

**立法會**  
**Legislative Council**

Ref : CB2/SS/15/08

LC Paper No. CB(2)2526/08-09  
(These minutes have been seen  
by the Administration)

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

**Minutes of the second meeting  
held on Wednesday, 2 September 2009, at 9:30 am  
in Conference Room A 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 CHEUNG Hok-ming, GBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon Cyd HO Sau-lan  
Dr Hon PAN Pey-chyou  
Hon Paul TSE Wai-chun
- Members absent** : Hon WONG Yung-kan, SBS, JP  
Hon CHIM Pui-chung  
Dr Hon Samson TAM Wai-ho, JP
- Public Officers attending** : Constitutional and Mainland Affairs Bureau  
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)

Correctional Services Department

Dr KWAN Ming-tak  
Senior Superintendent (Penal Administration)

Ms LEUNG Wai-chong  
Superintendent (Operations)

Department of Justice

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

Miss NG Wing-man, Mandy  
Government Counsel

Home Affairs Department

Mr LEE Kei-shun, Kesson, JP  
Assistant Director

Mr MA Kit-chi  
Chief Liaison Officer

Registration and Electoral Office

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

Miss Vivien POON  
Council Secretary (2)1

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(2)2211/08-09(01)-(08), CB(2)2405/08-09(01) and (02), CB(2)2412/08-09(01), CB(2)2421/08-09(01) and (02), REO14/32/5(CR) and L.N. 162 of 2009]

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

2. The Subcommittee completed scrutiny of the Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009 and the detailed provisions of the five Amendment Regulations on electoral procedure and the three Amendment Regulations on registration of electors.

3. The Administration undertook to provide its response to members' concerns over new sections 28(1)(c) and 45(6)(ga)-(gb) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D), together with the finalized amendments to be proposed, by the following week for the Subcommittee's consideration by circulation. Members agreed that if there was no request for the Subcommittee to hold a further meeting to discuss the Administration's response, the Subcommittee would report to the House Committee on 9 October 2009 supporting the relevant subsidiary legislation. Members noted that the deadline for the Administration to give notice of amendments would be 14 October 2009.

Admin

Clerk

*(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)2477/08-09 on 11 September 2009.)*

4. The meeting ended at 12:30 pm.

Council Business Division 2  
Legislative Council Secretariat  
24 September 2009

**Proceedings of the second meeting of the  
Subcommittee on Subsidiary Legislation  
Relating to Voting by Imprisoned Persons  
on Wednesday, 2 September 2009, at 9:30 am  
in Conference Room A of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000013 - 000240	Chairman	Opening remarks	
000241 - 000548	Chairman Administration	Provision of a copy of the amended voter registration form which could cater for applicants who were imprisoned persons [LC Paper No. CB(2)2406/08-09(01)] and a copy of the pamphlet which would be provided to imprisoned persons upon release to remind them to update the Registration and Electoral Office on their new address [LC Paper No. CB(2)2406/08-09(02)].	
000549 - 000940	Chairman Administration	Briefing by the Administration on proposed technical amendments to the relevant subsidiary legislation relating to voting by imprisoned persons [LC Paper No. CB(2)2405/08-09(01)].	
000941 - 001430	Chairman ALA9 Administration	The Administration's letter dated 1 September 2009 [LC Paper No. CB(2)2429/08-09(01)] in response to the legal adviser's letter dated 31 August 2009 seeking clarification and making suggestions on amendment regulations on electoral procedures [LC Paper No. CB(2)2421/08-09(02)].  ALA9's confirmation that no further query was raised on the Administration's response.	
001431 - 002521	Ms Emily LAU Administration ALA9 Chairman	Response of the Administration to questions raised by Ms Emily LAU -  <u>Legislative Council (LegCo) elections</u>  (a) arrangements would be made for electors arrested, detained or remanded on the polling day to vote at a dedicated polling station (DPS), as an alternative polling station, in accordance with section 30(4A) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D) (paragraph (a) of LC Paper No. CB(2)2429/08-09 (01));	

