

立法會
Legislative Council

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LC Paper No. CB(2)2481/10-11
(These minutes have been seen
by the Administration)

**Subcommittee on Declaration of Constituencies
(District Councils) Order 2011**

**Minutes of the first meeting
held on Friday, 15 April 2011, at 1:00 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Kwok-kin, BBS
Hon Alan LEONG Kah-kit, SC

Member absent : Hon Paul TSE Wai-chun, JP

Public Officers attending : Constitutional and Mainland Affairs Bureau

Miss Adeline WONG
Under Secretary for Constitutional and Mainland Affairs

Ms Anne TENG
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Christopher LAU
Assistant Secretary for Constitutional and Mainland
Affairs

Department of Justice

Miss Emma WONG
Senior Government Counsel

Registration and Electoral Office

Mr Raymond WANG
Deputy Chief Electoral Officer

Mr Philip LAM
Senior Electoral Officer

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

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Miss Ivy LEONG
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Election of Chairman

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

II. Meeting with the Administration

[CMAB C2/11, LC Paper Nos. LS44/10-11 and CB(2)371/10-11]

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).
3. The Subcommittee completed the scrutiny of the Declaration of Constituencies (District Councils) Order 2011.
4. Members agreed that the Subcommittee would report its deliberations to the House Committee on 6 May 2011.

Action

III. Any other business

5. There being no other business, the meeting ended at 2:10 pm.

Council Business Division 2
Legislative Council Secretariat
3 August 2011

**Proceedings of the first meeting of the
Subcommittee on Declaration of Constituencies (District Councils) Order 2011
on Friday, 15 April 2011, at 1:00 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000114 - 000200	Mr CHEUNG Man-kwong Dr LAM Tai-fai Ms Starry LEE Mr IP Kwok-him	Election of Chairman	
000200 - 000808	Chairman Administration	Briefing by the Administration on the Declaration of Constituencies (District Councils) Order 2011 ("the Order").	
000809 - 001428	Dr LAM Tai-fai Administration	<p>Dr LAM Tai-fai expressed regret at the Administration's delay in finalizing the delineation of District Council constituency areas ("DCCAs") for the 2011 DC election and stressed the need for the Subcommittee to expedite its scrutiny work.</p> <p>Dr LAM also expressed the following views –</p> <ul style="list-style-type: none"> (a) the delay in finalizing the delineation of DCCAs had affected the preparation work of the DC members and prospective candidates who planned to stand for the upcoming ordinary election in November 2011; (b) the Administration should advance the timetable for the demarcation exercise of DCCAs in the future; (c) the Electoral Affairs Commission ("EAC") should adhere strictly to its working principles in making its recommendations on the delineation of DCCAs and should not take into consideration factors with political implications in order to be fair to all candidates; and (d) the adoption of the election expenses limit of \$53,800 across-the-board for the 2011 DC election would restrict unfairly the electioneering activities of candidates of constituencies with a large population size. 	

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		<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) EAC had all along been fair and open in following the relevant statutory criteria and the established working principles in the demarcation exercise of DCCAs; (b) the Administration had focused in the first half of 2010 on the methods for selecting CE and forming LegCo in 2012, following which it had expedited its work and compressed the timeframe in relation to the allocation of new elected DC seats and the legislative work concerning the demarcation of constituency boundaries for the 2011 DC election; (c) as compared with the timetables for the demarcation of the boundaries of DCCAs for the Second and Third Term DCs, the current timetable for the Fourth Term DCs was more or less the same. For the Second Term DCs, the Legislative Council ("LegCo") approved the increase in the number of elected DC seats in December 2002 and the relevant declaration of constituencies order was gazetted in May 2003. For the Third Term DCs, LegCo approved the increase in the numbers of elected seats in June 2006, and the relevant declaration of constituencies order was gazetted in December 2006. For the Fourth Term DCs, LegCo approved the increase in the number of elected seats in December 2010, and the Order was gazetted in March 2011; (d) once EAC published its provisional recommendations on the delineation of DCCAs on 3 December 2010, prospective candidates should have an idea of the proposed delineation of DCCAs and could start their preparation for participating in the 2011 DC election; (e) it was appropriate to apply the same election expenses limit to all DC constituencies because their size was small when compared to the LegCo geographical constituencies and the population of most DCCAs varied within the $\pm 25\%$ deviation limits. 	

