

LCQ22: Eligibility review and oath-taking arrangements for public elections

Following is a question by the Hon Chan Hok-fung and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, in the Legislative Council today (May 18):

Question:

At present, there are discrepancies in the arrangements for eligibility review of candidates and statutory oath-taking for elected candidates among different types of public elections. In this connection, will the Government inform this Council:

(1) given that in accordance with the Decision on Improving the Electoral System of the Hong Kong Special Administrative Region announced by the National People's Congress on March 11, 2021, the eligibility of candidates for the Election Committee members, the Chief Executive and the Legislative Council (LegCo) Members shall be subject to the assessment and validation of the Candidate Eligibility Review Committee of the Hong Kong Special Administrative Region, whether the Government will, by way of local legislation, require all candidates of public elections to first go through the eligibility review procedure; if so, of the details; if not, the reasons for that;

(2) given the Government's proposal that rural representatives-elect be required to take a written oath before holding office, and that such an arrangement is different from the oath-taking arrangements for elected candidates of the LegCo and District Council elections, of the detailed justifications for that, and whether it has assessed if such an arrangement is sufficient to reflect the solemnity of oath-taking;

(3) whether it has studied if other jurisdictions have adopted written oath as a form of statutory oath-taking for elected candidates of public elections; if it has studied, of the details; and

(4) with regard to public elections overseen by the Electoral Affairs Commission, if any elected candidate fails to fulfil the statutory oath-taking requirements and is thus disqualified from holding office, whether the Government will recover from the person concerned all payments, such as remuneration and allowances, that he/she has received after being elected; if not, of the reasons for that?

Reply:

President,

In consultation with the Administration Wing of the Chief Secretary for

Administration's Office and the Home Affairs Bureau, the consolidated reply is as follows:

(1) As stipulated in the Decision on Improving the Electoral System of the Hong Kong Special Administrative Region (HKSAR) made by the National People's Congress (NPC) on March 11, 2021, and Annexes 1 and 2 to the Basic Law, the Candidate Eligibility Review Committee (CERC) of the HKSAR shall be set up and responsible for reviewing and confirming the eligibility of candidates for Election Committee (EC) members, for the office of Chief Executive (CE) and for the Legislative Council (LegCo). To implement the requirement, the HKSAR Government has, through the Improving Electoral System (Consolidated Amendments) Ordinance 2021, added section 9A in the Chief Executive Election Ordinance (Cap. 569) (CEE0) to provide for the composition of the CERC and amended the relevant electoral laws to implement the requirement for the CERC to review and confirm the eligibility of candidates for the EC Subsector Ordinary Elections, the LegCo Election and the CE Election.

The function of the CERC is clearly stipulated in the Basic Law and related decision of the NPC, and has been fully and accurately implemented in local electoral laws. Currently, the Government does not have plan to expand or change the functions of the CERC.

(2) and (3) Article 6 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region stipulates that a resident of the HKSAR who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (PRC) and swear allegiance to the HKSAR of the PRC (uphold the Basic Law and bear allegiance to the HKSAR) in accordance with the law. On this, section 42A of the Schedule to the CEE0 provides that members-elect of the EC must submit a written oath to uphold the Basic Law and bear allegiance to the HKSAR in order to become a member of the EC. All the members of the EC constituted on October 22, 2021, have complied with the written oath requirement. We have confirmed with the relevant Central Authority that the aforementioned written oath complies with the oath-taking requirements for public officers. As the number of rural representatives (RRs) is similar to that of EC members, after reviewing the oath-taking arrangements for the EC and in other public elections, the Home Affairs Department (HAD) considers that the EC model, whereby a written oath is required before assumption of office, better suits the case for RRs operationally. We have not further studied the situation in other jurisdictions.

(4) Section 2(1) of the Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China passed by the Standing Committee of the NPC stipulates that "[n]o public office shall be assumed, no corresponding powers and functions shall be exercised, and no corresponding entitlements shall be enjoyed by anyone who fails to lawfully and validly take the oath or who declines to take the oath".

Section 21 of the Oaths and Declarations Ordinance (Cap.11) provides that any person who declines or neglects to take an oath duly requested which

he is required to take by Part IV of the Ordinance, shall, if he has not entered on his office, be disqualified from entering on it. That provision is applicable to the oaths to be made by the CE, LegCo members, and District Council (DC) members. In addition, the Government would introduce the Rural Representative Election (Amendment) Bill 2022 to the LegCo on May 18, 2022. If the Bill is passed, an elected RR who breaches the oath or fails to comply with the legal requirement and conditions of upholding the Basic Law and bearing allegiance to the HKSAR will be disqualified from holding office; no corresponding powers and functions shall be exercised, and no corresponding entitlements shall be enjoyed.

If a LegCo member is disqualified for not complying with the aforementioned requirement, the LegCo Commission would take into account the actual circumstances of individual cases in deciding the appropriate course of actions for handling remuneration-related matters, such as taking legal actions to recover the remuneration.

As regards the cases relating to disqualification of DC members from holding office, the HAD would handle the remuneration arrangements in accordance with the law and the Guidelines on the Remuneration Package for Members of the District Councils of the HKSAR. If necessary, the HAD will take legal actions to recover the remuneration.