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		<p>(b) for the LegCo general election, a few DPSs would be set up in police station(s) to cater for the detained or arrested electors of all the five geographical constituencies (GCs);</p> <p><u>District Council (DC) elections</u></p> <p>(c) for the DC ordinary election, similar arrangements would be made;</p> <p>(d) for the Kwai Tsing DC by-election scheduled for 6 September 2009, electors in Kwai Shing East Estate constituency who were arrested, detained or remanded by law enforcement agencies (LEAs) (other than the Correctional Services Department (CSD)) could vote at the DPS at Kwai Chung Police Station; and</p> <p>(e) to ensure secrecy of voting, ballot papers cast at DPSs in a DC ordinary election would be enclosed in envelopes marked with the name and code of the constituency concerned for sorting at the ballot paper sorting stations (BPSSs) and expeditiously transferred to the respective main counting stations.</p>	
002522 - 002921	Mr LEUNG Kwok-hung Administration Chairman	<p>Response of the Administration to questions raised by Mr LEUNG Kwok-hung -</p> <p>(a) electors arrested, detained or remanded towards the end of the polling hours of a public election could vote provided they arrived at DPS (closest to their place of arrest/detention/remand) before the close of the polling hours; and</p> <p>(b) if more than one election was held on the same day, the respective ballot boxes could be provided at DPSs to facilitate voting by the electors.</p>	
002922 - 003208	Dr Margaret NG Chairman	<p>Expression of support by Dr Margaret NG for the amendment regulations to enable prisoners and remanded unconvicted persons to vote in public elections and her suggestion that -</p> <p>(a) the Subcommittee should focus on whether it was necessary to confer the Administration with powers set out in the amendment regulations to put in place the relevant practical arrangements in a timely manner; and</p>	

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		(b) the Administration should report to LegCo on the implementation of the practical arrangements in due course.	
003209 - 003845	Mr Paul TSE Administration Chairman	<p>Mr Paul TSE's concern about security and logistical arrangements for voting by imprisoned persons on the polling day.</p> <p>Response of the Administration that as such practical arrangements applied only to imprisoned persons, the logistical arrangements should be manageable. Arrangements would be made with LEAs to safeguard security at DPSs.</p> <p>Mr TSE's question on whether ballot papers could be provided at police stations to facilitate postal voting by electors being detained; and his enquiry on related overseas practices.</p> <p>Response of the Administration that -</p> <p>(a) such an arrangement would involve much more resources compared to the arrangements for DPSs since staff supervising the electoral processes would need to be posted at various police stations; and</p> <p>(b) the Administration had focused its study on overseas practices relating to voting in person by imprisoned persons but not electors being detained as the voting systems in Hong Kong were different from that in overseas countries.</p>	
003846 - 004110	Mr CHEUNG Man-kwong Administration	View of Mr CHEUNG Man-kwong that since members of the general electorate who failed to arrive at polling stations before the close of the polling hours would not be able to vote, prisoner-electors/electors being detained who could not arrive at DPSs on time should not be given special treatment by allowing them to vote after the close of the polling hours.	
004111 - 004435	Dr Margaret NG Administration Chairman	The Administration's confirmation of Dr Margaret NG's view that as postal voting was not provided for in the Voting by Imprisoned Persons Ordinance, it could not be implemented by way of amending the related regulations on electoral procedure.	

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004436 - 005233	Ms Cyd HO Administration Chairman Ms Emily LAU	<p>Ms Cyd HO's concern whether provisions in the Amendment Regulations on registration of electors [LC Paper Nos. CB(2)2211/08-09(06)-(08)] would facilitate the voter registration of young people reaching the 18 years of age in custody or prison.</p> <p>Response of the Administration that by virtue of the Voting by Imprisoned Persons Ordinance, persons who met the eligibility criteria for voter registration, whether in prison or in custody, would be allowed to register as an elector. These criteria included -</p> <p>(a) being permanent residents of the Hong Kong Special Administrative Region; and</p> <p>(b) having reached 18 years of age.</p> <p>Advice of the Administration that CSD would inform imprisoned persons of the requirements, arrangements and period for voter registration, and send their completed application forms for voter registration for verification by the Registration and Electoral Office.</p>	
005234 - 005326	Chairman Administration	<b><u>Scrutiny of the Voting by Imprisoned Persons Ordinance (Commencement) Notice 2009 (L.N.162)</u></b>	
005327 - 005456	Chairman Administration	<b><u>Scrutiny of the provisions of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) (Amendment) Regulation 2009 (L.N.130)</u></b>	
005457 - 010027	Chairman Administration	sections 2(1) and (6), Cap. 541 sub. leg. D	
010028 - 010828	Chairman Administration	<p>sections 23(18)-(21)</p> <p>Explanation of the Administration in response to the Chairman's enquiry on the discretionary powers of the Commissioner of Correctional Services under subsection (20).</p>	
010829 - 011745	Chairman Administration Mr Paul TSE Mr WONG Ting-kwong Ms Cyd HO	<p>section 27</p> <p>Explanation of the Administration in response to the enquiries of Mr Paul TSE, Mr WONG Ting-kwong and Ms Cyd HO respectively -</p>	