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001429 - 001515	Mr LAM Tai-fai Chairman	Dr LAM Tai-fai reiterated his concern about the delay in finalizing the delineation of DCCAs for the 2011 DC election and any possible delay caused by the scrutiny work of the Subcommittee.	
001516 - 002009	Ms Emily LAU Administration Chairman	<p>Ms Emily LAU echoed Dr LAM Tai-fai's concern about the delay in finalizing the delineation of DCCAs for the 2011 DC election.</p> <p>Ms LAU enquired –</p> <p>(a) about the statutory timeframe for the delineation of DCCAs; and</p> <p>(b) how the recommendations on the delineation of DCCAs had reflected that factors with political implications had not been taken into consideration.</p> <p>The Administration responded that –</p> <p>(a) EAC was required under the Electoral Affairs Commission Ordinance (Cap. 541) to submit a report to the Chief Executive ("CE") on its recommendations for DCCAs not more than 36 months from the preceding DC ordinary election. As the last DC ordinary election was held on 18 November 2007, EAC should have submitted its report and recommendations to CE by 17 November 2010. However, CE had pursuant to section 18(4) of the Ordinance extended the deadline to April 2011 to allow EAC adequate time to formulate its proposals on delineation of DCCAs;</p> <p>(b) in demarcating the boundaries of DCCAs, EAC had followed the relevant statutory criteria. The primary consideration of EAC was to ensure compliance with the population criterion (i.e. the population in each constituency should be as near the population quota as practicable), and where it was not practicable to comply with this requirement, the population in that constituency should not exceed or fall short of the population quota by more than 25%;</p>	

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		<p>(c) EAC might depart from the strict application of the $\pm 25\%$ deviation limits where it appeared that consideration of community identities, the preservation of local ties or physical features rendered a departure necessary or desirable;</p> <p>(d) in making its provisional and final recommendations, EAC had followed the established working principles in the whole exercise which was conducted with a high degree of transparency;</p> <p>(e) EAC had considered all the representations having regard to the relevant statutory criteria and the established working principles. All the written and oral representations received during the consultation period, with detailed justifications for accepting or rejecting the suggestions, had been included in the EAC report on the Recommended Constituency Boundaries for the 2011 DC Election submitted to CE.</p>	
002010 - 002251	Ms Emily LAU Administration Chairman	<p>Noting from paragraph 8 of the LegCo Brief [CMAB C2/11] that EAC had invited District Officers ("DOs") to comment on its preliminary findings before the provisional recommendations were made, Ms Emily LAU enquired about the nature of the comments made by DOs whose role, she considered, had become increasingly political. She also asked whether those comments could be disclosed to the public.</p> <p>The Administration responded that –</p> <p>(a) it was an established practice for EAC to invite DOs to comment on its preliminary findings before the provisional recommendations were made;</p> <p>(b) DOs who were familiar with their districts would provide EAC with information related to the community identities and local ties of the district, public facilities shared among communities in the district and development of the relevant area etc. Such information would facilitate EAC in better understanding the local features and the environment of the</p>	

