

Revised

Paper No. CB(2)1027/98-99(01)

**TABLE A****Comparison of the Districts Councils Bill with the Provisional Districts Boards Ordinance and the District Boards Ordinance**

(The Clauses not covered by Table A are the electoral provisions which are based on the Legislative Council Ordinance and they are dealt with in Table B)

<u>Legend</u>	
<b>BEC</b>	The former Boundary and Election Commission Ordinance
<b>CE</b>	The Chief Executive
<b>DBO</b>	District Boards Ordinance as it was immediately before amendment as the Provisional District Boards Ordinance by Ordinance No. 114 of 1997 which came into operation on 1 July 1997.
<b>DB</b>	Former District Board established under the DBO.
<b>DC Bill</b>	District Councils Bill
<b>EAC</b>	The Electoral Affairs Commission
<b>EPO</b>	The former Electoral Provisions Ordinance (Cap: 367)
<b>GIC</b>	The former Governor in Council
<b>LCO</b>	The Legislative Council Ordinance (134 of 1997)
<b>PDB</b>	Provisional District Board
<b>PDBO</b>	The Provisional District Boards Ordinance (Cap. 366)

Provision of the DC Bill	Provision of the PDBO	Provision of the DBO	Remarks
<b>Clause 1</b> <i>Short title &amp; commencement</i>  Proposed short title is District Councils Ordinance	<b>Section 1</b> <i>Short title</i>  Short title is Provisional District Boards Ordinance	<b>Section 1</b> <i>Short title</i>  Short title was District Boards Ordinance	
<b>Clause 2</b> <i>Interpretation</i>	<b>Section 2</b> <i>Interpretation</i>	<b>Section 2</b> <i>Interpretation</i>	Please see Annex 1

DC Bill	PDBO	DBO	REMARKS
<p><b>Clause 3</b> <i>Declaration of Districts</i></p>	<p><b>Section 3</b> <i>Declaration of Districts</i></p>	<p><b>Section 3</b> <i>Declaration of Districts</i></p>	<p><u>Number &amp; particulars of Districts</u></p> <p>(a) In the DC Bill, the number of and the particulars of Districts are set out in Schedule 1. The Schedule is part of the Ordinance. Subsequent amendments will be by subsidiary legislation in the form of orders made by CE in Council.</p> <p>(b) Under the PDBO, the number and particulars of Districts are specified in orders made by the CE in Council. The orders are subsidiary legislation. (When the PDBO was enacted on 1 July 1997, the Districts which existed immediately before that date were included in a Schedule to the Ordinance and deemed under s. 27 to have been declared by CE in Council).</p> <p>(c) Under the DBO, the number and particulars of Districts were specified in orders made by the CE in Council. The orders were subsidiary legislation.</p> <p><u>Maps showing the boundaries of Districts</u></p> <p>(a) Under the DC Bill, the maps are identified in Schedule 1 and are to be kept at the office of the Designated Officer. Copy maps certified by Designated Officer are conclusive evidence of area of District.</p> <p>(b) Under the PDBO, the maps are kept at the office of the Designated Officer. Copy maps certified by Designated Officer are proof of area of District.</p> <p>(c) Under the DBO, the maps were kept at the office of the Designated Officer and the office of the BEC. Copy maps certified by BEC were conclusive evidence of area of District.</p> <p><i>Note: The equivalent of s. 3(4) of the PDBO &amp; DBO was not included in this Bill as it is considered not necessary in view of clause 3(5). This clause follows s18 of LCO</i></p>

