

立法會
Legislative Council

Ref : CB2/SS/15/08

LC Paper No. CB(2)2387/08-09

(These minutes have been seen
by the Administration)

**Subcommittee on Subsidiary Legislation
Relating to Voting by Imprisoned Persons**

**Minutes of the first meeting
held on Wednesday, 15 July 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Hon WONG Yung-kan, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Dr Hon PAN Pey-chyou
- Public Officers attending** : Mr HO Kin-wah, Arthur
Deputy Secretary for Constitutional & Mainland Affairs
- Mr CHANG Chi-ho, Ivanhoe
Principal Assistant Secretary (Constitutional & Mainland Affairs)
- Mr POON Wai-wing, Gary
Principal Assistant Secretary (Constitutional & Mainland Affairs)
- Dr KWAN Ming-tak
Senior Superintendent (Penal Administration)
Correctional Services Department

Ms LEUNG Wai-chong
Superintendent (Operations)
Correctional Services Department

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

Miss NG Wing-man, Mandy
Government Counsel

Mr HAR Mung-fei, Philip
Assistant Director (Acting)
Home Affairs Department

Ms KAN Sau-fun, Carmen
Senior Liaison Officer
Home Affairs Department

Mrs TING TSUI Wai-ming, Vivian
Chief Electoral Officer

Mr CHAN Shun-hee, Hermes
Deputy Chief Electoral Officer (Special Duties)

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. Election of Chairman

Mr IP Kwok-him was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[LC Paper Nos. CB(2)2211/08-09(01) - (05), CB(2)2211/08-09(06) - (08), CB(2)2212/08-09(02), REO 14/32/5(CR), L.N. 162 of 2009, LS90/08-09 and LS102/08-09]

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Action

3. The Administration was requested to provide a copy of the amended voter registration form, which could cater for applicants who were prisoners, when available.

4. Members agreed that the Subcommittee should invite written views on the Amendment Regulations from the two legal professional bodies, rehabilitation organizations for offenders, and human rights bodies which had given views on the Voting by Imprisoned Persons Bill.

5. The Clerk advised that if the Subcommittee aimed at completing the scrutiny of the relevant subsidiary legislation before the expiry of the scrutiny period on 21 October 2009, it should report its deliberations to the House Committee on 9 October 2009. Members agreed that the next meeting would be held on 2 September 2009 from 9:30 am to 12:30 pm to study the detailed provisions of the subsidiary legislation when written views on the Amendment Regulations should be available.

6. The meeting ended at 12:15 pm.

Council Business Division 2
Legislative Council Secretariat
19 August 2009

**Proceedings of the first meeting of the
Subcommittee on Subsidiary Legislation
Relating to Voting by Imprisoned Persons
on Wednesday, 15 July 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000101 - 000140	Mrs Sophie LEUNG Mr WONG Ting-kwong Ms Cyd HO Mr IP Kwok-him	Election of Chairman	
000141 - 000355	Chairman	Opening remarks	
000356 - 000711	Administration	<p>Briefing by Administration on -</p> <p>(a) Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009;</p> <p>(b) five Amendment Regulations made under the Electoral Affairs Commission (EAC) Ordinance relating to practical voting arrangements for imprisoned persons and gazetted on 19 June 2009; and</p> <p>(c) three Amendment Regulations made under the EAC Ordinance relating to electoral registration arrangements for imprisoned persons and gazetted on 3 July 2009.</p> <p>The relevant provisions of the Voting By Imprisoned Ordinance which came into operation on 3 July 2009 were related to the registration of electors and the remaining provisions would come into force on the same date as the Amendment Regulations.</p>	
000712 - 000924	Chairman Administration	Scrutiny period for the eight Amendment Regulations made under the EAC Ordinance	
000925 - 001539	Chairman Administration	Briefing by the Administration on the practical voting and electoral registration arrangements for imprisoned persons as set out in the two Legislative Council Briefs	
001540 - 002637	Chairman Mr CHEUNG Man-kwong Administration	<p>Sorting, delivery and counting of ballot papers cast in dedicated polling stations (DPSs)</p> <p>Concern whether the polling hours of DPSs which ran from 9:00 am to 4:00 pm, rather than the conventional arrangement from</p>	

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		<p>7:30 am to 10:30 pm, would be subject to legal challenge</p> <p>Response of the Administration that -</p> <p>(a) the polling hours of DPSs were shortened to meet operational and security needs. The polling hours tied in with the daily routine of prisoners who would cease labour in penal institutions at 4:00 pm and any normal movement would be suspended afterwards;</p> <p>(b) every prisoner-electors would be given reasonable chance and time to vote on the polling day, given that DPSs would be set up inside penal institutions;</p> <p>(c) prisoner-electors would also be given sufficient time to consider which candidate they should vote for as election-related materials would be made available to them before the polling day;</p> <p>(d) for security reason, each eligible prisoner-electors would be allocated a time slot to vote at a DPS and the prisoner-electors would be informed of the allocated timeslot before the polling day; and</p> <p>(e) as the Chief Electoral Officer had been given the statutory power to appoint the polling hours by administrative means, the polling hours of DPSs should not be liable to legal challenge so long as reasonable arrangements had been made for prisoner-electors to vote.</p>	
002638 - 002826	Administration Chairman	<p>Concern about prisoner-electors being pressurized to vote</p> <p>Response of the Correctional Services Department (CSD) that broadcast would be arranged throughout the polling day notifying prisoner-electors of the voting arrangement and they could choose to go to DPSs for voting or not on a voluntary basis.</p>	
002827 - 004938	Mr Paul TSE Administration Chairman	<p>Response of the Administration to questions raised by Mr Paul TSE -</p> <p>(a) while visitors to prisons could canvass for prisoners' votes in their personal capacity, they were prohibited from doing so if their visits were made in their</p>	

