conduct in question only applies to those who intentionally commit the relevant conduct. We do not propose to add the words "wilfully" as "incite" under the common law already includes the need to prove *mens rea*.

30. Members suggested adding the Internet as one of the examples of "any form of communication to the public" in section 27A(5)(a). We consider that the existing provision (also seen in section 46(3) of the Disability Discrimination Ordinance (Cap. 487) and section 45(4) of the Race Discrimination Ordinance (Cap. 602)) has clearly stated that all communications to the public (in any form) fall within the scope of public

activity. The major consideration is on the “communication to the public” and there is no need to specify whether the communication is made on the Internet or other platforms.

(B) Specifying the types of information to be sought from EC and LegCo candidates

31. Pursuant to the amended sections 10(10), 11(11) and 12A(10) of Cap. 541D and sections 7(6) and 8(10) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) (“Cap. 541I”), the RO may require a candidate/nominee/designated body to furnish any other information that Officer considers appropriate for enabling the CERC to be satisfied — (a) that the candidate/nominee is eligible to be nominated as a candidate; or (b) otherwise as to the validity of the nomination. We note that during the meeting of the Bills Committee, some Members were of the view that the law should specify any other information that the CERC can seek from candidates, nominees, etc., including, among others, whether the person is in possession of foreign nationalities, whether the person has connections with political organisations in foreign countries and has received funding from such organisations, and issues pertaining to the integrity of the candidates, etc.

32. As we pointed out during the meeting of the Bills Committee on 21 April 2021, the existing drafting approach of the provisions aims to provide flexibility for the CERC to request any other information from candidates, nominees, etc. when considering the validity of nominations of candidates, nominees, etc., including but not limited to the information mentioned by Members. We therefore recommend to maintain the existing drafting approach of the provision in order to provide the greatest flexibility for the CERC. Upon passage of the Bill, we shall consult the CERC on the types of information to be collected.

(C) Naming of GCs

33. Members suggested that the names of the five LegCo GCs in the New Territories should be amended. The proposed names are based on the corresponding geographical locations of the constituencies to facilitate electors’ understanding of the GCs to which they belong. Most importantly, the REO will issue poll cards to electors before polling day in accordance with the new delineation of GCs. The poll card will show

clearly the constituency to which the elector belongs, the name and address of the polling station so that the elector will not be confused. With effect from the LCGE for the eighth term of LegCo (i.e. starting from the 2025 LCGE), the Electoral Affairs Commission (“EAC”) will continue to perform its statutory functions of reviewing the GC boundaries in accordance with the existing provisions of the EACO, including making provisional recommendations for public consultation and subsequently submitting formal recommendations for endorsement by the CE in Council. The EAC will take into account and reflect the views of the society as appropriate in the future delineation exercise.

(D) Empowering the Presiding Officers (“PROs”) to set up a special queue for electors in need in public elections

34. Members suggested specifying in the new provision that persons accompanying electors in need may queue up to vote through the special queue. According to the prevailing EAC Guidelines, only electors and designated/authorized persons are allowed entry into a polling station. Electors requiring assistance from others for entering into a polling station may make a request to the PRO for discretionary arrangements as appropriate. It is noteworthy that, based on the principles of the autonomy of voting and secrecy of votes, it is prohibited under the law to have anyone (even if he/she is an elector’s relative or friend) to accompany or assist the elector to cast his/her vote. An elector who has difficulty in marking the ballot paper by himself/herself may, in accordance with the law, ask the PRO or the PRO’s deputy to mark the ballot paper on his/her behalf according to his/her voting preference, in the presence of one polling staff as a witness. We reiterate that the PROs have been allowed to exercise discretion, where appropriate, to allow accompanying persons to use the special queue together with electors who have a genuine need to be accompanied by others. If the legislation is further amended to allow all accompanying persons to use the special queue across the board, the special queue may become ineffective in terms of facilitating electors in need. The REO will provide adequate guidelines and training to polling staff.

(E) EC related matters

35. A Member suggested whether section 9(2) of the CEEO should be repealed to allow flexibility for handling the term of office of the next EC. After consideration, we are content that the long-standing arrangement of

constituting the EC on 1 February should be kept to provide greater certainty about the constitution date of the EC, which would facilitate the early preparation of all relevant parties for the CE Election. As such, we do not recommend making the amendment.

