

立法會
Legislative Council

Ref : CB2/BC/3/08

LC Paper No. CB(2)2284/08-09
(These minutes have been seen
by the Administration)

Bills Committee on Voting by Imprisoned Persons Bill

Minutes of the 4th meeting
held on Thursday, 11 June 2009, at 8:30 am
in the Chamber of the Legislative Council Building

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Hok-ming, SBS, JP
Hon CHIM Pui-chung
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Members absent : Hon WONG Yung-kan, SBS, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS

Public Officers attending : Mr Raymond TAM Chi-yuen
Under Secretary for Constitutional and Mainland Affairs

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary (Constitutional and Mainland Affairs)

Mr Gary POON Wai-wing
Principal Assistant Secretary (Constitutional and Mainland Affairs)

Mr Gilbert MO Sik-keung
Deputy Law Draftsman (Bilingual Drafting and Administration)

Miss Dorothy CHENG Tai-ngar
Senior Government Counsel

Miss Mandy NG Wing-man
Government Counsel

Mr Hermes CHAN Shun-hee
Chief Electoral Officer (Acting)

Mr Eddie NG Sik-hay
Deputy Chief Electoral Officer (Operations)

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)1622/08-09(03), CB(2)1812/08-09(01),
CB(2)1827/08-09(01) and CB(3)548/08-09]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Administration undertook to examine the following issues when the electoral arrangements for the next general election were reviewed -

- (a) how persons who were homeless and who moved from place to place could be registered as electors; and
- (b) issues raised in paragraph 8 of the Hong Kong Human Rights Monitor's submission (LC Paper No. CB(2)1812/08-09(03))

3. The Bills Committee concluded deliberations on the Bill. The following members indicated that they would consider proposing Committee Stage amendments (CSAs) to the Bill -

- (a) Dr Margaret NG would propose CSAs to provide a prisoner who was serving life imprisonment the option to use the prison as his registered address for the purpose of voter registration, provided that the prison could meet the legal requirement of being his sole or principal residence on the basis of facts; and

Action

- (b) Mr James TO would propose CSAs to enable a prisoner-elect or a prisoner who was serving long-term or life imprisonment to use prison as his registration address if the Electoral Registration Officer was satisfied that the prison constituted his sole or principal residence during imprisonment.
4. Members agreed that a meeting should be held on 15 June 2009 at 5:30 pm to discuss the CSAs proposed by members.
5. Members supported the resumption of the Second Reading debate on the Bill at the Council meeting on 24 June 2009, as proposed by the Administration. Members noted that the deadline for giving notice of amendments, if any, was 15 June 2009. The Chairman would make a verbal report to the House Committee on 12 June 2009, to be followed by a written report to the House Committee on 19 June 2009.
6. The meeting ended at 10:28 am.

Council Business Division 2
Legislative Council Secretariat
24 July 2009

**Proceedings of the 4th meeting of the
Bills Committee on Voting by Imprisoned Persons Bill
on Thursday, 11 June 2009, at 8:30 am
in Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000531 - 001248	Chairman Administration	Administration's responses to the issues raised by members on 8 June 2009 (LC Paper No. CB(2)1827/08-09(01))	
001249 - 001923	Chairman Mr James TO Administration	<p>Views of Mr James TO that -</p> <p>(a) while some members proposed to allow a prisoner serving life sentence (lifer) the option to use prison as his registered address for the purpose of voter registration, he advocated that a prisoner should not be given a choice but should be allowed to use prison as his registration address if, on the basis of facts, he did not maintain a home in Hong Kong and the prison was the only place he resided while in imprisonment;</p> <p>(b) if the Electoral Registration Officer was satisfied that a place could be established to be more closely connected with the prisoner than his prison address, Mr TO would not object to use that place as the prisoner's registered address for the purpose of voter registration; and</p> <p>(c) he did not support the proposed section 28(1A) and (2A) which arbitrarily assigned a prisoner with an address for the purpose of voter registration. He would propose Committee Stage amendments (CSAs) to remove the relevant provisions and would introduce CSAs to allow a prisoner to use the prison as his registered address for voter registration under exceptional circumstances.</p> <p>Response of the Administration that -</p> <p>(a) the proposed measures specified in paragraph 8(a)-(c) of the Administration's paper would ensure that all eligible prisoners would have a registered address to enable them to exercise their right to vote; and</p>	

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		<p>(b) it did not agree that the deeming provisions in proposed section 28(1A) and (2A) were arbitrary given that a prisoner's last dwelling place in Hong Kong or his residential address last recorded by the Immigration Department under the Registration of Persons Regulation were places where he had resided before imprisonment.</p>	
001924 - 003650	Dr Margaret NG Chairman Administration Clerk	<p>Views of Dr Margaret NG that -</p> <p>(a) she supported the Administration's latest position that it would not propose CSAs to remove the words "outside the prison" from clauses 4 and 5 of the Bill;</p> <p>(b) according to her understanding, the Chinese term "家居" for "home" was incorrect grammatically;</p> <p>(c) she agreed with the Administration that the same principle should apply to all electors, i.e. only one address could be accepted as a person's registered address. Under the existing section 28(3), a person who owned several flats would have the choice to select which flat would be registered as his residential address provided that he could support it with facts. Proposed section 28(1A), however, provided a lifer with an address by a deeming provision, disregarding the fact that he would reside in a prison for the rest of his life; and</p> <p>(d) she would consider proposing a CSA to provide a lifer who did not maintain a home in Hong Kong the option to use the prison as his registered address for the purpose of voter registration, provided that the prison could meet the legal requirement of his sole or principal residence on the basis of facts.</p> <p>Information provided by the Chairman that there was a court case heard by the Court of First Instance (HCMA 1230/2001) in which the Court ruled that the address of a flat owned by a District Council (DC) candidate could not be used as the registered address of the other two</p>	