DC Bill	PDBO	DBO	REMARKS
No equivalent	Section 4 <i>Directions by CE to public officers.</i>	Section 4 <i>Directions by Governor to public officers</i>	The provision in the PDBO and DBO which empowered the CE and the Governor respectively to give directions to public officers in the performance of their functions under the Ordinance is not included in the DC Bill as it is considered not necessary.
Clause 4 <i>Establishment of District Councils</i>	Section 5 <i>Establishment</i>	Section 5 <i>Establishment</i>	<p>(a) Under the DC Bill, the particulars of District Councils are set out in Schedule 2 which is part of the Ordinance. Subsequent amendments are by subsidiary legislation, in the form of orders made by CE in Council.</p> <p>(b) Under the PDBO, Provisional District Boards are established by order made by CE in Council which is subsidiary legislation. (When the PDBO was enacted on 1 July 1997, the District Boards which existed immediately before that date were included in a Schedule to the Ordinance and deemed under s. 27 to have been Provisional District Boards established by CE in Council).</p> <p>(c) Under the DBO, District Boards were established by the Governor by order published in the Gazette, which is subsidiary legislation.</p>
Clause 5 <i>Number of members to be elected to a District Council and number of members to be appointed to it</i>	Section 6(1) <i>Composition of Board</i>	Sections 5A & 7 <i>Total number of elected members &amp; Declaration of numbers of elected members</i>	<p>(a) In the DC Bill the number of elected members and the number of appointed members are set out in Schedule 3. Subsequent amendments are by CE in Council by order published in the Gazette.</p> <p>(b) Under s 6(1) of the PDBO CE can appoint a number of members subject to a maximum of 40 specified in the Ordinance.</p> <p>(c) S. 5A of the DBO set out the total number of DB members. Under s. 7 Governor could specify by order, i.e. subsidiary legislation, the number of members of each DB, having regard to recommendations made by BEC.</p>

DC Bill	PDBO	DBO	REMARKS
<b>Clause 6</b> <i>Declaration of constituencies</i>	Not applicable	No equivalent (but see para (b) opp.)	(a) Under the DC Bill, constituencies are declared by CE in Council having regard to recommendations made by EAC. (Ref: s.18(2)-(6) of LCO)  (b) Constituencies for the purpose of the DBO were declared by GIC under s. 3(1)(c) of the EPO having regard to recommendations made by BEC.
<b>Clause 7</b> <i>Number of elected members to be returned to each constituency</i>	Not applicable	No equivalent (but see para (b) opp.)	(a) Under the DC Bill, the number of members to be returned from each DC constituency is 1.  (b) For purposes of DBO, Under s. 3(5) of the EPO, the number of members to be returned from each DB constituency was 1.
<b>Clause 8</b> <i>Chief Executive in Council may amend Schedule 1, 2 or 3</i>	No equivalent	No equivalent	In the PDBO and DBO an equivalent of this clause was not necessary as -  (a) under the PDBO it is the CE in Council who can determine the number of Districts and establish PDBs by subsidiary legislation;  (b) the DBO it was the GIC who could determine the number of Districts, establish DBs and determine the number of members for each DB by subsidiary legislation.  <i>Note: For further details, please refer to A5 contained in the Administration's response to the concerns raised by the Bills Committee at its meeting held on 4.1.99.</i>
<b>Clause 9</b> <i>District Councils to consist of elected members, appointed members and ex officio members</i>	<b>Section 6</b> <i>Composition of Board</i>	<b>Section 6</b> <i>Composition of Board</i>	(a) Under the DC Bill, a DC is to consist of elected members, appointed members & ex officio members.  (b) Under the PDBO, a PDB consists only of appointed members.  (c) Under the DBO, a DB consisted of elected members and ex officio members.