36. Separately, a Member also raised concerns as to whether a EC member who has been ruled to have breached an oath after he/she has taken up the office would affect the nomination or vote cast earlier. According to sections 16(5)(e) and (f) and 26(1)(e) and (f) of the CEEO as amended, if a person is in breach of an oath, or fails (or is declared or decided in accordance with any law to have failed) to fulfill the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China ("upholding BL and bearing allegiance to HKSAR"), the person would be disqualified from making a nomination or voting respectively at the relevant election. According to the newly added sections 16(5A) and 26(2) of the CEEO, if the Secretary for Justice brings proceedings under the newly added section 43A of the Schedule to the CEEO, and the person's functions as a EC member are suspended under section 43A(2), the person is disqualified from making a nomination or voting at the relevant election.

37. According to the existing section 16(6) of the CEEO, even if a EC member is disqualified from making a nomination, the nomination made by him/her before such disqualification should not be affected by such subsequent disqualification. Nevertheless, if after the making of a nomination by the EC member, the court declares or decides, pursuant to the legal proceedings provided under section 43A of the Schedule, that the member has breached an oath or failed to fulfill the legal requirements and conditions on "upholding BL and bearing allegiance to HKSAR" before the nomination is made, then the nomination should be regarded as a nomination made after the person has been disqualified from making a nomination in the relevant election. In this case, section 16(6) would not apply.

38. If any candidate (or persons whose nominations are determined to be invalid) considers that the nomination made or vote cast by the EC member before his/her disqualification would constitute material irregularity in that election, the relevant person may lodge an election petition. This arrangement is the same as that for general electors or voters who have made a nomination or cast a vote after being disqualified from doing so to ensure fairness of the elections.

39. In addition, if a EC member has been disqualified pursuant to section 43A of the Schedule to the CEEO but continues to act as a EC member, the court may grant an injunction restraining the defendant from so acting and order the defendant to pay to the Government such sum as the court thinks appropriate, not exceeding \$5,000 for each occasion on which the person so acted while disqualified. This arrangement is consistent with the existing arrangement for disqualification of the LegCo Members as provided in the LCO.

40. In the Bill, a leap-frog appeal mechanism for proceedings brought under section 43A of the Schedule to the CEEO is also provided. A party who is not satisfied with a decision made by the CFI may lodge an appeal to the Court of Final Appeal (“CFA”) direct (instead of lodging an intermediate appeal to the Court of Appeal of the High Court), subject to leave being granted by the Appeal Committee of the CFA. The period within which an application for leave to appeal to the CFA must be lodged will be within 14 working days after the day on which the relevant CFI judgment is handed down. Such arrangement would facilitate speedy resolution of proceedings brought by the Secretary for Justice on the grounds of suspected breach of oath of a member or failure to fulfil the legal requirements and conditions on “upholding BL and bearing allegiance to HKSAR”, thereby ensuring the final decision of the legal proceedings could be attained as soon as possible.

(F) Relevant amendments for the electronic poll register (“EPR”)

41. Some Members raised concerns on the slight discrepancy between the references to the EPR for use in the LegCo, EC and CE elections as appearing in Cap. 541D, Cap. 541I and the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) respectively, and that appearing in the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F). As explained in the relevant meeting, the slight discrepancy is due to the difference in the arrangement for the printed copy of the registers as provided under the four pieces of subsidiary legislation, and thus the corresponding arrangements were adopted when stipulating the provisions for the EPR in the Bill. Nevertheless, in view of Members’ suggestion, to allow greater operational flexibility for the use of EPR, we **propose** that the arrangements for the use of EPR in different elections be made consistent across the four pieces of subsidiary legislation. As such, the relevant provisions will be amended to refer to “the FR electronic copy or extract” consistently.

42. For the offences of obtaining access to the EPR without legal authority, damaging any data or information contained in the EPR or otherwise tampering with the EPR to make its operation defective as specified under sections 111(1) and (3) of Cap. 541D, some Members also raised concerns on whether the penalty of imprisonment for two years is appropriate. Since the use of EPR relates to electoral procedure, the relevant arrangement and legal provisions are stipulated in the four pieces of legislation under the EACO. The afore-mentioned penalty of imprisonment for two years corresponds to section 7(5) of the EACO which specifies the level of penalty that may be imposed by its subsidiary legislation. Furthermore, considering the nature and severity of the relevant offence, and making reference to the offences and provisions on damaging other electronic records, we are of the view that the penalty of two years' imprisonment for the offences related to the EPR is suitable and proportionate.