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		<p>business or official capacities in order to ensure fair and equal treatment to all candidates;</p> <p>(b) CSD would implement appropriate measures, such as arranging briefings and distribution of promotional leaflets, to remind visitors who were visiting prisons in their official and business capacities not to canvass for prisoners' votes. Non-compliance would constitute a criminal offence;</p> <p>(c) additional copies of candidates' introductory leaflets and election-related materials would be made available in penal institutions to ensure that prisoner-electors could make an informed decision when casting votes. In addition, prisoners could access to election-related information through newspapers, magazines, radio and television. Access to information via facsimile and Internet, however, was prohibited due to security reason;</p> <p>(d) CSD would study the feasibility of recording election forums broadcasted in television and allowing prisoner-electors to view them on Sunday if they wished to do so, but careful consideration must be made having regard to the security and resources implications;</p> <p>(e) organizing small group discussion sessions between prisoner-electors and candidates had practical safety and security difficulties given the large number of prisoners and candidates involved;</p> <p>(f) some prisoners detained in maximum security prisons had committed serious crimes, some of them were violent or some might have mental illness, or required maximum protection as some were informers of other law enforcement agencies. For the sake of the personal safety of both candidates and prisoners, only candidates and not their election and polling agents were allowed to observe the poll at DPSs set up inside maximum security prisons. In addition, there were practical difficulties to vet the background of all election and polling agents given the large number involved;</p>	

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		<p>(g) CSD had an intelligence network inside penal institutions to monitor the conduct of prisoners and detect any unusual activities. Under the Elections (Corrupt and Illegal Conduct) Ordinance, a person who used force or duress to induce another person to vote at the election for a particular candidate or candidates constituted a criminal offence; and</p> <p>(h) to protect secrecy of votes, similar to the arrangement for other electors in a normal polling station, a prisoner-electer would cast his vote inside a voting compartment. As such, his voting preference would unlikely be controlled as it would not be made known to others.</p>	
004939 - 010720	Ms Cyd HO Administration	<p>Response of the Administration to questions raised by Ms Cyd HO -</p> <p>(a) the Administration would step up effort to promote secrecy of votes in penal institutions;</p> <p>(b) the voter registration form would be amended in such a way that, for applicants who were prisoners, they would be required to indicate whether they maintained a home outside the prison. Based on the information provided, the Registration and Electoral Office (REO) would take necessary follow-up action upon notification by CSD that a prisoner-electer would be discharged from prison. The Administration would provide the amended form for the Subcommittee's reference when it was finalized;</p> <p>(c) a prisoner-electer who maintained a home outside the prison would be registered to his home address during the term of imprisonment, and would continue to be so registered after being discharged from prison;</p> <p>(d) a prisoner who did not maintain a home outside the prison would be registered to a deemed address. Upon his release, REO would remind him to update REO with his new residential address in order to maintain his status as an eligible electer. The same message would be promoted to ex-prisoners through the</p>	Admin

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		<p>assistance of rehabilitation organizations for offenders;</p> <p>(e) in relation to (d) above, if the prisoner-elect concerned did not update his address after being discharged from prison, the Electoral Registration Officer was empowered to enter his name on the omissions list; and</p> <p>(f) soft copy of the omissions list would be made available for inspection during the statutory inspection period by prisoners or remanded persons detained by CSD or other law enforcement agencies upon request.</p>	
010721 - 011500	Mr CHEUNG Man-kwong Administration Chairman	<p>Response of the Administration to questions raised by Mr CHEUNG Man-kwong regarding eligibility of prisoner-electors to vote in professional sector functional constituencies (FCs) -</p> <p>(a) the composition of professional sector FCs was in general based on professional membership. For an FC which required professional body membership, a person who was a member of a professional body but had ceased to be a member would cease to be eligible to be registered as an elector under that FC and would be disqualified from voting in a FC election;</p> <p>(b) REO would issue letters to invite umbrella organizations and professional bodies to provide up-to-date membership information to ensure that the electoral records were updated. Relevant bureaux and departments would also provide REO with relevant information that could facilitate the updating of electoral record; and</p> <p>(c) REO would process the updating information received as appropriate, e.g. to update the electoral record after verifying relevant information.</p>	
011501 - 011904	Chairman Administration	<p>Response of the Administration on sorting of ballot papers -</p> <p>(a) a DPS might have hundreds of prisoner-electors who belonged to different constituencies. In a LegCo general election, the code of a</p>	

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		<p>geographical constituency would be printed at the back of the ballot paper to facilitate sorting. In DC and village representative ordinary elections, an envelope would be used to enclose the ballot paper cast at a DPS and the Presiding Officer would write on the envelope the name and number of the constituency concerned to facilitate sorting;</p> <p>(b) for LegCo general election, DC ordinary election and village representative ordinary election, ballot papers cast at DPSs would be delivered to Ballot Paper Sorting Stations for sorting by constituencies before they were transferred to the respective main counting stations for counting of votes; and</p> <p>(c) ballot papers cast at DPSs would be mixed with those cast by other electors before counting of votes.</p>	
011905 - 012432	Chairman Mr CHEUNG Man-kwong Ms Cyd HO Mr WONG Ting-kwong	Invitation of public views	
012433 - 012849	Chairman Clerk Administration Mr CHEUNG Man-kwong Ms Cyd HO	Scrutiny period of the subsidiary legislation Date of next meeting to study detailed provisions of the subsidiary legislation	