

立法會
Legislative Council

LC Paper No. LS72/08-09

**Paper for the House Committee Meeting
on 29 May 2009**

**Legal Service Division Report on
Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009**

I. SUMMARY

1. Objects of the Bill

To make miscellaneous amendments to village representative election legislation to improve the arrangements for rural elections, in the light of the experience gained in the first two rounds of village ordinary elections held in 2003 and 2007 respectively, and to prepare for the next round of village ordinary election in 2011.

2. Comments

The proposed amendments in the Bill seek to -

- (a) add two villages known as "Lai Pek Shan" (犁壁山) and "Yuen Long Kau Hui" (元朗舊墟) for the purposes of village representative elections;
- (b) change the names of some villages;
- (c) extend the time limits for lodging and handling claims, objections and reviews in relation to voter registration and revise the time frames concerning the registration of electors and the compilation of registers of electors;
- (d) remove references relating to the village representative elections held in 2003 which have become spent; and
- (e) increase the maximum penalty for offences concerning order at polling stations and secrecy of votes.

3. Public Consultation

No public consultation has been conducted but the Administration and the Heung Yee Kuk jointly formed a Rural Elections Review Working Group in November 2007 to review the Village Representative Election Ordinance (Cap. 576).

4. Consultation with LegCo Panel

The Panel on Home Affairs received a briefing from the Administration on the key features of the proposals in the Bill on 14 November 2008 and met with deputations on 9 January 2009. Major concerns and suggestions raised by Members include issues relating to the listing of villages in the Schedules to Cap. 576, the time frame for ruling on the claims and objections received in relation to registration of electors and the time limit for application for review on such rulings.

5. Conclusion

In the light of concerns over the future arrangements of the village representative elections, Members may wish to consider the need for a Bills Committee to consider it in detail.

II. REPORT

Objects of the Bill

To make miscellaneous amendments to village representative election legislation to improve the arrangements for rural elections, in the light of the experience gained in the first two rounds of village ordinary elections held in 2003 and 2007 respectively, and to prepare for the next round of village ordinary election in 2011.

LegCo Brief Reference

2. HAD HQ CR/11/15/3SF2/(C) issued by the Home Affairs Department in May 2009

Date of First Reading

3. 27 May 2009.

Comments

Inclusion of two villages

4. Village representative (VR) elections are held for the indigenous villages (which include Indigenous Villages and Composite Indigenous Villages) and existing village settlements (Existing Villages) under the Village Representative Election Ordinance (Cap. 576) (the Ordinance). The Existing Villages, Indigenous Villages, and Composite Indigenous Villages are listed in Schedules 1, 2 and 3 of the Ordinance respectively.

5. Under clauses 11 and 12 in Part 2 of the Bill, amendments are proposed to be made to the Ordinance to include two villages, namely Lai Pek Shan (犁壁山) in Tai Po and Yuen Long Kau Hui (元朗舊墟) in Yuen Long as Existing Villages and Indigenous Villages in both Schedules 1 and 2 to the Ordinance so that such villages can be included in the next round of village ordinary election in 2011.

Change of village names

6. The names of ten villages that now appear in the Schedules to the Ordinance are proposed to be changed (clauses 11 to 13 in Part 2 of the Bill). According to paragraph 13 of the LegCo Brief, the proposed changes are in response to the requests from the concerned villages to highlight the historical background or location of the villages, or to adopt village names that have been used in the rural community for some time.

Extension of time limits for lodging and handling claims, objections and reviews

7. The Electoral Registration Officer (ERO) is empowered under the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541 sub. leg. K) (the Registration Regulation) to determine whether an applicant for registration in a provisional register is eligible. The Registration Regulation allows certain types of persons to make a claim that he or she is entitled to be registered as an elector (section 24) and a person who considers that a registered person is not eligible to be registered to make an objection to the registration of that person (section 23) by lodging a notice with the ERO.

8. Under section 3(2) of the Village Representative Election (Registration of Electors) (Appeals) Regulation (Cap. 576 sub. leg. A) (the Appeals Regulation), the Revising Officers (ROs), who are magistrates, shall make rulings allowing or dismissing the claims and objections. Clause 16 in Part 3 of the Bill proposes to amend section 2(5) of the Appeals Regulation to revise the period within which a hearing in respect of a claim or objection must be held. The proposed amendment extends the existing minimum period of time for the ROs to rule on the claims and objections from seven days to 14 days after the deadline for lodging claims and objections.

9. Under section 4(4) of the Appeals Regulation, the person who has made a claim or objection, or the person in respect of whom the objection is made, may apply for a review of the ruling made by the RO not later than two days after the day on which the notification of ruling is sent. Clause 17 in Part 3 of the Bill proposes to extend it to four days.

10. As a result of the proposed extension of time periods in paragraphs 8 and 9 above, the minimum period of time for ROs, under section 7(2)(b) of the Appeals Regulation, to process applications for review of ruling lodged on the last day of the submission period will be extended from two days to eight.