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		<p>(a) on the need to assign a time slot during the polling hours appointed for a DPS to a prisoner-elect for operational and security reasons;</p> <p>(b) a prisoner-elect could request an alternative time slot other than the one assigned with proper justifications;</p> <p>(c) prisoner-elects would be notified of their time slots around 10 days before the polling day and would receive publicity materials related to the election in advance; and</p> <p>(d) they could decide whether to go to DPSs to vote or not as voting was strictly voluntary.</p>	
011746 - 012623	Administration Ms Cyd HO Chairman	<p>section 28</p> <p>Explanation of the Administration in response to Ms Cyd HO's enquiry that designation of BPSS under subsection (1)(c) applied to a LegCo general election but not a by-election, because a by-election usually only involved one GC and that BPSS would not be required in that case.</p> <p>Concern of the Chairman and Ms HO that subsection (1)(c) failed to provide for BPSS arrangements for a by-election which involved more than one GC.</p> <p>Undertaking of the Administration to review the drafting of section 28(1)(c) and corresponding provisions in the Amendment Regulations relating to electoral procedure in the light of members' concern.</p>	<b>Admin</b>
012624 - 012934	Administration Chairman	sections 30(4)-(7)	
012935 - 013217	Administration Chairman Ms Cyd HO	<p>sections 31(3A)</p> <p>Advice of the Administration in response to the concerns of Ms Cyd HO that each prisoner-elect would receive together with the poll card, a guide on voting procedure, candidates' profiles, and a leaflet from the Independent Commission Against Corruption on clean elections, which would facilitate them to make an informed decision for voting.</p>	



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013218 - 013445	Administration Chairman	section 39(1)	
013446 - 013552	Chairman Administration	section 41(3)	
013553 - 014045	Administration Chairman	sections 42(8)-(9)	
014046 - 014136	Administration Chairman	sections 43 (1) and (1A)	
014137 - 014231	Administration Chairman	section 44(6A)	
014232 - 014655	Administration Chairman Mr Paul TSE	section 45(6)(ga)-(gb)  Query of Mr Paul TSE as to why an officer of CSD or any LEA who would be exempted from the application of section 45(1) should be added in paragraph (ga)-(gb) instead of after paragraph (i) .  The Chairman's request for the Administration to consider incorporating the said provisions after section 45(6)(i) instead.	<b>Admin</b>
014656 - 014837	Administration Chairman	sections 46(2A)-(3) and (5)	
014838 - 015050	Administration Chairman	section 52(1)-(3)	
015051 - 015930	Administration Chairman	sections 53A(1)-(3) and (5A)-(6)  Explanation of the Administration in response to the Chairman's enquiry that with the consent of a prisoner-elect who was unable to vote during the time slot assigned for voting at DPS (i.e. because of the need to receive medical treatment), arrangements would be made to assist that elector to return to DPS during polling hours if feasible.	
015931 - 015957	Administration Chairman	section 63	
015958 - 020256	Administration Chairman Ms Cyd HO	sections 63A(1), (2A) and (4)  Reiteration of Ms Cyd HO and the Chairman's above concerns in relation to section 28(1)(c).	
020257 - 020456	Administration Chairman	sections 65(2A) and (9)	

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020457 - 020522	Administration Chairman	section 66A	
020523 - 020634	Administration Chairman	sections 70(1)-(2)	
020635 - 020643	Administration Chairman	section 71(6)	
020644 - 020813	Administration Chairman	section 74A(1)	
020814 - 021202	Administration Chairman	<p>section 74AA</p> <p>Concern of the Chairman over delays arising from the reporting requirements at BPSS, such as "a statement in writing as to the number of GC ballot papers" recorded under paragraph (e) of section 74AA; and his suggestion to simplify the data required for reporting purposes.</p> <p>Advice of the Administration that -</p> <p>(a) only numerical data would be required for reporting purposes; and</p> <p>(b) as most DPSs were situated in prisons of which the polling hours would end at 4:00 pm, there would be ample time for ballot papers cast to be sorted at BPSS and transferred to the main counting stations before the cut-off time at 10:30 pm.</p>	
021203 - 021314	Administration Chairman	<p>section 75(4A)</p> <p>Reiteration of the concerns of the Chairman and Ms Cyd HO in relation to section 28(1)(c).</p>	
021315 - 021322	Administration Chairman	section 85(5)	
021323 - 021334	Administration Chairman	section 86(2)	
021335- 021850	Administration Chairman Mr Paul TSE	section 90A	
021851 - 021925	Administration Chairman	section 95(5)	
021926 - 021956	Administration Chairman	sections 96(1A) and (2)	