43. Some Members also commented that for the description of the EPR in section 111(1) of Cap. 541D, examples might be added to illustrate the phrase "to be stored on an electronic platform". The legislative intent of the relevant provision is to provide the legal basis for the EAC to create and maintain the EPR. The current provisions could also allow a suitable degree of flexibility to take into account new technologies in future which may be applicable to the EPR. We are of the view that the current provisions are sufficiently clear and could also take into account the operational needs and development of the EPR in future, and therefore no amendments are required.

(G) How to define if a person has a substantial connection with a subsector

44. During the meeting, some Members also enquired how a person would be considered to have a substantial connection with a subsector. According to the existing section 1(3)(b) of the Schedule to the CEEO, the circumstances in which a person has a substantial connection with a subsector include, but are not limited to, being a member, partner, officer or employee of a body (or a corporate member) included in the subsector. Section 3(2)(b) of the LCO also adopts similar definition. While there is no court case on the definition of "substantial connection" in electoral laws, ROs have to consider if a candidate had a substantial connection with a EC subsector and the LegCo FC in previous EC subsector elections and LegCo election. Some determinations made by ROs in the past are extracted at **Annex C** for reference.

Other Refinements related to Law Drafting

45. We also propose CSAs to address certain drafting issues and areas for improvement.

Advice Sought

46. Members' views are sought on the proposed draft CSAs.

Constitutional and Mainland Affairs Bureau
April 2021

Time Required for Election Committee Subsector By-election

Item	Action	Date	Days required ¹
(1)	Publication of Gazette notice for public inspection of the Election Committee (EC) provisional register and omissions list by the Electoral Registration Officer (ERO)	--	14 days
(2)	Public inspection period of the omission list	Item (1) + 7 days (amended ss.25(2)(b) and 29(3)(d) of Cap. 541B)	20 days
(3)	Claims and objections period	Item (1) + 7 days (amended ss. 30(2)(c)(iv) and 31(8)(d) of Cap. 541B)	
(4)	Deadline for ERO to deliver copies of notices of objection and notice of claim to Revising Officer (RevO)	Item (1) + 10 days (amended s. 32(2)(d) of Cap. 541B)	
(5)	Deadline for the RevO to make ruling	Item (1) + 20 days (s. 37(1E) of Cap. 541B)	
(6)	Publication of Gazette Notice for number of EC member(s) to be returned, nomination period and polling day of EC subsector	As soon as possible (s.4(2) of Cap. 541I)	Item (5) + Around 14 days
(7)	Nomination period	--	7 days
(8)	Publication of notice of validly nominated nominees/candidates	Item (7) + 14 days (ss.18(1) and 19(1) of Cap. 541I)	14 days

¹ Both statutory and operational requirements.

Item	Action	Date	Days required¹
(9)	Polling day of contested subsectors	--	Item (8) + around 14 days
(10)	Gazette Notices published in Gazette for the results of elections	(s.35(1) of Schedule to Cap. 569)	3 days
(11)	Submission of written oaths	Item (10) + 3 days (amended s. 42A(2) of Schedule to Cap. 569)	--
(12)	Publication of a final register of EC	Item (10) + 7 days (s.40(2) of Schedule to Cap. 569)	7 days
Days required ((1) to (12)):			Around 90 days
Days required for preparation of the Legislative Council General Election from item (12):			60 days (around 8 weeks)
Total:			Around 150 days

Past Determination of Returning Officer on Substantial Connection

Election	Subsector	Case
2016 Election Committee Subsector Election; 2018 Legislative Council By-election	Architectural, surveying, planning and landscape	<ul style="list-style-type: none"> ● Returning Officer (“RO”) determined the nomination of the candidate to be valid. ● Although the candidate was not an architect, surveyor, planner or landscape architects, the candidate provided information to convince RO that he had substantial connection with the subsector, including that he was connected with or a member of the relevant associations.
2016 Election Committee Subsector Election	Engineering	<ul style="list-style-type: none"> ● RO determined the nomination of a number of candidates to be invalid. The jobs of the candidates concerned were renovation worker/bar bender & fixer/safety officer, etc. RO determined the nominations of the candidates concerned to be invalid because those persons were not eligible voters of the relevant subsector and that the nature, professional qualifications and working experience were not substantially connected with that subsector.
2016 Election Committee Subsector Election	Higher education	<ul style="list-style-type: none"> ● RO determined the nomination of the candidates to be invalid. ● At the time when the candidate submitted the nomination form, while he was still a student of the university, he was no longer holding a post in the relevant Council of the university.