DC Bill	PDBO	DBO	REMARKS
<b>Clause 10</b> <i>An elected member or appointed member taken to have resigned on becoming an ex officio member</i>	<b>Section 6(2)</b> <i>Composition of Board</i>	<b>Section 6(2) &amp; (3)</b> <i>Composition of Board</i>	(a) In the DC Bill, clause 10 read with clauses 20(2), (3) & (4) is designed to prevent a member holding office in more than one DC or holding 2 seats in the same DC.  (b) The equivalent provisions in the PDBO & DBO state the same principle, but do not specify how it works in practical situations.
<b>Clause 11</b> <i>Chief Executive to appoint members and how long appointed members are to hold office</i>	<b>Section 6(1)</b> <i>Composition of Board</i>	Not applicable	(a) Under the DC Bill the term of office of appointed member is from the date specified in the letter of appointment until 31 December of the year in which the next election is held. CE can specify a lesser period in individual cases.  (b) S. 6(1) of the PDBO states that the appointment cannot last beyond 31 December 1999; subject to that, CE can determine the length of the term.
<b>Clause 12</b> <i>Who may be appointed to a District Council</i>	No equivalent	Not applicable	This clause is based on the law before 1994 with the difference that the required period of ordinary residence under the Bill is 3 years and not 10 years. The PDBO does not specify any eligibility criteria for appointment.
<b>Clause 13</b> <i>Appointed member to accept office</i>	<b>Section 6(2)</b> <i>Composition of Board</i>	No equivalent	(a) The DC Bill provides that acceptance of office must be within the period specified by the Designated Officer.  (b) The PDBO does not specify a period for accepting office.
<b>Clause 14</b> <i>Disqualification of appointed members</i>	<b>Section 7</b> <i>Disqualification from appointment</i>	No equivalent	The grounds on which a person is disqualified from being appointed to or holding office in a DC are based on s. 39 of the LCO which sets out the grounds on which a person is disqualified from being a candidate at an election.

DC Bill	PDBO	DBO	REMARKS
<b>Clause 15</b> <i>How an appointed member can resign</i>	<b>Section 12</b> <i>Resignation of a member</i>	Not applicable	(a) Under the DC Bill, notice of resignation has to be given to Designated Officer (Ref: s. 14 of LCO)  (b) Under the PDBO an appointed member can resign by giving notice to Designated Officer or Chairman.
<b>Clause 16</b> <i>When appointed member's office becomes vacant &amp; appointment of a substitute</i>	<b>Section 14</b> <i>Publication of notice of vacancy</i>	Not applicable	Section 14 of PDBO sets out the circumstances in which the office of a member becomes vacant but does not provide expressly for appointment of substitutes.
<b>Clause 17</b> <i>Ex officio members to accept office</i>	No equivalent	No equivalent	Under the DC Bill, a Rural Committee Chairman does not become a member until he accepts office as a member.
<b>Clause 18</b> <i>When the office of ex officio member becomes vacant</i>	Not applicable	No equivalent	This sets out the circumstances in which a person ceases to be an ex officio member
<b>Clause 19</b> <i>Disqualification of ex officio members</i>	Not applicable	<b>Section 9</b> <i>Disqualification of ex officio members</i>	Under the DC Bill, the grounds for disqualification of ex officio members are the same as those for disqualifying appointed & elected members and follows s. 39 of the LCO.
<b>Clause 59</b> <i>Functions of a District Council</i>	<b>Section 20</b> <i>Functions of a Board</i>	<b>Section 20</b> <i>Functions of a Board</i>	Under the DC Bill, a DC has the additional function of advising on food and environmental hygiene matters.
<b>Clause 60</b> <i>Election of first Chairman &amp; Vice Chairman</i>	<b>Section 28</b> <i>Election of first Chairman</i>	<b>Section 15</b> <i>Board to elect Chairman</i>	The office of Vice Chairman was not provided for in the PDBO or the DBO.
<b>Clause 61</b> <i>Resignation of Chairman or Vice Chairman</i>	<b>Section 19</b> <i>Resignation etc. of Chairman</i>	<b>Section 19</b> <i>Resignation etc. of Chairman</i>	Under the DC Bill notice of resignation is to be given to the District Officer. Under the PDBO & DBO, notice of resignation was to be given to the Designated Officer. (Ref: s. 14 of the LCO).
<b>Clause 62</b> <i>When office of Chairman or Vice Chairman becomes vacant</i>	<b>Section 19(2)</b> <i>Resignation etc. of Chairman (S. 15(2) is also relevant)</i>	<b>Section 19(2)</b> <i>Resignation etc. of Chairman (S 15(2) is also relevant)</i>	The circumstances in which the office of Chairman or Vice Chairman become vacant follow previous legislation on vacancy of office of Chairman.
<b>Clause 63</b> <i>Election of Chairman &amp; Vice Chairman to be in accordance with Schedule 5</i>	<b>Section 28(3)</b> <i>Election of first Chairman</i>	No equivalent	For electing the Chairman & Vice Chairman, the DC Bill follows the PDBO procedure for electing Chairman.