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		<p>defendants for the purpose of voter registration because it was not their sole or main home.</p> <p>Advice of the Clerk that the deadline for giving notice to propose CSAs was 15 June 2009 if the Bill would resume its Second Reading debate on 24 June 2009</p> <p>Discussion between the Administration and Dr Margaret NG on the adoption of the Chinese term "家居" for "home" and the reason behind</p>	
003651 - 004012	Dr Priscilla LEUNG Chairman	<p>Views of Dr Priscilla Leung that -</p> <p>(a) it would be difficult to determine the length of sentence on which a prisoner should be eligible to use the prison as his residential address for voter registration; and</p> <p>(b) she had exchanged views with residents in a DC constituency and there were concerns that allowing prisoners to use prison address as the registered address for the purpose of voter registration might lead to an unduly high proportion of prisoners in the registered electorate of the constituency concerned.</p>	
004013 - 004350	Dr PAN Pey-chyou Chairman	<p>Views of Dr PAN Pey-chou that -</p> <p>(a) the policy for voter registration of prisoners must be fair; and</p> <p>(b) allowing prisoners to use the prison as their registered address would impact on the election result of a DC constituency with a small electorate.</p> <p>Views of Dr PAN on the approach adopted for drafting the law in Chinese</p>	
004351 - 005727	Mr LEUNG Yiu-chung Chairman Administration	<p>Views of Mr LEUNG Yiu-chung that –</p> <p>(a) some members' concern about vote planting was unfounded as prisoners had different political inclinations and vote planting was a criminal offence; and</p> <p>(b) he considered proposed section 28(1A) and (1B) arbitrary.</p>	

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		Explanation by the Administration on why the Chinese translation for "home" was "家居" rather than "居所"	
005728 - 010103	Mr Paul TSE	Views of Mr Paul TSE on the approach adopted for drafting the law in Chinese	
010104 - 010856	Ms Emily LAU Administration Chairman	<p>Query of Ms Emily LAU about the basis for the Administration's concern about vote planting.</p> <p>Response of the Administration to the questions raised by Ms Emily LAU -</p> <p>(a) there were 274 lifers in Hong Kong and about 90% of them were either imprisoned in Stanley Prison or Shek Pik Prison;</p> <p>(b) the electorate size of each of the two DC constituencies concerned was about 6 000 to 7 000; and</p> <p>(c) given that a candidate could win in an election only by a small margin, there were concerns about an unduly high proportion of prisoner-electors in a constituency with a small electorate, as expressed in the submissions received during consultation.</p>	
010857 - 012208	Mr James TO Chairman Administration ALA9	Discussion on whether removing proposed section 28(1A) and (2A) would still enable prisoners-electors and prisoners, who served either long or short term sentence, to register as electors if they did not maintain a home in Hong Kong	
012209 - 012335	Chairman Dr Priscilla LEUNG	Supplementary information provided by Dr Priscilla LEUNG that residents of a DC constituency had expressed the view that prisoners did not understand the needs of the constituency concerned since they lived in an enclosed environment.	
012336 - 012624	Mr Paul TSE Chairman Administration	Response of the Administration to the question raised by Mr Paul TSE that proposed section 28(1A) and (2A) was necessary. For example, proposed section 28(2A) would ensure that the name of a prisoner-elector would not be removed from the final register if he no longer had a home in Hong Kong.	
012625 - 013238	Chairman Administration	Examination on clause 5 of the Bill	

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013239 – 013935	Mr James TO Chairman Administration Ms Emily LAU Dr PAN Pey-chyou	<p>Response of the Administration that the following issues raised by members were outside the scope of the Bill and would be examined when the electoral arrangements for the next general election were reviewed -</p> <p>(a) how persons who were homeless and who moved from place to place could be registered as electors; and</p> <p>(b) issues raised in paragraph 8 of the Hong Kong Human Rights Monitor's submission (LC Paper No. CB(2)1812/08-09(03))</p>	Admin
013936 - 014710	Mr James TO Chairman Administration ALA9 Mr Paul TSE	<p>Question raised by Mr James TO on whether prison could be regarded as the registered address under section 28(3) if, on the basis of facts, it was the principal residence and dwelling place of a person serving long term or life imprisonment and, if so, there was no need to propose CSAs to the Bill.</p> <p>Response of the Administration that the Court had recently ruled, based on the facts of a case, that "the EAC (i.e. the Electoral Affairs Commission) was quite entitled to come to the conclusion that Mr Choi's prison cell in Stanley was not his dwelling place in Hong Kong at which he resided and which constituted his sole or main home at the time of application for change of address".</p> <p>Advice of ALA9 that the deeming provisions in proposed section 28(1A) and (2A) and the prescribed address provided in proposed section 28(1B) sought to preclude an imprisoned person from using the prison address as his address for the purpose of voter registration and it reflected the Administration's policy intention.</p> <p>Intention of Mr James TO to propose CSAs to the Bill</p>	
014711 - 014731	Chairman ALA9	Confirmation by ALA9 that she had no further comments on legal and drafting aspects of the Bill	

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014732 - 015844	Chairman Mr James TO Ms Audrey EU Ms Emily LAU Clerk Administration Dr Priscilla LEUNG	Date of next meeting to discuss CSAs proposed by members Resumption of the Second Reading debate of the Bill on 24 June 2009	

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