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		<p>areas concerned when drawing up the provisional recommendations and considering representations from the public; and</p> <p>(c) in making its recommendations, EAC had given considerations to the factors, such as the community identities, the preservation of local ties or physical features, in accordance with the relevant statutory criteria. EAC would only invite DOs to give comments on those factors as appropriate.</p>	
002252 - 002552	Mr CHEUNG Hok-ming Administration	<p>Mr CHEUNG Hok-ming's observation that the difference in population figure for DCCAs could be as high as 8,641 within the $\pm 25\%$ deviation limits and the difference would be greater among those DCCAs which fell outside the $\pm 25\%$ deviation limits. He enquired whether the Administration would consider increasing the number of constituencies in a district if the population figure in a DCCA exceeded the population quota by more than 25%.</p> <p>The Administration responded that –</p> <p>(a) in making recommendations on the delineation of DCCAs, EAC had to ensure compliance with the population quota requirement and the number of elected seats in each district as stipulated in the District Councils Ordinance (Cap. 547) ("DCO"); and</p> <p>(b) in the circumstances that the population figure in a constituency exceeded the population quota by more than 25% and the number of elected seats in that district would be increased, EAC could make use of the new seat(s) to try to bring the population of the constituency concerned within the $\pm 25\%$ deviation limits.</p>	
002553 - 002958	Mr CHEUNG Hok-ming Administration Dr LAM Tai-fai Chairman	<p>Mr CHEUNG Hok-ming further enquired –</p> <p>(a) why a constituency could not be spilt into two constituencies (or two constituencies spilt into three constituencies) if their population figure had exceeded the population quota by more than 25%; and</p>	

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		<p>(b) about the constituencies which had the largest and smallest population sizes.</p> <p>The Administration responded that –</p> <p>(a) if the number of elected seats in a district would be increased, two constituencies in that district with population exceeding the population quota by more than 25% could be spilt into three constituencies. However, if there was no addition of seats in that district, EAC could only consider making adjustments to the boundary of that DCCA and those of adjacent DCCAs, taking into consideration the preservation of local ties, community identities and physical features of the areas, with a view to bringing the population of the constituency concerned within the 25% deviation limits; and</p> <p>(b) Lamma & Po Toi DCCA (Islands District) had the smallest population size of 6,095, while Po Tat DCCA (Kwun Tong District) had the largest population size of 24,761.</p>	
002959 - 003424	Chairman Administration	<p>The Chairman enquired –</p> <p>(a) how EAC had considered the views received in a fair and independent manner before making its final recommendations on the delineation of DCCAs; and</p> <p>(b) whether EAC had changed its provisional recommendations having regard to the representations received during the consultation period and if yes, how many DCCAs had been affected.</p> <p>The Administration responded that –</p> <p>(a) EAC had considered seriously in accordance with the relevant statutory criteria and the established working principles all the written and oral representations received during the public consultation exercise on its provisional recommendations;</p>	

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		<p>(b) for representations regarding DCCAs which were provisionally determined to be the same as those of the DCCAs in 2007, modifications to their boundaries would be considered only if they were supported by cogent reasons and would result in substantial and notable improvement on community, geographical and development considerations; they would not in turn affect an unacceptable number of unaltered DCCAs; and the resulting population of all the DCCAs affected would not exceed the $\pm 25\%$ deviation limits;</p> <p>(c) where the population of an unaltered DCCA was within the $\pm 25\%$ deviation limit, EAC considered it inappropriate to accept representations which proposed changes to the unaltered DCCA solely to bring the population closer to the population quota. If EAC were to accept such representations, many DCCAs would have to be re-delineated without the benefit of further public consultation as to their acceptability. Therefore, EAC would not accept such representations;</p> <p>(d) for representations regarding new DCCAs, EAC would consider accepting those suggestions with sufficient cause on better population distribution or on community considerations; and</p> <p>(e) having regard to the representations received, EAC adjusted its provisional recommendations in respect of the boundaries of 19 DCCAs and the names of two DCCAs.</p>	
003425 - 004131	Ms Emily LAU Administration Chairman	<p>Ms Emily LAU reiterated her concern as to whether the whole exercise was seen to be open and fair, and whether DOs would have undue influence in the delineation of DCCAs. She also enquired about the number of DCCAs' boundaries EAC had proposed to change in its provisional recommendations.</p> <p>The Administration responded that –</p>	