DC Bill	PDBO	DBO	REMARKS
Clause 64 <i>Duties of Chairman and Vice Chairman</i>	Section 17 <i>Duties of Chairman</i>	Section 17 <i>Duties of Chairman</i>	The 3 provisions are substantially the same.
Clause 65 <i>Chairman or other person presiding to have a casting vote</i>	Section 18 <i>Chairman to have a casting vote</i>	Section 18 <i>Chairman to have a casting vote</i>	The 3 provisions are substantially the same.  <i>Note: In clause 65(2) "member" should be replaced by "person". Administration proposes to correct this.</i>
Clause 66 <i>District Council may make standing orders</i>	Section 21(b) <i>Appointment of secretary; standing orders; and committees of Boards</i>	Section 21(b) <i>Appointment of secretary; standing orders; and committees of Boards</i>	The provision for making standing orders is substantially the same in the 3 cases.
Clause 67 <i>District Council may appoint secretary</i>	Section 21(a) <i>Appointment of secretary; standing orders; and committees of Boards</i>	Section 21(a) <i>Appointment of secretary; standing orders; and committees of Boards</i>	The power to appoint a secretary is substantially the same in the 3 provisions.
Clause 68 <i>Quorum</i>	Section 22 <i>Quorum</i>	Section 22 <i>Quorum</i>	(a) Under the DC Bill, the quorum of a DC is not less than half its members.  (b) Under the PDBO & DBO, the quorum was 1/3 rounded to the nearest whole number  <i>Note: The Administration proposes to change the heading of this clause to "Quorum of a District Council" as it is more appropriate. The quorum of committees is provided for in clause 66(3) of the Bill.</i>
Clause 69 <i>District Council may appoint committees</i>	Section 21(c) <i>Appointment of secretary; standing orders; and committees of Boards</i>	Section 21(c) <i>Appointment of secretary; standing orders; and committees of Boards</i>	The power to appoint committees is substantially the same in the 3 provisions.
Clause 70 <i>Proceedings of a District Council not affected by vacancy or defect in membership</i>	Section 23 <i>Validity of acts of a Board or committee</i>	Section 23 <i>Validity of acts of a Board or committee</i>	The substance of clause 70 is the same as the corresponding provisions in the previous legislation; the structure of the clause follows s.17 of the LCO; the clause also covers non acceptance of office by appointed & ex officio members.  <i>Note: It appears that Clause 70 does not cover committees. This is an inadvertent omission. The Administration proposes to rectify this.</i>  <i>Note: The equivalent of s.10 of the PDBO &amp; DBO is not included in the DC Bill as the situation is covered by clause 70.</i>

DC Bill	PDBO	DBO	REMARKS
<b>Clause 77</b> <i>Proceedings against members on grounds of disqualification</i>	<b>Section 26</b> <i>Proceedings against persons on grounds of disqualification</i>	<b>Section 26</b> <i>Proceedings against persons on grounds of disqualification</i>	The provisions are substantially the same except that under the DC Bill & the PDBO only Secretary for Justice can bring proceedings whereas under the DBO the Attorney General or an elector could bring proceedings.  <i>Note: In the section heading of clause 77 "member" should be "person". The Administration proposes to correct this.</i>
<b>Clause 80</b> <i>Chief Executive in Council may amend Schedule 4 or 5</i>	No equivalent	No equivalent	It is proposed to give CE in Council power to amend Schedules 4 & 5 which contain the forms for accepting office and details of the procedure to elect the Chairman & Vice Chairman.
<b>Clause 81</b> <i>Designated Officer to give notice of membership</i>	No equivalent	No equivalent	
<b>Clause 82</b> <i>Designated Officer to give notice of vacancy</i>	<b>Section 14</b> <i>Publication of notice of vacancy</i>	<b>Section 14</b> <i>Publication of notice of vacancy</i>	In the DC Bill, this clause is confined to publication of the notice. In the previous legislation circumstances in which a vacancy arises and the publication of the notice are combined in one provision
<b>Clause 83</b> <i>Directions by Chief Executive to a District Council</i>	<b>Section 24</b> <i>Directions by Governor to Board</i>	<b>Section 24</b> <i>Directions by Governor to Board</i>	The 3 provisions are substantially the same.  <i>Note: The omission of 'in the public interest' in clause 83 is inadvertent. We will restore the phrase as a Committee Stage Amendment.</i>
<b>Clause 84</b> <i>Protection of members</i>	<b>Section 26</b> <i>Protection of members</i>	<b>Section 26</b> <i>Protection of members</i>	The 3 provisions are substantially the same.

