

**Administration's Response to Concerns raised on 19 October 1999
by Members of the Bills Committee
on Elections (Corrupt and Illegal Conduct) Bill**

C1: The Administration is requested to improve the drafting of clause 31 to reflect the policy objective that there will be full relief and prosecution will stay pending application for relief under clause 31(2) and no prosecution will follow if the application is approved. (C3 of CB(2)84/99-00(01))

A1: We will amend clause 31 to address the Committee's concerns.

C2: The Administration is requested to review the drafting of clause 39 to clarify -

(i) that a candidate can apply for a court order for an extended period under clause 39 before the permitted period for lodging an election return stipulated in clause 36(2)(a) expires (C7 of CB(2)84/99-00(01)); and

(ii) that an elected candidate could participate in the affairs of the body to which the candidate has been elected, pending an application for a court order under clause 39.

A2: We will amend clauses 38 and 39 to address the Committee's concerns.

C3: The Administration is requested to consider substituting "some other reasonable cause" in clause 39(2)(d) with "any reasonable cause". (C9 of CB(2)84/99-00(01))

A3: We will substitute "some other reasonable cause" with "any reasonable cause" in clause 39(2)(d).

C4: The Administration is requested to consider recasting clause 42 to reflect the policy intention that attempts to commit any offence under the Bill will be treated as substantive offences for the purpose of penalty and disqualification under an electoral law, and to advise on the law relating to “attempts” relevant to the clause. (C10 of CB(2)84/99-00(01))

A4: The offence of “attempting to commit an offence” is provided under section 159G of the Crimes Ordinance, and the offence of attempt at common law is abolished according to section 159K. We will amend clause 42 to address the Committee’s concerns.

C5: The Administration is requested to provide more information on the four complaint cases in the 1998 LegCo election concerning ballot papers being previously issued under the same name as the complainants; and to consider members’ suggestions on improved measures to guard against future recurrences. (C2 of CB(2)128/99-00(01))

A5: The Electoral Affairs Commission had put in place various measures in previous elections to prevent human errors in the issuing of ballot papers. Before the polling day, briefing was given to all polling officers on the procedures they should follow in issuing ballot papers. A manual setting out the detailed procedures was given to each polling officer. Two polling officers would work in pair to check the identity of the voters and to cross out their names in the Final Register. The Presiding Officers in charge of the polling stations were also briefed on the importance of supervising the polling officers closely.

But in the event that a voter turns up and a ballot paper has already been issued under his name, the existing arrangement is for the polling staff to issue a ballot paper stamped with the word “tendered” to the voter concerned after explaining that it will not be counted. This is to avoid interruption to the polling.

To ensure fairness in an election, the electoral laws have provided a mechanism for a candidate to question the election results by an election petition which may be based on various grounds including a material irregularity occurred in relation to the polling. If the election results are affected materially by the issue of tendered ballot papers, a candidate can certainly lodge on

election petition.

We have conveyed Members' concerns and suggestions for improving the existing arrangements to the Electoral Affairs Commission. The Commission will emphasize the importance of marking the Final Register accurately in the briefings for the electoral staff in the coming District Councils election. The Commission will consider the feasibility of Members' suggestions in future elections.

Constitutional Affairs Bureau
3 November 1999

CWP1177