

LCQ20: Election Committee members representing the District Council subsectors

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (December 11):

Question:

Annex I to the Basic Law provides that the Chief Executive shall be elected by a broadly representative Election Committee (EC) in accordance with the Basic Law and appointed by the Central People's Government. Section 9 of the Chief Executive Election Ordinance (Cap. 569) provides that the term of office of EC shall be five years, and the term of office of the current EC commenced on February 1, 2017. Section 2 of the Schedule to Cap. 569 stipulates that EC is to consist of 1 200 members who must be Hong Kong permanent residents and, among such members, 57 and 60 of them are representing respectively the subsectors of the "Hong Kong and Kowloon District Councils" and the "New Territories District Councils" under the Fourth Sector. On the other hand, a certain number of members of the current-term District Councils (DCs) will cease to be members of the relevant DCs upon expiry of their term of office on December 31 this year. In this connection, will the Government inform this Council, whether those EC members representing the aforesaid subsectors will be deemed to have resigned from the membership of EC if they cease to be a DC member from January 1 next year onwards:

(1) if so, of the legal provisions on which this statement is based, the resultant number of vacancies, and whether the authorities are required to hold the relevant subsector by-elections for such vacancies before the subsector ordinary elections are held at the end of 2021; if they are not required to do so, of the legal provisions on which this statement is based, and the rationale for the authorities' enacting such provision(s); and

(2) if not, of the legal provisions on which this statement is based, and the rationale for the authorities' enacting such provision(s)?

Reply:

President:

Our consolidated reply to Hon Dennis Kwok's question is as follows:

According to section 9 of the Chief Executive Election Ordinance (Cap. 569) (the Ordinance), the term of office of the Election Committee (EC) shall be five years commencing on the date on which it is constituted. The EC shall be constituted on February 1 in the year in which the term of office of

the Chief Executive (CE) is to expire. The term of the current EC is from February 1, 2017 to January 31, 2022.

According to sections 3(1B) and (1C) of the Schedule to the Ordinance, if a member of the EC representing the Hong Kong and Kowloon District Councils (DCs) subsector or the New Territories DCs subsector (formed by elected members of DCs) ceases to be a member of a DC specified in the District Councils Ordinance (Cap. 547), he is deemed to have resigned from the membership of the EC unless—

(a) the cessation is due to the expiry of his term of office as a member of such DC; and

(b) he is a member of such DC immediately after the cessation.

In the event that the office of the CE becomes vacant due to the reasons specified in section 4(b) or (c) of the Ordinance, that is, if the CE dies or if the Central People's Government removes the CE from office in accordance with the Basic Law, the Acting CE shall declare the vacancy pursuant to section 5 of the Ordinance, and the Electoral Registration Officer (ERO) shall, pursuant to section 4(1) of the Schedule to the Ordinance, compile and publish in accordance with the EAC Regulations (Note 1) a provisional register of members of the EC within 14 days after the making of a vacancy declaration. The actual number of vacancy of the EC subsectors (ECSS) to be filled shall be ascertained by the ERO at the time a provisional register is published pursuant to section 4(1) of the Schedule to the Ordinance. According to section 5(1) of the Schedule to the Ordinance, as soon as practicable after the ERO has published a provisional register of members of the EC, the Electoral Affairs Commission—

(a) shall ascertain the number of members representing each subsector (other than a subsector specified in items 1 and 2 of Table 4 in section 2, i.e., the National People's Congress subsector and Legislative Council subsector) on the EC; and

(b) if the number of members so ascertained as representing a subsector is less than the number of members allocated to the subsector in accordance with section 2(6) of the Schedule to the Ordinance, shall, in accordance with the EAC Regulations, arrange for a supplementary nomination (in the case of the Religious subsector) or a subsector by-election (in the case of any other subsector) to be held to fill the vacancy among the members representing the subsector on the EC.

As such, in the absence of the situation specified under sections 4(b) or (c), hence section 5 of the Ordinance, the 1 200 members from various subsectors of the EC to elect the sixth term CE in 2022 shall be constituted on February 1, 2022 in the manner prescribed by the Ordinance, of which 1 034 members from certain subsectors (Note 2) should be returned by ECSS ordinary elections. Section 16(1) of the Schedule to the Ordinance stipulates that ECSS ordinary election(s) shall be held on the date(s) specified by the CE. The relevant election date(s) is/are yet to be determined.

Note 1: By definition under section 2 of the Chief Executive Election Ordinance (Cap. 569), EAC Regulations means regulations made under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541).

Note 2: Excluding the 36 members of the National People's Congress subsector and 70 members of the Legislative Council subsector under the Fourth Sector who are ex-officio members of the EC, and 60 members of the Religious subsector under the Third Sector who are to be nominated by designated bodies as members of the relevant subsector for the new term of office pursuant to section 7(1) of the Schedule to the Ordinance.