*Note: It is not necessary to include in this Bill provisions corresponding to the savings & transitional provisions in the PDBO relating to the conversion of District Boards to Provisional District Boards.*

**ANNEX 1****Comparison of the definitions in the DC Bill with those in PDBO & DBO**

<b>Definition in DC Bill</b>	<b>Position under the PDBO</b>	<b>Definition in DBO</b>	<b>Remarks</b>
"appointed member"	No equivalent	No equivalent	In the PDBO, there is only one type of member. In the DBO, there were no appointed members
"by-election"	Not applicable	No equivalent	Definition modelled on definition in LCO
"candidate"	Not applicable	No equivalent	Modelled on definition on LCO
"Chairman"	Substantially the same	Substantially the same	The definition in DC Bill, uses "holding the office of" instead of "elected". No difference in substance as only a person elected can hold the office of Chairman
"committee"	No equivalent	No equivalent	
"constituency"	Not applicable	No equivalent	Modelled on corresponding definition in LCO
"corrupt practice"	Not applicable	No equivalent	Follows definition in LCO
"costs"	No equivalent	No equivalent	Follows definition in LCO
"Court"	No equivalent	No equivalent	Follows definition in LCO
Designated Officer (Director of Home Affairs)	Defined as Director of Home Affairs	Defined as Director of Home Affairs	
"District"	Defined	Defined	No substantive difference

District Council	"Board" defined as Provisional District Board	"Board" defined as "District Board"	
District Officer	Used but not defined	Used but not defined	
"elected member"	Not applicable	No substantive difference in definition	Follows definition in LCO
"election"	Not applicable	No equivalent	Follows definition in LCO
"election petition"	Not applicable	No equivalent	Follows definition in LCO
"elector"	Not applicable	No equivalent	Since there is no registration under the DC Bill, "elector" is defined with reference to the final register compiled under the LCO
"Electoral Affairs Commission"	Not applicable	No equivalent	
"electoral officer"	Not applicable	No equivalent	Follows definition in LCO
"Electoral Registration Officer"	Not applicable	No equivalent	Follows definition in LCO
"existing final register"	Not applicable	"final register" defined in EPO	
"ex officio member"	Not applicable	No substantive difference in definition	
"function"	No equivalent	No equivalent	Follows definition in LCO
"identity document"	Not applicable	No equivalent	Follows definition in LCO
"illegal practice"	Not applicable	No equivalent	Follows definition in LCO
"judicial officer"	Not applicable	No equivalent	Follows definition in LCO

<b>"member"</b>	<b>Defined as a person appointed by CE in Council</b>	<b>Defined as any of the persons of whom Board is composed</b>	
<b>"ordinary election"</b>	<b>Not applicable</b>	<b>No equivalent</b>	<b>No substantive difference from previous definition relating to DB elections, in EPO</b>
<b>'prescribed public officer'</b>	<b>Not applicable</b>	<b>No equivalent</b>	<b>Follows definition in LCO</b>
<b>"the regulations"</b>	<b>Not applicable</b>	<b>No equivalent</b>	<b>Follows definition in LCO</b>
<b>"Returning Officer"</b>	<b>Not applicable</b>	<b>No equivalent</b>	<b>Follows definition in LCO</b>
<b>"Rural Committee"</b>	<b>Not applicable</b>	<b>Definition in section 6(1)(b) substantially the same</b>	
<b>Vice Chairman</b>	<b>No equivalent</b>	<b>No equivalent</b>	<b>Office of Vice Chairman is new</b>