

Replacement Mechanism complies with Basic Law and Bill of Rights

The Department of Justice has all along been providing legal advice to the Constitutional and Mainland Affairs Bureau throughout the preparation of the Legislative Council (Amendment) Bill 2011 to ensure that the proposed replacement mechanism is consistent with our constitutional framework.

Responding to media enquiries today (June 24), a spokesman for the department said, "We respect the different views expressed by various stakeholders in the community as the issue is complex."

"However, after careful and thorough examination of the proposal, we have come to the considered view that it is consistent with Articles 26 and 68 of the Basic Law and Article 21(b) of the Hong Kong Bill of Rights."

Relevant arguments in support of this view have been set out in the paper presented to the Bills Committee this morning. The key points are summarised as follows:

1. The Basic Law and the Hong Kong Bill of Rights do not require that any casual vacancy of the legislature must be filled by means of a by-election. It is not reasonable to conclude that by-election is the only lawful means to fill a casual vacancy and that any alternative means is tantamount to an unconstitutional deprivation of the right to vote or the right to stand for election.

2. Filling casual vacancies by reference to the results of the previous general election, such as the proposed replacement mechanism, is in line with the spirit of the proportional representation system used in the general election for geographical constituencies. It gives effect to the free expression of the will of the electors in the previous general election as a whole. Therefore, with the replacement mechanism introduced, the LegCo will continue to be "constituted by election" under Article 68 of the Basic Law.

3. The rules for the replacement mechanism are based on objective criteria and are transparent, fair and reasonable. The right of permanent residents to vote and to stand for election in general elections is not in any way affected by the proposed replacement mechanism.

4. Article 68 and Annex II of the Basic Law gives LegCo a broad discretion in determining the contents of legislation which governs the "specific method" for forming the LegCo. The

current proposal is a solution within the discretionary area of judgment of the Legislature.

5. In this connection, it should be borne in mind that a proportional representation system is already in place whereby a single vote cast by electors can return representatives in a multiple-seat geographical constituency. Furthermore, when considering the new electoral arrangement, the Government and the legislature are entitled to take into account the event which took place in 2010 when certain LegCo Members resigned from office in order to trigger a by-election in which the Members intended to stand and seek re-election.

6. The current Proposal is consistent with Articles 26 and 68 of the Basic Law and Article 21(b) of the Hong Kong Bill of Rights.

Ends/Friday, June 24, 2011