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		<p>(a) at the invitation of EAC, DOs would tender comments in relation to the factors to be considered by EAC in making recommendations on the delineation of DCCAs i.e. on community identities, local ties and physical features of DCCAs;</p> <p>(b) since EAC would not take into consideration factors with political implications, DOs would not be invited to comment on this area;</p> <p>(c) EAC had conducted the whole process openly and fairly by including all the representations received during the consultation period (with the exception of those requesting for non-disclosure) and setting out its justifications for accepting or rejecting the representations in the EAC report;</p> <p>(d) the EAC's provisional recommendations on the boundaries of the DCCAs were treated as an internal document until its publication; and</p> <p>(e) in the provisional recommendations, EAC had proposed to change the boundaries of 113 DCCAs. Having regard to the representations received, EAC adjusted its provisional recommendations in respect of the boundaries of 19 DCCAs. In the final recommendations, the boundaries of 122 DCCAs were changed.</p>	
004132 - 004906	Mr Alan LEONG Administration Chairman	<p>Mr Alan LEONG's view that apart from the consideration of community identities and shared use of public facilities, EAC should also consider the close contacts and network already built up by a DC member in his/her respective constituency.</p> <p>Referring to the constituency of Tsui Ping North, Mr LEONG pointed out that the serving DC member, Mr LAM Ka-keung, had served the area for almost eight years but the constituency would be dissolved according to the EAC's recommendations. Hence, Mr LAM had to start building up network within a new constituency all over again. Mr LEONG asked whether EAC had paid regard to such factors and whether EAC</p>	

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		<p>would enhance the transparency of the demarcation exercise.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) according to EAC's established working principles adopted in the previous exercises, for existing DCCAs where the population fell within the $\pm 25\%$ deviation limits, their boundaries would be maintained as far as possible; for those DCCAs where the population fell outside the $\pm 25\%$ deviation limits, their boundaries and also those of adjacent DCCAs would be adjusted to comply with the population quota requirement; (b) the population figure of the existing Tsui Ping North DCCA and Kwun Tong Central DCCA was less than 12,962 (i.e. fell short of the population quota by more than 25%), while there was a population growth in other DCCAs in the Kwun Tong district. After having considered various options, EAC had recommended merging these two DCCAs with the Tsui Ping South DCCA to form two constituencies so as to comply with the population quota requirement; This would also release one constituency to cater for other areas in Kwun Tong which had had significant population growth. (c) EAC had endeavoured to maintain the boundaries of existing DCCAs as far as possible and where adjustments had to be made, EAC would adopt a way which affected the least number of existing DCCAs; and (d) EAC appreciated concerns that changes to DCCA boundaries might affect the provision of services by DC members to their constituencies. EAC had tried its best to minimize changes to the boundaries of existing DCCAs. This was shown by the fact that for the Third Term DCs, a total of five elected seats had been added and the boundaries of 139 DCCAs were changed, whereas for the Fourth Term DCs, seven 	

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		<p>elected seats would be added but only 122 DCCAs' boundaries were changed.</p> <p>Mr LEONG further enquired about –</p> <p>(a) whether the Administration would enhance the transparency of the demarcation exercise to dispel any suspicion of political consideration; and</p> <p>(b) the weighting of the factors considered by EAC.</p> <p>The Administration responded that –</p> <p>(a) Appendix III to the EAC report had set out in detail all the written and oral representations received by EAC. The justifications for accepting the representations or otherwise were also stated clearly in the Appendix. The current exercise had entailed a high degree of transparency. Having said that, the Administration would relay Mr LEONG's view to EAC; and</p> <p>(b) EAC had to follow the relevant statutory criteria in demarcating the boundaries of DCCAs. The primary consideration of EAC was to ensure compliance with the population criterion, unless there were justifications for deviation on grounds of community identities, preservation of local ties and/or physical features.</p>	
004907 - 005231	Ms Starry LEE Administration	<p>Ms Starry LEE expressed dissatisfaction about the delay in finalizing the delineation of DCCAs for the Fourth Term DCs which she considered had affected the preparation plan of serving DC members who planned to stand for the upcoming DC election. Noting from Annex E to the LegCo Brief that there were disparities in the number of DCCAs among DCs, Ms LEE enquired whether the district boundaries of the 18 DCs would be changed in the future, given the development of new areas, such as the development of the former Kai Tak airport in Wong Tai Sin district.</p> <p>The Administration responded that the existing district boundaries of the 18 DCs were drawn up</p>	

