

LCQ20: Eligibility for being nominated as a candidate for a functional constituency election of the Legislative Council

Following is a question by the Hon Tony Tse and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (June 13):

Question:

Under section 37(2)(b) of the Legislative Council Ordinance (Cap. 542), a person is eligible to be nominated as a candidate at a functional constituency (FC) election of the Legislative Council, other than the District Council (DC) (first) FC and the DC (second) FC, provided the person (i) is both registered and eligible to be registered as an elector for the FC, or (ii) satisfies the Returning Officer for the FC that the person has a substantial connection with the FC (substantial connection provision). Currently, it is specified in the eligibility requirements for registration as electors of an FC with individual voting as its electorate base that persons who wish to register as electors must (i) have the specified recognised professional qualifications, or (ii) be members of specified professional bodies who are entitled to vote at the general meetings of such bodies. In this connection, will the Government inform this Council:

(1) of the circumstances, other than those provided in section 3 (Interpretation)(2)(b) of Cap. 542 in which a person is considered to have a substantial connection with an FC, based on which the Returning Officer for the FC will be satisfied that a person has a substantial connection with the FC concerned;

(2) given that under section 37(2)(b)(ii) of Cap. 542, any person, in respect of an FC with individual voting as its electorate base, can be a candidate at the FC election as long as the person has a substantial connection with the FC, even if that person is ineligible for registration as an elector of the FC, of the reasons why the eligibility requirements prescribed by the authorities for candidates at the elections of this type of FCs are even less stringent than those for the electors for such elections;

(3) why it is currently the case that the eligibility requirements for candidates at the elections for the DC (first) FC and the DC (second) FC do not include the substantial connection provision but the eligibility requirements for candidates at other FC elections do, and whether the authorities have examined if such a situation reflects the adoption of double standards; and

(4) whether the authorities will amend the legislation to (i) raise the

eligibility requirements for candidates at elections for FCs with individual voting as its electorate base, so as to align such requirements with those for registration as electors of the FCs concerned, and (ii) remove the substantial connection provision in relation to the eligibility requirements for election candidates; if so, of the legislative timetable; if not, the reasons for that?

Reply:

President,

My reply to Hon Tony Tse's question is as follows:

(1) and (2) The eligibility criteria for a person being nominated as a candidate at an election for a Legislative Council (LegCo) functional constituency (FC) has been clearly set out in section 37(2) of the Legislative Council Ordinance (Cap. 542) (LCO). The provision stipulates that a person intending to stand in the election should be registered and eligible to be registered as an elector for the FC concerned (with the exception of District Council (DC) (second) FC), or satisfies the Returning Officer (RO) for the FC concerned that the he/she has substantial connection with that FC (with the exceptions of DC (first) and DC (second) FC). Besides, the provision also stipulates that in order for a person to become a candidate at an election for a FC, he/she, in addition to being a registered geographical constituency elector, must satisfy the restrictions on age, nationality and year of residence in Hong Kong for candidates as laid down in the provision.

Section 3(2)(b) of the LCO has elaborated on the circumstances in which a person has a "substantial connection" with a FC, including but not limited to being a member, partner, officer or employee of a corporate elector of the FC, or a corporate member of such a corporate elector; or belonging to a class of persons specified as being electors of the FC.

As for whether a person running in the election has a substantial connection with the FC concerned, it would depend on the actual circumstances of each case. In accordance with section 42A of the LCO and section 16 of the Electoral Affairs Commission (Electoral Procedure) (LegCo) Regulation (Cap. 541D), whether a candidate's nomination is valid or not is determined by the RO according to the legal requirements and relevant procedures. Depending on the actual circumstances of each case, the RO may seek advice from the Nomination Advisory Committee and may, where necessary, require the candidate to furnish additional information that he/she considers appropriate, so as to satisfy himself/herself as to the eligibility of the candidate or the validity of the nomination. The RO shall, in accordance with the law and having considered the relevant information, decide whether or not a person is validly nominated as a candidate.

(3) In respect of the DC (first) and DC (second) FCs, in accordance with the existing legislation, only elected district councillors can be nominated as a candidate in the election for the FCs. If the provision on "substantial connection" is applicable to the election for these FCs, there is a possibility that over three million registered electors would be eligible to

be nominated as a candidate, which appears to be in contradiction to the legislative intent of the Government.

(4) The existing requirement on the eligibility to be nominated as a candidate has been effective. We have no plan for any change.