11. Consequent upon the proposed extensions of time periods in paragraphs 8 to 10 above, the time frames concerning the registration of electors and the compilation of registers of electors will have to be advanced by about two weeks. Part 4 of the Bill proposes to amend the Registration Regulation to that effect. According to the Administration, this will not have an adverse effect on the preparatory work required for arranging VR elections.

Removal of spent references to the first VR election held in 2003

12. According to paragraph 12 of the LegCo Brief, the Administration intends to hold the first VR election for Lai Pek Shan and Yuen Long Kau Hui as part of the village ordinary election in 2011. The Ordinance currently stipulates that, for all villages included in the Schedules, their first provisional and final registers of electors shall be compiled and their first VR election conducted in 2003. These provisions are proposed to be removed as they have become spent and transitional provisions are proposed to be included (clauses 10 and 14 in Part 2 of the Bill) to

enable, for the two new villages (i.e. Lai Pek Shan and Yuen Long Kau Hui), the compilation of the first provisional and final registers of electors in 2010 and the conduct of the first VR election in 2011.

Increase of penalty on offences concerning order at polling stations and secrecy of votes

13. Clause 37 in Part 5 of the Bill proposes to amend section 89 of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L) (the Procedure Regulation) to increase the maximum term of imprisonment from three months to six months on two offences¹ concerning order at polling stations and secrecy of votes under section 38(4) and section 82(1) of the Procedure Regulation respectively. According to paragraph 22 of the LegCo Brief, this is to align with that for the Legislative Council and District Council elections for a stronger deterrence effect.

Public Consultation

14. According to paragraphs 27 and 29 of the LegCo Brief, the Administration and the Heung Yee Kuk jointly formed a Rural Elections Review Working Group (the Working Group) in November 2007 to review the Ordinance. The Working Group agreed to take forward the proposals put forward by the rural community except the inclusion of "Yuen Long Kau Hui" in the Ordinance. Following further discussion between Heung Yee Kuk and the Shap Pat Heung Rural Committee after the meeting of the LegCo Panel on Home Affairs on 9 January 2009 (see paragraph 16 below), Heung Yee Kuk has indicated support for including Yuen Long Kau Hui in the Ordinance while the Shap Pat Heung Rural Committee is re-considering its position.

15. According to paragraph 30 of the LegCo Brief, the Administration consulted the Electoral Affairs Commission on 17 March 2009 regarding the proposed amendments to the Registration Regulation and the Procedure Regulation. Members of the Commission supported the proposed amendments.

Consultation with LegCo Panel

16. The Panel on Home Affairs (the Panel) received a briefing from the Administration on the key features of the proposals in the Bill on 14 November 2008 and met with deputations on 9 January 2009 to discuss issues relating to the listing of villages in the Schedules to the Ordinance. Major concerns and suggestions raised by members are summarized as below -

¹ Section 38(4) of the Procedure Regulation prohibits filming, photo-taking, and audio or video recording in a polling station on a polling day without permission and section 82(1) of that Regulation prohibits the breaching of secrecy of votes by, for example, communicating to another person information obtained within a polling station as to the candidate for whom an elector is about to vote or has voted.

- (a) the requirement for the inclusion of an indigenous village in the village representation system in 1999 for listing in the Schedules to the Ordinance might have ruled out those indigenous villages where such system had been established before 1999² but were not in operation in that particular year. These villages should also be included in the Schedules;
- (b) the Administration should adopt a more flexible attitude in dealing with reasonable requests to amend the Schedules to the Ordinance, and amendments should be made to the Ordinance to enable the Administration to make necessary changes to the Schedules in a timely manner;
- (c) Yuen Long Kau Hui should be added to the Schedules as it had been proven that it was an indigenous village already in existence in 1898 and had a village representation system before 1999;
- (d) sufficient time should be allowed for the Revising Officer to rule on the claims and objections received in relation to registration of electors, and the time limit for application for review on such rulings should be further extended to allow more time for the person concerned to seek legal advice; and
- (e) the Administration should step up measures to verify the identity of indigenous inhabitants and monitor false claims on residency in voters registration, ensure the impartiality of polling staff, and strengthen the promotional campaign on VR elections.

The Administration informed the Panel in May 2009 that legislative amendments would be proposed to include Yuen Long Kau Hui in the Schedules to the Ordinance. At the Panel meeting on 8 May 2009, members noted that the Administration would not accede to the request made by a Cheung Chau resident for the inclusion of Cheung Chau in the Schedules to the Ordinance for the reason that it did not meet the criteria for such purpose.

17. Members may wish to refer to the minutes of the relevant meetings of the Panel (LC Paper No. CB(2)469/08-09 and CB(2)1088/08-09) for details of the discussion.

² When the last round of VR election before the enactment of the Village Representative Election Ordinance (Cap. 576) in 2003 was held.

Conclusion

18. In the light of concerns expressed over the future arrangements of the village representative elections, Members may wish to consider the need for a Bills Committee to consider it in detail. Meanwhile, the Legal Service Division will continue to scrutinize the legal and drafting aspects of the Bill.

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