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		<p>some years before on the basis of factors including historical background. For reasons such as development of the relevant areas and population growth, there were bound to be disparities in the population of the 18 districts. As the existing boundaries had been in use for a long time, and DC members and their constituencies were familiar with the arrangements, any proposed changes would have to be made with great prudence. The Administration would give consideration to all relevant factors, including the development of the relevant areas, should a review in the district boundaries be deemed necessary in the future.</p>	
005232 - 005344	Chairman Administration	<p>The Chairman asked whether the Administration would consider reviewing the district boundaries in the future even though the disparities in the number of DCCAs among DCs could not be dealt with in the current legislative exercise.</p> <p>The Administration reiterated that the Administration would have to exercise great prudence in proposing any amendments to the district boundaries. Since the 2011 DC election would be held in November, the Administration considered it appropriate to retain the existing district boundaries of the 18 DCs.</p>	
005345 - 005821	Mr WONG Yung-kan Chairman Administration	<p>Mr WONG Yung-kan's view that as the adjustment of the boundaries of existing DCCAs was made on the basis of the population quota requirement, there should not be any political considerations as all political parties were affected in the adjustment. He enquired about the exact date of the DC election to be held in November 2011.</p> <p>The Chairman asked whether comments from individual political parties had been incorporated in EAC's recommendations.</p> <p>The Administration responded that –</p> <p>(a) upon receiving a representation, be it from a political party or from general public, the EAC would consider it in accordance with the statutory criteria and working principles; and</p>	

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		(b) DC ordinary election was normally held in November and according to past practices, the announcement of the exact date would be made around six months before the election. The Administration would make announcement after CE had determined the date for holding the 2011 DC election pursuant to the relevant provision of DCO.	
005822 - 010239	Dr LAM Tai-fai Chairman Ms Starry LEE Administration	Dr LAM Tai-fai and Ms Starry LEE reiterated their grave dissatisfaction about the delay in finalizing the delineation of DCCAs. They also raised doubt over the appropriateness of Members to interfere with the recommendations of EAC on the delineation of DCCAs. They considered that EAC should conduct its work independently. The Chairman informed members that the scrutiny period of the Order had been extended to 18 May 2011 and individual LegCo Members were entitled to give notice for moving amendments to the Order if they wished to do so.	
010240 - 010352	Chairman Administration	<u>Scrutiny of the provisions of the Order</u> Section 1	
010353 - 010450	Ms Emily LAU Chairman	In response to Ms Emily LAU's enquiry, the Chairman advised that while the Third Term DCs would adjourn in September 2011, DC members would hold office till the end of the term, i.e. 31 December 2011 and the Fourth Term DCs would commence on 1 January 2012.	
010451 - 010516	Chairman Administration	Section 2	
010517 - 010640	Chairman Administration Dr LAM Tai-fai	Section 3	
010641 - 010659	Chairman Administration	Section 4	
010700 - 010858	Chairman Ms Emily LAU Legal adviser	The Chairman advised that the Subcommittee should report its deliberations to the House Committee on 6 May 2011 and the deadline for giving notice to amend the Order would be	

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		11 May 2011. In response to Ms Emily LAU's enquiry, Assistant Legal Adviser 9 advised that the Order was subject to negative vetting by LegCo. Subject to any amendment, the Order would come into operation on 23 May 2011.	

Council Business Division 2
Legislative Council Secretariat
3 August 2011