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021957 - 022113	Chairman Administration	section 97(1A)	
022114 - 022301	Chairman Administration	Advice from the Administration that the five Amendment Regulations on electoral procedure to make provisions for voting at elections of the Chief Executive (CE), Members of LegCo, members of DC, members of the Election Committee and village representatives by prisoner-electors and electors being detained were broadly comparable except for a few provisions as highlighted below.	
022302 - 022311	Chairman Administration	<b><u>Scrutiny of the provisions of the Electoral Affairs Commission (Electoral Procedure)(District Councils) (Amendment) Regulation 2009 (L.N.131)</u></b>	
022312 - 022515	Chairman Administration Ms Cyd HO	section 31 of Cap. 541 sub. leg. F  Definition of the term, "special polling station".	
022516 - 022537	Administration Chairman	section 37(4)	
022538 - 022715	Administration Chairman Ms Cyd HO	section 57(2A)	
022716 - 022817	Administration Chairman	sections 75(1A) and 75A	
022818 - 022917	Administration Chairman ALA9	section 83(5)  Confirmation by ALA9 that the legal and drafting aspects of the relevant amendment regulation were in order.	
022918 - 023126	Chairman Administration ALA9	<b><u>Scrutiny of the provisions of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009 (L.N.132)</u></b>  Confirmation by ALA9 that the legal and drafting aspects of the relevant amendment regulation were in order.	
023127 - 023355	Chairman Administration	<b><u>Scrutiny of the provisions of the Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009 (L.N.133)</u></b>  section 2 of Cap. 541 sub. leg. J on definitions of "the main polling station" and DPS	

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023356 - 023732	Mrs Sophie LEUNG Chairman Administration	section 17(7)  Discussion on the appointment of different polling hours for different polling stations and the Administration's advice that for public election other than the CE election, the polling hours of DPSs situated in prison would run from 9:00 am to 4:00 pm to tie in with the daily routine of prisoners who would cease labour in penal institutions at 4:00 pm; and that details regarding specific polling hours would be worked out administratively.	
023733 - 024200	Chairman Administration Ms Cyd HO	Advice of the Administration that unlike a LegCo general election or a DC ordinary election, a CE Election would not require any BPSS.  Concern of Ms Cyd HO over the secrecy of votes cast by electors at DPSs for the CE Election; and advice of the Administration that even though envelopes would not be used to enclose ballot papers cast at DPSs, such ballot papers would be mixed with ballot papers cast by other electors at the counting stations before the counting of votes.	
024201 - 024227	Chairman Administration	<b><u>Scrutiny of the provisions of the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 (L.N.134)</u></b>	
024428 - 024515	Administration Chairman ALA9	Explanation of the Administration on amendments to sections 28(2)(b) and 28(4) of Cap. 541 sub. leg. L, with reference to para.(d) of LC Paper No. CB(2)2429/08-09(01).	
024516 - 024634	Administration Chairman	section 47  Discussion on the use of envelopes under subsection (1A).	
024635 - 024711	Administration Chairman	sections 79A and 89	
024712 - 024900	Chairman Administration	<b><u>Scrutiny of the provisions of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) (Amendment) Regulation 2009 (L.N.156)</u></b>  section 2 of Cap. 541 sub. leg. A	

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024901 - 025007	Administration Chairman	section 9(2A)	
025008 - 025110	Administration Chairman	section 14(2A)	
025111 - 025156	Administration Chairman	section 15(7A)	
025157 - 025445	Chairman Administration	<b><u>Scrutiny of the provisions of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2009 (L.N.157)</u></b>  section 25(4) of Cap. 541 sub. leg. B	
025446 - 025532	Chairman Administration	<b><u>Scrutiny of the provisions of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) (Amendment) Regulation 2009 (L.N.158)</u></b>	
025533 - 025957	Chairman Ms Cyd HO Administration Mrs Sophie LEUNG Clerk	The Administration's undertaking to submit its response to the concerns raised by members over new sections 28(1)(c) and 45(6)(ga)-(gb) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D), together with the finalized amendments to be made, by the following week for the Subcommittee's consideration by circulation.  Legislative timetable  Members' agreement that if there was no request for the Subcommittee to hold a further meeting to discuss the Administration's response, the Subcommittee would report to the House Committee on 9 October 2009 supporting the relevant subsidiary legislation.	<b>Admin</b>          <b>Clerk</b>